

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Thursday, September 2, 2021
6:30 p.m.



PUBLIC ETHICS COMMISSION (PEC or COMMISSION)
SPECIAL MEETING

NOTE: Pursuant to the Governor's Executive Order N-29-20 and City of Oakland Emergency Order dated March 23, 2020, suspending the Sunshine Ordinance, all members of the Commission and participating PEC staff will join the meeting via phone/internet audio conference, and the following options for public viewing and participation are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland's KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on "View"
- **Online video teleconference:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/81308064540?pwd=UXRSY2c5eINwNWcrVER5T2ZYVHdkQTog>
Passcode: 021458
- **Telephone:** Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099
Webinar ID: 813 0806 4540
International numbers available: <https://us02web.zoom.us/j/81308064540?pwd=UXRSY2c5eINwNWcrVER5T2ZYVHdkQTog>
 - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to "Raise Your Hand" by pressing *9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov. If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
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Thursday, September 2, 2021
6:30 p.m.



Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

ACTION ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. June 7, 2021 Regular Meeting Minutes ([Meeting Minutes](#))
 - b. June 30, 2021 Special Meeting Minutes ([Meeting Minutes](#))
- 5. *In the Matter of The City of Oakland Planning and Building Department (Case No. 18-48 and 16-22M)*.** On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department failed to disclose records in response to a public records request made by the Complainant on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff completed and closed the mediation after the department reported no other documents in their possession regarding the request. The Commission closed the mediation and referred the matter to the Enforcement Unit for further investigation on whether the Planning and Building Department violated any laws within PEC's jurisdiction. Commission staff provides an informational report to the Commission regarding the findings of the investigation, the additional documents that were provided to the Complainant, and the scope of the Commission's authority under the Sunshine Ordinance. ([Staff Memorandum](#))
 - a. Public Comment from Complainant on July 21, 2021. Following initial posting of this item on the June 7, 2021, PEC meeting agenda, Complainant asked to reset this matter for a future meeting. Complainant also submitted a [letter](#) and [two](#)



[attachments](#) for Commissioners to consider.

6. **Non-Filer Cases Referred by PEC Filing Officer for the 2018 Election.** The following cases were referred to the Enforcement unit by the Public Ethics Commission filing officer for campaign statements required, but never filed, by campaign committees pursuant to the California Political Reform Act and the Oakland Campaign Reform Act during the 2018 election cycle and years leading to it. Commission staff attempted resolution by negotiated settlement but received no response from each filer. Staff provides a report for each committee showing probable cause that one or more violations exist in the following cases and requests approval from the Commission to schedule the cases for an administrative hearing in each case:
 - a. **PEC Case No. 17-18 and 18-17; *In the Matter of Darrel Carey and the East Bay Small Business Council*** ([17-18, 18-17 Staff Report](#))
 - b. **PEC Case No. 19-06; *In the Matter of Annie Campbell Washington for Oakland City Council 2018*** ([19-06 Staff Report](#))
 - c. **PEC Case No. 19-13; *In the Matter of Matt Hummel for Oakland City Council*** ([19-13 Staff Report](#))

DISCUSSION ITEMS

7. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.

INFORMATION ITEMS

8. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Disclosure Report](#))
9. **Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#))
10. **Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#); [M2020-12](#); [Mediation Summary](#); [M2021-14](#); [Mediation Summary](#))

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The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

8/20/2021

Approved for Distribution

Date



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Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ alarafranco@oaklandca.gov hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Monday, June 7, 2021
6:30 p.m.



DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:30 p.m.

Members present: MacDonald, Yan, Klein, Perteet, and Tuman. Tuman arrived at 6:35 p.m.

Staff present: Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie

2. Staff and Commission Announcements.

Whitney Barazoto, Executive Director, shared that Item #7 will be pulled from the agenda and will be brought back at another time to allow the complainant to be present.

3. Open Forum.

There were no public speakers.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. May 3, 2021 Regular Meeting Minutes

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Teleconference
Monday, June 7, 2021
6:30 p.m.



DRAFT

There were no public speakers.

Klein moved, and Perteet seconded to adopt the May 3, 2021, Regular Meeting Minutes.

Ayes: MacDonald, Yan, Klein, Perteet, and Tuman.

Noes: None

Vote: Passed 5-0

5. New Commissioner Selection.

Commissioner candidates who were selected as finalists presented and answered questions posed by Commissioners who then voted by closed ballot to determine which candidate receives the most votes. Ryan Micik received the most votes.

There were no public speakers.

MacDonald moved, and Yan seconded to appoint Ryan Micik as the new commissioner.

Ayes: MacDonald, Yan, Klein, Perteet, and Tuman.

Noes: None

Vote: Passed 5-0

6. In the Matter of Thomas Espinosa (Case No. 16-14)

Commissioners discussed the hearing officer’s recommendation of a \$210,000 penalty, reviewing each of the 47 Government Ethics Act violations.

At 8:20 p.m. MacDonald took public comment.

There were no public speakers.

Commissioners continued discussing the counts and the recommended penalties.

At 10:30 p.m., MacDonald called for a break of 4 minutes.

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DRAFT



Commissioners decided that it would be best for this item to be brought back at another meeting.

There were two public speakers.

7. In the Matter of The City of Oakland Planning and Building Department (Case No. 18-48 and 16-22M).

This item was pulled from the agenda and will be brought at a later meeting.

There were no public speakers.

DISCUSSION ITEMS

8. Reports on Subcommittees and Commissioner Assignments.

- a. Recruitment Subcommittee** (*ad hoc*/temporary, created on April 5, 2021) - Michael MacDonald (Chair), Jerett Yan, and Arvon Perteet

MacDonald dissolved the Recruitment Subcommittee (*ad hoc*).

INFORMATION ITEMS

9. Disclosure and Engagement.

Ms. Barazoto provided a report of recent education, outreach, disclosure and data illumination activities.

There were no public speakers.

10. Enforcement Program.

Chief Johnson reported on the Commission’s enforcement work since the last regular Commission meeting.

There was one public speaker.

11. Executive Director’s Report.

Item #4a - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
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Monday, June 7, 2021
6:30 p.m.

DRAFT



Ms. Barazoto reported on overall projects, priorities, and significant activities since the Commission's last meeting.

There were no public speakers.

The meeting adjourned at 11:30 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Wednesday, June 30, 2021
5:30 p.m. (Closed Session)
6:30 p.m. (Public Meeting)



DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES

CLOSED SESSION (5:30 p.m. – 6:30 p.m.)

1. Executive Director Performance.

The closed session was canceled and will be brought back at a later meeting.

PUBLIC MEETING (beginning at 6:30 p.m.)

2. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:30 p.m.

Members present: MacDonald, Yan, Klein, Micik, Perteet, and Tuman.

Staff present: Whitney Barazoto, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie

3. Staff and Commission Announcements.

MacDonald welcomed Micik to the commission.

4. Open Forum.

There were two public speakers.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
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Teleconference
Wednesday, June 30, 2021
5:30 p.m. (Closed Session)
6:30 p.m. (Public Meeting)



DRAFT

ACTION ITEMS

5. *In the Matter of Thomas Espinosa (Case No. 16-14)*

Commissioners discussed the matter.

Mr. Espinosa called in and shared that he was not aware of the matter and that he had a medical impairment.

Commissioners discussed and asked questions.

At 8:01 p.m. MacDonald called for public comment. There were no public speakers.

Commissioners continued discussing and asking questions. They requested that staff provide more information at a future meeting about Mr. Espinosa's assertions of his medical impairment and the review of the issue at the administrative hearing.

MacDonald moved to continue the matter at staff's discretion and Perteet seconded.

Ayes: MacDonald, Yan, Klein, Micik, Perteet, and Tuman.

Noes: None

Vote: Passed 6-0

The meeting adjourned at 8:16 p.m.

Item #5 - Staff Memorandum



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: August 19, 2021
RE: Case No. 18-48 and 16-22M; In the matter of Oakland Planning and Building Department prepared for the September 2, 2021, Public Ethics Commission Meeting

BACKGROUND:

On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department (Department) failed to disclose records in response to a public records request made by the complainant (Complainant) on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff has completed mediation and made a recommendation to close the mediation because the department reported that they had no other documents in their possession regarding the public records request related to Case No DS 15-0313. The Commission closed the Mediation and referred the matter to the Enforcement Unit for further investigation on whether the Planning and Building Department violated the Public Ethics Act. That investigation has concluded and is summarized in this memorandum.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

OMC 2.20.190 Release of Documentary Public Information; Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of

Government Code Section 6253.9 are incorporated herein by reference. (Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997) added by Stats. 2008, Ch. 63, Sec. 2. Effective January 1, 2009.)

California Public Records Act § 6253:

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or their designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

FACTUAL SUMMARY:

In 2015, the complainant made two public records requests to the City of Oakland Planning and Building Department. The first was in-person at the Zoning counter, where the complainant requested e-mails pertaining to the 5150 Redwood matter. On that day, the Department employee on duty recalled going back to his computer and printing out a “big stack” of records and then giving that stack, directly to the complainant. The Complainant later that month, submitted an electronic records request [the one at issue in this case]. The following reflects the substance of the public records request that the complainant made on electronically.

Item #5 - Staff Memorandum

On August 8, 2016, the City received, via RecordTrac, the following public records request: “All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.”

At the time, RecordTrac was the City’s online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On August 18, 2016, the Department stated the following on RecordTrac: “Request extended: Additional time is required to answer your public records request. We need to consult with another agency before we are able to deliver your record (Government Code Section 6253(c)(3)).”

Also on August 18, 2016, Complainant stated the following on RecordTrac: “This response does not appear to fulfill the requirements of Government Code section 6253(c)(3) in that you have not stated "the estimated date and time when the records will be made available." Given that the entire project has taken place in Planning and Building what outside agency has records concerning this project?”

Also on August 18, 2016, the Department stated the following on RecordTrac: “Dear Requester, this was not a response, but a request for additional time as the Planning and Building Department does need to consult with another department in the production of the records. Documents will be uploaded on or before September 1st.”

On August 26, 2016, the Department provided the following statement, 420 pages of documents, and closed the request: “Dear Records Requester, I have just scanned and uploaded 410 pages of documents which staff from the City of Oakland’s Department of Planning and Building believe to be responsive to your request. Having made all responsive materials available to you, the City of Oakland will consider your request closed. Thank you,”

On September 7, 2016, the Commission received a complaint alleging that the Department failed to disclose records in response to public records request (PRR) No. 16745 made by Complainant.

On October 31, 2016, Commission Staff started its mediation process by reaching out to the Department and giving them the opportunity to review the complaint and submit a response. On November 18, 2016, the Department provided Commission Staff with a detailed memorandum outlining communications the Department had with Complainant preceding

Item #5 - Staff Memorandum

the filing of the complaint, the Department's response to PRR No. 16745, as well as one page of additional records that were not provided in the Department's response to the public records request on Recordtrac.

On December 14, 2016, Commission Staff shared the Department's memorandum with Complainant, including the one page of additional records. Complainant responded to Commission Staff on the same day, asserting that Complainant found the response inadequate because it did not contain a copy of the Conditions of Approval for Case File No. DS15-0313 signed by both the City and the applicant.

Commission Staff continued to communicate with Complainant in January 2017, during which Complainant alleged that the Department continued to purposefully withhold records. On January 10, 2017, Commission Staff asked what evidence Complainant had supporting this allegation. Complainant replied that the fact the Department did not provide "the signed [Conditions of Approval] is evidence that they are withholding records." Complainant alleged that the lack of a signed Conditions of Approval was in violation of Department policy.

In response, Commission Staff requested confirmation from the Department that it did not have a copy of the signed Conditions of Approval. On February 2, 2017, the Department confirmed that it did not have a signed Conditions of Approval, or any additional records in response to PRR No. 16745. The Department explained to Commission Staff that it approved the application and moved forward with the project without receiving a Conditions of Approval signed by the applicant. The Department had verbally informed the applicant of the Conditions of Approval and had confirmed that the applicant was adhering to the Conditions of Approval by visual inspection approximately two weeks later. Commission Staff relayed this information to Complainant, but Complainant continued his allegation that the Department was withholding a signed Conditions of Approval and/or communications between the Department and the applicant.

In response, Commission Staff informed Complainant that further mediation was unlikely to resolve his concerns, and that the violation of Department Policy that he alleged was outside the scope of the mediation process and the Oakland Sunshine Ordinance as it relates to public records.

When the Commission referred this matter back to the Enforcement unit for evaluation in May 2020, the Commission investigator conducted a related document search through the City IT department and recovered additional documents, specifically email communications between the developer and the City Planning and Building Department, including emails

Item #5 - Staff Memorandum

between the developer and the City regarding the Conditions of Approval. The Complainant had requested a copy of these emails in 2015 but was told they did not exist. The PEC forwarded those documents, described above, to the complainant.

The Complainant also had requested a copy of the signed agreement between the developer and the city regarding compliance with safety and preservation standards for small project design approval. It is a Planning and Building Department policy that a signed copy of the Conditions of Approval be submitted to the Department before a project could begin. The Department eventually provided a copy of an unsigned agreement to the Complainant, but not a signed copy. The Department did not produce a copy of the Conditions of Approval that was signed by both the City and the developer, and no such signed document was found in the PEC staff's investigation and IT search. It is very likely that the developer did not provide a signed copy of the form to the City.

When asked why the City did not disclose the emails between the developer and the City, City Planner Aubrey Rose said he did not know why the emails were not turned over when the Complainant made the request.

ANALYSIS:

The City of Oakland's Sunshine Act incorporates the requirements of the California Public Records Requests Act. Both Acts give the public the right to inspect and copy most records retained by governmental agencies in the course of business, subject to certain privileged information or statutory exemptions.

The PRA expressly provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The purpose is to give the public access to information that enables them to monitor the functioning of their government. See, Gov. Code, § 6250.

Neither the Oakland Sunshine Act nor the California Public Records Act provide the Public Ethics Commission the authority to impose penalties against a City department or agency that fails to comply with the provisions of either Act. The Commission or a Complainant has the option of filing a civil action in the Superior Court of California for violations to the CPRA. The burden is on the requester to go to court to fight for the documents. While the agency may have to pick up the requester's legal bills, there is no penalty for agencies that willfully, knowingly, and without any good reason violate the law.

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Here, the Complainant made a request for documents from the City Planning and Building Department. The documents were records retained by the Planning and Building Department in its regular course of business. The Department provided some documents to the Complainant but failed to provide others. The Commission Staff were able to recover additional responsive documents that the Department failed to provide to the Complainant. It is not clear whether the Department, willfully, knowingly or negligently withheld documents from the Complainant. The Department representative Aubrey Rose was without any good reason to explain why all responsive documents were not provided to the Complainant.

CONCLUSION:

As described above, the Department failed to provide responsive documents to the Complainant. Through the PEC's mediation program, PEC staff facilitated the release of additional records to the Complainant. After closing the mediation and opening an investigation, PEC staff conducted an independent search of records and found additional documents that the department should have provided to the requester/Complainant. PEC staff provided those additional records to the Complainant. This memorandum provides a summary of the investigation pursuant to the Commission's Complaint Procedures and Sunshine Ordinance which authorizes merely mediation and investigative activities by the PEC and does not authorize the PEC to impose monetary or remedial penalties on City employees or departments found to violate its provisions. Following mediation, any person may file suit in court for injunctive relief, declaratory relief, or writ of mandate to enforce his or her rights.¹ This investigation and report aims to provide a requester/complainant with additional information and documents to pursue their legal claim.

¹ OMC 2.20.270.

Memorandum

TO: Oakland Public Ethics Commission

FROM: Ralph Kanz, Complainant

DATE: July 21, 2021

RE: Complaints 18-48 and 16-22; Oakland Planning Department Violations of California Public Records Act and Oakland Sunshine Ordinance

BACKGROUND:

This complaint concerns the Oakland Planning Department (Planning) intentionally withholding records subject to disclosure under the California Public Records Act (CPRA) and the Oakland Sunshine Ordinance (Sunshine), and lying to Public Ethics Commission (PEC) investigators about the existence of the records. As a former member of the Oakland PEC, and one time chair, I am disappointed that after nearly five years a public records request I made to the City has still not been fulfilled. Despite my identifying documents subject to disclosure under both the CPRA and Sunshine, the requested records have not been produced. The PEC has the authority to compel production of the identified records, but to date has not utilized all the means provided by the Charter and Municipal Code .

Planning continues to knowingly withhold records that are responsive to a records request made five years ago. Planning hid records for four years and created two versions of a document in order to cover-up violations of the law. Available records suggest other records were destroyed or have been withheld. This case involves more than violations of the CPRA and Sunshine. Underlying this matter is the City of Oakland's continuing violations of the California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA).

Planning has a history of destroying, hiding, and withholding records that are responsive to public records requests. My personal experiences with Planning go back over 20 years; years that have included seeing documents appear and disappear in planning files; files that were re-organized and sanitized, including the removal items that would make the approval of a project more difficult.

Planning has a history of short-cutting the CEQA process, thereby limiting and/ or preventing public involvement in the review and approval of proposed projects. In this matter documents were backdated and never circulated for public comment. In 2020 there was a proposal for a project on the property at 5200 Old Redwood Road.¹

¹ The project that is the subject of the complaint took place at 5150 Redwood Road, adjacent to 5200 Old Redwood Road.

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Planning committed to noticing the project, and approved it without the promised noticing. In both cases CEQA and CESA have been violated because proper noticing and opportunity for public comment did not occur; the California Department of Fish and Wildlife was not consulted as the trustee agency for threatened and endangered species; and take of an endangered species was a result. In the case of the adjacent property at 5200 Old Redwood Road, Planning told me I could appeal the matter, which if successful, would have resulted in the project to be properly noticed, but the appeal fee in the matter was \$1622.57, money the appellant may not recover.

City and Planning staff misled the PEC investigators both in writing and orally by claiming there were no further records subject to disclosure. Four years after making these statements records were disclosed proving the statements false.

This is a case where the PEC must fully investigate and use all the tools available to compel production of the records. Also this matter involves possible criminal acts which can be referred for prosecution.

FACTS OF CASE:

On September 2, 2015 while driving past 5150 Redwood Road I noticed a Planning Department notification posted on the site. I stopped and took a photo of the sign and the next day emailed the case planner Aubrey Rose expressing my concern that the site contains habitat for, and a population of, Presidio clarkia (*Clarkia franciscana*). Presidio clarkia is listed as endangered under both the federal and state endangered species acts. The population of Presidio clarkia at 5150 Redwood Road is well documented and the City has been informed many times of presence on the site. On September 4, 2015 Rose responded in part, "however, the building permit has not been issued; therefore, a HOLD has been placed on it while we investigate this matter further - talk to you soon."

The presence of any special status species on a site triggers review under the California Environmental Quality Act (CEQA). In this case there needed to be either a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR) prepared for the project.

I heard nothing back from Aubrey Rose after September 4, 2015 and I assumed it was because the CEQA review was in process. On April 20, 2016 while driving past the site I noticed construction was taking place. I again wrote Aubrey Rose asking why construction had commenced without CEQA review. His response "Good to hear from you, thanks for checking in – the zoning approval is attached – condition of approval #23 on pages 9-10 relates to the issue you raise; please take a look and advise, do you feel there is non-compliance with that condition?" The Zoning Approval contained 23 Conditions of Approval (COA).

Over the next few days we exchanged emails regarding the requirement of Condition #23 that the applicant hire a biologist to survey for Presidio clarkia "prior to any construction related activity." I was told that Planning staff determined there was no

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need for a biologist to inspect the site even though Condition #23 made this a requirement.

After more communications with Planning, including the May 19, 2016 letter from Scott Miller attempting to justify the violations of CEQA, I went to the Planning offices in August and asked to inspect the file for the case. I specifically asked Aubrey Rose for emails related to the case because none were in the case file. In my experience, emails are the most often used method of communication between planners and project applicants. Rose went into the back offices and after quite a while came out with a stack of records. All of the records were emails involving me. Not a single email was with the applicant for the project. As the staff report states, it was over 400 pages of documents, but in reality it represented no more than 20 pages of actual responsive documents that had been printed repeatedly in varying and bizarre formats.²

After inspecting the files at Planning I went to the Building Department and asked to inspect the plans for the project. COA Condition #6 requires a copy of the signed COA and approval letter be "attached to each set of permit plans submitted to the appropriate City agency for the project..." Attached to the plans I was provided by Building was a copy of the COA for the project. The COA attached to the plans contained 22 Conditions and they were signed by Scott Miller for the City, but not by the applicant. This raises the issue of which set of COA were legally enforceable, the one with 22 Conditions or the one with 23.³

The two versions of the COA are dated the same day, August 11, 2015. The version with 23 Conditions could not have been dated earlier than October 9, 2015 when they were first communicated to the project applicant, and should have triggered public notification of the project to allow for comment.⁴ Plus the time to appeal the decision should have started on the new date.

I filed the complaint with the PEC in September 2016, and as a result the City responded with the memo dated November 18, 2016. The memo, signed by Claudia Cappio and Darin Ranalletti declares in part, "all existing emails have been provided..."⁵

I continued communicating with Milad Dalju who was handling the matter for the PEC. In a January 9, 2018 email Mr. Dalju stated:

Based on your previous statements, the outstanding issues are the following:

- 1. The Planning Department did not provide a copy of a COA that both includes Condition No. 23 and is signed by the applicant, and;*

² Exhibit A contains the over 400 pages of reformatted emails.

³ COA Condition #8 in all approvals by the City requires the applicant to indemnify the City, therefore without an applicant's signature the COA are not enforceable.

⁴ Exhibit B has the email string confirming communications with the project applicant.

⁵ Exhibit A includes the memo.

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2. *The Planning Department did not provide a copy of any documentation that indicates that Condition No. 23 was communicated to the applicant either in writing or orally.*

I communicated both of these issues to the Planning Department, and their response is the following:

1. *The Planning Department does not have a COA that includes Condition No. 23 that is signed by the applicant, and there is no evidence that the applicant ever signed a COA that includes Condition No. 23.*
2. *The Planning Department does not have any documentation, including call logs or emails, that show that a COA with Condition No. 23 was communicated to the applicant.*
3. *The Planning Department believes that they did communicate Condition No. 23 to the applicant, based on a site visit that confirmed that the applicant was adhering to Condition No. 23. They have provided the attached photos as documentation that the Planning Department verified in-person that the applicant was adhering to Condition No. 23.*

In a follow-up email on January 10, 2018 Mr. Dalju wrote:

According to the Planning Department, the hold was placed by entering it into Acella, and Condition No. 23 was communicated to the applicant by telephone. Documentation of the hold in Acella, dated September 4, 2015, has been provided to you. According to the Planning Department, there is no written record of the phone call they made to the applicant to communicate Condition No. 23. Additionally, they do not have a copy of the COA that is signed by the applicant.

I understand that you allege that they have a copy of a the COA signed by the applicant and a record of communication the hold and/or Condition No. 23 with the applicant. But they have confirmed that they have neither. So at this point, unless you have any other outstanding issues, I will conclude the mediation process. Please let me know by January 15, 2018, if there are any outstanding issues other than aforementioned ones.

On January 10, 2018 I suggested to Mr. Dalju that the PEC subpoena the records from the project applicant, but the PEC took no action. Oakland Charter section 603(f)(iv) gives the PEC the authority to issue subpoenas. In this case the applicant's records would provide the truth.

At the November 5, 2018 meeting of the PEC staff presented a memorandum of the mediation summary where Planning continued to assert no further documents existed.

Nothing of further significance occurred in this matter until July 17, 2020 when the City provided additional records that had not been provided previously. Most notable among them was the series of emails between Aubrey Rose and the project applicant that took

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place in October 2015, emails the City had previously stated did not exist. The emails show that on October 9, 2015 Rose sent an email attached with the COA with 23 Conditions to the applicant with the request that they be signed and returned to him. The records suggest the applicant was getting a signature on the COA, but the transmittal of the signed document was not part of the record. Based on the email chain, there is every reason to believe the signed COA was returned to the City.⁶

On January 4, 2021 I sent the following email to the PEC regarding this complaint:

Tomorrow will be 4 years and 5 months since the filing of the above complaint. The original Public Records request #RT-16745 was made to the Planning Department on August 8, 2016. The records concerned illegal approvals for a project that impacts special status species and therefore protections under the California Environmental Quality Act were not included. Within a short time it was clear the Planning Department was withholding responsive records. On September 2016 I filed a complaint with the Public Ethics Commission (PEC) because it was clear, based on this matter and my previous requests to the Planning Department that records were being withheld. Among the records being withheld is the signed Conditions of Approval (COA) for the project. There are two sets of COA's in the record, neither one is signed by the applicant as the COA's require. One set of COA's has 22 conditions listed and the other has 23. At one point I saw a set of COA's with 22 conditions signed by Scott Miller of the Planning Department, but not by the applicant.

In a memo to PEC staff dated November 18, 2016, Claudia Cappio and Darin Ranelletti stated in part, "all existing emails have been provided." On August 3, 2020 more records were released. Included in the new disclosure were responsive emails that had not been provided in 2016.

At this point I know there has to be a set of signed COA's. The emails released in August 2020 suggest there are other emails that have not been produced. There are currently two problems related to records laws in Oakland that need to be addressed. First the law needs to be clarified that mediation is not a requirement for filing a complaint. OMC section 2.20.270.C. states a person "may demand immediate mediation" of a request. PEC staff has made this mandatory, which only slows down the process. I knew when I filed the complaint in this matter that mediation would not result in production of the records. Staff then demanded mediation take place. That was a two year process. Still no records. At one point I asked staff to subpoena the records of the project applicant because they had no reason to withhold records. Now over four years later and five years after approval of the project the applicant has no legal duty to maintain those records. In 2019 SB615 was introduced in the California Legislature proposing a requirement for mediation of Public Records Act (PRA) requests. The reaction to to proposal by those who understand the law was swift and strong. The bill never made it to a committee hearing before the author withdrew the

⁶ Exhibit B contains the email string between Aubrey Rose and project applicant.

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proposal. Because mediation is a bad idea that has been strongly rejected at the state level, it should also be rejected in Oakland. Second there is no penalty for anyone intentionally withholding records that must be produced. The only penalty currently in the Public Records Act makes an agency responsible for the legal fees of a requester who goes to court. But only the agency is held responsible. The City of Vallejo does have an ordinance that addresses the problem. Under Vallejo Municipal Code section 2.08.140 willful and deliberate violations of the Brown Act or the Public Records Act "shall be deemed official misconduct." The law further allows for penalties as strong as termination or removal from office for anyone found guilty.

The PEC needs to make city officials and departments responsible for timely producing records requests under the PRA and the Sunshine Ordinance. Without such a change residents will continue to be denied rightful access to public information.

01/19/2021 PEC Enforcement Chief Kellie Johnson emailed me:

Unfortunately, I do not have an estimate to give to you. We contacted the department regarding the disclosure of the outstanding documents. As late as December 3, 2020, the department released additional documents to you. You responded that the documents were still not responsive. We re-contacted the department to address the concern of the outstanding documents. I will contact you when this matter is scheduled and on the PEC Agenda for consideration. Thank you for bringing this matter to our attention.

The only notice I received for the matter being scheduled was the regular agenda notice sent to agenda subscribers. Nothing was sent to me personally notifying me that the item would be heard, and there was no effort to get my input on the results of the investigation.

MISSING RECORDS:

When reviewing the records it is clear there are documents that have not been disclosed along with others that might exist. The following records have not been produced:

- The COA with 22 conditions signed by Scott Miller, which I have seen a copy of attached to plans in Building.
- A copy of the COA's signed by the applicant, whether it be with 22 or 23 conditions. There is reason to believe there are two versions signed by both the City and the applicant. The emails provided in July 2020 show that on October 9, 2015 Aubrey Rose told Vicki Gunther at Powell and Associates that the COA with

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23 conditions needed to be signed and returned. The entire string of emails suggest the project would not go forward without the City receiving the signed COA.

- Emails of Aubrey Rose communicating with other Planning staff regarding the wording of Condition# 23 for the COA. Some were produced, but those suggest there were others. Possibly this was done by phone, but the emails show Rose was wanting documents to take language from for the COA Condition #23.
- The email records produced in July 2020 suggest there are other email communications between Planning and the applicant.
- There are no phone logs or notes of phone calls. Notably, if a hold is placed on a project, as occurred here, the City would want a record of that communication for legal reasons.

ANALYSIS:

The Planning Department continues to withhold documents for which the CPRA and Sunshine compel production. The Charter states it shall be the duty of the PEC to enforce compliance with Sunshine and the CPRA. The PEC has the authority under the Charter to subpoena records and bring contempt charges for refusal to produce the records. Further the PEC can forward to the District Attorney criminal matters that can be charged under the Government Code

The CPRA and Sunshine were violated by not disclosing the records in 2016. Besides the CPRA and Sunshine, other laws are applicable to this case. Government Code section 6200 *et seq.* makes it a crime to "steal, remove, or secrete" a record as it does to "alter or falsify." In this case records were secreted for four years, and the COA was altered when Condition #23 was added but the date was not changed to the date of amendment. Further the law makes a guilty party punishable by a fine or imprisonment. The PEC must investigate further to determine what actually occurred in this matter and if the matter should be referred for prosecution.

RECOMMENDATIONS:

- The PEC should subpoena the records from the applicant and the City. The PEC is authorized to "seek remedial relief for violations and injunctive relief." As the staff memorandum acknowledges the "Commission or a Complainant has the option of filing a civil action in the Superior Court of California for violations to the CPRA." There is nothing prohibiting the PEC from going to court to obtain the records which are known to exist. The Charter and Oakland Municipal Code (OMC) gives the Commission the power and authority to bring such an action, and specifically declares it shall be the duty of the Commission to enforce the CPRA and Sunshine.

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- City staff lied to PEC investigators, in both written and verbal statements. The OMC should be amended to make it a punishable offense to lie to PEC investigators. If the PEC investigator had been an FBI agent people would be in jail.
- As this case proves, the mediation process laid out in the OMC has no teeth. A mediation requirement is not contained in the CPRA and as this case has shown it is a complete failure in Oakland. Mediation delays production of documents. The legislature wasted no time in refusing to consider adding a mediation requirement to the CPRA. Amend Sunshine to eliminate mediation so the law in Oakland is consistent with the CPRA.
- Amend City law to make individuals responsible for violating Sunshine, the CPRA, and the Brown Act liable for their conduct.
- Staff must improve communication with complainants to ensure all the issues and concerns in a case are addressed.



INTER OFFICE MEMORANDUM

TO: Milad Dalju
Deputy Director/Chief of Enforcement
Public Ethics Commission

FROM: Claudia Cappio
Assistant City
Administrator

Darin Ranelletti
Interim Director,
Planning and Building

SUBJECT: PEC Complaint #16-22 (Ralph Kanz)

DATE: November 18, 2016

Thank you for the opportunity to respond to the complaint submitted to the Public Ethics Commission on September 7, 2016, by Mr. Ralph Kanz alleging violations by staff in the Planning and Building Department and the City Administrator's Office (Complaint #16-22). The Complaint indicated violations of "The Oakland Sunshine Ordinance, California Public Records, or Ralph M. Brown (open meetings) Act." Staff has reviewed the matter and respectfully believes that no violation occurred, as explained in this memorandum.

Complaint #16-22 alleges that staff within the Planning and Building Department and City Administrator's Office provided incomplete records in response to a Public Records Request (see Attachment A). The request (#16745) related to a construction project at 5150 Redwood Road (Attachment B). Specifically, the request sought any email communications by Planning Bureau staff regarding the design review permit component of the project and an official record of a Department project hold that was indicated to have been placed by Planning staff.

On September 3, 2015, Mr. Kanz contacted Planning staff regarding a project for a small upper-story addition to an existing single-family home located at 5150 Redwood Road. The purpose of the contact was to gather information and register concerns regarding environmental protection procedures and measures related to the project. The site is located in an area known to possibly contain an endangered plant species (Presidio clarkia). Staff responded to Mr. Kanz, placed the project on hold internally within the Department (see Attachment C), contacted the project sponsors by telephone, and reported the preceding back to Mr. Kanz all within 24 hours. It is common for staff to communicate with the public and applicants by a combination of email, telephone, in person, mail, and/or fax. Staff noted that the project was located next to an up-sloping hillside beyond the property line that could potentially contain protected habitat. However, staff further noted that no undisturbed ground areas would be affected by the project or its construction. Nonetheless, staff required the contractor to construct a protective fence on a retaining wall running along the property line, instruct employees to not disturb the hillside for any reason, and to stop the project to contact the City if any plant occurrences were observed on the actual project site. Staff subsequently corresponded with Mr. Kanz on numerous occasions through August 2016.

In August 2016, Mr. Kanz visited the Planning and Building Department and requested all email correspondences of Planning staff related to the project. All such emails involving Mr. Aubrey Rose of the Planning Bureau were provided at that time (Attachment D). Apparently, Mr. Kanz also requested a record of the project hold from the Building Bureau at or around that time. Mr. Kanz subsequently placed a Public

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To: Milad Dalju, Deputy Director / Chief of Enforcement, Public Ethics Commission
Subject: PEC Complaint #16-22 (Ralph Kanz)
Date: November 18, 2016

Records Request (Request # 16745) for all records related to the original design review permit issued by the Planning Bureau. Mr. Rose provided said documents to Ms. Amber Todd, which were then forwarded to the requestor, Mr. Kanz.

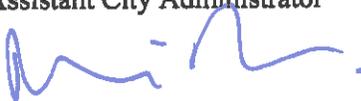
Mr. Kanz subsequently submitted his Complaint to the Public Ethics Commission, apparently with the belief that some email correspondence must have existed between City staff and the project sponsors following his initial inquiry, and that an official written record of a project hold should exist and be provided. As indicated, all existing emails have been provided and City communications are not always handled by email, in this case some by telephone. Additionally, it is unfortunate that the attached record of project hold was not produced by staff upon any initial request. Lastly, all emails not included in Attachment B, which consist of emails not copying Mr. Rose, and emails subsequent to records requests, are included as **Attachment E**.

Please contact **Scott Miller, Zoning Manager**, with any further questions at (510) 238-2235 or smiller@oaklandnet.com

Sincerely,



Claudia Cappio
Assistant City Administrator



Darin Ranelletti
Interim Director, Planning and Building Department

Cc:

Scott Miller, Zoning Manager
Aubrey Rose, Zoning Counter Supervisor
Amber Todd, City Administrator's Office
Mark Wald, City Attorney's Office

Attachments:

- A) Public Ethics Commission Complaint #16-22
- B) Public Records Request #16745 by Mr. Ralph Kanz
- C) Project hold dated September 4, 2015, on building permit application no. RB1503534
- D) All emails related to the project involving Mr. Aubrey Rose through August 2016, as provided
- E) All other emails related to the project

ATTACHMENT A



City of Oakland
Public Ethics Commission
 Complaint Form

For PEG Staff Use Only
 Date Received: 9/7/16
 PEG Staff Initials: AL
 Complaint #: 16-22

The Public Ethics Commission can investigate complaints of violations of laws related to campaign finance, lobbyist registration, public records, open meetings, and governmental ethics laws. The Commission has limited authority to enforce public records, open meetings, and governmental ethics laws but may be able to issue findings and recommendations, or to take limited action, such as mediation, on these issues.

If you would like to submit a complaint that is within the Commission's jurisdiction, please complete this form, which becomes a public record available for inspection and copying by the public, along with any documents submitted with this form. A copy of this complaint will be made available to the persons identified in the allegations below. For more information about the Commission's complaint process, see the Commission's Complaint Procedures.

A **Formal Complaint** requires that you complete all of the information on this form, including your name, address, phone number, and signature verifying under penalty of perjury the information you provide in this complaint. The Commission must review and take action on the complaint and notify the complainant about the Commission's final action.

An **Informal Complaint** is a complaint that does not meet all the requirements of a Formal Complaint. Informal Complaints, such as anonymous complaints and complaints without all of the information required above do not require action or notification to the complainant upon final action. Commission staff reviews informal complaints and can determine whether the complaint should move forward to investigation. Informal tips can be submitted to Commission staff by phone, email, or fax.

Contact Information of Person Making Complaint (This information will be available to the public.)

Name: Ralph Kanz
 Street Address: 4808 Congress Ave.
 City: Oakland State: CA Zip Code: 94601
 Email: rkanz@sonic.net Phone: (510) 535-9888

Type of Alleged Violation. Please select from below which law you allege has been violated:

- The Oakland Sunshine Ordinance, California Public Records Act, or Ralph M. Brown (open meetings) Act
- Oakland Campaign Reform Act
- Oakland Limited Public Financing Act
- Oakland Lobbyist Registration Act
- Oakland False Endorsement in Campaign Literature Act
- Oakland Government Ethics Act
- Not sure which specific law, ordinance or regulations apply

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Description of Violation. Please complete the lines below or attach a handwritten or typed attachment that provides the following details: If you run out of space please use extra pages and attach.

- **Name of the person or persons you are alleging committed a violation.** Please include any known address, phone number, email address, title, employment address, etc.:
Planning and Building Department, Scott Miller, Aubrey Rosa, and Amber Danielle- Rose Todd

- **The facts of the alleged violation.** Please include the date and location of the alleged violation, if known:
The records responsive to my request #16745 on the RecordTree system, is clearly incomplete. There is not a single communication between the City and the project proponent. The Sept. 4, 2016 email from Aubrey Rosa references a hold on the project, but no record of it was produced.

- **The names, addresses, and phone numbers of any witnesses who were involved and/or can provide additional information, if known:**
Information is contained in the records on RecordTree

- **Additional information or documentation that might aid in the investigation of the alleged violation.** Please include copies of such documentation and list them here.
The City's approval of this project violated the California Environmental Quality Act, and multiple other laws. The Planning department has a long and well documented history of ignoring the laws around the protection of special status species. This case is just one more example.

Verification. I certify under penalty of perjury under the laws of the State of California that my attached statements are true and correct.

Executed on 09/05/2016

(Date)

at Oakland, California

(City, State)

Raphel Keyes
(Signature)

Complaint Submission. Please complete and submit this form and any attachments by email, mail or fax:

Email: EthicsCommission@oaklandnet.com
Mail: Public Ethics Commission
1 Frank H. Ogawa Plaza, Rm. 104
Oakland, CA 94612
Phone: (510) 238-3593
Fax: (510) 238-3315

PRINT

CLEAR

ATTACHMENT B

Rose, Aubrey

From: Lu, Alan
Sent: Monday, August 22, 2016 5:36 PM
To: Todd, Amber
Cc: Rose, Aubrey
Subject: FW: Records Request 16745 - 5150 Redwood Road.

Importance: High

Aubrey, can you please help with this one?

Thanks.

Alan Lu
City of Oakland
Planning and Building Department
Building Services / Records
510.238.6731

This message may contain confidential and/or restricted information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. This information should only be forwarded or distributed on a "need to know basis". If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

From: Todd, Amber
Sent: Thursday, August 11, 2016 12:06 PM
To: Lu, Alan
Subject: Records Request 16745 - 5150 Redwood Road.
Importance: High

Alan is this with Planning and Building:

Request #16745

All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.

ATTACHMENT C

Record ID: RB1603534

[Menu](#) [View Log](#) [Search](#) [Help](#)

Showing 6-10 of 12

<u>Status</u>	<u>Status Date</u>	<u>Action By</u>	<u>Comment</u>
<u>Plan Review In Progress</u>	10/13/2015	Shafi Refai	Updated by Script
<u>Plan Review In Progress</u>	10/12/2015	Shafi Refai	Updated by Script
<u>On Hold</u>	09/04/2015	Shafi Refai	Hold by Aubrey Rose
<u>Plan Routing - Completed</u>	08/27/2015	Wayne Wada	
<u>Intake - Completed</u>	08/20/2015	Candace Burns	

Page of 3 [<](#) [>](#)

ATTACHMENT D

Rose, Aubrey

From: Miller, Scott
Sent: Friday, August 05, 2016 4:46 PM
To: Ralph Kanz
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.; Schuerholz, Keith
Subject: RE: 5150 Redwood Road CEQA Violations
Attachments: 5150 Redwood Rd 8-11-15 DS150313.pdf; 5150 Redwood Rd revised COA DS150313.pdf

Hello, Mr. Kanz. Attached are 2 documents: The original signed approval letter for application DS150313 dated August 11, 2015 and the same letter (unsigned) with the added Condition of Approval 23. We do not have a signed version of that letter the 2nd time it was issued (with the added Condition). The original approval on August 11th was issued by a Senior Planner, which is standard protocol for this type of small-project design review application. The re-issuance of the letter the 2nd time (with the added Condition) was also issued by a Senior Planner. Please let me know if you have any remaining questions about the approval for 5150 Redwood Road.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Wednesday, July 27, 2016 12:34 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.; Schuerholz, Keith
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

Did you sign Conditions of Approval for the project at 5150 Redwood Road that included Condition of Approval #23? Please respond with a copy of the signed Conditions of Approval.

Ralph Kanz

On 7/26/2016 3:52 PM, Miller, Scott wrote:

Hello, Mr. Kanz, I apologize for the delay in getting back to you. Regarding the 5150 Redwood Road Small Project Design Review (for a 2nd story addition) and the Conditions of Approval applicable to that project, my June 3rd email to you explains the City's position. In that email I stated "upon site inspection after project approval and before project construction, it was determined that the pre-construction biologist survey would be unnecessary, due to the clear separation between the built environment of the existing single family property...and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall)." Also, from that email, "all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been

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implemented." As stated in the May 19th letter to you, a CEQA Exemption was properly issued for this project, given the limited scope of the project (a 2nd story addition above existing floor area) and clear separation of the built property from the adjacent natural habitat area.

In your June 3rd email, you state "Additionally there was vegetation clearance on the site at 5150 Redwood Road that was apparently associated with the current project. These activities could have resulted in the take of Presidio clarkia." There was no evidence of vegetation clearing when I visited the site, so it would be helpful if you could elaborate on what you are referring to. Thanks for any additional information you can provide, including the specific location on the site and the timing of any vegetation clearance.

I looked at the permit records for the 2 Parcel Maps you refer to in your June 3rd email. You are correct, according to our permit tracking records, they were approved with CEQA Exemptions (in 2000/2001). A subsequent subdivision along Crestmont Drive went through an EIR process when the sensitive habitat was brought to the City's attention (TPM7940).

For the reasons stated in my May 19th letter, as well as my June 6th email, and as repeated above, the City finds no active violation of any applicable Condition of Approval for the project at 5150 Redwood Road.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [<mailto:rkanz@sonic.net>]

Sent: Tuesday, June 14, 2016 10:20 AM

To: Miller, Scott

Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.

Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

What have you done to insure the COA's for the project are being enforced? I am still waiting for a reply to my previous email.

Ralph Kanz

On 6/3/2016 10:56 AM, Ralph Kanz wrote:

Mr. Miller,

COA 23 is very clear: "The project applicant shall hire a qualified biologist to conduct a Presidio Clarkia (Clarkia Franciscana) survey to identify the potential presence of Presidio Clarkia at the project site."

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Your answer confirms the project applicant has violated this COA. It is also clear from your answer that no one on City staff knows where the plants are on the site, and being that it is an annual species there can be changes in the areas of occupied habitat from one year to another.

This is very similar to what occurred in 2000 and 2001 when the City approved PM 7336 and PM 7159. As the history I provided previously explains there was no CEQA review done on either project, and both impacted Presidio clarkia. Because the City did not follow CEQA requirements there has been no mitigation for the impacts of those two projects. This is why I can say with confidence that the City has never enforced mitigation measures for a project that impacts Presidio clarkia.

Please forward me a copy of the biologist's report and map showing the occupied habitat on the site and where fencing should be place to protect the species on the site, once it is prepared.. Additionally there was vegetation clearance on the site at 5150 Redwood Road that was apparently associated with the current project. These activities could have resulted in the take of Presidio clarkia.

Ralph Kanz

On 6/3/2016 9:01 AM, Miller, Scott wrote:

Hello, Mr. Kanz. Regarding 5150 Redwood Road, there are no mitigation measures, as a CEQA Exemption was properly completed (as summarized in my May 19th letter). Regarding Condition of Approval #23, upon site inspection after project approval and before project construction, it was determined that the pre-construction biologist survey would be unnecessary, due to the clear separation between the built environment of the existing single family property (5150 Redwood Road) and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall). As mentioned in my May 19th letter, all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been implemented. Based on this information, the City finds no violation evident related to the Zoning approval that was granted for the project.

Regarding the 2 other developed properties that you have raised, we will assign staff to review those records to determine any follow up action on the City's part. Thank you for bringing those to our attention.

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Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, June 02, 2016 12:09 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

I wanted to follow-up with you to see what has happened with this situation of the mitigation measures for Presidio clarkia not being enforced. I drove by the site at 5150 Redwood Road and it appears the project is proceeding. Please provide me a copy of the report the biologist prepared identifying the habitat on the site and verifying which mitigation measures have been implemented to ensure the species is protected during construction.

Ralph Kanz

On 5/25/2016 3:24 PM, Ralph Kanz wrote:

Mr. Miller,

I received your letter of May 19, 2015 concerning the project at 5150 Redwood Road that is in violation of its permit. Attached to this email is your letter, the approval for the project, and the History of Presidio clarkia in Oakland that details all of the failed mitigations for this species related to previously approved projects.

Item #5a - Public Comment Letter

The project proponent has violated COA 23.a. requiring a pre-construction survey. As your letter admits, this project requires CEQA review that has not occurred, and now the mitigation measures that are described as Conditions of Approval have been violated.

I realize, as the accompanying History of Presidio Clarkia in Oakland shows, that the City has not enforced mitigation measures for any project impacting the species. At the Oakland Hills Tennis Club the COA's requires that "the project sponsor shall develop a management plan for the on-going protection of the plant population and its potential habitat. The plan shall be reviewed by the State Department of Fish and Game, and shall be approved by the Director of City Planning prior to issuance a certificate of occupancy. The plan shall include monitoring of the plant population for a five year period following issuance of the certificate of occupancy." The City has no record of this COA being honored, and in the years since approval, there has been additional development that has occupied habitat closer to the on-site population than was allowed at the time of approval.

The Sunrise Assisted Living Facility, adjacent to the Tennis Club, had the following Mitigation Measures as part of its approval in 1997:

14.1 *The project sponsor shall remove French broom from the site using a technique(s) approved by the City. Typical techniques for removing French broom include (1) mechanical mowing or removal, (2) hand cutting or removal, (3) controlled burn, and (4) painted or direct spraying of herbicides. The project sponsor shall consult with the City and California Department of Fish and Game (CDFG) staff as appropriate to draft a French broom removal plan. The plan should include grounds and maintenance worker education and training concerning the listed species and responsibilities under the State and Federal Endangered Species Acts. The plan shall be submitted and approved by CDFG and the City prior to the issuance of any grading or other building-related permits for the project. The removal plan shall be accompanied by a revegetation and monitoring plan approved by the City and CDFG. The area should be revegetated with native shrubs and grasses such as coyote brush, California sage, and purple needlegrass. Annual monitoring and maintenance should be conducted on an ongoing basis as stipulated by the CDFG or in the plan, to prevent the recolonization of the area with French broom or other non-native, invasive species. Grounds and maintenance worker education and training shall also be incorporated into the project's regular maintenance plan and grounds and maintenance*

worker training as provided for in the plan.

14.2 The project sponsor shall prepare a training plan for construction, grounds and maintenance workers that details the steps to be taken to ensure the continued survival and well-being of the endangered species found on the site and any habitat factors important to them. The plan should include but not necessarily be limited to details of the general area in which the endangered species are known to occur; any other portions of the site where they might potentially occur; and measures that shall be taken to ensure that the endangered plant species and their habitat will not be disturbed by construction or ongoing operations on the site. The measures in the plan should include but not be limited to the construction and maintenance of physical barriers to prevent unauthorized access to the plants or their habitat; measures to be taken to ensure that maintenance of site landscaping (including irrigation, the application of chemical fertilizers, herbicides or other pesticides, or any other measures to be taken) does not harm the plants or their habitat; and any the measures to be taken, in addition to those required by Mitigation Measure 14.1, to ensure that exotic invasive plants found on the site do not intrude into the habitat of the endangered plant species. The plan shall be submitted to the California

Item #5a - Public Comment Letter

Department of Fish and Game (CDFG) and the Zoning Manager for review prior to the issuance of any grading or building permit and no such grading or building permits shall be issued until both the CDFG and the Zoning Manager have approved the plan.

14.3 The applicant shall obtain any required permits from the CDFG, USFWS, and any other regulatory body with jurisdiction over listed species prior to the issuance of any grading permits by the City.

Implementation of these mitigation measures would reduce impacts on endangered plant species to a less than significant level.

Review of the files cannot find any plans or record of contact with CDFG or USFWS. There is no indication a management plan was ever produced, and the French broom is currently thriving in the location described.

I realize the City made a serious mistake in approving the 5150 Redwood Road project without CEQA review. However, the COA's have been violated, just as other COA's and mitigation measures have been ignored at other project sites that have impacted Presidio clarkia.

Another troubling fact is that the approval for this project was backdated. The attached approval is dated August 11, 2015. I contacted Aubrey Rose by email on September 3, 2015 to

inform him that Presidio clarkia are present on the project site. On September 4 Mr. Rose responded, "[t]his is a second story addition to an existing single story home - upper story

additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption

- however, the building permit has not been issued; therefore, a HOLD has been placed on it while we investigate this matter further - talk to you soon." I heard nothing further from

Mr Rose. On April 20, 2016 when passing 5150 Redwood Road I saw construction related activity taking place on the site. I emailed an inquiry to Mr. Rose that same day and he

responded by sending by the attached Approval for the project. Later that same day Mr. Rose sent another email stating, "this particular project was exempt from CEQA; there was

no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this."

The project was underway without COA 23.a. being

implemented by the project proponent.

On April 21 I sent the following email to Mr. Rose: "If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site.

Item #5a - Public Comment Letter

This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presido clarkia conditions were not in the permit at that time." The same day Mr. Rose responded, "[c]orrect, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon."

I asked for further information and in an April 22, 2016 email Mr. Rose stated "[t]hey responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon." Again in an April 26, 2016 email Mr. Rose again confirmed, "There is no report, but I can speak with them about fencing."

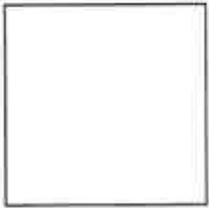
As I explained to Mr. Rose on more than one occasion, the only way to determine if the fencing is adequate is to have a biologist survey the site and identify the areas of potential habitat and protect those areas during construction. The COA's call for this, but the survey and fencing based upon the survey has not taken place.

Item #5a - Public Comment Letter

Clearly the project at 5150 Redwood Road is out of compliance with the COA's as are the previously approved projects that continue to impact the species.

Please let me know how you plan to proceed to insure that the mitigation measures for all of these projects are implemented.

Ralph Kanz



This email has been checked for viruses by Avast antivirus software.
www.avast.com



CITY OF OAKLAND
SMALL PROJECT DESIGN REVIEW
APPROVAL

DATE: August 11, 2015
PROJECT ADDRESS: 5150 Redwood Road
APN: 037A-3138-003-04
CASE FILE NO.: DS15-0313
APPLICANT NAME: Powell & Associates
MAILING ADDRESS: 560 1st Street, B203
Benicia, CA 94510
GENERAL PLAN: Hillside Residential
ZONING: RH-3

Dear Applicant:

Your application to construct an approximately 850 square foot addition to the existing single-family dwelling including a second story addition of 730 square feet conforms to the Small Project Design Review Criteria Checklist and to all applicable zoning regulations, and is therefore **APPROVED**. This approval is subject to the **Conditions of Approval** stated in the following section of this letter. This design review approval becomes effective immediately and shall expire two calendar years from the date of this letter, unless all necessary permits for construction or alteration have been issued within such period. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, such period of time may be extended by the Director of City Planning or designee, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

NOTICE TO ALL PARTIES: The time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision.

Please note that any desired modifications to the approved plans must be submitted for review by the Planning Bureau prior to the changes taking place. To apply for a building permit you must complete an application form and submit additional sets of plans to the Building Bureau. For more information about building permit requirements, please contact the Building Bureau at (510) 238-3443.

If you have any questions regarding this approval, please contact the Planning Bureau at (510) 238-3911.

Signed

-for-

SCOTT MILLER
Zoning Manager
Planning and Zoning Division

SMALL PROJECT DESIGN REVIEW
CONDITIONS OF APPROVAL
ATTACHED AND INCORPORATED INTO CASE DS15-0313

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ALL PROJECTS

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and the approved plans submitted on 7/22/15, as amended by the following conditions of approval and mitigation measures, if applicable ("Conditions of Approval" or "Conditions").

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire two calendar years from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved

technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Public Works Department, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ADDITIONS AND ALTERATIONS¹**12. Graffiti Control****Requirement:**

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

¹ These conditions do not apply to Small Project Design Review approvals for signs, facades, fences, barriers, or freestanding walls.

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. Covering with new paint to match the color of the surrounding surface.
- iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

13. Landscape Plan

This condition applies to residential additions over 500 sq. ft. of floor area and new secondary units over 500 sq. ft. of floor area.

a. Landscape Plan Required

Requirement: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A

b. Landscape Installation

Requirement: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.

When Required: Prior to building permit final

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

c. Landscape Maintenance

Requirement: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

14. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

15. Tree Permit

This condition applies to projects involving the removal of a protected tree or construction activities within 10 feet of a protected tree, defined by the City's Tree Protection Ordinance as the following:

- a. Any Coast Live Oak tree that is larger than 4 inches dbh.
- b. Any tree (except Eucalyptus) that is larger than 9 inches dbh (Eucalyptus trees and up to 5 Monterey Pines per acre are not considered Protected Trees under this section. Monterey Pines must be inspected and verified by the Public Works Department – Tree Division prior to their removal. Contact the Tree Division at (510) 615-5850 for more information or to schedule an inspection).
- c. Any tree of any size located in the public right-of-way (including street trees).

Requirement: Pursuant to the City's Tree Protection Ordinance (OMC chapter 12.36), the project applicant shall obtain a tree permit and abide by the conditions of that permit.

When Required: Prior to approval of construction-related permit

Initial Approval: Permit approval by Public Works Department, Tree Division; evidence of approval submitted to Bureau of Building

Monitoring/Inspection: Bureau of Building

16. Erosion and Sedimentation Control Measures for Construction

Requirement: The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet

at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

19. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Construction Activity in the Public Right-of-Way**a. Obstruction Permit Required**

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. Traffic Control Plan Required

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. Repair of City Streets

Requirement: The project applicant shall repair any damage to the public right-of-way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

21. Construction and Demolition Waste Reduction and Recycling

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

22. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date



CITY OF OAKLAND
SMALL PROJECT DESIGN REVIEW
APPROVAL

DATE: August 11, 2015

PROJECT ADDRESS: 5150 Redwood Road

APN: 037A-3138-003-04

CASE FILE NO.: DS15-0313

APPLICANT NAME: Powell & Associates

MAILING ADDRESS: 560 1st Street, B203
Benicia, CA 94510

GENERAL PLAN: Hillside Residential

ZONING: RH-3

Dear Applicant:

Your application to construct an approximately 850 square foot addition to the existing single-family dwelling including a second story addition of 730 square feet conforms to the Small Project Design Review Criteria Checklist and to all applicable zoning regulations, and is therefore **APPROVED**. **This approval is subject to the Conditions of Approval stated in the following section of this letter.** This design review approval becomes effective immediately and shall expire two calendar years from the date of this letter, unless all necessary permits for construction or alteration have been issued within such period. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, such period of time may be extended by the Director of City Planning or designee, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

NOTICE TO ALL PARTIES: The time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision.

Please note that any desired modifications to the approved plans must be submitted for review by the Planning Bureau prior to the changes taking place. To apply for a building permit you must complete an application form and submit additional sets of plans to the Building Bureau. For more information about building permit requirements, please contact the Building Bureau at (510) 238-3443.

If you have any questions regarding this approval, please contact the Planning Bureau at (510) 238-3911.

Signed,

-for-

SCOTT MILLER
Zoning Manager
Planning and Zoning Division

SMALL PROJECT DESIGN REVIEW
CONDITIONS OF APPROVAL
ATTACHED AND INCORPORATED INTO CASE DS15-0313

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This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire two calendar years from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved

technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. **Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. **Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement (“p-job”) permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Public Works Department, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ADDITIONS AND ALTERATIONS¹

12. **Graffiti Control**

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

¹ These conditions do not apply to Small Project Design Review approvals for signs, facades, fences, barriers, or freestanding walls.

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. Covering with new paint to match the color of the surrounding surface.
- iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

13. Landscape Plan

This condition applies to residential additions over 500 sq. ft. of floor area and new secondary units over 500 sq. ft. of floor area.

a. Landscape Plan Required

Requirement: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A

b. Landscape Installation

Requirement: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.

When Required: Prior to building permit final

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

c. Landscape Maintenance

Requirement: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

14. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

15. Tree Permit

This condition applies to projects involving the removal of a protected tree or construction activities within 10 feet of a protected tree, defined by the City's Tree Protection Ordinance as the following:

- a. *Any Coast Live Oak tree that is larger than 4 inches dbh.*
- b. *Any tree (except Eucalyptus) that is larger than 9 inches dbh (Eucalyptus trees and up to 5 Monterey Pines per acre are not considered Protected Trees under this section. Monterey Pines must be inspected and verified by the Public Works Department – Tree Division prior to their removal. Contact the Tree Division at (510) 615-5850 for more information or to schedule an inspection).*
- c. *Any tree of any size located in the public right-of-way (including street trees).*

Requirement: Pursuant to the City's Tree Protection Ordinance (OMC chapter 12.36), the project applicant shall obtain a tree permit and abide by the conditions of that permit.

When Required: Prior to approval of construction-related permit

Initial Approval: Permit approval by Public Works Department, Tree Division; evidence of approval submitted to Bureau of Building

Monitoring/Inspection: Bureau of Building

16. Erosion and Sedimentation Control Measures for Construction

Requirement: The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet

at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

19. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Construction Activity in the Public Right-of-Way

a. *Obstruction Permit Required*

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. *Traffic Control Plan Required*

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. *Repair of City Streets*

Requirement: The project applicant shall repair any damage to the public right-of-way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

21. Construction and Demolition Waste Reduction and Recycling

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

22. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

23. Endangered Plant Protection Measures

a. Pre-Construction Survey Required

Requirement: The project applicant shall hire a qualified biologist to conduct a **Presidio Clarkia (Clarkia Franciscana)** survey to identify the potential presence of **Presidio Clarkia** at the project site. If the presence of **Presidio Clarkia** is confirmed, see Condition of Approval no. 23c.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

b. Information and Protocols for Construction Workers

Requirement: The biologist from section (a) above shall instruct the project superintendent and the construction crews (primarily the clearing, demolition, and foundation crews) of the potential presence, status, and identification of **Presidio Clarkia**. The biologist shall also establish a set of protocols for use during construction concerning the steps to take if a **Presidio Clarkia** is seen on the project site, including who to contact, to ensure that **Presidio Clarkia** are not harmed or killed. The project applicant shall submit evidence of compliance with these requirements to the City for review and approval.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

c. Presidio Clarkia Exclusion Fence

Requirement: Unless alternative (equivalent or more effective) measures are recommended by the biologist, the project applicant shall install a solid fence to separate **Presidio Clarkia** from the work site. The plant exclusion fence shall be constructed as follows:

- i. Plywood sheets at least three feet in height, above ground. Heavy duty geotextile fabric approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife may also be used for the plant exclusion fence;
- ii. Buried four to six inches into the ground;
- iii. Soil back-filled against the plywood fence to create a solid barrier at the ground;
- iv. Plywood sheets maintained in an upright position with wooden or masonry stakes;
- v. Ends of each plywood sheet overlapped to ensure a continuous barrier; and
- vi. Work site or construction area shall be completely enclosed by the exclusion fence.

The location and design of the proposed exclusion fence shall be submitted for review and approval by the City and be included on plans for all construction-related permits.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

d. Plant Protection During Construction

Requirement: The project applicant shall comply with the requirements in the above sections during construction activities. The approved protocol from section (b) above shall be followed in the event **Presidio Clarkia** is encountered. The plant exclusion fence from section (c) above shall be installed and remain in place throughout the construction period.

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All construction activities and equipment/materials/debris storage shall take place on the project-side of the exclusion fence.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building



<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=O1UI>

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date

Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Wednesday, July 27, 2016 12:34 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.; Schuerholz, Keith
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

Did you sign Conditions of Approval for the project at 5150 Redwood Road that included Condition of Approval #23? Please respond with a copy of the signed Conditions of Approval.

Ralph Kanz

On 7/26/2016 3:52 PM, Miller, Scott wrote:

Hello, Mr. Kanz, I apologize for the delay in getting back to you. Regarding the 5150 Redwood Road Small Project Design Review (for a 2nd story addition) and the Conditions of Approval applicable to that project, my June 3rd email to you explains the City's position. In that email I stated "upon site inspection after project approval and before project construction, it was determined that the pre-construction biologist survey would be unnecessary, due to the clear separation between the built environment of the existing single family property...and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall)." Also, from that email, "all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been implemented." As stated in the May 19th letter to you, a CEQA Exemption was properly issued for this project, given the limited scope of the project (a 2nd story addition above existing floor area) and clear separation of the built property from the adjacent natural habitat area.

In your June 3rd email, you state "Additionally there was vegetation clearance on the site at 5150 Redwood Road that was apparently associated with the current project. These activities could have resulted in the take of Presidio clarkia." There was no evidence of vegetation clearing when I visited the site, so it would be helpful if you could elaborate on what you are referring to. Thanks for any additional information you can provide, including the specific location on the site and the timing of any vegetation clearance.

I looked at the permit records for the 2 Parcel Maps you refer to in your June 3rd email. You are correct, according to our permit tracking records, they were approved with CEQA Exemptions (in 2000/2001). A subsequent subdivision along Crestmont Drive went through an EIR process when the sensitive habitat was brought to the City's attention (TPM7940).

For the reasons stated in my May 19th letter, as well as my June 6th email, and as repeated above, the City finds no active violation of any applicable Condition of Approval for the project at 5150 Redwood Road.

Scott

Item #5a - Public Comment Letter

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [<mailto:rkanz@sonic.net>]

Sent: Tuesday, June 14, 2016 10:20 AM

To: Miller, Scott

Cc: Flynn, Rachel; Ranelletti, Darin; Capplo, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.

Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

What have you done to insure the COA's for the project are being enforced? I am still waiting for a reply to my previous email.

Ralph Kanz

On 6/3/2016 10:56 AM, Ralph Kanz wrote:

Mr. Miller,

COA 23 is very clear: "The project applicant shall hire a qualified biologist to conduct a Presidio Clarkia (Clarkia Franciscana) survey to identify the potential presence of Presidio Clarkia at the project site." Your answer confirms the project applicant has violated this COA. It is also clear from your answer that no one on City staff knows where the plants are on the site, and being that it is an annual species there can be changes in the areas of occupied habitat from one year to another.

This is very similar to what occurred in 2000 and 2001 when the City approved PM 7336 and PM 7159. As the history I provided previously explains there was no CEQA review done on either project, and both impacted Presidio clarkia. Because the City did not follow CEQA requirements there has been no mitigation for the impacts of those two projects. This is why I can say with confidence that the City has never enforced mitigation measures for a project that impacts Presidio clarkia.

Please forward me a copy of the biologist's report and map showing the occupied habitat on the site and where fencing should be place to protect the species on the site, once it is prepared.. Additionally there was vegetation clearance on the site at 5150 Redwood Road that was

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apparently associated with the current project. These activities could have resulted in the take of Presidio clarkia.

Ralph Kanz

On 6/3/2016 9:01 AM, Miller, Scott wrote:

Hello, Mr. Kanz. Regarding 5150 Redwood Road, there are no mitigation measures, as a CEQA Exemption was properly completed (as summarized in my May 19th letter). Regarding Condition of Approval #23, upon site inspection after project approval and before project construction, it was determined that the pre-construction biologist survey would be unnecessary, due to the clear separation between the built environment of the existing single family property (5150 Redwood Road) and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall). As mentioned in my May 19th letter, all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been implemented. Based on this information, the City finds no violation evident related to the Zoning approval that was granted for the project.

Regarding the 2 other developed properties that you have raised, we will assign staff to review those records to determine any follow up action on the City's part. Thank you for bringing those to our attention.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, June 02, 2016 12:09 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

I wanted to follow-up with you to see what has happened with this situation of the mitigation measures for Presidio

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clarkia not being enforced. I drove by the site at 5150 Redwood Road and it appears the project is proceeding. Please provide me a copy of the report the biologist prepared identifying the habitat on the site and verifying which mitigation measures have been implemented to ensure the species is protected during construction.

Ralph Kanz

On 5/25/2016 3:24 PM, Ralph Kanz wrote:

Mr. Miller,

I received your letter of May 19, 2015 concerning the project at 5150 Redwood Road that is in violation of its permit. Attached to this email is your letter, the approval for the project, and the History of Presidio clarkia in Oakland that details all of the failed mitigations for this species related to previously approved projects.

The project proponent has violated COA 23.a. requiring a pre-construction survey. As your letter admits, this project requires CEQA review that has not occurred, and now the mitigation measures that are described as Conditions of Approval have been violated.

I realize, as the accompanying History of Presidio Clarkia in Oakland shows, that the City has not enforced mitigation measures for any project impacting the species. At the Oakland Hills Tennis Club the COA's requires that "the project sponsor shall develop a

management plan for the on-going protection of the plant population and its potential habitat. The plan shall be reviewed by the State Department of Fish and Game, and shall be approved by the Director of City Planning prior to issuance a certificate of occupancy. The plan shall include monitoring of the plant population for a five year period following issuance of the certificate of occupancy." The City has no record of this COA being honored, and in the years since approval, there has been additional development that has occupied habitat closer to the on-site population than was allowed at the time of approval.

The Sunrise Assisted Living Facility, adjacent to the Tennis Club, had the following Mitigation Measures as part of its approval in 1997:

14.1 The project sponsor shall remove French broom from the site using a technique(s) approved by the City. Typical techniques for removing French broom include (1) mechanical mowing or removal, (2) hand cutting or removal, (3) controlled burn, and (4) painted or direct spraying of herbicides. The project sponsor shall consult with the City and California Department of Fish and Game (CDFG) staff as appropriate to draft a French broom removal plan. The plan should include grounds and maintenance worker education and training concerning the listed species and responsibilities under

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the State and Federal Endangered Species Acts. The plan shall be submitted and approved by CDFG and the City prior to the issuance of any grading or other building-related permits for the project. The removal plan shall be accompanied by a revegetation and monitoring plan approved by the City and CDFG. The area should be revegetated with native shrubs and grasses such as coyote brush, California sage, and purple needlegrass. Annual monitoring and maintenance should be conducted on an ongoing basis as stipulated by the CDFG or in the plan, to prevent the recolonization of the area with French broom or other non-native, invasive species. Grounds and maintenance worker education and training shall also be incorporated into the project's regular maintenance plan and grounds and maintenance worker training as provided for in the plan.

14.2 The project sponsor shall prepare a training plan for construction, grounds and maintenance workers that details the steps to be taken to ensure the continued survival and well-being of the endangered species found on the site and any habitat factors important to them. The plan should include but not necessarily be limited to details of the general area in which the endangered species are known to occur; any other portions of the site where they might potentially occur;

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and measures that shall be taken to ensure that the endangered plant species and their habitat will not be disturbed by construction or ongoing operations on the site. The measures in the plan should include but not be limited to the construction and maintenance of physical barriers to prevent unauthorized access to the plants or their habitat; measures to be taken to ensure that maintenance of site landscaping (including irrigation, the application of chemical fertilizers, herbicides or other pesticides, or any other measures to be taken) does not harm the plants or their habitat; and any the measures to be taken, in addition to those required by Mitigation Measure 14.1, to ensure that exotic invasive plants found on the site do not intrude into the habitat of the endangered plant species. The plan shall be submitted to the California Department of Fish and Game (CDFG) and the Zoning Manager for review prior to the issuance of any grading or building permit and no such grading or building permits shall be issued until both the CDFG and the Zoning Manager have approved the plan.

14.3 *The applicant shall obtain any required permits from the CDFG, USFWS, and any other regulatory body with jurisdiction over listed species prior to the issuance of any grading permits by the City.*

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Implementation of these mitigation measures would reduce impacts on endangered plant species to a less than significant level.

Review of the files cannot find any plans or record of contact with CDFG or USFWS. There is no indication a management plan was ever produced, and the French broom is currently thriving in the location described.

I realize the City made a serious mistake in approving the 5150 Redwood Road project without CEQA review. However, the COA's have been violated, just as other COA's and mitigation measures have been ignored at other project sites that have impacted Presidio clarkia.

Another troubling fact is that the approval for this project was backdated. The attached approval is dated August 11, 2015. I contacted Aubrey Rose by email on September 3, 2015 to inform him that Presidio clarkia are present on the project site. On September 4 Mr. Rose responded, "[t]his is a second story addition to an existing single story home - upper story additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption - however, the building permit has not been issued; therefore, a HOLD has been placed on it while we investigate this matter further

Item #5a - Public Comment Letter

- talk to you soon." I heard nothing further from Mr Rose. On April 20, 2016 when passing 5150 Redwood Road I saw construction related activity taking place on the site. I emailed an inquiry to Mr. Rose that same day and he responded by sending by the attached Approval for the project. Later that same day Mr. Rose sent another email stating, "this particular project was exempt from CEQA; there was no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this." The project was underway without COA 23.a. being implemented by the project proponent.

On April 21 I sent the following email to Mr. Rose: "If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presido clarkia conditions were not in the permit at that time." The same day Mr. Rose responded, "[c]orrect, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon."

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I asked for further information and in an April 22, 2016 email Mr. Rose stated "[t]hey responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon." Again in and April 26, 2016 email Mr. Rose again confirmed, "There is no report, but I can speak with them about fencing."

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Clearly the project at 5150 Redwood Road is out of compliance with the COA's as are the previously approved projects that continue to impact the species.

Please let me know how you plan to proceed to insure that the mitigation measures for all of these projects are implemented.

Ralph Kanz



This email has been checked for viruses by Avast antivirus software.
www.avast.com

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Rose, Aubrey

From: Miller, Scott
Sent: Tuesday, July 26, 2016 3:52 PM
To: rkanz@sonic.net
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: RE: 5150 Redwood Road CEQA Violations

Hello, Mr. Kanz, I apologize for the delay in getting back to you. Regarding the 5150 Redwood Road Small Project Design Review (for a 2nd story addition) and the Conditions of Approval applicable to that project, my June 3rd email to you explains the City's position. In that email I stated "upon site inspection after project approval and before project construction, it was determined that the pre-construction biologist survey would be unnecessary, due to the clear separation between the built environment of the existing single family property...and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall)." Also, from that email, "all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been implemented." As stated in the May 19th letter to you, a CEQA Exemption was properly issued for this project, given the limited scope of the project (a 2nd story addition above existing floor area) and clear separation of the built property from the adjacent natural habitat area.

In your June 3rd email, you state "Additionally there was vegetation clearance on the site at 5150 Redwood Road that was apparently associated with the current project. These activities could have resulted in the take of *Presidio clarkia*." There was no evidence of vegetation clearing when I visited the site, so it would be helpful if you could elaborate on what you are referring to. Thanks for any additional information you can provide, including the specific location on the site and the timing of any vegetation clearance.

I looked at the permit records for the 2 Parcel Maps you refer to in your June 3rd email. You are correct, according to our permit tracking records, they were approved with CEQA Exemptions (in 2000/2001). A subsequent subdivision along Crestmont Drive went through an EIR process when the sensitive habitat was brought to the City's attention (TPM7940).

For the reasons stated in my May 19th letter, as well as my June 6th email, and as repeated above, the City finds no active violation of any applicable Condition of Approval for the project at 5150 Redwood Road.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Tuesday, June 14, 2016 10:20 AM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

Item #5a - Public Comment Letter

What have you done to insure the COA's for the project are being enforced? I am still waiting for a reply to my previous email.

Ralph Kanz

On 6/3/2016 10:56 AM, Ralph Kanz wrote:

Mr. Miller,

COA 23 is very clear: "The project applicant shall hire a qualified biologist to conduct a Presidio Clarkia (Clarkia Franciscana) survey to identify the potential presence of Presidio Clarkia at the project site." Your answer confirms the project applicant has violated this COA. It is also clear from your answer that no one on City staff knows where the plants are on the site, and being that it is an annual species there can be changes in the areas of occupied habitat from one year to another.

This is very similar to what occurred in 2000 and 2001 when the City approved PM 7336 and PM 7159. As the history I provided previously explains there was no CEQA review done on either project, and both impacted Presidio clarkia. Because the City did not follow CEQA requirements there has been no mitigation for the impacts of those two projects. This is why I can say with confidence that the City has never enforced mitigation measures for a project that impacts Presidio clarkia.

Please forward me a copy of the biologist's report and map showing the occupied habitat on the site and where fencing should be place to protect the species on the site, once it is prepared.. Additionally there was vegetation clearance on the site at 5150 Redwood Road that was apparently associated with the current project. These activities could have resulted in the take of Presidio clarkia.

Ralph Kanz

On 6/3/2016 9:01 AM, Miller, Scott wrote:

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environment of the existing single family property (5150 Redwood Road) and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall). As mentioned in my May 19th letter, all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been implemented. Based on this information, the City finds no violation evident related to the Zoning approval that was granted for the project.

Regarding the 2 other developed properties that you have raised, we will assign staff to review those records to determine any follow up action on the City's part. Thank you for bringing those to our attention.

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From: Ralph Kanz [<mailto:rkanz@sonic.net>]

Sent: Thursday, June 02, 2016 12:09 PM

To: Miller, Scott

Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.

Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

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clarkia in Oakland that details all of the failed mitigations for this species related to previously approved projects.

The project proponent has violated COA 23.a. requiring a pre-construction survey. As your letter admits, this project requires CEQA review that has not occurred, and now the mitigation measures that are described as Conditions of Approval have been violated.

I realize, as the accompanying History of Presidio Clarkia in Oakland shows, that the City has not enforced mitigation measures for any project impacting the species. At the Oakland Hills Tennis Club the COA's requires that "the project sponsor shall develop a management plan for the on-going protection of the plant population and its potential habitat. The plan shall be reviewed by the State Department of Fish and Game, and shall be approved by the Director of City Planning prior to issuance a certificate of occupancy. The plan shall include monitoring of the plant population for a five year period following issuance of the certificate of occupancy." The City has no record of this COA being honored, and in the years since approval, there has been additional development that has occupied habitat closer to the on-site population than was allowed at the time of approval.

The Sunrise Assisted Living Facility, adjacent to the Tennis Club, had the following Mitigation Measures as part of its approval in 1997:

14.1 The project sponsor shall remove French broom from the site using a technique(s) approved by the City. Typical techniques for removing French broom include (1) mechanical mowing

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or removal, (2) hand cutting or removal, (3) controlled burn, and (4) painted or direct spraying of herbicides. The project sponsor shall consult with the City and California Department of Fish and Game (CDFG) staff as appropriate to draft a French broom removal plan. The plan should include grounds and maintenance worker education and training concerning the listed species and responsibilities under the State and Federal Endangered Species Acts. The plan shall be submitted and approved by CDFG and the City prior to the issuance of any grading or other building-related permits for the project. The removal plan shall be accompanied by a revegetation and monitoring plan approved by the City and CDFG. The area should be revegetated with native shrubs and grasses such as coyote brush, California sage, and purple needlegrass. Annual monitoring and maintenance should be conducted on an ongoing basis as stipulated by the CDFG or in the plan, to prevent the recolonization of the area with French broom or other non-native, invasive species. Grounds and maintenance worker education and training shall also be incorporated into the project's regular maintenance plan and grounds and maintenance worker training as provided for in the plan.

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Ralph Kanz

Rose, Aubrey

From: Ranelletti, Darin
Sent: Tuesday, July 05, 2016 5:16 PM
To: 'Ralph Kanz'
Cc: Flynn, Rachel; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.; Schuerholz, Keith; Miller, Scott
Subject: RE: 5150 Redwood Road CEQA Violations

Mr. Kanz,

I apologize for the delayed response. The City takes the issues described below very seriously. Thank you for raising them. We are looking into these issues very carefully so that we can provide you with an informed response. Unfortunately, Scott Miller is away from the office this week. We intend to have a response for you when he returns next week. Thank you for your patience.

Regards,

Darin Ranelletti

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Tuesday, June 14, 2016 10:20 AM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: Re: 5150 Redwood Road CEQA Violations

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Presidio Clarkia at the project site." Your answer confirms the project applicant has violated this COA. It is also clear from your answer that no one on City staff knows where the plants are on the site, and being that it is an annual species there can be changes in the areas of occupied habitat from one year to another.

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Sent: Thursday, June 02, 2016 12:09 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Capplo, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: Re: 5150 Redwood Road CEQA Violations

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Subject: Re: 5150 Redwood Road CEQA Violations

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I wanted to follow-up with you to see what has happened with this situation of the mitigation measures for Presidio clarkia not being enforced. I drove by the site at 5150 Redwood Road and it appears the project is proceeding. Please provide me a copy of the report the biologist prepared identifying the habitat on the site and verifying which mitigation measures have been implemented to ensure the species is protected during construction.

Ralph Kanz

On 5/25/2016 3:24 PM, Ralph Kanz wrote:

Mr. Miller,

I received your letter of May 19, 2015 concerning the project at 5150 Redwood Road that is in violation of its permit. Attached to this email is your letter, the approval for the project, and the History of Presidio clarkia in Oakland that details all of the failed mitigations for this species related to previously approved projects.

The project proponent has violated COA 23.a. requiring a pre-construction survey. As your letter admits, this project requires CEQA review that has not occurred, and now the mitigation measures that are described as Conditions of Approval have been violated.

I realize, as the accompanying History of Presidio Clarkia in Oakland shows, that the City has not enforced mitigation measures for any project impacting the species. At the Oakland Hills Tennis Club the COA's requires that "the project sponsor shall develop a management plan for the on-going protection of the plant population and its potential habitat. The plan shall be reviewed by the State

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Department of Fish and Game, and shall be approved by the Director of City Planning prior to issuance a certificate of occupancy. The plan shall include monitoring of the plant population for a five year period following issuance of the certificate of occupancy." The City has no record of this COA being honored, and in the years since approval, there has been additional development that has occupied habitat closer to the on-site population than was allowed at the time of approval.

The Sunrise Assisted Living Facility, adjacent to the Tennis Club, had the following Mitigation Measures as part of its approval in 1997:

14.1 The project sponsor shall remove French broom from the site using a technique(s) approved by the City. Typical techniques for removing French broom include (1) mechanical mowing or removal, (2) hand cutting or removal, (3) controlled burn, and (4) painted or direct spraying of herbicides. The project sponsor shall consult with the City and California Department of Fish and Game (CDFG) staff as appropriate to draft a French broom removal plan. The plan should include grounds and maintenance worker education and training concerning the listed species and responsibilities under the State and Federal Endangered Species Acts. The plan shall be submitted and approved by CDFG and the City prior to the issuance of any grading or other building-related permits for the project. The removal plan shall be accompanied by a revegetation and monitoring plan approved by the City and CDFG. The area should be revegetated with native shrubs and grasses such as coyote brush, California sage, and purple needlegrass. Annual monitoring and maintenance should be conducted on an ongoing basis as stipulated by the CDFG or in the plan, to prevent the recolonization of the area with French broom or other non-native, invasive species. Grounds and maintenance worker education and training shall also be incorporated into the project's regular maintenance plan and grounds and maintenance worker training as provided for in the plan.

14.2 The project sponsor shall prepare a training plan for construction, grounds and maintenance workers that details the steps to be taken to ensure the continued survival and well-being of the endangered species found on the site and any habitat factors important to them. The plan should include but not necessarily be limited to details of the general area

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in which the endangered species are known to occur; any other portions of the site where they might potentially occur; and measures that shall be taken to ensure that the endangered plant species and their habitat will not be disturbed by construction or ongoing operations on the site. The measures in the plan should include but not be limited to the construction and maintenance of physical barriers to prevent unauthorized access to the plants or their habitat; measures to be taken to ensure that maintenance of site landscaping (including irrigation, the application of chemical fertilizers, herbicides or other pesticides, or any other measures to be taken) does not harm the plants or their habitat; and any the measures to be taken, in addition to those required by Mitigation Measure 14.1, to ensure that exotic invasive plants found on the site do not intrude into the habitat of the endangered plant species. The plan shall be submitted to the California Department of Fish and Game (CDFG) and the Zoning Manager for review prior to the issuance of any grading or building permit and no such grading or building permits shall be issued until both the CDFG and the Zoning Manager have approved the plan.

14.3 The applicant shall obtain any required permits from the CDFG, USFWS, and any other regulatory body with jurisdiction over listed species prior to the issuance of any grading permits by the City.

Implementation of these mitigation measures would reduce impacts on endangered plant species to a less than significant level.

Review of the files cannot find any plans or record of contact with CDFG or USFWS. There is no indication a management plan was ever produced, and the French broom is currently thriving in the location described.

I realize the City made a serious mistake in approving the 5150 Redwood Road project without CEQA review. However, the COA's have been violated, just as other COA's and mitigation measures have been ignored at other project sites that have impacted Presidio clarkia.

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Another troubling fact is that the approval for this project was backdated. The attached approval is dated August 11, 2015. I contacted Aubrey Rose by email on September 3, 2015 to

inform him that Presidio clarkia are present on the project site. On September 4 Mr. Rose responded, "[t]his is a second story addition to an existing single story home - upper story

additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption

- however, the building permit has not been issued; therefore, a HOLD has been placed on it while we investigate this matter further - talk to you soon." I heard nothing further from

Mr Rose. On April 20, 2016 when passing 5150 Redwood Road I saw construction related activity taking place on the site. I emailed an inquiry to Mr. Rose that same day and he

responded by sending by the attached Approval for the project. Later that same day Mr. Rose sent another email stating, "this particular project was exempt from CEQA; there was

no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this." The project was underway without COA 23.a. being

implemented by the project proponent.

On April 21 I sent the following email to Mr. Rose: "If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site.

This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project.

When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presidio clarkia conditions

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I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition

– sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon."

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As I explained to Mr. Rose on more than one occasion, the only way to determine if the fencing is adequate is to have a biologist survey the sight and identify the areas of potential habitat and protect those areas during construction. The COA's call for this, but the survey and fencing based upon the survey has not taken place.

Clearly the project at 5150 Redwood Road is out of compliance with the COA's as are the previously approved projects that continue to impact the species.

Please let me know how you plan to proceed to insure that the mitigation measures for all of these projects are implemented.

Ralph Kanz

Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Wednesday, May 25, 2016 3:24 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: 5150 Redwood Road CEQA Violations
Attachments: 5150 Redwood Rd DS150313 08.11.2015.pdf; 5150 Redwood Road CEQA letter-1.pdf; Clarkia History.doc

Mr. Miller,

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Ralph Kanz



CITY OF OAKLAND
SMALL PROJECT DESIGN REVIEW
APPROVAL

DATE: August 11, 2015
PROJECT ADDRESS: 5150 Redwood Road
APN: 037A-3138-003-04
CASE FILE NO.: DS15-0313
APPLICANT NAME: Powell & Associates
MAILING ADDRESS: 560 1st Street, B203
Benicia, CA 94510
GENERAL PLAN: Hillside Residential
ZONING: RH-3

Dear Applicant:

Your application to construct an approximately 850 square foot addition to the existing single-family dwelling including a second story addition of 730 square feet conforms to the Small Project Design Review Criteria Checklist and to all applicable zoning regulations, and is therefore **APPROVED**. **This approval is subject to the Conditions of Approval stated in the following section of this letter.** This design review approval becomes effective immediately and shall expire two calendar years from the date of this letter, unless all necessary permits for construction or alteration have been issued within such period. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, such period of time may be extended by the Director of City Planning or designee, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

NOTICE TO ALL PARTIES: The time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision.

Please note that any desired modifications to the approved plans must be submitted for review by the Planning Bureau prior to the changes taking place. To apply for a building permit you must complete an application form and submit additional sets of plans to the Building Bureau. For more information about building permit requirements, please contact the Building Bureau at (510) 238-3443.

If you have any questions regarding this approval, please contact the Planning Bureau at (510) 238-3911.

Signed,

-for-
SCOTT MILLER
Zoning Manager
Planning and Zoning Division

**SMALL PROJECT DESIGN REVIEW
CONDITIONS OF APPROVAL
ATTACHED AND INCORPORATED INTO CASE DS15-0313**

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ALL PROJECTS

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and the approved plans submitted on 7/22/15, as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire two calendar years from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved

technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. **Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. **Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Public Works Department, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ADDITIONS AND ALTERATIONS¹

12. **Graffiti Control**

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

¹ These conditions do not apply to Small Project Design Review approvals for signs, facades, fences, barriers, or freestanding walls.

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. Covering with new paint to match the color of the surrounding surface.
- iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

13. Landscape Plan

This condition applies to residential additions over 500 sq. ft. of floor area and new secondary units over 500 sq. ft. of floor area.

a. Landscape Plan Required

Requirement: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A

b. Landscape Installation

Requirement: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.

When Required: Prior to building permit final

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

c. Landscape Maintenance

Requirement: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

14. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

15. Tree Permit

This condition applies to projects involving the removal of a protected tree or construction activities within 10 feet of a protected tree, defined by the City's Tree Protection Ordinance as the following:

- a. *Any Coast Live Oak tree that is larger than 4 inches dbh.*
- b. *Any tree (except Eucalyptus) that is larger than 9 inches dbh (Eucalyptus trees and up to 5 Monterey Pines per acre are not considered Protected Trees under this section. Monterey Pines must be inspected and verified by the Public Works Department – Tree Division prior to their removal. Contact the Tree Division at (510) 615-5850 for more information or to schedule an inspection).*
- c. *Any tree of any size located in the public right-of-way (including street trees).*

Requirement: Pursuant to the City's Tree Protection Ordinance (OMC chapter 12.36), the project applicant shall obtain a tree permit and abide by the conditions of that permit.

When Required: Prior to approval of construction-related permit

Initial Approval: Permit approval by Public Works Department, Tree Division; evidence of approval submitted to Bureau of Building

Monitoring/Inspection: Bureau of Building

16. Erosion and Sedimentation Control Measures for Construction

Requirement: The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet

at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

19. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. **Construction Activity in the Public Right-of-Way**

a. ***Obstruction Permit Required***

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. ***Traffic Control Plan Required***

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. ***Repair of City Streets***

Requirement: The project applicant shall repair any damage to the public right-of way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

21. **Construction and Demolition Waste Reduction and Recycling**

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

22. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

23. Endangered Plant Protection Measures

a. Pre-Construction Survey Required

Requirement: The project applicant shall hire a qualified biologist to conduct a **Presidio Clarkia (Clarkia Franciscana)** survey to identify the potential presence of **Presidio Clarkia** at the project site. If the presence of **Presidio Clarkia** is confirmed, see Condition of Approval no. 23c.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

b. Information and Protocols for Construction Workers

Requirement: The biologist from section (a) above shall instruct the project superintendent and the construction crews (primarily the clearing, demolition, and foundation crews) of the potential presence, status, and identification of **Presidio Clarkia**. The biologist shall also establish a set of protocols for use during construction concerning the steps to take if a **Presidio Clarkia** is seen on the project site, including who to contact, to ensure that **Presidio Clarkia** are not harmed or killed. The project applicant shall submit evidence of compliance with these requirements to the City for review and approval.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

c. Presidio Clarkia Exclusion Fence

Requirement: Unless alternative (equivalent or more effective) measures are recommended by the biologist, the project applicant shall install a solid fence to separate **Presidio Clarkia** from the work site. The plant exclusion fence shall be constructed as follows:

- i. Plywood sheets at least three feet in height, above ground. Heavy duty geotextile fabric approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife may also be used for the plant exclusion fence;
- ii. Buried four to six inches into the ground;
- iii. Soil back-filled against the plywood fence to create a solid barrier at the ground;
- iv. Plywood sheets maintained in an upright position with wooden or masonry stakes;
- v. Ends of each plywood sheet overlapped to ensure a continuous barrier; and
- vi. Work site or construction area shall be completely enclosed by the exclusion fence.

The location and design of the proposed exclusion fence shall be submitted for review and approval by the City and be included on plans for all construction-related permits.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

d. Plant Protection During Construction

Requirement: The project applicant shall comply with the requirements in the above sections during construction activities. The approved protocol from section (b) above shall be followed in the event **Presidio Clarkia** is encountered. The plant exclusion fence from section (c) above shall be installed and remain in place throughout the construction period.

Small Project Design Review Case No. DS15-0313

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All construction activities and equipment/materials/debris storage shall take place on the project-side of the exclusion fence.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building



<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=O1UI>

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building
Zoning Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

May 19, 2016

Ralph Kanz
4808 Congress Avenue
Oakland, California 94601

Subject: CEQA Compliance for Addition to Single Family Home at 5150 Redwood Road

Dear Mr. Kanz:

I have reviewed your correspondence and the zoning application process for the property at 5150 Redwood Road. As you know, the project is a 2nd story addition to the existing single family home on the site. The plans indicate that the 2nd story addition will be located primarily over a portion of the existing building footprint, with a 6 foot deck extension from the new 2nd story extending over a formerly hardscape patio area. Given that you had contacted the City with interest in this project relatively early in the process, I apologize that you were not kept abreast of decisions until after construction commenced. I am working with staff on improving outreach to interested parties, especially when sensitive habitat issues are potentially affected.¹

A project of this scale and characteristics qualifies for a Categorical Exemption pursuant to CEQA Guidelines Section 15301. As you may be aware, Section 15301 provides CEQA Exemption for additions to existing structures that involve negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The net increase of less than 850 square feet to an existing single family home satisfies that criteria. In addition, the area of expansion is over existing building footprint except for a deck addition which is being built over a hardscape patio area. If the project were to have an impact on a sensitive or endangered plant or animal habitat, a CEQA Exemption would not be used.

Based on the scope of the addition to the existing home, there will be no disturbance to sensitive habitat on or adjacent to the subject property. The construction area is separated from the potential habitat area by approximately eight (8) feet of setback, and by an existing three (3) foot retaining wall. Atop the retaining wall has been built a temporary plywood "exclusion" fence for the entire length of the property line along the potential

¹ Note, we are currently updating our GIS mapping system to better identify areas of sensitive habitat.

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habitat area. This exclusion fence satisfies the parameters of the added project condition of approval #23. It is plywood, 3-4 feet in height (over the height of the existing retaining wall), in an upright position and securely supported on the developed (i.e. non-habitat) side of the fence, and it completely encloses the work site.

Furthermore, our inspection of the site on Friday, May 13, 2016 indicated that there has been no recent disturbance of the sensitive habitat due to this project.

The City's permit tracking system indicates that a CEQA Exemption was granted to the project at the time of project approval. The Public Notice for the project that was posted on the site prior to approval also listed a preliminary CEQA determination of Exemption. In addition, the property owner appears to have a vested right based on issuance of a building permit and commencement of construction in substantial reliance on that permit. Moreover, there are no additional discretionary actions necessary for this project to proceed as permitted. Based on these facts, the City will not be pursuing additional CEQA analysis for this application.

Please do not hesitate to contact me should you have any questions on this reply.

Sincerely,



Scott Miller
Zoning Manager

Cc: Rachel Flynn, Planning and Building Director
Darin Ranelletti, Deputy Director
Aubrey Rose, Planner III, Zoning Counter Supervisor

History of Presidio clarkia (*Clarkia franciscana*) in Oakland

1956: The type specimen is collected by Peter Raven at the Presidio in San Francisco.

The City of Oakland approves Tract Maps 1710 and 1614 covering most of the serpentine soils in the Crestmont area. Most of the houses are constructed by 1960. TM 1710 declares “that said map particularly sets forth and describes all lots included for sale by lot and block number.” Lot “A”, a 3.1769-acre remainder parcel in Tract 1710 is “designated a public park area” in the C, C & R’s for the Homeowners of Crestmont Association recorded on December 3, 1956.¹

1958: Species first described by Harlan Lewis and Peter Raven.

1964: James Roof collects seed from the Presidio and sows them at the East Bay Regional Park District’s Tilden Botanical Garden.

January 15, 1971: Wunderlich sells Lot “A” to Harlan Sparks.

1972: James Roof scatters seed collected from plants at the Tilden Botanical Garden at several sites in the Presidio.

February 4, 1977: Harlan Sparks sells Lot “A” to Great Day Development Sales Corporation.

1978: State of California lists Presidio clarkia as an endangered species.

1980: Katherine Culligan discovers *Clarkia franciscana* (about 1,000 plants) at the Serpentine Prairie in Redwood Regional Park.

June 19, 1980: Katherine Culligan counts approximately 1,000 individual Presidio clarkia plants at the Serpentine Prairie.

September 26, 1984: Great Day Development Sales Corporations brings suit against the City of Oakland challenging the designation of a “public park area” on Lot “A” of Tract 1710.

March 7, 1988: Settlement between the City of Oakland and Great Day Development Sales Corporation quieting title to Lot “A” in Tract 1710 of Crestmont. This removed any claim the City of Oakland had to holding title to Lot “A” for public park purposes.

¹The current “Crestmont Project” is located on the lower portion of Lot “A”

At the time, Great Day had applied to subdivide Parcel "A" with Tentative Parcel Map 5494.²

May 23, 1988: Ric Villasenor of EIP Associates discovers a small population of Presidio clarkia (40-50 individual plants) at the Oakland Hills Tennis Club while conducting a field survey for the EIR for the club expansion project. Villasenor's May 24, 1988 memo suggests "that a more detailed and extensive field survey be conducted in the very near future to make sure there are no other rare plants in the immediate area."³

June 7, 1988: Memorandum from Charlie Bryant, Oakland Planning Department to EIP Associates, explains that "any conditions of approval relating to Clarkia franciscana would be a part of the Conditional Use Permit" for the Tennis Club

June 12, 1988: Ann Howald and Roxanne Bittman from the Department of Fish and Game visited the Tennis Club site.

June 18, 1988: Ric Villasenor surveys the Serpentine Prairie and counts approximately 400 Presidio clarkia plants.

June 21, 1988: Letter From Ann Howald to Charles Bryant: "The finding of this new population is extremely significant because it is one of only three known sites in the world for the state-listed Endangered Presidio clarkia, and because its presence suggests that the other Oakland Hills site is also a natural population and not the result of an earlier introduction. For these reasons we feel that all feasible means should be used to protect the plants and their serpentine grassland habitat." "Also, we have significant doubts that the area where plants were found this year represents all on-site habitat for the species. Our conclusion is based on the fact that this is a dry year and, typically, annual plants occupy only portions of their potential distribution during drought years. In addition we found evidence that the plant may occur in at least one area outside of the site identified by Villaseñor. In general, there is ample potential habitat for the plant in the surrounding serpentine bunchgrass grassland."

August 10, 1988: Oakland Planning Commission approves Conditions of Approval for the Tennis Club Expansion. A biological monitor is required to be on-site during construction and "the project sponsor shall develop a management plan for the on-going protection of the plant population and its potential habitat. The plan shall be reviewed by the State Department of Fish and Game, and shall be approved by the Director of City Planning prior to issuance a certificate of occupancy. The plan shall include monitoring of the plant population for a five year period following issuance of the certificate of occupancy."⁴

² The records for this map have not been produce by the City. We do not know if any environmental review was performed.

³ No record of further plant surveys was found in the City files.

⁴ If a management plan was prepared it is not in the files for the project.

August 11, 1988: Oakland Tribune article: "Rare flower escalates cost of lap pool." "Although this is the first time an on-site botanist has been required for an Oakland development, Howald said there are dozens of California projects each year that require special protections for rare plants. 'this is not extreme by any means,' Howald said. 'It's adequate for the project.'"

August 12, 1988: "Club to Hire Botanist To Guard Wildflower" article in San Francisco Chronicle. "James Thompson, owner of the Oakland Hills Tennis Club says he loves nature but hiring a \$100-an-hour bodyguard to protect a wildflower is a bit much."

San Francisco Examiner article: "Rare bloom stalls swimming pool". "'I'm not very happy about it, but I guess it will have to be done because it is the law,' Thompson said, expressing a little surprise at the refusal by state and park district official to let him remove clarkia seeds from his land so they could be transplanted to another, safer location."

San Jose Mercury News article: "*Clarkia franciscana*; Ecologists overjoyed by rare-flower find, but tennis club president finds fault." "'It's a lot like one more weed,' says Thompson, whose 10-acre club sits on an open hillside above the bay."

"'I was really excited when I first heard about it,' said Ann Howald, the ecologist who supervises the state's Endangered Plant Project. 'I wasn't sure I believed it.'"

"Thompson doesn't understand the hoopla over a plant no one knew was on his property until now.

'We're talking about \$500 to \$600 a plant,' he said of the cost of protecting them. 'We'd almost want to pot these things and sell them.'

Howald is skeptical of that figure. But she says the *Clarikia* is worth the trouble. The plant, she said, could prove to have untapped medicinal or scientific value. Besides she said, 'It's not our place to cause living things to go extinct.'"

August 25, 1988: Ken Berg, botanist with the California Native Plant Society sends letter to Charles Bryant, City of Oakland. "Our organization would like to express our appreciation for the efforts you and the Planning Department have taken to protect the endangered Presidio clarkia, at the Oakland Hills Tennis Club. The newly discovered occurrences in this area are critical to the overall survival of this state-listed endangered plant. Your permit conditions designed to avoid impacts during construction and to provide long-term monitoring of the site are a progressive example that we hope other Bay Area communities will emulate.

The goal of our 8,000 member organization is to promote the preservation of California's native plants, especially those that are rare or endangered. While California has laws protecting rare plants, proper implementation of these laws requires the good faith and professionalism exhibited by you and your colleagues in the Oakland Planning Department. We are confident, that by working together, we can achieve the proper balance between development and resource protection to maintain the high quality of life that present and future Californians expect.

Thanks again for your commitment to good planning in the City of Oakland."

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August 25, 1988: The Director of City Planning administratively approves Tentative Parcel Map 5494. The subdividing of Lot "A" had begun.

December 14, 1988. Great Day Development Sales Corporation records Parcel Map 5494. This first subdivision of Lot "A" of Tract 1710 creates two lots on Kimberlin Heights and one on Crestmont Drive (the future 538 Crestmont) leaving a 2.6-acre remainder parcel. Great Day Development Sales Corporation, the owner, had sued the City of Oakland over the park designation.⁵

June 17, 1989: CNPS survey by Brad Olson monitors the Serpentine Prairie population and finds 1,900 Presidio clarkia plants (in 10 sub-populations).

November 11, 1989: Oakland Tribune article: "PLANT GUARD ON DUTY Botanist protects rare flowers during club's expansion". "Katherine Culligan is a friendly, engaging person. But mess with a rare, little plant that grows on a rocky Oakland hillside and watch out."

"It is an opportunity to save a species in our own backyard,' emphasized an adamant Culligan."

"Thompson, who calls the whole thing something of a costly burden, has nonetheless accepted his fate and is dedicated to preserving the strip of gray rocky soil about 25 feet wide and 100 feet long on which the plant grows."

June 30, 1990: CNPS survey by Brad Olson finds 2,301 plants (in 13 sub-populations) at the Serpentine Prairie in Redwood Regional Park.

June 2, 1991: CNPS survey by Brad Olson: 4,254 plants (in 14 sub-populations) at the Serpentine Prairie.

June 1991: Brad Olson surveys Oakland serpentine areas and is the first to document the Old Redwood Road and Crestmont occurrences. He files reports of the findings with the California Natural Diversity Database ("CNDDDB"). Besides finding Presidio clarkia he also found a large population of most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*) at the Crestmont site.

1992: Gottlieb, L.D.; Edwards, S. W. 1992. An Electrophoretic Test of the Genetic Independence of a Newly Discovered Population of *Clarkia franciscana*. Madroño. 39, 1: 1-7. The comparison of San Francisco and Oakland plants by Edwards and Gottlieb "strongly suggests that the Oakland Hills population did not originate by seed transfer from San Francisco, and that it must be regarded as indigenous to its present locality."

⁵ Despite a public records request made May 21, 2006, the City still has not produced the documentation showing the process for the approval of PM 5494. We do not know what, if any, environmental review was prepared.

1993: Oakland approves design review for 538 Crestmont Drive, the location Brad Olson discovered Presidio clarkia and most beautiful jewelflower in 1991. No environmental review was performed at the time of design review.

January 9, 1995: Great Day is granted administrative approval of Tentative Parcel Map 6706 to create of one lot at the end of Colgett Drive.⁶

February 3, 1995: Presidio clarkia listed as a federal endangered species by USFWS.

March 24, 1995: Parcel Map 6706 recorded creating one lot at the end of Colgett Drive, the fourth lot formed from the former Lot "A." The remainder parcel is now about 2.4-acres.

1995: The house at 538 Crestmont is completed.

December 14, 1995: Tract Map 6622 is recorded, creating three more lots from the former Lot "A." The project was approved with a Mitigated Negative Declaration. The Initial Study ("IS") was prepared by City of Oakland Planner Anu Raud. Under Environmental Effects Biotic the IS states that the project would not "reduce the numbers of any unique, rare, or endangered species of plants or animals." The comment explains that "because of the existing residential uses on the site and in the area, it is not likely that unique, rare, or endangered species are present. In addition, site visits confirm that this property is not conducive to the habitat that would contain rare and endangered species living in this region." The IS also determined that the proposed project would not introduce "new species of plants or animals into an area, or result in a barrier to the replenishment of existing plant species, or the migration or movement of animals." The comment for this statement: **"There is ample open space adjacent the project site for the existing wildlife and flora to continue to thrive."**⁷

If the CNDDDB had been consulted during the preparation of the IS for TM 6622, Brad Olson's 1991 reports would have disclosed the existence of Presidio clarkia and most beautiful jewelflower on portions of the 1.68-acre remainder parcel formed by the subdivision, leading to biological surveys.

1997: Oakland approves the Sunrise Assisted Living Facility for the corner of Redwood Road and Skyline Boulevard. Environmental review consisted of a Mitigated Negative Declaration. From the IS for the project:

Initial Study

14. Reduce the numbers of any unique, rare, or endangered species of plants or animals? Maybe

⁶ We have not yet received the records to know if any environmental review was prepared for the map.

⁷ The open space adjacent to the project site includes the 1.68-acre remainder parcel of TM 6622, a portion of which is now being proposed for development as the Crestmont Project.

Comment: Two listed plant species occur on the extreme edge of the proposed site, but not within the area to be disturbed by the project: San Francisco popcornflower (*Plagiobothrys diffusus*), listed as endangered on the state of California, and Presidio clarkia (*Clarkia franciscana*), listed as endangered by both the state and federal listings. Current location and extent of populations of these species on the site were confirmed in April 1997. The two endangered plants occur on serpentine outcrops and serpentine derived soils within patches of native purple needle grass grassland along the southern border of the property, downslope from existing development, in an area that would not be disturbed by the project. The two populations include approximately 500 San Francisco popcornflower and 450 Presidio clarkia. The plants are at the extreme edge of the property and will not be disturbed by the construction of the project or ongoing use of the site.

Although development of the proposed project would not directly affect these two endangered plants, a portion of the site directly below the existing parking lot supports a dense stand of invasive French broom that, if left unattended, will colonize the native grasslands, eliminating habitat for these species, and that will present a fire hazard to the project. The following mitigation measures will reduce this hazard to a less than significant level.

Mitigation Measures

- 14.1 The project sponsor shall remove French broom from the site using a technique(s) approved by the City. Typical techniques for removing French broom include (1) mechanical mowing or removal, (2) hand cutting or removal, (3) controlled burn, and (4) painted or direct spraying of herbicides. The project sponsor shall consult with the City and California Department of Fish and Game (CDFG) staff as appropriate to draft a French broom removal plan. The plan should include grounds and maintenance worker education and training concerning the listed species and responsibilities under the State and Federal Endangered Species Acts. The plan shall be submitted and approved by CDFG and the City prior to the issuance of any grading or other building-related permits for the project. The removal plan shall be accompanied by a revegetation and monitoring plan approved by the City and CDFG. The area should be revegetated with native shrubs and grasses such as coyote brush, California sage, and purple needlegrass. Annual monitoring and maintenance should be conducted on an ongoing basis as stipulated by the CDFG or in the plan, to prevent the recolonization of the area with French broom or other non-native, invasive species. Grounds and maintenance worker education and training shall also be incorporated into the project's regular maintenance plan and grounds and maintenance worker training as provided for in the plan.
- 14.2 The project sponsor shall prepare a training plan for construction, grounds and maintenance workers that details the steps to be taken to ensure the continued survival and well-being of the endangered species found on the site and any habitat factors important to them. The plan should include but not necessarily

be limited to details of the general area in which the endangered species are known to occur; any other portions of the site where they might potentially occur; and measures that shall be taken to ensure that the endangered plant species and their habitat will not be disturbed by construction or ongoing operations on the site. The measures in the plan should include but not be limited to the construction and maintenance of physical barriers to prevent unauthorized access to the plants or their habitat; measures to be taken to ensure that maintenance of site landscaping (including irrigation, the application of chemical fertilizers, herbicides or other pesticides, or any other measures to be taken) does not harm the plants or their habitat; and any the measures to be taken, in addition to those required by Mitigation Measure 14.1, to ensure that exotic invasive plants found on the site do not intrude into the habitat of the endangered plant species. The plan shall be submitted to the California Department of Fish and Game (CDFG) and the Zoning Manager for review prior to the issuance of any grading or building permit and no such grading or building permits shall be issued until both the CDFG and the Zoning Manager have approved the plan.

- 14.3 The applicant shall obtain any required permits from the CDFG, USFWS, and any other regulatory body with jurisdiction over listed species prior to the issuance of any grading permits by the City.

Implementation of these mitigation measures would reduce impacts on endangered plant species to a less than significant level.

Review of the files cannot find any plans or record of contact with CDFG or USFWS. The French broom is currently thriving in the location described.

April 16, 1997: Golden Stone Investment Corporation purchases the three lots and 1.68-acre remainder parcel of TM 6622 from Great Day Development Sales Corporation.

April 3, 1998: Dennis Woodruff purchases 5-acre parcel (APN 037A-3148-08) in a trustee sale for \$176,180.

December 23, 1998: Dennis Woodruff transfers title of property to his company Andalucia Properties, LLC.

January 25, 2000: Andalucia Properties, LLC Records Parcel Map 7336. The City provides the project a Categorical Exemption from CEQA review. This property constitutes the rest of the open space adjacent to TM 6622.

July 12, 2001: Golden Stone Investment Corporation records PM 7159 subdividing the 1.61 remainder parcel from TM 6622 into three lots. The IS for the Mitigated Negative Declaration was prepared by Oakland Planner Elizabeth Dunn. As with earlier projects the California Natural Diversity Database was not consulted to determine the possible

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presence of special status species. The IS declared that the proposed project would have no impacts on biological resources. The Comments to the Biological Resources section:

The proposed project is within a built out, urbanized area where former biotic habitat and natural vegetation has been replaced with urban uses. Several pine and eucalyptus trees on Parcel 1 will be removed in order to construct a house on the flatter level of this proposed parcel. Should the Tentative Parcel Map be approved, and the Final Parcel Map is recorded, the applicant must apply for a tree removal permit when plans are submitted for design review of the proposed homes. The project site does not serve as a wildlife corridor for migratory or other natural movement patterns. Therefore, no effect on native habitat will occur. As there are no significant environmental impacts, no mitigation measures or monitoring provisions are required.

Under Geology and Soils the IS identifies soils on the site as being Maymen loam. "Furthermore, the project site contains younger fluvial deposits, which are unconsolidated deposits of sand, silt, and silty clay." Actually, the site is composed entirely of serpentinite.

August 1, 2001: Golden Stone Investment Corporation sells two of the three lots formed by PM 7159 to Andalusia Properties LLC (Dennis Woodruff).

August 2001 to May 2004: Dennis Woodruff goes through three applications and nine iterations for a development proposal for the two lots. All the proposals are variations of four or five house developments. The City grants the proposals Categorical Exemption from CEQA review. After many appeals the final approval is set for May 4, 2004 at the City Council.

April 26, 2004: Due to the work of a number of CNPS members, Presidio clarkia and most beautiful jewelflower are rediscovered on the Andalusia Crestmont property proposed for development.

April 28, 2004: Small populations of Presidio clarkia are found on the uphill slopes of Colgett Drive and Kimberlin Heights.

May 1, 2004: Martha Lowe and Ralph Kanz count 3,500 plants at the Serpentine Prairie.

May 3, 2004: Martha Lowe's report is submitted to the City Council documenting the existence of special status species on the site. The proposal is withdrawn.

May 2006: Presidio clarkia is found on Lot 3 of Tract Map 6622, directly up the hill from the proposed Crestmont project.

June 2006: Presidio clarkia located on the median strip between Chadbourne Way and Skyline. Approximately 1600 individual plants are counted.

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Rose, Aubrey

From: Miller, Scott
Sent: Friday, May 20, 2016 3:02 PM
To: rkanz@sonic.net
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey
Subject: RE: Redwood Road CEQA determination
Attachments: 5150 Redwood Road CEQA letter.pdf

Mr. Kanz, attached is my letter which was mailed yesterday. Please do not hesitate to contact me with any questions.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Miller, Scott
Sent: Tuesday, May 10, 2016 4:49 PM
To: 'rkanz@sonic.net'
Cc: Flynn, Rachel (RFlynn@oaklandnet.com); Ranelletti, Darin (DRanelletti@oaklandnet.com); ccappio@oaklandnet.com; City Administrator's Office
Subject: Redwood Road CEQA determination

Hello, Mr. Kanz. I wanted to let you know that I am reviewing the situation at 5150 Redwood Road and hope to have a formal response to you in the next few days.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

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CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building
Zoning Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

May 19, 2016

Ralph Kanz
4808 Congress Avenue
Oakland, California 94601

Subject: CEQA Compliance for Addition to Single Family Home at 5150 Redwood Road

Dear Mr. Kanz:

I have reviewed your correspondence and the zoning application process for the property at 5150 Redwood Road. As you know, the project is a 2nd story addition to the existing single family home on the site. The plans indicate that the 2nd story addition will be located primarily over a portion of the existing building footprint, with a 6 foot deck extension from the new 2nd story extending over a formerly hardscape patio area. Given that you had contacted the City with interest in this project relatively early in the process, I apologize that you were not kept abreast of decisions until after construction commenced. I am working with staff on improving outreach to interested parties, especially when sensitive habitat issues are potentially affected.¹

A project of this scale and characteristics qualifies for a Categorical Exemption pursuant to CEQA Guidelines Section 15301. As you may be aware, Section 15301 provides CEQA Exemption for additions to existing structures that involve negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The net increase of less than 850 square feet to an existing single family home satisfies that criteria. In addition, the area of expansion is over existing building footprint except for a deck addition which is being built over a hardscape patio area. If the project were to have an impact on a sensitive or endangered plant or animal habitat, a CEQA Exemption would not be used.

Based on the scope of the addition to the existing home, there will be no disturbance to sensitive habitat on or adjacent to the subject property. The construction area is separated from the potential habitat area by approximately eight (8) feet of setback, and by an existing three (3) foot retaining wall. Atop the retaining wall has been built a temporary plywood "exclusion" fence for the entire length of the property line along the potential

¹ Note, we are currently updating our GIS mapping system to better identify areas of sensitive habitat.

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habitat area. This exclusion fence satisfies the parameters of the added project condition of approval #23. It is plywood, 3-4 feet in height (over the height of the existing retaining wall), in an upright position and securely supported on the developed (i.e. non-habitat) side of the fence, and it completely encloses the work site.

Furthermore, our inspection of the site on Friday, May 13, 2016 indicated that there has been no recent disturbance of the sensitive habitat due to this project.

The City's permit tracking system indicates that a CEQA Exemption was granted to the project at the time of project approval. The Public Notice for the project that was posted on the site prior to approval also listed a preliminary CEQA determination of Exemption. In addition, the property owner appears to have a vested right based on issuance of a building permit and commencement of construction in substantial reliance on that permit. Moreover, there are no additional discretionary actions necessary for this project to proceed as permitted. Based on these facts, the City will not be pursuing additional CEQA analysis for this application.

Please do not hesitate to contact me should you have any questions on this reply.

Sincerely,



Scott Miller
Zoning Manager

Cc: Rachel Flynn, Planning and Building Director
Darin Ranelletti, Deputy Director
Aubrey Rose, Planner III, Zoning Counter Supervisor

Rose, Aubrey

From: Miller, Scott
Sent: Friday, May 13, 2016 8:02 AM
To: Rose, Aubrey
Subject: Redwood

Categories: Red Category

Hi, Aubrey, do you want to ride out to 5150 Redwood Road with me this morning?

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 |
Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website:
www.oaklandnet.com/planning

Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, May 09, 2016 3:31 PM
To: Office of the Mayor; City Administrator's Office; DL - City Council; Miller, Scott; Rose, Aubrey
Subject: Re: Take of Endangered Species without CEQA Review

It has been two weeks since I brought this to your attention and I have heard nothing back and it appears the project is proceeding without the required mitigations and approvals. Please advise how the City is planning to proceed on this matter.

Ralph Kanz

On 4/26/2016 2:05 PM, Ralph Kanz wrote:

According to the approval document, the City has approved a project at 5150 Redwood Road on a site that has occupied habitat for the State and federal endangered species Presidio clarkia. The approval for the project is dated August 11, 2015 and as the approval states, "[t]he time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision."

On September 3, 2015 when I first learned about the project I emailed Aubrey Rose to inform the planning department that the project has the potential to impact an endangered species. The email stated:

I was driving past 5150 Redwood Road yesterday and noted the sign for the proposed work at 5150 Redwood Road. The sign indicated the work has been exempted from CEQA review. Are you aware that this location has both potential and occupied habitat for the endangered Presidio clarkia?
As the plant is present on this site there need to be mitigation measures in place to insure that there is no take of the species during the work on this site.

I was unable to find anything on the website about this project, so I assume it was only noticed to neighbors and on the location.

On September 4, 2015 I received the following response from Aubrey Rose:

This is a second story addition to an existing single story home - upper story additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption - however, the building permit has not been issued; therefore, a HOLD has been placed on it while we investigate this matter further - talk to you soon

I did not hear anything further from Planning. On April 20, 2016 when I drove past the site I noted construction taking place. I was surprised since I had expected to have received some type of notice from the Planning Department regarding the final approval of the project.

I emailed Mr. Rose and asked what was taking place. He responded and attached a copy of the zoning approval. He noted in his email that the City had added condition 23 to the Conditions of Approval (COA) regarding mitigations for impacts to Presidio clarkia. The Approval and COA's are dated August 11, 2015, before condition 23 was added to the COA's. The project approval was altered after it was issued, and it was not sent to all the parties, including myself, that should have received a copy and had a chance to respond. By backdating the approval, and not sending it to all interested parties, the City has cut the legally mandated time to respond to the approval and prevented comment on the City's failure to perform review under the California Environmental Quality Act (CEQA).

Under CEQA, a project that has the potential to impact endangered species is subject to environmental review. The approval for this project does not state that it was exempted from CEQA review. The issue is never addressed. Because there are documented occurrences of an endangered species at this site, CEQA review is mandatory.

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Even if the project was exempted from CEQA review, which is not legally possible, the applicant has failed to honor the COA's. COA 23.a requires pre-construction surveys of the site by a qualified biologist. According to staff that survey has not been performed. COA 23.b. requires to biologist to educate the construction crew about the species.

Apparently this COA has not been performed. COA 23.c. requires exclusion fencing to protect Presidio clarkia on the site. The exclusion fence has not been installed.

COA 23.d. requires the applicant to comply with the other requirements of COA 23. Obviously this COA has also been violated.

Presidio clarkia is a very rare endangered species that naturally occurs only in a small area of the San Francisco Presidio and the Oakland Hills. In Oakland the habitat has been severely fragmented by development and the City has approved a number of projects that have impacted the species without providing appropriate mitigations or CEQA review.

The project at 5150 Redwood Road requires CEQA review. Work on the site must be stopped immediately pending the results of the CEQA review.

Please contact me with any questions.

Ralph Kanz

4808 Congress Ave.

Oakland, CA 94601

Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Tuesday, April 26, 2016 2:06 PM
To: Office of the Mayor; City Administrator's Office; DL - City Council; Miller, Scott; Rose, Aubrey
Subject: Take of Endangered Species without CEQA Review

According to the approval document, the City has approved a project at 5150 Redwood Road on a site that has occupied habitat for the State and federal endangered species *Presidio clarkia*. The approval for the project is dated August 11, 2015 and as the approval states, "[t]he time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision."

On September 3, 2015 when I first learned about the project I emailed Aubrey Rose to inform the planning department that the project has the potential to impact an endangered species. The email stated:

I was driving past 5150 Redwood Road yesterday and noted the sign for the proposed work at 5150 Redwood Road. The sign indicated the work has been exempted from CEQA review. Are you aware that this location has both potential and occupied habitat for the endangered *Presidio clarkia*? As the plant is present on this site there need to be mitigation measures in place to insure that there is no take of the species during the work on this site.

I was unable to find anything on the website about this project, so I assume it was only noticed to neighbors and on the location.

On September 4, 2015 I received the following response from Aubrey Rose:

This is a second story addition to an existing single story home - upper story additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption - however, the building permit has not been issued; therefore,

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a HOLD has been placed on it while we investigate this matter further - talk to you soon

I did not hear anything further from Planning. On April 20, 2016 when I drove past the site I noted construction taking place. I was surprised since I had expected to have received some type of notice from the Planning Department regarding the final approval of the project.

I emailed Mr. Rose and asked what was taking place. He responded and attached a copy of the zoning approval. He noted in his email that the City had added condition 23 to the

Conditions of Approval (COA) regarding mitigations for impacts to Presidio clarkia. The Approval and COA's are dated August 11, 2015, before condition 23 was added to the COA's.

The project approval was altered after it was issued, and it was not sent to all the parties, including myself, that should have received a copy and had a chance to respond.

By backdating the approval, and not sending it to all interested parties, the City has cut the legally mandated time to respond to the approval and prevented comment on the

City's failure to perform review under the California Environmental Quality Act (CEQA).

Under CEQA, a project that has the potential to impact endangered species is subject to environmental review. The approval for this project does not state that it was exempted from CEQA review. The issue is never addressed. Because there are documented occurrences of an endangered species at this site, CEQA review is mandatory.

Even if the project was exempted from CEQA review, which is not legally possible, the applicant has failed to honor the COA's. COA 23.a requires pre-construction surveys of the site by a qualified biologist. According to staff that survey has not been performed. COA 23.b. requires to biologist to educate the construction crew about the species. Apparently this COA has not been performed. COA 23.c. requires exclusion fencing to protect Presidio clarkia on the site. The exclusion fence has not been installed. COA 23.d. requires the applicant to comply with the other requirements of COA 23. Obviously this COA has also been violated.

Presidio clarkia is a very rare endangered species that naturally occurs only in a small area of the San Francisco Presidio and the Oakland Hills. In Oakland the habitat has been severely

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fragmented by development and the City has approved a number of projects that have impacted the species without providing appropriate mitigations or CEQA review.

The project at 5150 Redwood Road requires CEQA review. Work on the site must be stopped immediately pending the results of the CEQA review.

Please contact me with any questions.

Ralph Kanz

4808 Congress Ave.

Oakland, CA 94601

Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Tuesday, April 26, 2016 9:00 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

CEQA review is the process by which it is determined what mitigation measures are appropriate to protect a species on a particular project site. Without CEQA review the project is in violation of the law.

On 4/26/2016 8:56 AM, Rose, Aubrey wrote:

If we need to; but, wouldn't the fence encircle all undeveloped area? There is no work or staging in the undeveloped area btw

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Tuesday, April 26, 2016 8:55 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

The biologist's report is how the fence location would be determined. Will you be stopping the project until there is the required CEQA review?

On 4/26/2016 8:33 AM, Rose, Aubrey wrote:

There is no report, but I can speak with them about fencing

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Monday, April 25, 2016 9:15 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

Where is the biologist's report, and where is the fencing around the potential habitat for the special status species?

Ralph Kanz

On 4/25/2016 8:44 PM, Rose, Aubrey wrote:

Ralph,
I spoke with the contractor today: there is no work or staging at the unimproved area (upslope beyond a retaining wall)
-Aubrey

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From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 5:01 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I drove by the site on Saturday and it appeared some work was being done. What is the current status of the project?

Ralph Kanz

On 4/22/2016 2:20 PM, Rose, Aubrey wrote:

Ralph,
They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon
-Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Friday, April 22, 2016 2:09 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

What is the latest on this? The conditions of approval, if not followed, should be amended to make sure the habitat for the species on the site is not impacted by the project. Water run-off into the habitat area should be prohibited/limited since it is the time the plants are blooming and setting seed.

Ralph

On 4/21/2016 10:45 AM, Rose, Aubrey wrote:

Correct, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon

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From: Ralph Kanz
[mailto:rkanz@sonic.net]
Sent: Thursday, April 21, 2016 10:40 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presido clarkia conditions were not in the permit at that time.

Ralph

On 4/21/2016 8:37 AM, Rose, Aubrey wrote:

Ralph,
That's good information, so you do feel the applicant is out of compliance – maybe I should make a site visit right away, are you available to meet me?
Thanks,
Aubrey

From: Ralph Kanz
[mailto:rkanz@sonic.net]
]
Sent: Thursday, April 21, 2016 8:04 AM

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To: Rose, Aubrey
Subject: Re: 5150
Redwood Road /
DS150313

Aubrey,

In past years
Presidio clarkia
have been
observed on this
property and the
adjacent property.
This site is noted in
the CNDDDB as
having Presidio
clarkia present and
is called the Old
Redwood Road
population. The
requirements
clearly state a
qualified biologist
was to survey the
site. That means
there would be a
written report with
the results of the
survey. If the City
does not have a
copy of that report,
the terms have
been violated. The
COA's do not
address the
impacts to habitat
for the species, and
how habitat should
be protected.
Becasue Presidio
clarkia is an annual
species, the
protections put in
place have to

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protect habitat
more than
individual plants.
The CEQA
Guidelines make it
clear that when a
special status
species is involved,
CEQA review is
required. CEQA
review still needs
to be done on the
project.

Ralph
On 4/20/2016 9:12
PM, Rose, Aubrey
wrote:

Ralph,

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Aubrey**

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Ralph
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<rkanz
@sonic.
net>

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Ralph
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Rose, Aubrey

From: Rose, Aubrey
Sent: Tuesday, April 26, 2016 8:56 AM
To: 'Ralph Kanz'
Subject: RE: 5150 Redwood Road / DS150313

If we need to; but, wouldn't the fence encircle all undeveloped area? There is no work or staging in the undeveloped area btw

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Tuesday, April 26, 2016 8:55 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

The biologist's report is how the fence location would be determined. Will you be stopping the project until there is the required CEQA review?

On 4/26/2016 8:33 AM, Rose, Aubrey wrote:

There is no report, but I can speak with them about fencing

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Monday, April 25, 2016 9:15 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

Where is the biologist's report, and where is the fencing around the potential habitat for the special status species?

Ralph Kanz

On 4/25/2016 8:44 PM, Rose, Aubrey wrote:

Ralph,
I spoke with the contractor today: there is no work or staging at the unimproved area (upslope beyond a retaining wall)
-Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 5:01 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I drove by the site on Saturday and it appeared some work was being done. What is the current status of the project?

Ralph Kanz

On 4/22/2016 2:20 PM, Rose, Aubrey wrote:

Ralph,
They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon
-Aubrey

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Friday, April 22, 2016 2:09 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

What is the latest on this? The conditions of approval, if not followed, should be amended to make sure the habitat for the species on the site is not impacted by the project. Water run-off into the habitat area should be prohibited/limited since it is the time the plants are blooming and setting seed.

Ralph

On 4/21/2016 10:45 AM, Rose, Aubrey wrote:

Correct, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Thursday, April 21, 2016 10:40 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

If the biologist has not surveyed to site, then

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they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presidio clarkia conditions were not in the permit at that time.

Ralph

On 4/21/2016 8:37 AM, Rose, Aubrey wrote:

Ralph,
That's good information, so you do feel the applicant is out of compliance – maybe I should make a site visit right away, are you available to meet me?
Thanks,
Aubrey

From: Ralph Kanz
[mailto:rkanz@sonic.net]
Sent: Thursday, April 21, 2016 8:04 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

In past years Presidio clarkia have been observed on this property and the adjacent property. This site is noted in the CNDDDB as having Presidio clarkia present and is called the Old Redwood Road population. The requirements clearly state a qualified biologist was to survey the site. That means there would be a written report with the results of the survey. If the City does not have a copy of that report, the terms have been

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violated. The COA's do not address the impacts to habitat for the species, and how habitat should be protected. Because Presidio clarkia is an annual species, the protections put in place have to protect habitat more than individual plants. The CEQA Guidelines make it clear that when a special status species is involved, CEQA review is required. CEQA review still needs to be done on the project.

Ralph

On 4/20/2016 9:12 PM, Rose, Aubrey wrote:

Ralph,

Thanks for responding, we share your concern for PC as well as any endangered or even threatened species of plant or animal in Oakland - as a 45 year resident of Oakland who grew up in the south hills, hiked Redwood and Joaquin Miller too many times to count, and attended Skyline high, I'm with you - I have a few quick questions that would help a lot:

-what would you consider evidence?
-what as you see it triggers the requirement for a report if a condition is not met?

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-what proof do we have to provide to code enforcement staff that a condition was not met?
-have you noted the PC on this property?
-if so, have they recently removed some or all of the PC on site?

Thanks! we'll get to the bottom of it, talk to you soon

Sincerely,
Aubrey

From: Ralph Kanz
<rkanz@sonic.net>
Sent: Wednesday, April 20, 2016 8:20 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

It appears the City under condition 23.b. should have "evidence of compliance with these requirements to the City for review and approval." If you do not have the evidence, a report from a biologist, then the project is in violation of the COA's. Additionally,

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my understanding of the CEQA Guidelines is that any project site with endangered species requires at minimum a mitigated negative declaration, if not a full EIR. This site has Presidio clarkia present. CEQA review is required. Presidio clarkia have just started blooming, making them identifiable. Any survey would have to have been done in the last week, and prior to the weed eating that took place on the site. Any report on the presence of the species should include mention of a reference site where the species is known to occur. The reference site is next door at what is known as the Old Redwood Road site. The CNDDDB has all the information on local occurrences of Presidio clarkia. At the Old Redwood Road site today the species was in bloom.

Ralph Kanz

On 4/20/2016 7:40
PM, Rose, Aubrey
wrote:

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**Item #5a - Public Comment Letter
Aubrey**

From:
Ralph
Kanz
<rkanz
@sonic.
net>

Sent:
Wedne
sday,
April
20,
2016
7:16
PM

To:
Rose,
Aubrey
Subject
: Re:
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Item #5a - Public Comment Letter

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**Ralph
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Item #5a - Public Comment Letter

**Aubrey
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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Tuesday, April 26, 2016 8:55 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

The biologist's report is how the fence location would be determined. Will you be stopping the project until there is the required CEQA review?

On 4/26/2016 8:33 AM, Rose, Aubrey wrote:

There is no report, but I can speak with them about fencing

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Monday, April 25, 2016 9:15 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

Where is the biologist's report, and where is the fencing around the potential habitat for the special status species?

Ralph Kanz

On 4/25/2016 8:44 PM, Rose, Aubrey wrote:

Ralph,
I spoke with the contractor today: there is no work or staging at the unimproved area (upslope beyond a retaining wall)
-Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 5:01 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I drove by the site on Saturday and it appeared some work was being done. What is the current status of the project?

Ralph Kanz

On 4/22/2016 2:20 PM, Rose, Aubrey wrote:

Item #5a - Public Comment Letter

Ralph,

They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon

-Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]

Sent: Friday, April 22, 2016 2:09 PM

To: Rose, Aubrey

Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

What is the latest on this? The conditions of approval, if not followed, should be amended to make sure the habitat for the species on the site is not impacted by the project. Water run-off into the habitat area should be prohibited/limited since it is the time the plants are blooming and setting seed.

Ralph

On 4/21/2016 10:45 AM, Rose, Aubrey wrote:

Correct, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon

From: Ralph Kanz [<mailto:rkanz@sonic.net>]

Sent: Thursday, April 21, 2016 10:40 AM

To: Rose, Aubrey

Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you

Item #5a - Public Comment Letter
on September 4, 2015, and the Presidio
clarkia conditions were not in the permit at
that time.

Ralph

On 4/21/2016 8:37 AM, Rose, Aubrey wrote:

Ralph,
That's good information, so you do feel
the applicant is out of compliance –
maybe I should make a site visit right
away, are you available to meet me?
Thanks,
Aubrey

From: Ralph Kanz
[mailto:rkanz@sonic.net]
Sent: Thursday, April 21, 2016 8:04 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road /
DS150313

Aubrey,

In past years Presidio clarkia
have been observed on this
property and the adjacent
property. This site is noted in
the CNDDDB as having Presidio
clarkia present and is called the
Old Redwood Road population.
The requirements clearly state a
qualified biologist was to survey
the site. That means there
would be a written report with
the results of the survey. If the
City does not have a copy of that
report, the terms have been
violated. The COA's do not
address the impacts to habitat
for the species, and how habitat
should be protected. Because
Presidio clarkia is an annual
species, the protections put in
place have to protect habitat
more than individual plants. The

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CEQA Guidelines make it clear
that when a special status
species is involved, CEQA review
is required. CEQA review still
needs to be done on the project.

Ralph

On 4/20/2016 9:12 PM, Rose,
Aubrey wrote:

Ralph,

Thanks for
responding, we share
your concern for PC
as well as any
endangered or even
threatened species of
plant or animal in
Oakland - as a 45 year
resident of Oakland
who grew up in the
south hills, hiked
Redwood and Joaquin
Miller too many times
to count, and
attended Skyline
high, I'm with you - I
have a few quick
questions that would
help a lot:

- what would you
consider evidence?
- what as you see it
triggers the
requirement for a
report if a condition is
not met?
- what proof do we
have to provide to
code enforcement
staff that a condition
was not met?
- have you noted the
PC on this property?
- if so, have they
recently removed

Item #5a - Public Comment Letter

some or all of the PC
on site?

Thanks! we'll get to
the bottom of it, talk
to you soon

Sincerely,
Aubrey

From: Ralph Kanz
<rkanz@sonic.net>
Sent: Wednesday, April
20, 2016 8:20 PM
To: Rose, Aubrey
Subject: Re: 5150
Redwood Road /
DS150313

Aubrey,

It appears the City
under condition
23.b. should have
"evidence of
compliance with
these requirements
to the City for
review and
approval." If you
do not have the
evidence, a report
from a biologist,
then the project is
in violation of the
COA's. Additionally,
my understanding
of the CEQA
Guidelines is that
any project site
with endangered
species requires at
minimum a
mitigated negative

Item #5a - Public Comment Letter

declaration, if not a full EIR. This site has Presidio clarkia present. CEQA review is required. Presidio clarkia have just started blooming, making them identifiable. Any survey would have to have been done in the last week, and prior to the weed eating that took place on the site. Any report on the presence of the species should include mention of a reference site where the species is known to occur. The reference site is next door at what is known as the Old Redwood Road site. The CNDDDB has all the information on local occurrences of Presidio clarkia. At the Old Redwood Road site today the species was in bloom.

Ralph Kanz

Item #5a - Public Comment Letter

On 4/20/2016 7:40

PM, Rose, Aubrey

wrote:

**Ralph,
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**From:
Ralph
Kanz**

Item #5a - Public Comment Letter

<rkanz@sonic.net>

Sent:
Wedne
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April
20,
2016
7:16
PM

To:
Rose,
Aubrey
Subject
: **Re:**
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Item #5a - Public Comment Letter

**project?
Please provide copies of the biologist reports for their surveys. I could not see any fencing in place at the site. What did the biologist find?**

**Ralph
Kanz
On
4/20/2016
5:29 PM,
Rose, Aubrey
wrote:**

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Rose, Aubrey

From: Rose, Aubrey
Sent: Tuesday, April 26, 2016 8:34 AM
To: 'Ralph Kanz'
Subject: RE: 5150 Redwood Road / DS150313

There is no report, but I can speak with them about fencing

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Monday, April 25, 2016 9:15 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

Where is the biologist's report, and where is the fencing around the potential habitat for the special status species?

Ralph Kanz

On 4/25/2016 8:44 PM, Rose, Aubrey wrote:

Ralph,
I spoke with the contractor today: there is no work or staging at the unimproved area (upslope beyond a retaining wall)
-Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 5:01 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I drove by the site on Saturday and it appeared some work was being done. What is the current status of the project?

Ralph Kanz

On 4/22/2016 2:20 PM, Rose, Aubrey wrote:

Ralph,
They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon
-Aubrey

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Friday, April 22, 2016 2:09 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

What is the latest on this? The conditions of approval, if not followed, should be amended to make sure the habitat for the species on the site is not impacted by the project. Water run-off into the habitat area should be prohibited/limited since it is the time the plants are blooming and setting seed.

Ralph

On 4/21/2016 10:45 AM, Rose, Aubrey wrote:

Correct, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon

From: Ralph Kanz [mailto:rkanz@sonic.net]
Sent: Thursday, April 21, 2016 10:40 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presido clarkia conditions were not in the permit at that time.

Ralph

On 4/21/2016 8:37 AM, Rose, Aubrey wrote:

Ralph,
That's good information, so you do feel the applicant is out of compliance – maybe I should make a site visit right away, are you available to meet me?

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Thanks,
Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, April 21, 2016 8:04 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

In past years Presidio clarkia have been observed on this property and the adjacent property. This site is noted in the CNDDDB as having Presidio clarkia present and is called the Old Redwood Road population. The requirements clearly state a qualified biologist was to survey the site. That means there would be a written report with the results of the survey. If the City does not have a copy of that report, the terms have been violated. The COA's do not address the impacts to habitat for the species, and how habitat should be protected. Because Presidio clarkia is an annual species, the protections put in place have to protect habitat more than individual plants. The CEQA Guidelines make it clear that when a special status species is involved, CEQA review is required. CEQA review still needs to be done on the project.

Ralph

On 4/20/2016 9:12 PM, Rose, Aubrey wrote:

Ralph,

Thanks for responding, we share your concern for PC as well as any endangered or even threatened species of plant or animal in Oakland - as a 45 year resident of Oakland who grew up in the south hills, hiked Redwood and Joaquin Miller too many times to count, and attended Skyline high, I'm with you -

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I have a few quick questions that would help a lot:

- what would you consider evidence?
- what as you see it triggers the requirement for a report if a condition is not met?
- what proof do we have to provide to code enforcement staff that a condition was not met?
- have you noted the PC on this property?
- if so, have they recently removed some or all of the PC on site?

Thanks! we'll get to the bottom of it, talk to you soon

Sincerely,
Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Wednesday, April 20, 2016 8:20 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

It appears the City under condition 23.b. should have "evidence of compliance with these requirements to the City for review and approval." If you do not have the evidence, a report from a biologist, then the project is in violation of the COA's. Additionally, my understanding of the CEQA Guidelines is that any project site with endangered species requires at minimum a mitigated negative declaration, if not a full EIR. This site has

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Presidio clarkia present. CEQA review is required. Presidio clarkia have just started blooming, making them identifiable. Any survey would have to have been done in the last week, and prior to the weed eating that took place on the site. Any report on the presence of the species should include mention of a reference site where the species is known to occur. The reference site is next door at what is known as the Old Redwood Road site. The CNDDDB has all the information on local occurrences of Presidio clarkia. At the Old Redwood Road site today the species was in bloom.

Ralph Kanz

On 4/20/2016 7:40 PM, Rose, Aubrey wrote:

Ralph,
Thanks for the quick response - this particular project was exempt from CEQA; there was no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this.
Sincerely,
Aubrey

From: Ralph Kanz
<rkanz@sonic.net>
Sent: Wednesday, April

Item #5a - Public Comment Letter

20, 2016 7:16 PM

To: Rose, Aubrey

Subject: Re: 5150

Redwood Road /

DS150313

Aubrey,

To be clear, even though there are endangered species on the site, no CEQA review was complete for this project? Please provide copies of the biologist reports for their surveys. I could not see any fencing in place at the site. What did the biologist find?

Ralph Kanz

On 4/20/2016 5:29

PM, Rose, Aubrey

wrote:

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Item #5a - Public Comment Letter

approval #23 on pages 9-10 relates to the issue you raise; please take a look and advise, do you feel there is non-compliance with that condition?

Sincerely,
Aubrey

From: Ralph Kanz
[mailto:rkanz@sonic.net]
Sent: Wednesday, April 20, 2016 2:59 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road /

Item #5a - Public Comment Letter

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On
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Item #5a - Public Comment Letter

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Rose, Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 9:15 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

Where is the biologist's report, and where is the fencing around the potential habitat for the special status species?

Ralph Kanz

On 4/25/2016 8:44 PM, Rose, Aubrey wrote:

Ralph,
I spoke with the contractor today: there is no work or staging at the unimproved area (upslope beyond a retaining wall)
-Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 5:01 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I drove by the site on Saturday and it appeared some work was being done. What is the current status of the project?

Ralph Kanz

On 4/22/2016 2:20 PM, Rose, Aubrey wrote:

Ralph,
They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon
-Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Friday, April 22, 2016 2:09 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

What is the latest on this? The conditions of approval, if not followed, should be amended to make sure the habitat for the species on the site is not impacted by the project. Water run-off into the habitat area should be prohibited/limited since it is the time the plants are blooming and setting seed.

Ralph

On 4/21/2016 10:45 AM, Rose, Aubrey wrote:

Correct, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, April 21, 2016 10:40 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presido clarkia conditions were not in the permit at that time.

Ralph

On 4/21/2016 8:37 AM, Rose, Aubrey wrote:

Ralph,
That's good information, so you do feel the applicant is out of compliance – maybe I should make a site visit right away, are you available to meet me?
Thanks,
Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, April 21, 2016 8:04 AM

Item #5a - Public Comment Letter

To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

In past years Presidio clarkia have been observed on this property and the adjacent property. This site is noted in the CNDDDB as having Presidio clarkia present and is called the Old Redwood Road population. The requirements clearly state a qualified biologist was to survey the site. That means there would be a written report with the results of the survey. If the City does not have a copy of that report, the terms have been violated. The COA's do not address the impacts to habitat for the species, and how habitat should be protected. Because Presidio clarkia is an annual species, the protections put in place have to protect habitat more than individual plants. The CEQA Guidelines make it clear that when a special status species is involved, CEQA review is required. CEQA review still needs to be done on the project.

Ralph

On 4/20/2016 9:12 PM, Rose, Aubrey wrote:

Ralph,

Thanks for responding, we share your concern for PC as well as any endangered or even threatened species of plant or animal in Oakland - as a 45 year resident of Oakland who grew up in the south hills, hiked Redwood and Joaquin Miller too many times to count, and attended Skyline high, I'm with you - I have a few quick questions that would help a lot:

-what would you consider evidence?

Item #5a - Public Comment Letter

- what as you see it triggers the requirement for a report if a condition is not met?
- what proof do we have to provide to code enforcement staff that a condition was not met?
- have you noted the PC on this property?
- if so, have they recently removed some or all of the PC on site?

Thanks! we'll get to the bottom of it, talk to you soon

Sincerely,
Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Wednesday, April 20, 2016 8:20 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

It appears the City under condition 23.b. should have "evidence of compliance with these requirements to the City for review and approval." If you do not have the evidence, a report from a biologist, then the project is in violation of the COA's. Additionally, my understanding of the CEQA Guidelines is that any project site with endangered species requires at minimum a mitigated negative declaration, if not a full EIR. This site has Presidio clarkia present. CEQA review is required. Presidio clarkia have just started blooming, making them

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identifiable. Any survey would have to have been done in the last week, and prior to the weed eating that took place on the site. Any report on the presence of the species should include mention of a reference site where the species is known to occur. The reference site is next door at what is known as the Old Redwood Road site. The CNDDDB has all the information on local occurrences of *Presidio clarkia*. At the Old Redwood Road site today the species was in bloom.

Ralph Kanz

On 4/20/2016 7:40 PM, Rose, Aubrey wrote:

Ralph,
Thanks for the quick response - this particular project was exempt from CEQA; there was no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this.
Sincerely,
Aubrey

From: Ralph Kanz
<rkanz@sonic.net>
Sent: Wednesday, April 20, 2016 7:16 PM
To: Rose, Aubrey
Subject: Re: 5150

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Redwood Road /
DS150313

Aubrey,

To be clear, even though there are endangered species on the site, no CEQA review was complete for this project? Please provide copies of the biologist reports for their surveys. I could not see any fencing in place at the site. What did the biologist find?

Ralph Kanz
On 4/20/2016 5:29
PM, Rose, Aubrey
wrote:

Hi
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Sincerely,
Aubrey

From:
Ralph
Kanz
[mailto:
[rkanz@
sonic.net](mailto:rkanz@sonic.net)
et]
Sent:
Wednesday,
April
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2:59
PM
To:
Rose,
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Subject:
Re:
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protect the habitat of this endangered species has been put in place.

Please send me copies of the CEQA review for the project.

Ralph Kanz
On 9/4/2015
12:32 PM,
Rose, Aubrey
wrote:

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Rose, Aubrey

From: Rose, Aubrey
Sent: Monday, April 25, 2016 8:44 PM
To: Ralph Kanz
Subject: Re: 5150 Redwood Road / DS150313

Ralph,
I spoke with the contractor today: there is no work or staging at the unimproved area (upslope beyond a retaining wall)
-Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Monday, April 25, 2016 5:01 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I drove by the site on Saturday and it appeared some work was being done. What is the current status of the project?

Ralph Kanz

On 4/22/2016 2:20 PM, Rose, Aubrey wrote:

Ralph,
They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon
-Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Friday, April 22, 2016 2:09 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

What is the latest on this? The conditions of approval, if not followed, should be amended to make sure the habitat for the species on the site is not impacted by the project. Water run-off into the habitat area should be prohibited/limited since it is the time the plants are blooming and setting seed.

Ralph
On 4/21/2016 10:45 AM, Rose, Aubrey wrote:

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Correct, and the approval was amended, your help on that was appreciated – fast forward to now: I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition – sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, April 21, 2016 10:40 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project. When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presidio clarkia conditions were not in the permit at that time.

Ralph

On 4/21/2016 8:37 AM, Rose, Aubrey wrote:

Ralph,
That's good information, so you do feel the applicant is out of compliance – maybe I should make a site visit right away, are you available to meet me?
Thanks,
Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, April 21, 2016 8:04 AM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

In past years Presidio clarkia have been observed on this property and the adjacent property. This site is noted in the CNDDDB as having Presidio clarkia present and is called the Old Redwood Road population. The requirements clearly state a qualified biologist was to survey the site. That means there would be a written report with the results of the survey. If the City does not have a copy of that report, the terms have been violated. The COA's do not address the impacts to habitat for the species, and how habitat should be protected. Because Presidio clarkia is an annual species, the protections put in place have to protect habitat more

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than individual plants. The CEQA Guidelines make it clear that when a special status species is involved, CEQA review is required. CEQA review still needs to be done on the project.

Ralph

On 4/20/2016 9:12 PM, Rose, Aubrey wrote:

Ralph,

Thanks for responding, we share your concern for PC as well as any endangered or even threatened species of plant or animal in Oakland - as a 45 year resident of Oakland who grew up in the south hills, hiked Redwood and Joaquin Miller too many times to count, and attended Skyline high, I'm with you - I have a few quick questions that would help a lot:

- what would you consider evidence?
- what as you see it triggers the requirement for a report if a condition is not met?
- what proof do we have to provide to code enforcement staff that a condition was not met?
- have you noted the PC on this property?
- if so, have they recently removed some or all of the PC on site?

Thanks! we'll get to the bottom of it, talk to you soon

Sincerely,
Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Wednesday, April 20, 2016 8:20 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

It appears the City under condition 23.b. should have "evidence of compliance with these requirements to the City for review and approval." If you do not have the evidence, a report from a biologist, then the project is in violation of the COA's. Additionally, my

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understanding of the CEQA Guidelines is that any project site with endangered species requires at minimum a mitigated negative declaration, if not a full EIR. This site has Presidio clarkia present. CEQA review is required. Presidio clarkia have just started blooming, making them identifiable. Any survey would have to have been done in the last week, and prior to the weed eating that took place on the site. Any report on the presence of the species should include mention of a reference site where the species is known to occur. The reference site is next door at what is known as the Old Redwood Road site. The CNDDDB has all the information on local occurrences of Presidio clarkia. At the Old Redwood Road site today the species was in bloom.

Ralph Kanz

On 4/20/2016 7:40 PM, Rose, Aubrey wrote:

Ralph,
Thanks for the quick response - this particular project was exempt from CEQA; there was no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this.
Sincerely,
Aubrey

From: Ralph Kanz <rkanz@sonic.net>
Sent: Wednesday, April 20, 2016 7:16 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

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To be clear, even though there are endangered species on the site, no CEQA review was complete for this project? Please provide copies of the biologist reports for their surveys. I could not see any fencing in place at the site. What did the biologist find?

Ralph Kanz

On 4/20/2016 5:29 PM, Rose, Aubrey wrote:

Hi Ralph

Good to hear from you, thanks for checking in – the zoning approval is attached – condition of approval #23 on pages 9-10 relates to the issue you raise; please take a look and advise, do you feel there is non-compliance with that condition?

Sincerely,
Aubrey

From: Ralph Kanz
[mailto:rkanz@sonic.net]
Sent: Wednesday, April 20, 2016 2:59 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

I went past this site today and it appears the construction is in progress. What CEQA review has

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been completed on the project. It appears Presidio clarkia on the site likely have been cut down, and there is no fencing to protect the habitat of this endangered species has been put in place.

Please send me copies of the CEQA review for the project.

Ralph Kanz
On 9/4/2015 12:32 PM, Rose, Aubrey wrote:

Ralph
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This is a second story addition to an existing single story home - upper story additions are posted on site and closest property

Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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Ralph
Kanz

Item #5a - Public Comment Letter

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Item #5a - Public Comment Letter

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habitat of this
endangered
species has been
put in place.

Please send me
copies of the CEQA
review for the
project.

Ralph Kanz
On 9/4/2015 12:32
PM, Rose, Aubrey
wrote:

Ralph

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is a
second
story
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Item #5a - Public Comment Letter

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Suite
2114
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Oakla
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94612
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phone
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(510)
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fax:
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Item #5a - Public Comment Letter

lanni
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Original
Message---
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From:
Ralph
Kanz
[mail
to:rk
anz@
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net]

Sent:
Thursday,
September
03,
2015
5:03
PM

To:
Rose,
Aubre
Y

Subject:
5150
Redwo
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DS150
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Item #5a - Public Comment Letter

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Ralph
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Item #5a - Public Comment Letter

Rose, Aubrey

From: Rose, Aubrey
Sent: Friday, April 22, 2016 2:20 PM
To: 'Ralph Kanz'
Subject: RE: 5150 Redwood Road / DS150313

Ralph,

They responded but it was inadequate – I asked for more information and did not receive – so I'll go see the Inspections Dept for next steps – talk to you soon

-Aubrey

From: Ralph Kanz [mailto:rkanz@sonic.net]
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Planner III /
Zoning Counter
Supervisor | City
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Bureau of
Planning | 250
Frank H Ogawa

Item #5a - Public Comment Letter

Plaza, Suite 2114
| Oakland CA
94612 | phone:
(510) 238-2071 |
fax: (510) 238-
4730 | email:
[arose@oaklandnet.
com](mailto:arose@oaklandnet.com) | website:
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Ralph Kanz

On 4/20/2016 5:29 PM, Rose, Aubrey wrote:

Hi Ralph

Good to hear from you, thanks for checking in – the zoning approval is attached – condition of approval #23 on pages 9-10 relates to the issue you raise; please take a look and advise, do you feel there is non-compliance with that condition?

Sincerely,
Aubrey

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Wednesday, April 20, 2016 2:59 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

Aubrey,

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Please send me copies of the CEQA review for the project.

Ralph Kanz

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Ralph,
This is a second story addition to an existing single story home - upper story additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption - however, the building permit has not been issued;

Item #5a - Public Comment Letter

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Aubrey

Aubrey Rose, AICP Planner III / Zoning Counter Supervisor | City of Oakland | Bureau of Planning | 250 Frank H Ogawa Plaza, Suite 2114 | Oakland CA 94612 | phone: (510) 238-2071 | fax: (510) 238-4730 | email: arose@oaklandnet.com | website: www.oaklandnet.com/planning

-----Original Message-----

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Thursday, September 03, 2015 5:03 PM
To: Rose, Aubrey
Subject: 5150 Redwood Road / DS150313

I was driving past 5150 Redwood Road yesterday and noted the sign for the proposed work at 5150 Redwood Road. The sign indicated the work has been exempted from CEQA review. Are you aware that this location has both potential and occupied habitat for the endangered *Presidio clarkia*?

As the plant is present on this site there need to be mitigation measures in place to insure that there is no take of the species during the work on this site.

I was unable to find anything on the website about this project, so I assume it was only noticed to neighbors and on the location.

Ralph Kanz

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Subject: RE: 5150 Redwood Road / DS150313
Attachments: DS150313, 5150 Redwood Rd 2.pdf

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Item #5a - Public Comment Letter

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CITY OF OAKLAND
SMALL PROJECT DESIGN REVIEW
APPROVAL

DATE: August 11, 2015

PROJECT ADDRESS: 5150 Redwood Road

APN: 037A-3138-003-04

CASE FILE NO.: DS15-0313

APPLICANT NAME: Powell & Associates

MAILING ADDRESS: 560 1st Street, B203
Benicia, CA 94510

GENERAL PLAN: Hillside Residential

ZONING: RH-3

Dear Applicant:

Your application to construct an approximately 850 square foot addition to the existing single-family dwelling including a second story addition of 730 square feet conforms to the Small Project Design Review Criteria Checklist and to all applicable zoning regulations, and is therefore **APPROVED**. This approval is subject to the Conditions of Approval stated in the following section of this letter. This design review approval becomes effective immediately and shall expire **two calendar years** from the date of this letter, unless all necessary permits for construction or alteration have been issued within such period. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, such period of time may be extended by the Director of City Planning or designee, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

NOTICE TO ALL PARTIES: The time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision.

Please note that any desired modifications to the approved plans must be submitted for review by the Planning Bureau prior to the changes taking place. To apply for a building permit you must complete an application form and submit additional sets of plans to the Building Bureau. For more information about building permit requirements, please contact the Building Bureau at (510) 238-3443.

If you have any questions regarding this approval, please contact the Planning Bureau at (510) 238-3911.

Signed,

-for-

SCOTT MILLER

Zoning Manager

Planning and Zoning Division

SMALL PROJECT DESIGN REVIEW
CONDITIONS OF APPROVAL
ATTACHED AND INCORPORATED INTO CASE DS15-0313

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ALL PROJECTS

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and the approved plans submitted on 7/22/15, as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire two calendar years from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved

technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. **Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. **Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Public Works Department, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

STANDARD CONDITIONS OF APPROVAL THAT APPLY TO ADDITIONS AND ALTERATIONS¹

12. **Graffiti Control**

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

¹ These conditions do not apply to Small Project Design Review approvals for signs, facades, fences, barriers, or freestanding walls.

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. Covering with new paint to match the color of the surrounding surface.
- iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

13. Landscape Plan

This condition applies to residential additions over 500 sq. ft. of floor area and new secondary units over 500 sq. ft. of floor area.

a. Landscape Plan Required

Requirement: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A

b. Landscape Installation

Requirement: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.

When Required: Prior to building permit final

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

c. Landscape Maintenance

Requirement: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

14. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

15. Tree Permit

This condition applies to projects involving the removal of a protected tree or construction activities within 10 feet of a protected tree, defined by the City's Tree Protection Ordinance as the following:

- a. *Any Coast Live Oak tree that is larger than 4 inches dbh.*
- b. *Any tree (except Eucalyptus) that is larger than 9 inches dbh (Eucalyptus trees and up to 5 Monterey Pines per acre are not considered Protected Trees under this section. Monterey Pines must be inspected and verified by the Public Works Department – Tree Division prior to their removal. Contact the Tree Division at (510) 615-5850 for more information or to schedule an inspection).*
- c. *Any tree of any size located in the public right-of-way (including street trees).*

Requirement: Pursuant to the City's Tree Protection Ordinance (OMC chapter 12.36), the project applicant shall obtain a tree permit and abide by the conditions of that permit.

When Required: Prior to approval of construction-related permit

Initial Approval: Permit approval by Public Works Department, Tree Division; evidence of approval submitted to Bureau of Building

Monitoring/Inspection: Bureau of Building

16. Erosion and Sedimentation Control Measures for Construction

Requirement: The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet

at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

19. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Construction Activity in the Public Right-of-Way

a. *Obstruction Permit Required*

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. *Traffic Control Plan Required*

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. *Repair of City Streets*

Requirement: The project applicant shall repair any damage to the public right-of way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

21. Construction and Demolition Waste Reduction and Recycling

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

22. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

23. Endangered Plant Protection Measures

a. Pre-Construction Survey Required

Requirement: The project applicant shall hire a qualified biologist to conduct a **Presidio Clarkia (Clarkia Franciscana)** survey to identify the potential presence of **Presidio Clarkia** at the project site. If the presence of **Presidio Clarkia** is confirmed, see Condition of Approval no. 23c.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

b. Information and Protocols for Construction Workers

Requirement: The biologist from section (a) above shall instruct the project superintendent and the construction crews (primarily the clearing, demolition, and foundation crews) of the potential presence, status, and identification of **Presidio Clarkia**. The biologist shall also establish a set of protocols for use during construction concerning the steps to take if a **Presidio Clarkia** is seen on the project site, including who to contact, to ensure that **Presidio Clarkia** are not harmed or killed. The project applicant shall submit evidence of compliance with these requirements to the City for review and approval.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

c. Presidio Clarkia Exclusion Fence

Requirement: Unless alternative (equivalent or more effective) measures are recommended by the biologist, the project applicant shall install a solid fence to separate **Presidio Clarkia** from the work site. The plant exclusion fence shall be constructed as follows:

- i. Plywood sheets at least three feet in height, above ground. Heavy duty geotextile fabric approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife may also be used for the plant exclusion fence;
- ii. Buried four to six inches into the ground;
- iii. Soil back-filled against the plywood fence to create a solid barrier at the ground;
- iv. Plywood sheets maintained in an upright position with wooden or masonry stakes;
- v. Ends of each plywood sheet overlapped to ensure a continuous barrier; and
- vi. Work site or construction area shall be completely enclosed by the exclusion fence.

The location and design of the proposed exclusion fence shall be submitted for review and approval by the City and be included on plans for all construction-related permits.

When Required: Prior to any construction-related activity

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

d. Plant Protection During Construction

Requirement: The project applicant shall comply with the requirements in the above sections during construction activities. The approved protocol from section (b) above shall be followed in the event **Presidio Clarkia** is encountered. The plant exclusion fence from section (c) above shall be installed and remain in place throughout the construction period.

Small Project Design Review Case No. DS15-0313
Page 10

All construction activities and equipment/materials/debris storage shall take place on the project-side of the exclusion fence.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building



<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=O1UI>

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date

Rose, Aubrey

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Sent: Wednesday, April 20, 2016 2:59 PM
To: Rose, Aubrey
Subject: Re: 5150 Redwood Road / DS150313

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To: Rose, Aubrey
Subject: 5150 Redwood Road / DS150313

I was driving past 5150 Redwood Road yesterday and noted the sign for the proposed work at 5150 Redwood Road. The sign indicated the work has been exempted from CEQA review. Are you aware that this location has both potential and occupied habitat for the endangered *Presidio clarkia*?

As the plant is present on this site there need to be mitigation measures in place to insure that there is no take of the species during the work on this site.

I was unable to find anything on the website about this project, so I assume it was only noticed to neighbors and on the location.

Ralph Kanz

ATTACHMENT E

Item #5a - Public Comment Letter

Rose, Aubrey

From: Todd, Amber
Sent: Thursday, November 10, 2016 11:04 AM
To: Ranelletti, Darin; Meekins, Ayanna
Cc: Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: RE: Public Ethics Commission Complaint No. 16-22

All... we have a meeting regarding Public Ethic complaint on Monday the 14th. please come prepared with materials and supporting documentation.

Darin, can you make sure Claudia is in that meeting too or do you think it will be easier to brief her later?

From: Ranelletti, Darin
Sent: Wednesday, November 09, 2016 8:35 PM
To: Meekins, Ayanna
Cc: Miller, Scott; Rose, Aubrey; Cappio, Claudia; Todd, Amber
Subject: Re: Public Ethics Commission Complaint No. 16-22

Ayanna,

Can you contact Milad Dalju (see below) to find out more about what type of response is expected? Also, please schedule a meeting between me, Amber, Scott and Aubrey to discuss before Nov 18.

Thanks,

Darin

Darin Ranelletti, Interim Director | City of Oakland | Planning and Building Department | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: [\(510\) 238-3663](tel:5102383663) | Fax: [\(510\) 238-6538](tel:5102386538) | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

Sent from my mobile device.

On Nov 3, 2016, at 2:50 PM, Todd, Amber <ATodd@oaklandnet.com> wrote:

We were extended to November 18

Sent from my iPhone

On Nov 2, 2016, at 7:18 PM, Ranelletti, Darin <DRanelletti@oaklandnet.com> wrote:

Correction: Scott returns Tues, Nov 8.

Darin

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Item #5a - Public Comment Letter

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Amber,

There is a long history on this matter which would justify a meeting to discuss the appropriate response to the complaint. Scott is a key person on this and is currently on vacation, returning Mon., Nov. 7. Can you explain that to Milad and ask for a one-week extension to Nov. 14? If granted, can you schedule a time for us all to discuss the week of Nov 7th?

Thanks,

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Sent from my mobile device.

On Nov 1, 2016, at 3:10 PM, Rose, Aubrey <ARose@oaklandnet.com> wrote:

Noted.

From: Todd, Amber
Sent: Tuesday, November 01, 2016 3:06 PM
To: Ranelletti, Darin; Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: FW: Public Ethics Commission Complaint No. 16-22

Afternoon all,

Please review the attached complaint from a member of the public alleging a Sunshine violation. I am assemble all documentation I received on this matter. We may want to schedule a meeting to go over this and see what we can do.

Thank you,

Amber Todd

City Administrator Analyst
Office of the City Administrator
City of Oakland

(510) 238-6369
atodd@oaklandnet.com

Item #5a - Public Comment Letter

<image001.jpg>

From: Dalju, Milad
Sent: Monday, October 31, 2016 3:54 PM
To: Todd, Amber
Subject: Public Ethics Commission Complaint No. 16-22

Hi Amber,

We are processing the attached complaint alleging violations of the Sunshine Ordinance by the Planning and Building Department. Before we decide whether to open an investigation or not, we would like to give the Planning and Building Department the opportunity to review the complaint and submit a response.

It is our goal to resolve complaints regarding alleged Sunshine Ordinance violations without conducting a formal investigation. Please submit any information you would like us to consider by **November 7, 2016**.

Regards,

Milad Dalju

Milad Dalju
Deputy Director/Chief of Enforcement
CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza (City Hall), Rm. 104 |
Oakland, CA 94612
510.238.4976
mdalju@oaklandnet.com

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Item #5a - Public Comment Letter

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Thanks,

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Item #5a - Public Comment Letter

granted, can you schedule a time for us all to discuss the week of Nov 7th?

Thanks,

Darin

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Subject: FW: Public Ethics Commission Complaint No. 16-22

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Thank you,

Amber Todd

City Administrator Analyst
Office of the City Administrator
City of Oakland

(510) 238-6369
atodd@oaklandnet.com

<image001.jpg>

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Sent: Monday, October 31, 2016 3:54 PM
To: Todd, Amber
Subject: Public Ethics Commission Complaint No. 16-22

Item #5a - Public Comment Letter

Hi Amber,

We are processing the attached complaint alleging violations of the Sunshine Ordinance by the Planning and Building Department. Before we decide whether to open an investigation or not, we would like to give the Planning and Building Department the opportunity to review the complaint and submit a response.

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Regards,

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1 Frank Ogawa Plaza (City Hall), Rm. 104 |
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Rose, Aubrey

From: Todd, Amber
Sent: Thursday, November 03, 2016 2:51 PM
To: Ranelletti, Darin
Cc: Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: Re: Public Ethics Commission Complaint No. 16-22

We were extended to November 18

Sent from my iPhone

On Nov 2, 2016, at 7:18 PM, Ranelletti, Darin <DRanelletti@oaklandnet.com> wrote:

Correction: Scott returns Tues, Nov 8.

Darin

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Sent from my mobile device.

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Noted.

From: Todd, Amber
Sent: Tuesday, November 01, 2016 3:06 PM

Item #5a - Public Comment Letter

To: Ranelletti, Darin; Miller, Scott; Rose, Aubrey; Capplo, Claudia

Subject: FW: Public Ethics Commission Complaint No. 16-22

Afternoon all,

Please review the attached complaint from a member of the public alleging a Sunshine violation. I am assemble all documentation I received on this matter. We may want to schedule a meeting to go over this and see what we can do.

Thank you,

Amber Todd

City Administrator Analyst
Office of the City Administrator
City of Oakland

(510) 238-6369
atodd@oaklandnet.com

<image001.jpg>

From: Dalju, Milad
Sent: Monday, October 31, 2016 3:54 PM
To: Todd, Amber
Subject: Public Ethics Commission Complaint No. 16-22

Hi Amber,

We are processing the attached complaint alleging violations of the Sunshine Ordinance by the Planning and Building Department. Before we decide whether to open an investigation or not, we would like to give the Planning and Building Department the opportunity to review the complaint and submit a response.

It is our goal to resolve complaints regarding alleged Sunshine Ordinance violations without conducting a formal investigation. Please submit any information you would like us to consider by **November 7, 2016**.

Regards,

Milad Dalju

Milad Dalju
Deputy Director/Chief of Enforcement
CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza (City Hall), Rm. 104 | Oakland, CA 94612
510.238.4976

Item #5a - Public Comment Letter

mdalju@oaklandnet.com

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Rose, Aubrey

From: Todd, Amber
Sent: Thursday, November 03, 2016 2:41 PM
To: Ranelletti, Darin
Cc: Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: Re: Public Ethics Commission Complaint No. 16-22

Yes and I'm in the hospital so I requested an extension.

Sent from my iPhone

On Nov 2, 2016, at 7:18 PM, Ranelletti, Darin <DRanelletti@oaklandnet.com> wrote:

Correction: Scott returns Tues, Nov 8.

Darin

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Noted.

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Sent: Tuesday, November 01, 2016 3:06 PM

Item #5a - Public Comment Letter

To: Ranelletti, Darin; Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: FW: Public Ethics Commission Complaint No. 16-22

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Please review the attached complaint from a member of the public alleging a Sunshine violation. I am assemble all documentation I received on this matter. We may want to schedule a meeting to go over this and see what we can do.

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City Administrator Analyst
Office of the City Administrator
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<image001.jpg>

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Item #5a - Public Comment Letter

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Rose, Aubrey

From: Ranelletti, Darin
Sent: Wednesday, November 02, 2016 7:18 PM
To: Todd, Amber
Cc: Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: Re: Public Ethics Commission Complaint No. 16-22

Correction: Scott returns Tues, Nov 8.

Darin

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Amber Todd

City Administrator Analyst
Office of the City Administrator
City of Oakland

(510) 238-6369
atodd@oaklandnet.com

<image001.jpg>

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To: Todd, Amber
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Rose, Aubrey

From: Todd, Amber
Sent: Tuesday, November 01, 2016 3:06 PM
To: Ranelletti, Darin; Miller, Scott; Rose, Aubrey; Cappio, Claudia
Subject: FW: Public Ethics Commission Complaint No. 16-22
Attachments: 16-22; Complaint.pdf

Afternoon all,

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Thank you,

Amber Todd

City Administrator Analyst
Office of the City Administrator
City of Oakland

(510) 238-6369
atodd@oaklandnet.com



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Item #5a - Public Comment Letter

Milad Dalju

Deputy Director/Chief of Enforcement

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Rose, Aubrey

From: Todd, Amber
Sent: Tuesday, August 23, 2016 9:45 PM
To: Rose, Aubrey
Cc: Lu, Alan
Subject: Re: Records Request 16745 - 5150 Redwood Road.

Copies if possible.

Sent from my iPhone

On Aug 23, 2016, at 1:55 PM, Rose, Aubrey <ARose@oaklandnet.com> wrote:

It's a stack, I'll bring it – are originals OK? (they must be returned) – or, all copies?

From: Todd, Amber
Sent: Tuesday, August 23, 2016 1:25 PM
To: Rose, Aubrey; Lu, Alan
Subject: RE: Records Request 16745 - 5150 Redwood Road.

Im here now or you can scan it over

From: Rose, Aubrey
Sent: Tuesday, August 23, 2016 12:24 PM
To: Todd, Amber; Lu, Alan
Subject: RE: Records Request 16745 - 5150 Redwood Road.

That's the same, let me know when I can deliver the stack that he's already seen – here's his blog on my service btw:

<http://mortgageflimflam.com/>

From: Todd, Amber
Sent: Tuesday, August 23, 2016 12:22 PM
To: Rose, Aubrey; Lu, Alan
Subject: RE: Records Request 16745 - 5150 Redwood Road.

Do you think it is the same requester? This request was made by Ralph Kanz

From: Rose, Aubrey
Sent: Tuesday, August 23, 2016 8:32 AM
To: Lu, Alan; Todd, Amber
Subject: RE: Records Request 16745 - 5150 Redwood Road.

I have already provided this at the counter but can deliver the hard copies to Amber for them to re-review

From: Lu, Alan
Sent: Monday, August 22, 2016 5:36 PM
To: Todd, Amber

Item #5a - Public Comment Letter

Cc: Rose, Aubrey

Subject: FW: Records Request 16745 - 5150 Redwood Road.

Importance: High

Aubrey, can you please help with this one?

Thanks.

Alan Lu

City of Oakland

Planning and Building Department

Building Services / Records

510.238.6731

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From: Todd, Amber

Sent: Thursday, August 11, 2016 12:06 PM

To: Lu, Alan

Subject: Records Request 16745 - 5150 Redwood Road.

Importance: High

Alan is this with Planning and Building:

Request #16745

All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.

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To: Lu, Alan; Todd, Amber
Subject: RE: Records Request 16745 - 5150 Redwood Road.

I have already provided this at the counter but can deliver the hard copies to Amber for them to re-review

From: Lu, Alan
Sent: Monday, August 22, 2016 5:36 PM
To: Todd, Amber
Cc: Rose, Aubrey
Subject: FW: Records Request 16745 - 5150 Redwood Road.
Importance: High

Aubrey, can you please help with this one?

Thanks.

Alan Lu
City of Oakland
Planning and Building Department
Building Services / Records
510.238.6731

Item #5a - Public Comment Letter

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Importance: High

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Request #16745

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Item #5a - Public Comment Letter

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Sent: Monday, August 22, 2016 5:36 PM
To: Todd, Amber
Cc: Rose, Aubrey
Subject: FW: Records Request 16745 - 5150 Redwood Road.

Importance: High

Aubrey, can you please help with this one?

Thanks.

Alan Lu
City of Oakland
Planning and Building Department
Building Services / Records
510.238.6731

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From: Todd, Amber
Sent: Thursday, August 11, 2016 12:06 PM
To: Lu, Alan
Subject: Records Request 16745 - 5150 Redwood Road.
Importance: High

Alan is this with Planning and Building:

Request #16745

All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.

Miller, Scott

From: Ranelletti, Darin
Sent: Friday, August 05, 2016 2:37 PM
To: Schuerholz, Keith
Cc: Flynn, Rachel; Miller, Scott
Subject: RE: 5150 Redwood Road CEQA Violations

Keith,

I discussed this with Scott recently. He is pulling the conditions of approval in order to provide them to Mr. Kanz as requested. Scott will be responding shortly.

Thanks,

Darin

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Schuerholz, Keith
Sent: Friday, August 05, 2016 2:35 PM
To: Flynn, Rachel; Ranelletti, Darin
Subject: FW: 5150 Redwood Road CEQA Violations

Dear Rachel and Darin,

Mr. Kanz wants to know why no one has responded to him.

What do I need to tell him?

Keith

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Wednesday, July 27, 2016 12:34 PM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Capplo, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.; Schuerholz, Keith
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

Did you sign Conditions of Approval for the project at 5150 Redwood Road that included Condition of Approval #23? Please respond with a copy of the signed Conditions of Approval.

Ralph Kanz

Miller, Scott

From: Flynn, Rachel
Sent: Tuesday, July 05, 2016 4:55 PM
To: Ranelletti, Darin; Schuerholz, Keith; Miller, Scott
Subject: RE: 5150 Redwood Road CEQA Violations

Thanks Darin. Please go ahead and e-mail Ralph Kanz.

From: Ranelletti, Darin
Sent: Tuesday, July 05, 2016 4:04 PM
To: Flynn, Rachel; Schuerholz, Keith; Miller, Scott
Subject: RE: 5150 Redwood Road CEQA Violations

Scott did respond to Mr. Kanz on two occasions but Mr. Kanz has sent in new comments since then. I have discussed them with Scott and we agree we need to issue another response. Unfortunately Scott knows much more about this than I do so I'd prefer to wait for his return. In the meantime, I or you (based on your preference) could email Mr. Kanz saying the City is taking his comments seriously and looking into the issues, and Scott is on vacation; we should have a response next week.

Darin

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Flynn, Rachel
Sent: Tuesday, July 05, 2016 1:08 PM
To: Schuerholz, Keith; Miller, Scott
Cc: Ranelletti, Darin
Subject: RE: 5150 Redwood Road CEQA Violations

Darin, My recollection is that Scott responded to Ralph Kanz – indicating that the CoA's are being enforced – but Mr. Kanz disagrees.

Do you know enough about this project to discuss with Mr. Kanz? Or do we need to wait for Scott Miller to return from vacation? Thanks, Rachel

From: Schuerholz, Keith
Sent: Tuesday, July 05, 2016 11:09 AM
To: Flynn, Rachel
Subject: FW: 5150 Redwood Road CEQA Violations
Importance: High

Rachel,

Do we have a response on this?

Mr. Kanz visited our office and was very upset about it.

Thanks!

Keith

From: Office of the Mayor
Sent: Friday, July 01, 2016 3:05 PM
To: Schuerholz, Keith
Subject: FW: 5150 Redwood Road CEQA Violations
Importance: High

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Tuesday, June 14, 2016 10:20 AM
To: Miller, Scott
Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.
Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

What have you done to insure the COA's for the project are being enforced? I am still waiting for a reply to my previous email.

Ralph Kanz

On 6/3/2016 10:56 AM, Ralph Kanz wrote:

Mr. Miller,

COA 23 is very clear: "The project applicant shall hire a qualified biologist to conduct a Presidio Clarkia (Clarkia Franciscana) survey to identify the potential presence of Presidio Clarkia at the project site." Your answer confirms the project applicant has violated this COA. It is also clear from your answer that no one on City staff knows where the plants are on the site, and being that it is an annual species there can be changes in the areas of occupied habitat from one year to another.

This is very similar to what occurred in 2000 and 2001 when the City approved PM 7336 and PM 7159. As the history I provided previously explains there was no CEQA review done on either project, and both impacted Presidio clarkia. Because the City did not follow CEQA requirements there has been no mitigation for the impacts of those two projects. This is why I can say with confidence that the City has never enforced mitigation measures for a project that impacts Presidio clarkia.

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Please forward me a copy of the biologist's report and map showing the occupied habitat on the site and where fencing should be place to protect the species on the site, once it is prepared.. Additionally there was vegetation clearance on the site at 5150 Redwood Road that was apparently associated with the current project. These activities could have resulted in the take of Presidio clarkia.

Ralph Kanz

On 6/3/2016 9:01 AM, Miller, Scott wrote:

Hello, Mr. Kanz. Regarding 5150 Redwood Road, there are no mitigation measures, as a CEQA Exemption was properly completed (as summarized in my May 19th letter). Regarding Condition of Approval #23, upon site inspection after project approval and before project construction, it was determined that the pre-construction biologist survey would be unnecessary, due to the clear separation between the built environment of the existing single family property (5150 Redwood Road) and the potentially sensitive habitat area which lies outside of the boundaries of 5150 Redwood Road (and beyond a retaining wall). As mentioned in my May 19th letter, all other aspects of Condition #23 (including temporary barrier fencing atop the retaining wall) have been implemented. Based on this information, the City finds no violation evident related to the Zoning approval that was granted for the project.

Regarding the 2 other developed properties that you have raised, we will assign staff to review those records to determine any follow up action on the City's part. Thank you for bringing those to our attention.

Scott

Scott Miller, Zoning Manager | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 2114 | Oakland, CA 94612 | Phone: (510) 238-2235 | Fax: (510) 238-4730 | Email: smiller@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Ralph Kanz [<mailto:rkanz@sonic.net>]

Sent: Thursday, June 02, 2016 12:09 PM

To: Miller, Scott

Cc: Flynn, Rachel; Ranelletti, Darin; Cappio, Claudia; City Administrator's Office; Rose, Aubrey; Office of the Mayor; DL - City Council; Simons, Adam J.

Subject: Re: 5150 Redwood Road CEQA Violations

Mr. Miller,

I wanted to follow-up with you to see what has happened with this situation of the mitigation measures for Presidio clarkia not being enforced. I drove by the site at 5150 Redwood Road and it appears the

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project is proceeding. Please provide me a copy of the report the biologist prepared identifying the habitat on the site and verifying which mitigation measures have been implemented to ensure the species is protected during construction.

Ralph Kanz

On 5/25/2016 3:24 PM, Ralph Kanz wrote:

Mr. Miller,

I received your letter of May 19, 2015 concerning the project at 5150 Redwood Road that is in violation of its permit. Attached to this email is your letter, the approval for the project, and the History of Presidio clarkia in Oakland that details all of the failed mitigations for this species related to previously approved projects.

The project proponent has violated COA 23.a. requiring a pre-construction survey. As your letter admits, this project requires CEQA review that has not occurred, and now the mitigation measures that are described as Conditions of Approval have been violated.

I realize, as the accompanying History of Presidio Clarkia in Oakland shows, that the City has not enforced mitigation measures for any project impacting the species. At the Oakland Hills Tennis Club the COA's requires that "the project sponsor shall develop a management plan for the on-going protection of the plant population and its potential habitat. The plan shall be reviewed by the State Department of Fish and Game, and shall be approved by the Director of City Planning prior to issuance a certificate of occupancy. The plan shall include monitoring of the plant population for a five year period following issuance of the certificate of

occupancy." The City has no record of this COA being honored, and in the years since approval, there has been additional development that has occupied habitat closer to the on-site population than was allowed at the time of approval.

The Sunrise Assisted Living Facility, adjacent to the Tennis Club, had the following Mitigation Measures as part of its approval in 1997:

14.1 The project sponsor shall remove French broom from the site using a technique(s) approved by the City. Typical techniques for removing French broom include (1) mechanical mowing or removal, (2) hand cutting or removal, (3) controlled burn, and (4) painted or direct spraying of herbicides. The project sponsor shall consult with the City and California Department of Fish and Game (CDFG) staff as appropriate to draft a French broom removal plan. The plan should include grounds and maintenance worker education and training concerning the listed species and responsibilities under the State and Federal Endangered Species Acts. The plan shall be submitted and approved by CDFG and the City prior to the issuance of any grading or other building-related permits for the project. The removal plan shall be accompanied by a revegetation and monitoring plan approved by the City and CDFG. The area should be revegetated with native shrubs and grasses such as coyote brush, California sage, and purple needlegrass. Annual monitoring and maintenance should be conducted on an ongoing basis as stipulated by the CDFG or in the plan, to prevent the recolonization of the area with French broom or other non-native, invasive species. Grounds and maintenance worker education and training shall also be

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incorporated into the project's regular maintenance plan and grounds and maintenance worker training as provided for in the plan.

14.2 *The project sponsor shall prepare a training plan for construction, grounds and maintenance workers that details the steps to be taken to ensure the continued survival and well-being of the endangered species found on the site and any habitat factors important to them. The plan should include but not necessarily be limited to details of the general area in which the endangered species are known to occur; any other portions of the site where they might potentially occur; and measures that shall be taken to ensure that the endangered plant species and their habitat will not be disturbed by construction or ongoing operations on the site. The measures in the plan should include but not be limited to the construction and maintenance of physical barriers to prevent unauthorized access to the plants or their habitat; measures to be taken to ensure that maintenance of site landscaping (including irrigation, the application of chemical fertilizers, herbicides or other pesticides, or any other measures to be taken) does not harm the plants or their habitat; and any the measures to be taken, in addition to those required by Mitigation Measure 14.1, to ensure that exotic invasive plants found on the site do not intrude into the habitat of the endangered plant species. The plan shall be submitted to the California Department of Fish and Game (CDFG) and the Zoning Manager for review prior to the issuance of any grading or building permit and no such grading or building permits shall be issued until both the CDFG and the Zoning Manager have approved the plan.*

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14.3 The applicant shall obtain any required permits from the CDFG, USFWS, and any other regulatory body with jurisdiction over listed species prior to the issuance of any grading permits by the City.

Implementation of these mitigation measures would reduce impacts on endangered plant species to a less than significant level.

Review of the files cannot find any plans or record of contact with CDFG or USFWS. There is no indication a management plan was ever produced, and the French broom is currently thriving in the location described.

I realize the City made a serious mistake in approving the 5150 Redwood Road project without CEQA review. However, the COA's have been violated, just as other COA's and mitigation measures have been ignored at other project sites that have impacted Presidio clarkia.

Another troubling fact is that the approval for this project was backdated. The attached approval is dated August 11, 2015. I contacted Aubrey Rose by email on September 3, 2015 to inform him that Presidio clarkia are present on the project site. On September 4 Mr. Rose responded, "[t]his is a second story addition to an existing single story home - upper story additions are posted on site and closest property owners are notified by mail - the posting contains a preliminary determination, although the zoning approval did rely on this exemption - however, the building permit has not been issued; therefore, a HOLD has been placed on it while we

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investigate this matter further - talk to you soon." I heard nothing further from Mr Rose. On April 20, 2016 when passing 5150 Redwood Road I saw construction related activity taking place on the site. I emailed an inquiry to Mr. Rose that same day and he responded by sending by the attached Approval for the project. Later that same day Mr. Rose sent another email stating, "this particular project was exempt from CEQA; there was no biologist review or report - is there a breach to a condition of approval you noted? thanks again for your help on this." The project was underway without COA 23.a. being implemented by the project proponent.

On April 21 I sent the following email to Mr. Rose: "If the biologist has not surveyed to site, then they are out of compliance. I am not available today to visit the site. This project requires CEQA review. I was never sent a copy of the approval, or any other information about the project approval, even though I had inquired about the project.

When was the project approval issued? The date of the approval is August 11, 2015, but I corresponded with you on September 4, 2015, and the Presido clarkia conditions were not in the permit at that time." The same day Mr. Rose responded, "[c]orrect, and the approval was amended, your help on that was appreciated – fast forward to now:

I communicated with the applicant this morning who put me in touch with the contractor – I put the contractor on notice to respond how they are or are not meeting the condition

– sounds like you feel they will not be able to demonstrate, so we'll be looking at next steps right away such as SWO, etc – talk to you soon."

I asked for further information and in an April 22, 2016 email Mr. Rose stated "[t]hey responded but it was inadequate – I asked for more information and did not receive

– so I'll go see the Inspections Dept for next steps – talk to you soon." Again in and April 26, 2016 email Mr.

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Rose again confirmed, "There is no report, but I can speak with them about fencing."

As I explained to Mr. Rose on more than one occasion, the only way to determine if the fencing is adequate is to have a biologist survey the sight and identify the areas of potential habitat and protect those areas during construction. The COA's call for this, but the survey and fencing based upon the survey has not taken place.

Clearly the project at 5150 Redwood Road is out of compliance with the COA's as are the previously approved projects that continue to impact the species.

Please let me know how you plan to proceed to insure that the mitigation measures for all of these projects are implemented.

Ralph Kanz

Miller, Scott

From: Flynn, Rachel
Sent: Tuesday, July 05, 2016 1:51 PM
To: Ranelletti, Darin; Miller, Scott
Subject: FW: 5150 Redwood Road Violations

From: Ralph Kanz [<mailto:rkanz@sonic.net>]
Sent: Tuesday, July 05, 2016 12:36 PM
To: Flynn, Rachel; Schuerholz, Keith; City Administrator's Office; DL - City Council
Subject: 5150 Redwood Road Violations

After visiting planning offices on Friday and learning that the document that had been provided me as the Approval for the project at 5150 Redwood Road is not the same document that is the official approval, I put together a history of the project and posted in online at:

<http://mortgageflimflam.com/2016/07/05/oakland-fraud-destroys-endangered-species/>

Please tell me how the City proposes dealing with this serious problem of members of planning trying to cover-up the mistakes that were made on this project. It is time for the City to implement the OSCAR element of the General Plan to insure things like this do not happen again.

Please contact me with any questions and to let me know how you plan to resolve this mess.

Ralph Kanz

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From: [Rose, Aubrey](#)
To: [Eitan Epstein](#)
Cc: [Vicki Gunther](#)
Subject: RE: 5150 Old Redwood Rd / building permit applicaiton # RB1503534 / zoning permit approval # DS150313

Thank you, will visit the site today as agreed and check in tomorrow – again, in the meantime: the application is already off hold

From: Eitan Epstein [mailto:eitan.e@treeium.com]
Sent: Monday, October 12, 2015 12:06 PM
To: Rose, Aubrey
Cc: Vicki Gunther
Subject: Re: 5150 Old Redwood Rd / building permit applicaiton # RB1503534 / zoning permit approval # DS150313

hi Aubrey, now you have my email as well.
thanks
eitan

Sent from my iPhone

On Oct 12, 2015, at 10:45 AM, Information PowellandAssoc <info@powellandassoc.com> wrote:

Good morning,

Can you please complete the attached form? Once received by the Zoning Dept. they will release it to continue plan check to the Building Dept. Please call Aubrey Rose with any questions - 510-238-2071.

Have a good day!

Please note: Our new general e-mail address is info@powellandassoc.com. Please do not send any future correspondence to powell_and_assoc@sbcglobal.net, we will not receive your message. Thank you for your understanding.

Thank You,

Melissa Baker
Powell and Associates, Inc.

Riverside Office (So Cal):

Item #5a - Public Comment Letter

9980 Indiana Ave Ste 3
Riverside, Ca. 92503
Phone. 951.352.3588

Benicia Office (Nor Cal):
560 First St Ste-B-203
Benicia, Ca. 94510
Phone. 707.745.4030

Fax 951.343.3798
Toll Free 1-877-Powell9

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----- Forwarded message -----

From: Rose, Aubrey <ARose@oaklandnet.com>
Date: Fri, Oct 9, 2015 at 3:22 PM
Subject: RE: 5150 Old Redwood Rd / building permit applicaiton # RB1503534 / zoning permit approval # DS150313
To: Information PowellandAssoc <info@powellandassoc.com>
Cc: Melissa Baker <mbaker@powellandassoc.com>, "Refai, Sayed (Shafi)" <SRefai@oaklandnet.com>

Vicki,

Please review the attachment, with revised condition of approval # 23 to address the endangered plant located in the area surrounding the site – please contact me with any concerns, or sign and return if this looks good to you:

Sincerely,
Aubrey

From: Information PowellandAssoc [mailto:info@powellandassoc.com]
Sent: Friday, October 09, 2015 10:14 AM
To: Rose, Aubrey
Cc: Melissa Baker; Refai, Sayed (Shafi)

Subject: Re: 5150 Old Redwood Rd / building permit applicaiton # RB1503534 / zoning permit approval # DS150313

Awesome! When might we expect to have all reviews completed and plans approved for permit issuance?

Please note: Our new general e-mail address is info@powellandassoc.com. Please do not send any future correspondence to powell_and_assoc@sbcglobal.net, we will not receive your message. Thank you for your understanding.

Thank You,

Vicki Gunther

Powell and Associates, Inc.

Riverside Office (So Cal):
9980 Indiana Ave Ste 3
Riverside, Ca. 92503
Phone. [951.352.3588](tel:951.352.3588)

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On Fri, Oct 9, 2015 at 10:01 AM, Rose, Aubrey <ARose@oaklandnet.com> wrote:

Hi Vicki,

Thanks for checking in, sorry I missed your call – I did visit the site on Wednesday afternoon – yesterday I requested archived zoning conditions of approval from a project on an adjacent property, to glean from the language regarding protection measures for any endangered plant species that may be on site (Presidia Clarkia) – I have not received that yet, so instead I will fashion a condition as discussed with your colleague to the effect that construction workers shall remain on paved areas to the extent possible or stop work and contact the City if the plant is noticed near the work area – I'll do this and release the zoning hold with the building dept today

Sincerely,
Aubrey

From: Information PowellandAssoc [mailto:info@powellandassoc.com]

Sent: Friday, October 09, 2015 9:51 AM

To: Rose, Aubrey; Melissa Baker

Cc: Refai, Sayed (Shafi)

Subject: Re: 5150 Old Redwood Rd / building permit applicaiton # RB1503534 / zoning permit approval # DS150313

Good morning Aubrey,

I am looking for an update for this project. Were you

able to visit the site yesterday? Has the hold been removed and where do things stand now?

Thank you so much for all your info. Have a great weekend!

Please note: Our new general e-mail address is info@powellandassoc.com. Please do not send any future correspondence to powell_and_assoc@sbcglobal.net, we will not receive your message. Thank you for your understanding.

Thank You,

Vicki Gunther

Powell and Associates, Inc.

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9980 Indiana Ave Ste 3
Riverside, Ca. 92503
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On Wed, Oct 7, 2015 at 4:10 PM, Rose, Aubrey <ARose@oaklandnet.com> wrote:

Dear Powell and Associates,

Today we discussed a hold on issuance of the building permit, placed by the zoning division, for the subject project – the reason for the hold is, it has been determined that the site is located in an area where an endangered plant species may be present – this was not captured during the zoning review and therefore protection measures were not addressed in conditions of approval – I will visit the site later today, and revise zoning approval conditions tomorrow to reflect best practices for construction staging, and remove the hold on the building permit – sorry for the delay, thanks for your patience and checking in, talk to you Thursday

Item #5a - Public Comment Letter

Please feel free to contact me with any questions

Sincerely,

Aubrey Rose, AICP Planner III / Zoning Counter Supervisor | City of Oakland | Bureau of Planning |
250 Frank H Ogawa Plaza, Suite 2114 | Oakland CA 94612 | phone: [\(510\) 238-2071](tel:5102382071) | fax: [\(510\) 238-4730](tel:5102384730) | email: arose@oaklandnet.com | website: www.oaklandnet.com/planning

<DS150313, 5150 Redwood Rd 2.doc>

Item #6a - 17-18, 18-17 Staff Report



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: August 17, 2021
RE: Case Analysis for PEC Complaint No(s). 17-18 & 18-17; In the matter of Darrel Carey, prepared for the September 2, 2021, Public Ethics Commission Meeting

On August 28, 2017, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran emailed to Darrel Carey the principal officer of East Bay Small Business Council Committee, the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement, a Pre-election Report, and an incomplete Termination form between the years 2015-2017. On March 15, 2018, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that Darrel Carey and his committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

TIMELINE OF EVENTS:

- 8/25/2017 PEC Filing Officer spoke with the Respondent in person and gave a warning notice of Non-filer Non-compliance to the Respondent.
- 8/28/2017 PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
- 9/11/2017 PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.

Item #6a - 17-18, 18-17 Staff Report

9/13/2017	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
9/15/2017	PEC Filing Officer spoke with the Respondent and notice of Non-filer Non-compliance to the Respondent.
1/05/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
2/06/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
2/13/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
2/15/2018	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
2/16/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent and emailed notice of Non-filer Non-compliance.
2/26/2018	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
7/24/19	PEC Enforcement via formal letter notified the Respondent that the matter was referred for pursuant to Enforcement Procedure and offered to the Respondent an early resolution settlement offer.
10/30/2020	PEC Enforcement notified Respondent via formal letter in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures.

FACTUAL SUMMARY AND ANALYSIS:

Between 2015-2018, the Respondent was the principal officer for the East Bay Small Business Council Committee. Around 2018, the Committee stopped its election activities. After the Committee ceased activities it failed to file a Semi-Annual campaign finance statement(s) for the following periods:

1. June 1, 2015 through December 31, 2015;
2. January 1, 2016 through June 30, 2016;
3. October 23, 2016 through December 31, 2016;
4. January 1, 2017 through June 30, 2017; and

In addition, the Committee failed to file a Pre-election campaign finance statements between the following dates:

1. July 1, 2016 through September 24, 2016;
2. September 25, 2016 through October 22, 2016.

Item #6a - 17-18, 18-17 Staff Report

The Committee also failed to properly file a Termination 410 form on or between July 1, 2017 and September 13, 2017. Despite PEC best efforts to gain the Respondent's compliance, the Respondent did not submit the required campaign filing.

On March 15, 2018, the Filing Officer referred the matter to the PEC Enforcement unit. Enforcement notified the Respondent by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. The Respondent did not respond to Enforcement.

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and found that the Respondent moved from the original address that was provided on his required Committee filings. The Staff mailed a certified notice of Non-filer letter to the address identified by the locate search. The PEC sent several email notices to the Respondent but received no response. Staff confirmed that the email address that the Filing Officer used to communicate with the Respondent on prior occasions, was the same email address that Staff used to forward copies of the Non-filer Non-compliance notice.

VIOLATION(S):

The Respondent violated the following Oakland Municipal Code:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about February 1, 2019, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of June 1, 2015- December 31, 2015.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about August 1, 2016, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of January 1, 2016- June 30, 2016.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about September 29, 2016, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a First Pre-Election Report for the period of July 1, 2016- September 24, 2016.

Count 4: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

Item #6a - 17-18, 18-17 Staff Report

On or about October 27, 2016, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Second Pre-Election Report for the period of September 25, 2016- October 22, 2016.

Count 5: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about January 31, 2017, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of October 23, 2016- December 31, 2016.

Count 6: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about July 31, 2017, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of January 1, 2017-June 30, 2017.

Count 7: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about January 31, 2018, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement or Termination.

PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

Here, the circumstances of the Respondent's conduct establish aggravating factors that should increase the severity of the penalty:

1. The Respondent had demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission Violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule this matter for formal hearing before the full Commission.



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: August 18, 2021
RE: Case Analysis for PEC Complaint No. 19-06; In the matter of Annie Campbell Washington, prepared for the September 2, 2021, Public Ethics Commission Meeting

BACKGROUND:

On January 3, 2019, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran emailed to Former City Council Member Annie Campbell Washington, the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018. On May 9, 2019, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that Campbell-Washington and her committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

TIMELINE OF EVENTS:

1/03/2019 PEC Filing Officer emailed a warning notice of Non-filer Non-compliance to the Respondent.

2/19/2019 PEC Filing Officer sent a formal letter and notice of Non-filer Non-compliance to the Respondent.

Item #6b - 19-06 Staff Report

- 3/05/2019 PEC Filing Officer contacted the Respondent and spoke to her by telephone regarding the Non-filer Non-compliance.
- 3/27/2019 PEC Filing Officer sent a formal letter and notice of Non-filer Non-compliance to the Respondent.
- 4/01/2019 PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.
- 5/09/2019 PEC Enforcement notified Respondent via formal letter that a Non-filer Non-compliance report was submitted for formal Enforcement Procedures.
- 6/06/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution settlement offer.
- 10/30/2020 PEC Enforcement notified Respondent via formal letter in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures.

FACTUAL SUMMARY AND ANALYSIS:

In 2018, the Respondent was a candidate for Oakland City Council District 4 and established a committee for “Annie Campbell Washington for Oakland City Council 2018.” The Respondent had been an elected member of the Oakland City Council and had previously filed required campaign forms with the City, since 2015. In 2018, the Respondent abruptly ended her campaign for City Council. After ending her campaign, she failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018. The PEC Filing Officer made numerous attempts to gain the Respondent’s compliance, including warning the Respondent that she was subject to daily late filer fees for failing to timely file her Semi-Annual Campaign Statement. Despite PEC best efforts to gain the Respondent’s compliance, she did not submit the required campaign filing.

In May 2019, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. Shortly thereafter, on June 6, 2019, PEC staff proposed that the Respondent agree to an early resolution of her matter with a small fine. The Respondent did not respond to Enforcement.

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate’s campaign.

Despite the candidate’s requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The

PEC investigator conducted a locate search for the Respondent's address and confirmed that the address the PEC used to mail the Non-filer notice was the same as that associated with the Respondent. Staff also forwarded an additional copy of the Non-filer Non-compliance notice, certified mail. The PEC sent several email notices to the Respondent but received no response. Staff confirmed that during the same period that Staff attempted to a response from Campbell-Washington, the Respondent used the same email address to contact the PEC Executive Director, regarding an unrelated matter, that Staff used to forward copies of the Non-filer Non-compliance notice.

VIOLATION(S):

Annie Campbell Washington violated the following Oakland Municipal Code sections:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about February 1, 2019, Respondent, Annie Campbell Washington, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when she failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018.

PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty.

Item #6b - 19-06 Staff Report

As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

Here, the circumstances of the Respondent's conduct establish aggravating factors that should increase the severity of the penalty:

1. The Respondent was an experienced City Council Member.
2. The Respondent has demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission non-reporting violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule this matter for formal hearing before the full Commission.



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: August 18, 2021
RE: Case Analysis for PEC Complaint No. 19-13; In the matter of Matt Hummel, prepared for the September 2, 2021, Public Ethics Commission Meeting

BACKGROUND:

On September 27, 2018, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran called the Respondent Matt Hummel to warn that he would receive a “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement, failure to file an accurate Campaign Statement and Failure to file Termination. On November 11, 2018, Staff emailed the first in a series of communications that the Respondent was in violation of the Campaign Reform Act. In April 2019, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that the Respondent, despite multiple warnings and offers of assistance, did not electronically file the required campaign filings pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

TIMELINE OF EVENTS:

9/27/2018 PEC Filing Officer contacted the Respondent with a warning notice of Non-filer Non-compliance.

Item #6c - 19-13 Staff Report

10/02/2018 PEC Filing Officer telephoned the Respondent and gave him notice of Non-filer Non-compliance.

10/26/2018 PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.

11/07/2018 PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.

2/19/2019 PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.

2/21/2019 PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.

2/27/2019 PEC Filing Officer emailed an amended Non-filer Non-compliance letter to Respondent.

3/04/2019 PEC Filing Officer emailed letter to Respondent detailing potential fines.

3/05/2019 PEC Filing Officer telephoned the Respondent's Treasurer.

3/27/2019 PEC Filing Officer emailed a 10-day notice to the Respondent that the matter of the Non-filer Non-compliance report would be submitted for formal Enforcement Procedures.

4/19/2019 Respondent contacted the Filing Officer and acknowledge receipt of the Non-filer Non-compliance notice.

4/23/2019 PEC Filing Officer spoke with Treasurer regarding the amendments that were required in the Respondent's filings.

4/25/2019 PEC Filing Officer contacted the Respondent to reiterate that the filings must be amended and the remining forms must be submitted electronically.

4/30/2019 PEC Filing Officer emailed the Respondent expressing continued concern about his non-responsiveness.

5/09/2019 PEC Filing Officer provided technical assistance to the Respondent and notified him that the campaign could not Terminate with a remaining balance.

7/24/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution settlement offer.

9/17/2019 PEC Enforcement notified Respondent via formal engagement letter and warned that in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures. Mailed certified mail.

11/16/19 PEC received a signed copy of the certificate of receipt from the USPS verifying the letter was received and signed confirmation.

FACTUAL SUMMARY AND ANALYSIS:

In 2018, the Respondent was a candidate for Oakland City Council District 4 and established a committee for Matt Hummel for Oakland City Council. The Respondent had run a previous campaign for City Council in 2016. In 2018, the Respondent's campaign for City Council was unsuccessful. After the conclusion of the election season, he failed to file the following:

1. Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018;
2. (Accurate) Campaign Statement for the period of January 1, 2019 through June 30, 2019; and
3. Termination Form

The PEC Filing Officer made multiple attempts to gain the Respondent's compliance, including imposing daily late fees (\$280). Despite PEC best efforts to gain the Respondent's compliance, he did not submit the required campaign filings.

In July 2019, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. The Respondent did not respond to Enforcement.

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and confirmed that the address the PEC used to mail the Non-filer notice was the same as that associated with the Respondent. Staff also forwarded an additional copy of the Non-filer Non-compliance notice, certified mail. The USPS returned proof of delivery and a signed copy of the certification card. The PEC sent several email notices and the Filing Officer spoke to the Respondent and his Treasurer multiple times in an attempt to assist Hummel in submitting his required filings. The Respondent acknowledged to Staff that he had received the Non-filer notices. He failed to file the outstanding forms or amend the incorrect forms he had filed with the PEC.

VIOLATION(S):

The Respondent violated the following Oakland Municipal Code sections:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

Item #6c - 19-13 Staff Report

On or about February 1, 2019, Respondent, Matt Hummel, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about August 1, 2019, Respondent, Matt Hummel, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file an accurate Annual Campaign Statement for the period of 01/01/2019 through June 30, 2019.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

Around September 30, 2019, Respondent, Matt Hummel, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a campaign Termination form.

PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

Here, the circumstances of the Respondent's conduct establish aggravating factors that should increase the severity of the penalty:

1. The Respondent had experience with a campaign for elected office.
2. The Respondent has demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission Violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule this matter for formal hearing before the full Commission.

Item #8 - Disclosure Report



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: August 19, 2021
RE: Disclosure and Engagement Report for the September 2, 2021, PEC Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program since the last monthly meeting. Commission staff disclosure activities focus on managing and improving online tools for public access to local campaign finance and other disclosure data, ensuring compliance with disclosure rules, and conducting data analysis for PEC projects and programs as needed. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Filing Officer - Compliance

Campaign Finance Disclosure – In non-election years, campaign committees must file two semi-annual campaign statements ([FPPC Form 460](#)). August 2 was the deadline for semi-annual campaign statements covering the period from January 1 through June 30, 2021. All active campaign committees registered with the City of Oakland must file. Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#).

Approximately 69 percent of committees timely filed their campaign statements by the August 2 deadline. Staff will conduct outreach and provide assistance to bring any non-filers into compliance.

Lobbyist Registration and Reporting Program – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Public Ethics Commission before conducting any lobbying activity. It also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. To date, there are 65 individuals registered to lobby the City of Oakland. An up-to-date list of registered lobbyists with links to their client lists is available at the PEC's [Lobbyist Dashboard and Data](#) webpage.

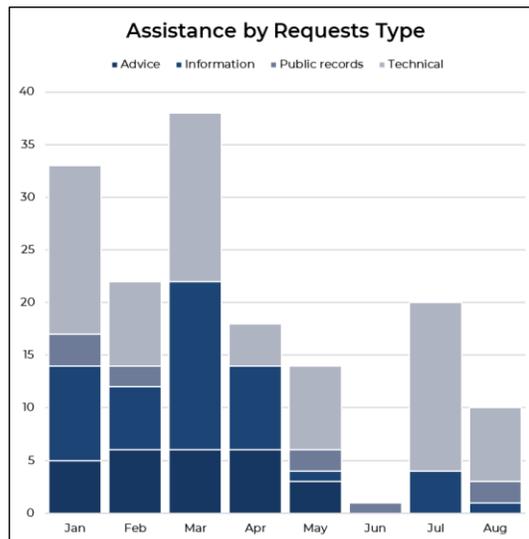
The 2021 second quarter lobbyist activity report deadline passed on July 31. To date, 64 reports have been filed, 75 percent timely. Commission staff is reaching out to non-filers to gain compliance. Lobbyist activity reports may be viewed online at the PEC's [Lobbyist Dashboard and Data](#) webpage.

Advice and Engagement

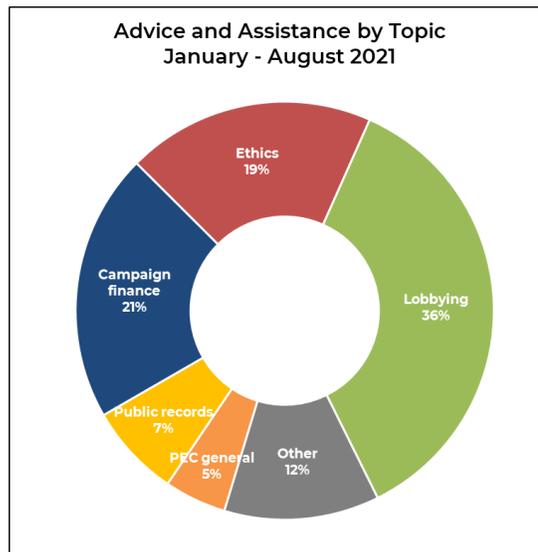
Advice and Technical Assistance – Since the last monthly report, Commission staff responded to 52 requests for information, advice or assistance regarding campaign finance, ethics, lobbyist registration or public records issues, for a total of 177 requests fulfilled in 2021 to date.

OPRYD Ethics Training – On June 26, Staff conducted an ethics training for 66 new employees of the Oakland Parks, Recreation, and Youth Development Department during their summer staff orientation.

New Employee Orientation – Staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). Since the last report, Commission staff has made 3 presentations and trained a total of 79 new employees on GEA provisions.



Conflicts of Interests Training – On July 7, at the request of the Planning and Building Department, Staff conducted a live training via Zoom during their weekly all-staff meeting. The training focused on conflicts of interests, Form 700 requirements, gift rules, and post-employment restrictions. 136 employees were in attendance.



Diversion Program – On July 22, Staff conducted the first live training for the Commission’s new enforcement diversion program. Staff provided participants with an overview of GEA provisions related to Form 700 requirements and conflicts of interest rules. The training provided an opportunity for participants to ask questions to gain a better understanding of ethics rules and requirements as well as share feedback regarding current City processes.

Item #9 - Enforcement Report



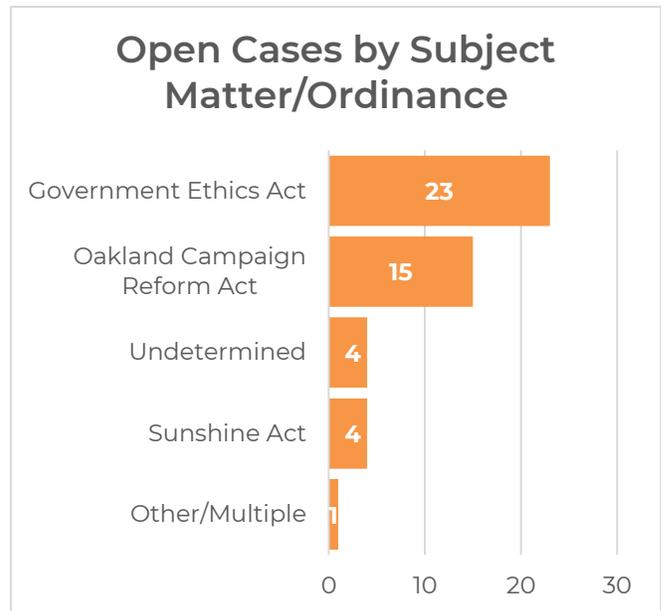
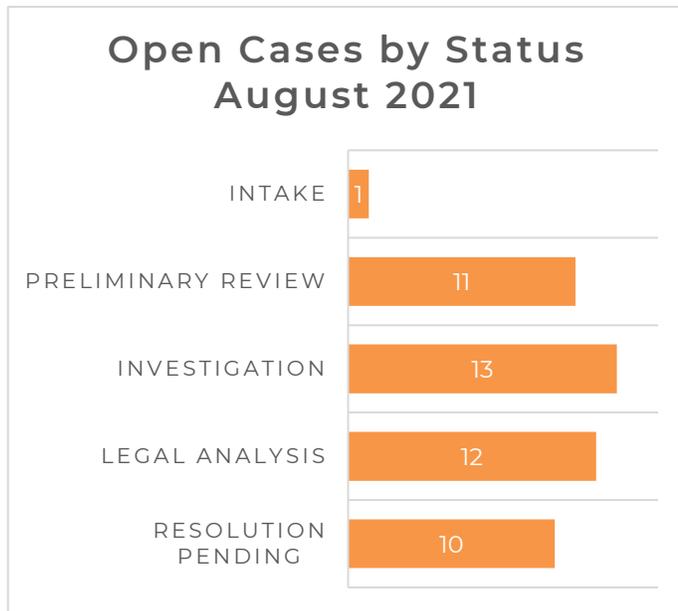
Michael McDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Whitney Barazoto, Executive Director
DATE: August 20, 2021
RE: Enforcement Program Update for the September 2, 2021, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on June 7, 2021, Commission staff received one new complaint. This brings the total Enforcement caseload to 47 open cases: 12 matter(s) in the intake or preliminary review stage, 13 matters under active investigation, 12 matters under post-investigation analysis, and 10 matters in settlement negotiations or awaiting an administrative hearing.



Summary of Current Cases:

Since the last Enforcement Program Update in June 2021, the following status changes have occurred:

1. ***In the Matter of The City of Oakland Planning and Building Department (Case No. 18-48 and 16-22M)***. On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department failed to disclose records in response to a public records request made by the Complainant on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff completed and closed the mediation after the department reported no other documents in their possession regarding the request. The Commission closed the mediation and referred the matter to the Enforcement Unit for further investigation on whether the Planning and Building Department violated any laws within PEC's jurisdiction. Commission staff provides an informational report to the Commission regarding the findings of the investigation, the additional documents that were provided to the Complainant, and the scope of the Commission's authority under the Sunshine Ordinance. (See Agenda Item)

2. **Non-Filer Cases Referred by PEC Filing Officer for the 2018 Election**. The following cases were referred to the Enforcement unit by the Public Ethics Commission filing officer for campaign statements required, but never filed, by campaign committees pursuant to the California Political Reform Act and the Oakland Campaign Reform Act during the 2018 election cycle and years leading to it. Commission staff attempted resolution by negotiated settlement but received no response from each filer. Staff provides a report for each committee showing probable cause that one or more violations exist in the following cases and requests approval from the Commission to schedule the cases for an administrative hearing in each case (See Agenda Items):
 - a. PEC Case No. 17-18 and 18-17; In the Matter of Darrel Carey and the East Bay Small Business Council
 - b. PEC Case No. 19-06; In the Matter of Annie Campbell Washington for Oakland City Council 2018
 - c. PEC Case No. 19-13; In the Matter of Matt Hummel for Oakland City Council

Item #10 - Executive Director's Report



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

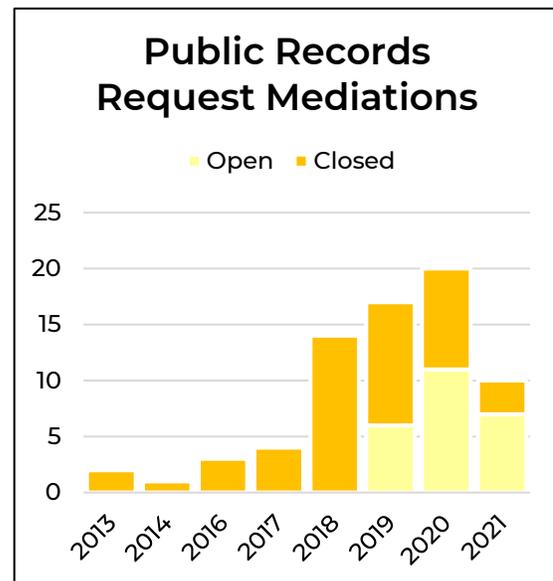
TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: August 20, 2021
RE: Executive Director's Report for the September 2, 2021, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2020-21 for each program area. (Commission Programs and Priorities attached)

Mediations

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. Following the mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. The following mediations were conducted by staff and subsequently closed this past month (reports attached):

1. In the Matter of the Planning and Building Department (Case No. M2020-12); (Mediation Summary attached)
2. In the Matter of the Oakland Police Department (Case No. M2021-14); (Mediation Summary attached)



Budget and Staffing

In June 2021, the City Council approved a budget that includes the addition of one new position for the PEC, to begin in July 2022. The new position will provide administrative support to the Enforcement Team, which will take enforcement-related administrative tasks off of our Commission Assistant as well as our Investigator and our Enforcement Chief. These duties include complaint intake, communications, complaint database management, case tracking, agenda and hearing preparation for enforcement cases, and other related tasks. Special thanks to PEC Chair Michael MacDonald for his advocacy at Council on behalf of the PEC.

In the Matter of Anthony Harbaugh Collections

Commission staff is working with City Collections and outside counsel to obtain payment of the \$55,000 fine imposed by the PEC on Anthony Harbaugh earlier this year. Harbaugh originally reached out to PEC staff to arrange a payment plan in coordination with our City Collections division, and, after agreeing to a payment plan, he never made his first payment. Instead, PEC staff received a copy of bankruptcy notice in Harbaugh's name. Staff is coordinating with outside counsel to protect the Commission's ability to collect payment.

Limited Public Financing Program

The City Auditor's Office staff is in the process of completing the audit of the 2020 Limiting Public Financing (LPF) Program. The LPF program provides District-City Council candidates with public funds via reimbursements for campaign-related expenses. Staff have been working to provide full access to the Auditor's Office to review PEC files of LPF distributions for the 2020 Election. We anticipate receiving the final audit report in the next month.

PUBLIC ETHICS COMMISSION
Programs and Priorities 2021

Program	Goal	Desired Outcome	Key Projects for 2021
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Oakland Sunshine Report Card, ongoing compliance 2. Campaign Public Finance Redesign 3. Form 700 Filing Officer Duty Transition
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Sunshine training 3. New trainings as needed for diversion
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Sunshine mediations 2. Communications/outreach to client groups 3. PEC social media outreach
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Filing Officer/Compliance – assess, follow-up, and refer 2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App 3. Open Disclosure – continue coordination and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Investigations 2. Add part-time investigator to assist 3. Collaborate with other government law enforcement agencies

Item #10 - Executive Director's Report

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC 2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. 3. Resolve all 2016 cases
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Annual Report 2. Budget – new positions 3. Enforcement database upgrade 4. Review data to adjust activities throughout the year 5. Ongoing: professional development and staff reviews

Item #10b - M2020-12; Mediation Summary



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: June 22, 2021
RE: *In the Matter of the Planning and Building Department (Case No. M2020-12); Mediation Summary*

I. INTRODUCTION

On August 28, 2020, the Commission received a request for mediation alleging that the Oakland Planning and Building Department failed to disclose records in response to five public records requests made by the Requester on December 16, 2019, May 18, 2020, June 3, 2020, June 12, 2020, and June 26, 2020, respectively. On September 2, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #10b - M2020-12; Mediation Summary

III. SUMMARY OF FACTS

On December 16, 2019, the City received, via NextRequest, the following public records request (No. 19-6003):

Please provide me the PDF maps, KMZ (Google Earth) map and Excel spreadsheet referenced in email to Aubrey Rose and Scott Miller from Matt Yergovich on August 18, 2015 at 10:27AM regarding 78 downtown wireless facilities.

In same email, CEQA implications were mentioned and ATT Overlapping Deployment for the downtown area. Please provide me with any subsequent communications and attachments between the City and Matt Yergovich or any other ExteNet Systems agent doing business in Oakland.

In this email, Matt mentions evaluating both "ATT and Verizon's proposals as a whole." Please provide any subsequent communications, records and documents relevant to this discussion between the any City employee and any employee or agent of ATT and Verizon.

On May 18, 2020, the City received, via NextRequest, an additional public records request from the Requester (20-2601):

Please provide all documents, reports, plans/drawings and communications between residents, City or telecom regarding the cell antenna projects located at 6387 Fairlane and 6391 Fairlane. Also, include planning commission documents that were made available to the public and to the commissioners. If any RF Emission reports are available created at the time of installation or since then, please include them.

Please include all documentation related to inactive, expired or issued applications in planning and building department related to these addresses as well.

Thank you.

On June 3, 2020, the City received, via NextRequest, a third public records request from the Requester (20-3004):

Please provide all information related to Record ID FDV19-22181 for APN 029A133003000.

Please provide all EME or RF reports (part of application and prior to building permit sign-off) for DS180340 and B1803917

Please include the approval or decision letters and related communications/attachments between applicant and the City for DS180340 and B1803917

On June 4, 2020, the Planning and Building Department released seven responsive documents to the requester for request 20-3004.

Item #10b - M2020-12; Mediation Summary

On June 12, 2020, the City received, via NextRequest, a fourth public records request from the Requester (20-3268):

Please provide all documents and communications (including emails and attachments) regarding the Appeal APL19009.

Thank you.

On June 18, 2020, the Planning and Building Department released an additional three documents to the requester in response to public records request 20-3004.

On June 26, 2020, the City received, via NextRequest, a fifth public records request from the Requester (20-3688):

I am interested in knowing what telecommunications companies currently have Master License Agreements with the City of Oakland.

Can you please provide me a copy of these agreements as well letting me know when they became effective and if they have an expiration date?

On, July 8, 2020, the Planning and Building Department released three responsive documents to the requester for request 20-3268.

On, July 14, 2020, the Planning and Building Department released seven responsive documents to the requester for request 20-2601.

On August 28, 2020, the Commission received a mediation request seeking the following:

Not fulfilling public records requests in a timely manner. Some of these have been partially completed.

On September 2, 2020, Staff initiated its mediation program and notified the Planning and Building Department (PBD) of the mediation request.

On, September 27, 2020, the Planning and Building Department released an additional three documents to the requester for request 20-3268. Subsequently, the Planning and Building Department closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On, September 28, 2020, the Planning and Building Department released an additional document to the requester for request 20-3268.

On, September 29, 2020, the Planning and Building Department released an additional two documents to the requester for request 20-3268.

Item #10b - M2020-12; Mediation Summary

On, October 7, 2020, the Planning and Building Department released an additional document to the requester for request 20-3004.

On, October 27, 2020, the Planning and Building Department released ten responsive documents to the requester for request 19-6003.

On, November 3, 2020, the Planning and Building Department released an additional 18 documents to the requester for request 20-2601. Subsequently, the Planning and Building Department closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On, November 4, 2020, the Planning and Building Department released an additional 117 documents to the requester for request 19-6003.

On, November 6, 2020, the Planning and Building Department released an additional 11 documents to the requester for request 19-6003.

On, January 7, 2021, the Planning and Building Department released an additional four documents to the requester for request 20-3688. Subsequently, the Planning and Building Department closed the request stating:

We released all of the requested documents.

On, January 7, 2021, the Planning and Building Department released an additional seven documents to the requester for 19-6003.

On, January 8, 2021, the Planning and Building Department released an additional 23 documents to the requester for 19-6003.

On, January 11, 2021, the Planning and Building Department released an additional 47 documents to the requester for 19-6003. Subsequently, the Planning and Building Department closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On, January 29, 2021, the Planning and Building Department released an additional document to the requester for 20-3004. Subsequently, the Planning and Building Department closed the request stating:

We released all of the requested documents.

Item #10b - M2020-12; Mediation Summary

On April 16, 2021, Staff followed up with the Requester and inquired if she had received all the responsive documents to her public record requests and, if so, notified her that the PEC would be closing the mediation. The Requester responded:

Yes, you can close M2020-12.

IV. RECOMMENDATION

Because the Planning and Building Department provided the responsive records for the public records requests, and because the Requester indicated that she had received all of the responsive documents, Staff closed the mediation without further action.

Item #10c - M2021-14; Mediation Summary



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: July 13, 2021
RE: *In the Matter of the Police Department (Case No. M2021-14); Mediation Summary*

I. INTRODUCTION

On June 29, 2021, the Commission received a request for mediation alleging that the Oakland Police Department failed to disclose records in response to a public records request made by the Requester on January 21, 2020. On June 29, 2021, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #10c - M2021-14; Mediation Summary

III. SUMMARY OF FACTS

On January 21, 2020, the City received, via email, the following public records request (No. 20-332):

Reports/CAD/Audio/PDRD: 8/15, 9/1, 10/1 & 12/12 of 2019 involving incident location and persons listed...190909000465, 190907001082, 190906000917

On January 31, 2020, the Police Department changed the due date in NextRequest stating:

03/02/2020 (was 01/31/2020). Our agency is in the process of reviewing your requested records to determine what information can be released in accordance with the California Public Records Act. All records must be reviewed and in some cases redaction may be necessary. Due to the Department's limited staffing resources and the numerous public records requests received, our agency needs additional time to respond to your request. All records that are not exempt will be provided within 30 days. Please contact the undersigned if you need the records sooner or can identify a shorter list of records (for voluminous requests) that can be provided to you. We will do our best to work with you. We appreciate your patience.

On June 23, 2020, the Police Department released a document to the Requester in response to the public records request.

On July 23, 2020, the Police Department changed the due date in NextRequest stating:

08/24/2020 (was 03/02/2020). Additional time is required to answer your public records request. We have the need to search for and/or collect the requested records from field facilities or other establishments that are separate from the office processing the request - CGC 6253(c)(1).

On September 22, 2020, the Police Department released an additional seven documents to the Requester in response to the public records request.

On September 23, 2020, the Police Department changed the due date in NextRequest stating:

10/23/2020 (was 08/24/2020).

On November 28, 2020, the Police Department changed the due date in NextRequest stating:

12/05/2020 (was 10/23/2020).

On November 30, 2020, the Police Department released an additional three documents to the Requester in response to the public records request.

On January 11, 2021, the Police Department changed the due date in NextRequest stating:

01/31/2021 (was 12/05/2020). We will give you an update by 1/18/21.

Item #10c - M2021-14; Mediation Summary

On June 29, 2021, the Commission received a complaint against the Police Department related to public records requests No 20-332 stating.

Request 20-332. I have been requesting the 911 call that led to my false and scripted arrest since 1/20/2020. OPD first lied & said it didn't exist. When I pushed they admitted to having it and now they are 521 days into the delay game.

On June 29, 2021, Staff initiated its mediation program and notified the Police Department of the mediation request.

On July 7, 2021, the Police Department released three audio recordings to the Requester in response to public records request 20-332.

On July 7, 2021, Staff followed up with the Requester to see if they had received all the responsive documents to their public records request including the requested audio files. The Requester responded:

Hello, we appreciate your response. The recordings attached are sufficient. This ethics complaint may be closed

Subsequently, Staff notified the Requester that the mediation cases would be closed.

IV. RECOMMENDATION

Because the Police Department provided the responsive records for the public records requests, and because the Requester indicated that they received all the responsive documents, Staff closed the mediation without further action.