



CENTER FOR BIOLOGICAL DIVERSITY

May 16, 2006

TO: Daniel Farrell, Fire Chief
City of Oakland Fire Department
150 Frank H. Ogawa Plaza, Suite #3354
Oakland, CA 94612

RE: Pallid manzanita, Presidio clarkia, most beautiful jewelflower, San Francisco popcorn-flower, and Alameda whipsnake

Dear Daniel Farrell:

The Center for Biological Diversity (“the Center”) would like to express its concern regarding the City of Oakland’s (“City”) vegetation management activities that have illegally harmed and continue to illegally harm the pallid manzanita (*Arctostaphylos pallida*) (a federally listed threatened plant and state listed endangered plant); the Presidio clarkia (*Clarkia franciscana*) (a state and federally listed endangered plant); the most beautiful jewelflower (*Streptanthus albidus* ssp *peramoenus*) (California Native Plant Society [“CNPS”] List 1.B.2 [Fairly endangered in California]); and the San Francisco popcorn-flower (*Plagiobothrys diffusus*) (a state listed endangered plant).

Pallid manzanita has a very limited distribution in the East Bay and is found nowhere else on Earth. Past vegetation and fire management activities by the City, including but not limited to goat grazing, herbicide use, and contracted manual vegetation removal, have caused substantial loss of pallid manzanita, as documented by the Friends of Sausal Creek (“FOSC”). Since 1985, the population of the pallid manzanita in the Sausal Creek watershed has declined by almost 50% — City operations and decisions have been directly responsible for the destruction or removal of many of these plants. For instance, goats grazing in Joaquin Miller Park contributed to the loss of 19 plants and failure to enforce mitigation measures for the Chabot Space and Science Center reduced the number of plants there from 21 to 11. Moreover, recent surveys of pallid manzanita show that the population is only 25 percent of the estimates reported in the U.S. Fish and Wildlife Service Recovery Plan.

It is imperative that all future fire management activities be designed to avoid any further destruction of, or harm to, the pallid manzanita. Because the population has been severely depleted, remedial measures should be immediately implemented in order to mitigate for the losses.

The Presidio clarkia is likewise in grave danger of extinction and studies show that one of the last remaining populations is indigenous to the Oakland Hills. It is critical that the Oakland Hills population be carefully protected and managed as it represents an important contribution to the species’ genetic diversity and acts as “insurance” if the population in San Francisco’s Presidio were to be extirpated. Currently, invasive species and premature

vegetation management (i.e. cutting of clarkia prior to seed set and dispersal) pose a significant threat to the species' continued survival. Vegetation and fire management operations that result in loss of or harm to this species must be discontinued and measures must be implemented to avoid any future degradation.

The most beautiful jewelflower is a California Native Plant Society List 1.B.2 species and was also listed as a federal species of concern by the U.S. Fish and Wildlife Service. There are only two known populations of most beautiful jewelflower in Oakland, one of which is located on Crestmont Drive near Redwood Road and Westfield Way. In 1991, the Crestmont population included 465 individual plants but in 2004 was down to just 13 individuals. Such a significant decline is cause for great concern, and the City should take steps to mitigate and reverse the problem.

San Francisco popcornflower, a state listed endangered plant, is only found in six locations and is considered "seriously endangered" by the California Native Plant Society. Alameda County's lone population resides in Oakland. Because of its extremely limited distribution, great caution must be exercised when conducting vegetation and fire management operations in or near popcornflower habitat.

The City should be proud to host four unique plant species and, regardless of the laws mandating protection of the plants, should feel compelled to create a habitat conservation plan that adequately addresses what actions should be taken to fully protect pallid manzanita, Presidio clarkia, most beautiful jewelflower, and San Francisco popcornflower.

If preserving these plants for future generations is not reason enough to end current harmful operations, however, the City's actions are in direct violation of both the California Endangered Species Act and the federal Endangered Species Act. Pursuant to the California Endangered Species Act ("CESA"), Fish and Game Code Section 2080, it is illegal to kill state listed plants in California without a "take" permit and associated approved mitigation and monitoring plan, or an emergency exemption. Currently, no such permit, mitigation/monitoring plan, or exemption for the City's fire management activities exists. Pursuant to the federal Endangered Species Act, it is illegal to "remove, cut, dig up, or damage or destroy" any endangered plant in knowing violation of state law (e.g. the California Endangered Species Act) or to violate any regulation pertaining to any endangered or threatened plant. 16 U.S.C. § 1538(a)(2). Therefore, if the City continues to damage, remove, or destroy the pallid manzanita, Presidio clarkia, or San Francisco popcornflower without a habitat conservation plan and a legal take permit, it will be liable for the associated penalties.

Furthermore, the California Native Plant Society lists pallid manzanita, Presidio clarkia, most beautiful jewelflower, and San Francisco popcornflower as category 1B plants. As such, it is mandatory that the plants be fully considered during preparation of any environmental documents relating to the California Environmental Quality Act ("CEQA") for actions that may affect the plants. CEQA's Guidelines also explicitly state that a finding of "significant effect on the environment" is mandatory when a "project has the potential ... to eliminate a plant or animal community or substantially reduce the number or restrict the range of an

endangered, rare, or threatened species.” CEQA Guidelines, 15065(a)(1). Consequently, all City projects that occur in or near these species’ habitats should include an Environmental Impact Report as part of CEQA compliance. See also Mt. Lion Found. v. Fish & Game Com., 16 Cal. 4th 105, 113 (Cal. 1997) (“Whenever a project may have a significant and adverse physical effect on the environment, an EIR must be prepared and certified.”)

Like CEQA’s mandate to ensure adequate analysis of impacts to imperiled species, the Open Space, Conservation and Recreation (OSCAR) Element of the Oakland General Plan explicitly states that it is City policy to protect “native plant communities” as well as “rare, endangered, and threatened species” OSCAR CO-7.1; OSCAR CO-9.1. To further that policy, the OSCAR calls for the mapping of all remaining native oak woodlands, redwood forests, perennial grasses, and other native plant communities within the City. OSCAR CO-7.1.1. More significantly, the OSCAR mandates the preparation of a habitat conservation plan (HCP) for the East Bay Hills. OSCAR CO-9.1.3. Unfortunately, it is now a decade later, and still, no such plan exists. Until it does, Oakland’s imperiled plant communities will not be adequately managed and protected.

The City has already allowed several developments to occur in the Oakland Hills that have destroyed listed plants or their habitat either through inadequate CEQA review of impacts, inappropriate use of a Mitigated Negative Declaration or Categorical Exemption, failure to perform floristic surveys during the period of identification for special status plants, or ignoring the recommendations of the OSCAR. Such practices must cease and a habitat conservation plan implemented.

The City must also end any further illegal take of pallid manzanita, Presidio clarkia, most beautiful jewelflower, and San Francisco popcornflower. All known occurrences of the species have been surveyed and mapped and can be avoided during fire management activities. Effective vegetation management and fire control does not require the careless extirpation of these unique native species.

The City’s obligations to avoid harm to federally and state listed species are not limited to plants. The Alameda whipsnake (*Masticophis lateralis euryxanthus*) (a federally listed threatened species) inhabits portions of the Oakland Hills as well, and the City, as part of its habitat conservation plan efforts, must conduct surveys for the snake and must avoid the destruction of any whipsnake habitat.

The City should immediately consult with the U.S. Fish and Wildlife Service (“USFWS”), California Department of Fish and Game (“CDFG”), East Bay Regional Park District, and Friends of Sausal Creek regarding locations of the imperiled species. As mitigation for past illegal take, the City should commit to implementing the recommendations of the 1987 CDFG Alameda Manzanita Recovery Plan, the USFWS 2002 Draft Recovery Plan for Chaparral and Scrub Community Species East of San Francisco Bay, California, and the USFWS 1998 Recovery Plan for Serpentine Soils of the San Francisco Bay Area.

The Center is aware that the City has initiated an effort to assemble a team that will begin to finally address the impacts of vegetation and fire management on species like the pallid

manzanita and Alameda whipsnake. See <http://www.oaklandnet.com/wildfirePrevention/RFQforWPADVegMgtPlan21706OFD.pdf>. However, it is unclear when or if that team will complete its efforts such as a CEQA mandated Environmental Impact Report or a habitat conservation plan. Therefore, until an adequate habitat conservation plan exists, the City must ensure that no harm to the pallid manzanita, Presidio clarkia, most beautiful jewelflower, San Francisco popcornflower, or Alameda whipsnake occurs and should immediately take steps to mitigate for past losses.

Thank you for your attention. If you have any questions or comments, I can be contacted at 415-436-9682 ext. 302.

Sincerely,

Justin Augustine
Staff Attorney
Center for Biological Diversity

cc: Leroy Griffin, Vegetation Management Unit
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