9777 Golf Links Road
Oakland . CA . 94605
T (510) 632-9525
F (510) 635-5719

June 18, 2012

Scott Wilson
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

SUBJECT: **Response to Department of Fish and Game Letter of April 30, 2012**
Oakland Zoo California Exhibit Expansion Project
Knowland Park, Oakland, California

Dear Mr. Wilson:

Thank you for your letter of April 30, 2012 from the Department of Fish and Game (Department) regarding the Oakland Zoo California Exhibit Expansion Project. Your letter addresses a number of issues including the Zoo's pending application for a Streambed Alteration Agreement (SAA), the classification of vegetation habitat on the Zoo expansion site, fuel management and habitat protection associated with the Zoo expansion, and a suggestion to relocate the Interpretative Center. We appreciate your comments and your review of the project. We hope our response addresses your concerns and assists you in better understanding the project. If questions remain, it may be worthwhile to schedule a field meeting to facilitate resolution of any remaining concerns.

Response to Comments

1. Meeting Date Correction

Your letter refers to a meeting on February 3, 2012 with Marcia Grefsrud to discuss the project, review the potential impacts on Alameda whipsnake and other resources, and obtain preliminary input on the proposed approach to mitigation. This meeting was held on February 3, 2011, not 2012.

2. Streambed Alteration Agreement

The Department provided the Zoo with a draft SAA on April 30, 2012. The Zoo responded on May 29, 2012 with some suggested minor revisions to the draft SAA. Please let us know if you have any further comments or questions on the draft SAA.

3. CESA Take Authority

Based on advice from the Department, the Zoo initially decided to submit a request for an Incidental Take Permit (ITP) under CESA rather than proceeding under a consistency determination pursuant to Fish and Game Code Section 2080.1. The Department informally reviewed a draft ITP application in early April 2012. As instructed by the Department, the draft ITP application followed the Department's application format, describing the potential impacts of the project on Alameda whipsnake and the approach to compensatory mitigation as proposed in the *Biological Assessment* (dated December 20, 2011) and *Alameda Whipsnake Mitigation and Monitoring Plan* (dated May 31, 2011), both prepared by Swaim Biological. The Zoo continues to evaluate both the ITP and consistency determination options. If the conservation measures the Zoo includes in its Section 7 Consultation process under the Federal Endangered Species Act satisfy the CESA requirements, the Zoo may elect to seek a consistency determination under CESA.

4. Vegetation Classification

a. Overview

Your letter suggests that the chaparral in the vicinity of the Zoo expansion area meets the definition of an alliance of Brittle leaf – Woolly leaf manzanita chaparral according to the 2009 *Manual of California Vegetation*. We do not agree. Instead, we believe Environmental Collaborative and Swaim Biological properly classified the vegetation on the project site during the extensive site surveys undertaken for the project's CEQA environmental review.[1] The results of these surveys are reported in the Subsequent Mitigated Negative Declaration/Addendum (SMND/A) prepared for the project under the direction of the City of Oakland. Moreover, the classification of the chaparral vegetation in one category or another is not relevant to either the pending SAA or the consideration of the project under CESA or the Federal ESA.

b. Information From CNPS

The Department's position regarding the possible occurrence of Brittle leaf – Woolly leaf manzanita on the site appears be based on information provided by Erin McDermott on behalf of the East Bay Chapter of the California Native Plant Society (CNPS). CNPS actively advocated against the project throughout the City's review and approval of the

[1] See SMND/A pp. p. 3.3-17 which describes the resource surveys and mapping conducted in connection with the environmental review of the project's impacts. Additional surveys, focused on native grasslands, were conducted during the City's review of the project and in response to comments received on the SMND/A. The SMND/A Biological Resources section (pp. 3.3-16- 3.3-58) documents the vegetation and wildlife habitat on the site, evaluates the project's impacts, and provides mitigation measures that reduce the potential impacts to less than significant levels.

project and is one of the petitioners in a lawsuit filed challenging the City's approval of the project and compliance with CEQA. (See Response 4(e) below for a discussion of the court's proposed ruling against the petitioners.)

On August 24, 2011, CNPS sent a series of emails to our consulting biologist, Jim Martin of Environmental Collaborative, which contained a copy of the "California Native Species Field Survey Form" (dated August 3, 2011) and a "CNPS and CDFG Combined Vegetation Rapid Assessment Field Form" (dated August 3, 2011), both completed by Erin McDermott. The email chain describes Erin's initial determination that the chaparral on the site "...fits solidly into *Adenostoma fasciculatum* Shrubland Alliance (Chamise chaparral)...." This determination is consistent with the assessment of Environmental Collaborative and Swaim Biological. In a subsequent email, however, Ms. McDermott modified this determination based on input from Roy West of CNPS and reclassified the community type as "Brittle Leaf Manzanita Chaparral" on the "California Native Species Field Survey Form". Notably, the "California Native Species Field Survey Form" omits all reference to the percent cover contribution of Brittle leaf – Woolly leaf manzanita in the stand on the site. The "CNPS and CDFG Combined Vegetation Rapid Assessment Field Form" completed by Ms. McDermott indicates that the Brittle leaf – Wooly leaf manzanita is less than one percent of this stand. This series of emails and the completed forms are attached for your information.

We also note the Zoo and Environmental Collaborative were not contacted by Ms. McDermott prior to the field survey. We do not know if Ms. McDermott had the information contained in the SMND/A biological resources section and its supporting documentation, the *Alameda Whipsnake Mitigation and Monitoring Plan*, the project's Conditions of Approval, accurate project plans, or other relevant information.

c. Qualifications for Manzanita Chaparral Alliance Not Met

The stand of chaparral near the proposed Interpretive Center is not believed to qualify as the Brittle leaf – Woolly leaf manzanita chaparral alliance. Chamise (*Adenostoma fasciculatum*) forms the predominant cover over most of the stand, well over 60 percent cover. The cover type for this stand accurately meets the description of "*Adenostoma fasciculatum* Shrubland Alliance – Chamise chaparral" in the 2009 *Manual of California Vegetation*, as originally concluded by Erin. Although Brittle leaf – Woolly leaf manzanita (*Archtostaphylos tomentos* ssp. *crustacean*) is found as scattered individuals in the chaparral on the site, the stand near the proposed Interpretive Center supports very little of this species.

The mere presence of this species in a chamise – dominated stand of chaparral does not elevate that stand to the Brittle leaf – Woolly leaf manzanita chaparral alliance. Ms. McDermott determined that this species comprises less than one percent cover in the stand of chaparral near the Interpretive Center. (See attached "CNPS and CDFG Combined Vegetation Rapid Assessment Field Form") We have not conducted detailed

sampling, but based on visual estimates by Jim Martin made from accessible areas along the fringe of the stand of chaparral, Mr. Martin estimates that Brittle leaf – Woolly leaf manzanita comprise less than 0.5 percent cover. Based on the characterization made by Todd Keeler-Wolf in your letter, the Department's position is that "...the presence of just one or two percent cover of this manzanita species..." would qualify the stand as a sensitive natural community type given the influences of fire suppression and succession that tends to replace manzanita over time. The cover composition in this stand, as reported by Ms. McDermott and estimated by Mr. Martin, however, does not meet the minimum cover specified by the Department.

Additionally, Brittle leaf – Woolly leaf manzanita is not a special-status species and thus does not implicate any CEQA significance standards or require any additional CEQA mitigation where the stand of chaparral does not qualify as a sensitive natural community type. Brittle – leaf Woolly leaf manzanita is relatively widespread in chaparral communities of central coastal California. According to the Calflora website (http://www.calflora.org/cgi-bin/species_query.cgi?where-calrecnum=617), there are 43 documented occurrences of Brittle leaf – Woolly leaf manzanita reported in Alameda County, with 23 records reported by the Consortium of California Herbaria. Consequently, there is no evidence to support a conclusion that the project, including the Interpretive Center, would threaten to eliminate this plant community and CEQA Guidelines section 15065(a) is not applicable.

For these reasons, we believe that the SMND/A provided complete and accurate information about the chaparral community type, and the project's biologists have complied fully with their obligations to describe the vegetation on site.

d. No Relevance to SAA or CESA Compliance

Moreover the classification of this stand does not have any specific relevance to either the pending SAA or compliance with CESA. None of the vegetation in question is found in the area covered by the SAA. Any effects on Alameda whipsnake habitat will be fully considered under the CESA and Federal ESA processes. Swaim Biological, one of the leading experts on Alameda whipsnake, has determined that the Mitigation and Monitoring Plan will fully mitigate any potential project impacts on Alameda whipsnake habitat.

e. No Additional CEQA Review Is Required

Finally, we note that issues of this type should have been raised during the CEQA process for the project. (CEQA Guidelines § 15096.) The City (the lead agency for the project) completed the CEQA process for this project on June 21, 2011 when the City Council adopted the SMND/A as part of its unanimous approval of the project. The City filed a Notice of Determination and the time for filing a challenge to the SMND/A has long expired. Because there are no project changes, no changed circumstances, and no

new information of substantial importance that could not have been known at the time the City adopted the SMND/A, there is no basis for requiring any additional CEQA review. (CEQA § 21166; CEQA Guidelines § 15162.)

On May 16, 2012, the Alameda County Superior Court issued a proposed statement of decision denying the CNPS and Friends of Knowland Park's petition for a writ of mandate in connection with the City's approval of the project and holding that the SMND/A for the project, including the biological resources discussion, complied with CEQA. The time period for objecting to the proposed statement of decision expired with no objections. We expect the Court to issue a final decision shortly.

5. Draft Recovery Plan

Your letter refers to the 2002 USFWS *Draft Recovery Plan for Chaparral and Scrub Community Species East of San Francisco Bay* (Draft Recovery Plan), which identifies habitat protection as the key element in the recovery of Alameda whipsnake, and points out the challenges with "restoring" natural disturbance regimes to fire adapted habitat such as chaparral and the risks of catastrophic wildfire at the wildland/urban interface. We note that a recovery plan – whether draft or final – is a planning document and has no regulatory significance.

Nonetheless, the Draft Recovery Plan was considered during preparation of the *Status of the Alameda Whipsnake in Knowland Park for the Proposed Expansion of the Oakland Zoo* (dated January 3, 2011) contained in Appendix A to the *Draft Alameda Whipsnake Mitigation and Monitoring Plan* (see Appendix C of the *Biological Assessment* in Attachment D to the JARPA).

6. Fuel Management

Your letter refers to Department concerns regarding fuel management requirements because of the location of project improvements in relation to fire-prone chaparral habitat.

As concluded in the SMND/A and responses to comments on the SMND/A prepared by City staff, potential impacts on the chaparral habitat would be largely avoided through elimination of the proposed amphitheater and through adjustments to the location of the proposed Interpretive Center and alignment of the perimeter fence. The Zoo, the project's biologists, and the City have never proposed extensive thinning of chaparral habitat as this is not considered necessary.

The *Biological Assessment* recommends removal of sapling coast live oaks and California bay where they encroach into the chaparral cover. Removal of these saplings is proposed as a way to prevent future shading of existing shrubs and succession to woodland habitat, which is taking place throughout the perimeter of the stands of chaparral, in part because of fire suppression.

French broom and other invasive species, which are currently moving into openings along the fringe of the chaparral habitat, also would be removed as part of implementing the *Habitat Enhancement Plan* (HEP) in the Ecological Recovery Area of the project. The invasive species control called for in the HEP is a critical part of maintaining and enhancing existing habitat conditions, and an important component of the *Draft Alameda Whipsnake Mitigation and Monitoring Plan*. Without the implementation of the HEP, which is part of the project, invasive species will continue to degrade the habitat in the project site and the remainder of Knowland Park.

The potential effect of fire fuel management activities in Knowland Park were considered as part of the impact analysis on biological resources in Section 3.3 of the SMND/A and no significant impacts are expected due to fire fuel management activities. The defensible space standards of the City of Oakland Wildfire Prevention Assessment District are listed on page 3.10-7 of the SMND/A. These standards apply to buildings and roads; they would not apply to the proposed fencing or animal enclosures, including the perimeter fence. The tree limbing in the vicinity of buildings/structures required for defensible space would not significantly alter the existing woodland habitat on the site, and most limbs on the oaks already meet this standard. Routine cutting of grass to less than six inches and maintenance of shrubs within the defensible space zone and along roadways may favor low growing species, thereby having a beneficial effect on grasslands and habitat.

The proposed Interpretive Center would be located adjacent to chaparral shrubland considered core Alameda whipsnake habitat. Fire fuel management activities would not require the removal of shrubland; instead, fuel management activities would require maintenance of shrubs, which would not degrade the whipsnake habitat according to input from Karen Swaim, by requiring no less than 25 percent cover be retained through selective thinning and pruning, and providing openings within the senescent chaparral beneficial to Alameda whipsnake use.

Mitigation Measure 14c approved by the City Council at their meeting on June 21, 2011 included the following provisions:

Fire fuel management activities required by the Oakland Fire Department to provide defensible space around buildings shall be done in a manner to limit the potential impact to Alameda whipsnake habitat and performed under the supervision of a qualified biological monitor, including without limitation (a) shrub maintenance shall be done manually using chain saws and clippers; (b) no shrub stumps shall be removed; (c) shrub

cuttings shall be removed from the area; (d) thinning shall not result in shrub cover of less than 25 percent; and (e) thinning shall not be performed more frequently than on an annual basis.

In addition, in accordance with Mitigation Measure 14c in the SMND/A, the project would require permit approval from the USFWS and the Department concerning Alameda whipsnake. The resource agency representatives must be satisfied that the entire Alameda whipsnake mitigation program complies with CESA and the Federal ESA before issuing the necessary permits or concurrence determination.

7. Effect of Thinning on Chaparral

Your letter also refers to concerns that the proposed thinning of chaparral could have a significant impact on maritime chaparral habitat in Knowland Park due not only to direct removal of chaparral but also by increasing the potential for colonization of invasive species, and concern that "...thinning will not re-establish native shrubs due to lack of fire-stimulated germination." As described above, the proposed fire fuel management activities are not anticipated to have any significant impact on chaparral habitat, regardless of how that vegetation type is defined or whether it qualifies as a sensitive natural community type.

Controlled burns were considered as part of the management options in implementing the HEP, but were not seen as feasible given the proximity to surrounding residences, variability in vegetative cover, and challenges with providing adequate control. Regeneration of chaparral vegetative cover following thinning would occur by stump sprouting, not by fire induced seed germination. The dominant species throughout the chaparral stands on the site is chamise, which sprouts vigorously after pruning. Although it is expected that no Brittle leaf – Woolly leaf manzanita would be pruned as part of the limited fire fuel management activities, the 2009 *Manual of California Vegetation* indicates that this species is a "high sprouter" (see page 347) following a fire and other documentation indicates that it resprouts after cutting. As noted above, invasive species would be removed as part of implementation of the HEP in the Ecological Recovery Area and throughout Knowland Park. The initial focus of the invasive species removal and control effort would be in the Ecological Recovery Area and other locations encompassed by the proposed conservation easement established as part of the Alameda whipsnake mitigation program. As required under the HEP, successive removal would be required on an annual basis any time the target invasive species such as French broom exceeded 5 percent of the absolute cover in treatment areas (see Implementing Action 1-3 on page 9 of HEP).

8. Effect of Thinning on Brittle Leaf Manzanita

Your letter refers to (a) CalFire's guidelines for defensible space and implications on chaparral cover in Southern California as an example and a concern that these types of vegetation management actions would cause significant impacts on the maritime chaparral habitat, (b) Todd Keeler-Wolf's concern that removal of even part of this habitat would be potentially critical to its viability, and (c) a concern that because Brittle leaf – Woolly leaf manzanita is not evenly distributed in the stand, even selective thinning or modification of the stand may remove the majority of the manzanita individuals. We do not agree.

As discussed above, the fire fuel modifications to the edge of the stand of chaparral in the vicinity of the proposed Interpretive Center would not have any significant impacts to this natural community type. First, only limited pruning of native shrubs within 100 feet of the structure would be allowed. Second, the chamise-dominated chaparral is not believed to qualify as part of the "*Arctoshaphylos* (*crustadea, tomentosa*) Shrubland Alliance." Third, no Brittle leaf – Woolly leaf manzanita shrubs are believed to be located within the limits of the fuel management area. Finally, proposed fuel modifications would <u>not</u> remove the "majority of the manzanita individuals" in the stand.

9. Interpretive Center Relocation

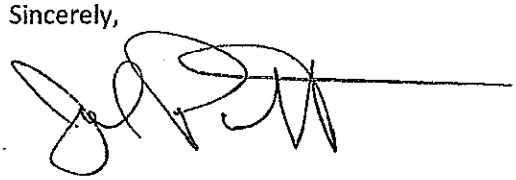
Your letter recommends "...relocating the Interpretive Center and any other wooden structures to another location, keeping the chaparral outside of the defensible space boundaries, such as the grassland area which is approximately 200 yards south..."

The Zoo carefully considered the location of the Interpretive Center and other improvements throughout the CEQA process. Based on recommendations from Jim Martin and Karen Swaim, the Zoo relocated the Interpretative Center to the east, adjusted the perimeter fence location, and removed the proposed amphitheater from the project to reduce vegetation impacts. We note that the Interpretive Center would be a concrete and steel structure with wood siding. We do not agree that relocating the Interpretive Center 200 yards to the south is either practical or would result in any meaningful reduction of impacts. Further, the planned mitigation measures included in the *Alameda Whipsnake Mitigation and Monitoring Plan* prepared by Swaim Biological likely will ensure that no take of the Alameda whipsnake occurs as part of the project. If a take does occur, the habitat conservation measures associated with the project will fully mitigate for any such take under CESA.

Conclusion

We appreciate the opportunity to address your comments. We would be happy to schedule a site visit if you think that would be helpful. In any event, we look forward to working with you on the SAA and compliance with CESA.

Sincerely,



Dr. Joel Parrott,
CEO, Oakland Zoo

cc: Darin Ranelletti, City of Oakland Planning Department
Maria Pracher and Robert Uram, Sheppard Mullin Richter & Hampton LLP
James Martin, Environmental Collaborative
Karen Swaim, Swaim Biological
Ryan Olah, U.S. Fish and Wildlife Service
Todd Keeler-Wolf, DFG
Marcia Grefsrud, DFG
Nik Dehejia, Oakland Zoo

ATTACHMENTS:

Emails from Laura Baker to James Martin on August 24, 2011 with attachments:
CNPS – CDFG Combined Field Form completed by Erin McDermott on August 3, 2011
California Native Species Field Form completed by Erin McDermott on August 3, 2011