

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

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**OTHER**

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- \_\_\_\_\_

Completed by: V. Young Date 09/30/16

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.



DENNIS J. HERRERA  
City Attorney

NICHOLAS COLLA  
Deputy City Attorney

Direct Dial: (415) 554-3819  
Email: nicholas.colla@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Nicholas Colla  
Deputy City Attorney  
DATE: September 30, 2016  
RE: Complaint No. 16071 – Borden v. John Rahaim of the San Francisco Planning Department

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### COMPLAINT

Complainant Tom Borden ("Complainant") alleges that John Rahaim ("Mr. Rahaim") of the San Francisco Planning Department ("Planning") violated public records laws by failing to adequately respond to his April 29, 2016 public records request and by failing to justify the withholding of information.

### COMPLAINANT FILES COMPLAINT

On August 9, 2016, Complainant filed this complaint with the Task Force alleging that Planning failed to timely respond to his request for public records and failed to justify the withholding of information.

### JURISDICTION

Planning is a City department subject to the provisions of the Sunshine Ordinance governing public records. Planning does not contest jurisdiction to hear this complaint.

### APPLICABLE STATUTORY SECTION(S)

#### Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request.
- Section 67.24 governs what must be disclosed.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

#### Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.
- Section 6254 describes the types of documents not subject to public record request laws.

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**APPLICABLE CASE LAW**

- *Los Angeles Police Dep't v. Superior Court* (1977) 65 Cal. App. 3d 661, 668 [a person who may be the subject of the particular record sought does not, because he is personally affected, have any greater right than any person to examine the record].
- *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645 [By disclosing exempted records to one requestor, a government agency may not deny access to subsequent requests to disclose those same records.]

**BACKGROUND**

On April 29, 2016, Complainant sent an email to Christine Silva of Planning in which he requested the following:

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

According to Planning’s August 25, 2016 response to this complaint, Planning informed Complainant via email on May 3, 2016 that records responsive to his request had been placed onto a CD and were available for pickup.

On several dates ranging from July 7, 2016 to August 5, 2016, Complainant allegedly emailed Planning to say that there were numerous redactions made to documents provided and that Planning failed to justify the withholding of information.

In an August 9, 2016 email from Planner Melinda Hue (“Ms. Hue”) to Complainant, Ms. Hue provided the following explanation for the redactions to the documents:

The copy of the SNRAMP RTC that was provided to you was a preliminary draft that is currently being reviewed by the Planning Department and the Recreation and Parks Department. Because it is a preliminary draft and it is not normally kept on file (since a final draft will ultimately be published) the recommendations of the author in the preliminary draft is exempt from disclosure per Section 67.24 of the Sunshine Ordinance. The items in the preliminary draft SNRAMP RTC that were considered recommendations of the author were therefore redacted in accordance with Section 67.24. Please consider the above reasoning as the Planning Department’s justification for withholding in accordance with Section 67.27 of the Sunshine Ordinance.

On the same date, Complainant filed this complaint with the Task Force.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS**

- Did Complainant eventually obtain all of the desired documents?

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- What provision of Sunshine Ordinance Section 67.24 does Planning contend justifies the withholding at issue?
- When did Complainant first notify Planning that it failed to provide him with a justification for withholding information and when did Planning actually provide a justification?

**LEGAL ISSUES/LEGAL DETERMINATIONS**

- Did Planning violate Administrative Code Section 67.21(b) by failing to provide Complainant with records responsive to his request in a timely manner?
- Did Planning withhold any responsive records and, if so, did they follow the protocol for doing so under Administrative Code Sections 67.26 and 67.27?

**SUGGESTED ANALYSIS*****Equal Access to Public Documents***

“[A] person who may be the subject of the particular record sought does not, because he is personally affected, have any greater right than any person to examine the record.” *Los Angeles Police Dep't v. Superior Court* (1977) 65 Cal. App. 3d 661, 668.

In *Los Angeles Police Dep't*, the Court held that the documents regarding a police investigation were exempt from the CPRA and that members of a church had no greater right to document disclosure than the general public solely because the church members were the subject of the requested documents. *Id.* Considering the holding in *Los Angeles Police Dep't*, did MTA act properly by requiring Complainant to sign a privacy waiver to access documents about her?

In addition, in *Black Panther Party v. Kehoe*, the court held that by disclosing records of complaints about licensed collection agencies to said collection agencies, the Department of Consumer Affairs could not subsequently deny access to Plaintiffs requesting the same documents by asserting that the documents were exempt from disclosure under CPRA Section 6254. *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 656-657. Considering the holding in *Black Panther Party*, the Task Force may wish to consider that disclosing the requested documents to Complainant may mandate subsequent disclosure of the same documents to subsequent requestors.

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**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

\* \* \*

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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)****SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. *If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.*

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided

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that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

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(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals.

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data



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submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all

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bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

**SEC. 67.26. WITHHOLDING OF RECORDS**

*No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute.* Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

(a) *A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.*

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

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(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)****SEC. 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 his or her 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. As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

**SEC. 6254**

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

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(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

**Sunshine Ordinance Task Force  
Complaint Summary**

File No. 16071

Tom Borden V. John Rahaim and the Planning Department

Date filed with SOTF: 8/9/16

Contacts information (Complainant information listed first):

tom@intrinsicdevices.com (Complainant)

Director John Rahaim; Jonas Ionin, Christine Silva (Respondent)

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File No. 16071: Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.

**Complaint Attached.**

## Young, Victor

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**From:** Tom Borden <tom@intrinsicdevices.com>  
**Sent:** Tuesday, August 09, 2016 1:02 PM  
**To:** SOTF, (BOS)  
**Subject:** Violation of Sunshine Ordinance by Planning Department  
**Attachments:** RTC redaction pages.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Task Force,

I would like to file a complaint against the Planning Department for multiple violations of the ordinance. I requested a copy of the Response to Comments (RTC) for the EIR of the Recreation and Parks Department SNRAMP. They provided the documents. However, I discovered they had made redactions to the document. They did not add notations to explain the basis for the redactions as required by section 67.27.

I submitted six requests for the redacted information and never received a reply from Planning until today, August 9. The dates of those requests and who they were sent to are:

April 29 [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) original request for EIR RTC  
July 7 [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) request for redactions  
July 19 [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) repeat request for redactions  
August 1 [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) & [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) repeat request for redactions  
August 3 [sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org), [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org), [jessica.range@sfgov.org](mailto:jessica.range@sfgov.org) request for redactions  
August 5 [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org) & [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) repeat request for redactions

They failed to respond within the time frame laid out by the ordinance.

In the email received today they justify all of the redactions per section 67.24, claiming the redactions are "recommendations of the author". Based on formatting there are 5 redactions that are clearly part of the body text of the document. They are not Recommendations by the author. That hidden information should be revealed. There are 13 other redactions where formatting does not give a clear indication.

The author of the RTC is not identified. As I understand it, it was drafted by a consulting company with input from RPD. This document is a contract deliverable we paid for. Why would anything be exempt from disclosure? How can we determine if the redactions are justified as "recommendations of the author"?

Below is the series of emails related to this Sunshine request. Attached are copies of the redacted pages of the RTC.

Thanks for you assistance on this.

Tom Borden  
415 252 5902

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**Subject:** Improper Redactions of SNRAMP EIR RTC  
**Date:** Tue, 9 Aug 2016 11:22:54 -0700

**From:** Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>

**To:** Hue, Melinda (CPC) <[melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org)>, Silva, Christine (CPC) <[christine.l.silva@sfgov.org](mailto:christine.l.silva@sfgov.org)>, Range, Jessica (CPC) <[jessica.range@sfgov.org](mailto:jessica.range@sfgov.org)>

**CC:** Jones, Sarah (CPC) <[sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org)>

Melinda,

Your department made redactions to the Response to Comments for the SNRAMP EIR that was provided to me under San Francisco's Sunshine Ordinance. You failed to note the justification for withholding information as required by the ordinance.

Sec. 67.26. Withholding Kept To A Minimum. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. **Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article.**

I submitted six requests for the redacted information and never received a reply from Planning until your response this morning. The dates of those requests and who they were sent to are:

April 29 [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) original request for EIR RTC

July 7 [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) request for redactions

July 19 [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) repeat request for redactions

August 1 [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) & [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) repeat request for redactions

August 3 [sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org), [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org), [jessica.range@sfgov.org](mailto:jessica.range@sfgov.org) request for redactions

August 5 [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org) & [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) repeat request for redactions

Given your response below, it is clear that Planning did not want to honor my information request and purposefully ignored one inquiry after another. You hoped I would give up.

You cite section 67.24 as justification for the redactions, claiming they are all "recommendations of the author". First of all, who is the "author"? I cannot find a name on the documents. I assume the recommendations of the author that would be held exempt from disclosure would be expressions of that person's personal opinions. If this document is the product of an outside consulting company we paid for, how would anything qualify as exempt? Aren't any explanatory comments part of the contract deliverables?

Some of the redactions are clearly made to the body text of the document. They are not "recommendations of the author". These obviously improper redactions are highlighted in the list below.

*page 4-25 top*

*page 4-34 bottom*

*page 4-169 top*

page 4-226 top clearly part of the document and not an author recommendation, cuts off end of sentence

page 4-263 bottom

page 4-306 bottom clearly part of the document and not an author recommendation, evidenced by formatting

page 4-343 top

page 4-346 top clearly part of the document and not an author recommendation, evidenced by formatting

page 4-357 bottom

page 4-358 top

Page 4-422 bottom clearly part of the document and not an author recommendation, evidenced by formatting  
Page 4-438 bottom  
page 4-439 top  
page 4-443 mid.  
page 4-487 clearly part of the document and not an author recommendation, evidenced by formatting  
page 4-582 mid page  
page 5-33 bottom  
page 5-34 top

I hope your department will reconsider your position on this. It is hard to imagine withholding this information is in the public good, or that there is any legal requirement forcing you to withhold the information.

Tom

Tom Borden  
tel: 415-252-5902

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**Subject:**Sunshine Request for Redactions of SNRAMP EIR RTC  
**Date:**Fri, 5 Aug 2016 12:24:10 -0700  
**From:**Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>  
**To:**Hue, Melinda (CPC) <[melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org)>  
**CC:**[Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org)

Melinda,

Thanks for stepping in. I don't know what happened with Christine. I've sent multiple emails to her and to the [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) address. No response.

The copy of the SNRAMP EIR RTC Christine provided to me has blacked out text in multiple locations. See me email below. It is not normal editing for a document of this type. I tried to send you a copy of what she provided, but the file is too large.

Thanks for any help.

Tom Borden  
415 252 5902 W  
415 297 6084 cell

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**Subject:**Re: Violation of CEQA by SFRPD  
**Date:**Wed, 3 Aug 2016 16:09:22 -0700  
**From:**Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>  
**To:**Jones, Sarah (CPC) <[sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org)>  
**CC:**Hue, Melinda (CPC) <[melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org)>, Range, Jessica (CPC) <[jessica.range@sfgov.org](mailto:jessica.range@sfgov.org)>, Sfforestleadership <[sfforestleadership@googlegroups.com](mailto:sfforestleadership@googlegroups.com)>

Sarah,



Thanks for the quick reply. The alleged violations I cite relate to things that are specifically planned in the SNRAMP. The most ironclad and easy to grasp are the trail closures. The trails appear as "existing" in the SNRAMP maps. In those maps they are color coded as "to be closed". That is exactly what they have done. It is black and white.

I have raised this issue with RPD and their commission. They have ignored it. Stacy knows about this as well.

If a land developer started demolishing a row of houses in preparation to build a Walmart, but the EIR was not certified, who would initiate action against the developer? Would the SF Planning department play any role in that process?

On another subject, I have been trying to get a public records request by the Planning Department for over a month. I have sent multiple emails to Christine Silva and to [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org). There has been no response. Do you happen to know who administers Sunshine requests for the Department? Thanks for any help on that.

Tom Borden  
415 252 5902

On 8/3/2016 2:13 PM, Jones, Sarah (CPC) wrote:

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**Subject:**Sunshine Request for Redactions of SNRAMP EIR RTC

**Date:**Mon, 1 Aug 2016 18:04:02 -0700

**From:**Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>

**To:**[CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org)

**CC:**[Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org)

I submitted a Sunshine request for all of the documents that comprise the EIR for the Recreation and Parks Department SNRAMP, your case number 2005.0912E (or 2005.1912E). That was on April 29, 2016. I was provided with the draft RTC documents.

I later noticed what appear to be redactions to the document. I sent an email to Christine Silva on July 7 2016, requesting the redactions. (See below.) I did not hear back from her.

On July 19, 2016 I sent the request again to this email address, [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org). (See just below.) A response is long overdue, but I have not received a reply.

Perhaps this fell down a crack on your end, or maybe I missed your response. Could you please send me the redacted information? Please consider this an immediate Sunshine request.

Thank you,

Tom Borden  
415 252 5902

[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)

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**Subject:**Fwd: Sunshine Request for Redactions of SNRAMP EIR

**Date:** Tue, 19 Jul 2016 09:31:15 -0700  
**From:** Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>  
**To:** [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org)

I sent the public records request below some time ago. The bold text was conveyed in a second email sent later on July 7. Please provide the information requested.

Thank-you,

Tom Borden

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**Subject:** Sunshine Request for Redactions of SNRAMP EIR

**Date:** Thu, 7 Jul 2016 15:14:11 -0700

**From:** Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>

**To:** [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org)

**CC:** Dee Seligman <[deesel91@gmail.com](mailto:deesel91@gmail.com)>

Christine,

I sent you the Sunshine request below some time ago. Thank you for producing the EIR RTC.

I am troubled by what appear to be redactions in the document. These appear as masked over text at the following locations in the document you provided titled, "3a. AdminDraftRTC-11-2015-for Tom Borden request".

*page 4-25 top*  
*page 4-34 bottom*  
*page 4-169 top*  
page 4-226 top  
**page 4-263 bottom**  
page 4-306 bottom  
**page 4-343 top**  
**page 4-346 top**  
**page 4-357 bottom**  
**page 4-358 top**  
**Page 4-422 bottom**  
**Page 4-438 bottom**  
**page 4-439 top**  
**page 4-443 mid.**  
**page 4-487**  
page 4-582 mid page  
page 5-33 bottom  
page 5-34 top

Section 67.26 of the Sunshine ordinance requires that the justification for each redaction be noted on the document. In addition, Section 67.27 lays out addition requirements for documenting the justification.

Would you please provide copies of those pages showing the redacted text or document the nature of the redacted information and the justification for withholding it as required by the ordinance? Also, if there are redactions in the other documents that I have not found yet, please provide the same information for those.

In terms of the timing of your response, please treat this as an Immediate Sunshine Request.

Thank you,

Tom

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**Subject:** Sunshine Request for SNRAMP EIR

**Date:** Fri, 29 Apr 2016 16:09:30 -0700

**From:** Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>

**To:** [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org)

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

I would be happy to receive it via FTP or on a mailed CD or DVD. If mailed, please send to my work address below.

Thank you,

Tom

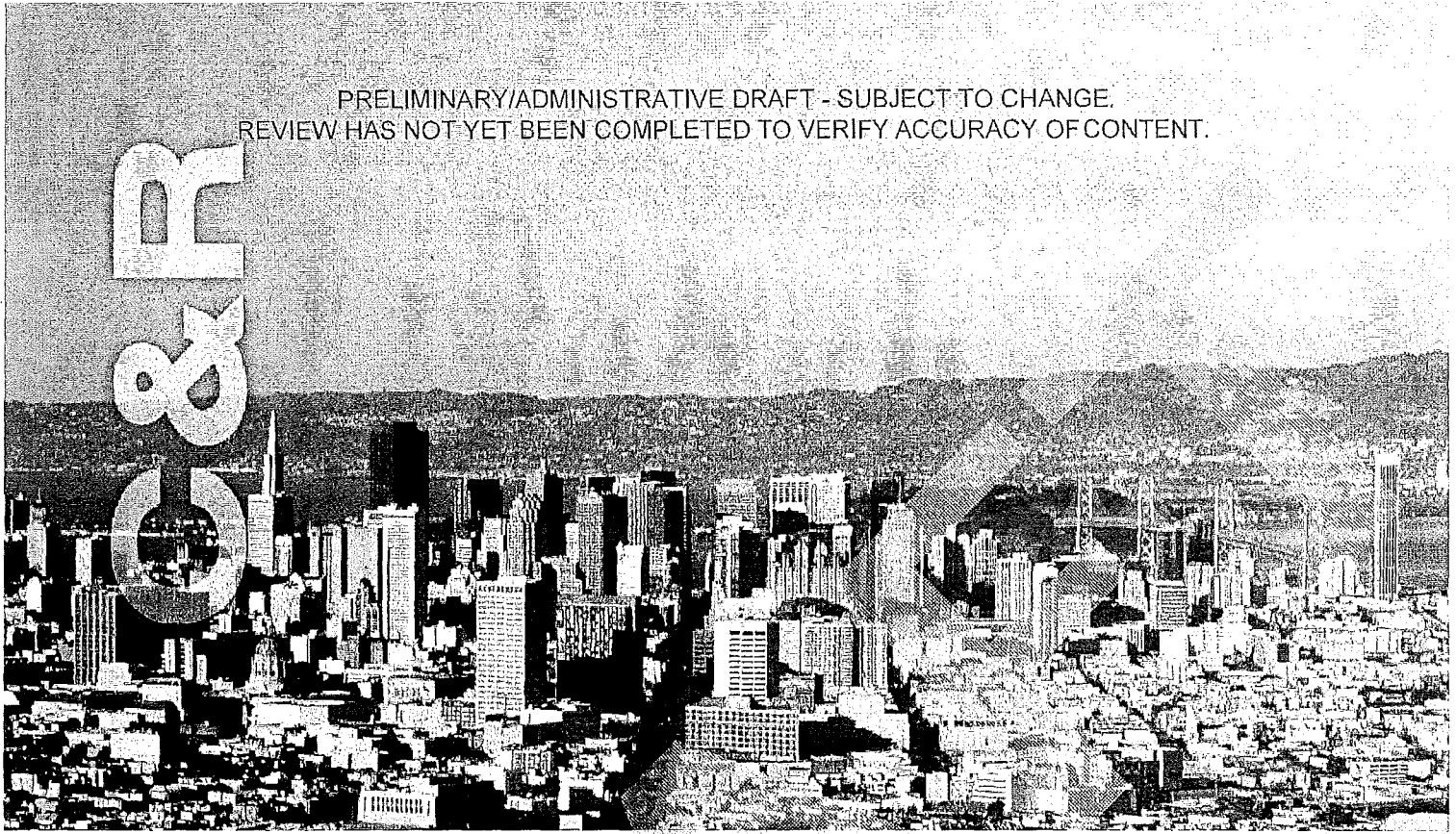
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Tom Borden  
2353 3rd. Street  
San Francisco, CA 94107  
tel: 415-252-5902  
fax: 415-252-1624



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)

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## RESPONSES TO COMMENTS

# Significant Natural Resource Areas Management Plan

CITY AND COUNTY OF SAN FRANCISCO  
PLANNING DEPARTMENT  
CASE NO. 2005.0912E  
CASE NO. 2005.0912E

STATE CLEARINGHOUSE NO. 2009042102



Administrative Draft Number  <b>03</b>	Draft ER Publication Date:	AUGUST 31, 2011
	Draft ER Public Hearing Date:	OCTOBER 6, 2011
	Draft ER Public Comment Period:	AUGUST 31, 2011, to OCTOBER 17, 2011; and APRIL 27, 2012, TO JUNE 11, 2012

Final ER Certification Hearing Date: MONTH XX 2015

THIS DRAFT HAS BEEN PROVIDED IN RESPONSE TO A

SAN FRANCISCO PUBLIC RECORDS REQUEST (SUBMITTED 4/27/16 AND 4/29/16) FROM TOM BORDEN.

SAN FRANCISCO  
PLANNING  
DEPARTMENT

ENVIRONMENTAL PLANNING DIVISION | SAN FRANCISCO PLANNING DEPARTMENT

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## RESPONSES TO COMMENTS

# Significant Natural Resource Areas Management Plan

CITY AND COUNTY OF SAN FRANCISCO  
PLANNING DEPARTMENT

CASE NO. 2005.0912E

CASE NO. 2005.0912E

STATE CLEARINGHOUSE NO. 2009042102



Administrative Draft Number  <b>03</b>	Draft ER Publication Date:	AUGUST 31, 2011
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SAN FRANCISCO  
PLANNING  
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ENVIRONMENTAL PLANNING DIVISION | SAN FRANCISCO PLANNING DEPARTMENT

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format, and consistency. To the extent possible, these clarity and organizational comments, as well as her specific technical comments, were incorporated into the Final Draft.

The Natural Areas comprise 1,107 acres of SFRPD's 4,113 acres of total recreation and open space areas (approximately 27 percent); however, this only represents parkland under SFRPD's jurisdiction. Within the SFRPD's parkland, after implementation of the SNRAMP, almost 100,000 trees and 29 acres of trails would be provided. Considering parkland within the city that is under the control of other public entities, such as the Port of San Francisco, federal government (e.g., Presidio Trust or Golden Gate National Recreation Area), SFPUC, and University of California San Francisco (UCSF), there are many more thousands of acres available to the public within the immediate local area. Refer also to Response PD-6, RTC p. 4-443, Response G-5, RTC p. 4-31, and Response RE-8, RTC p. 4-315, for a further discussion of potential impacts associated with access restrictions.

With respect to the sustainability of native plants, refer to Response PD-11, RTC p. 4-156, for a discussion of the City's policy guidance that supports the protection and maintenance of biodiversity within the City's Natural Areas, including guidance provided in the City's *Sustainability Plan* regarding the protection of natural Natural Areas in San Francisco. Refer also to Response BI-36, RTC p. 4-454, for a discussion of the temporary intervention and maintenance activities that are required for native species to become established.

One of the commenters questions whether the NAP is harming the environment by removing established trees, habitats, and ecosystems and also questions whether the removal of grasses would cause harm to species that use grassland as its habitat. Refer to Response BI-13, RTC p. 4-385, and Response BI-31, RTC p. 4-425, for a discussion of the impacts of removing vegetation, including impacts to common species, and refer to Response BI-15, RTC p. 4-389, for a discussion of the impacts of retaining nonnative vegetation and the relative benefits of removing nonnative vegetation.

With respect to the commenters concerns about when activities proposed under the SNRAMP would occur relative to the breeding and nesting season, the section on *Invasive Vegetation Removal* provided under Impact BI-2 on Draft EIR pp. 304 and 305 notes that "vegetation management activities would be conducted outside the breeding season for bird species (February 1 through August 31, as designated by CDFW), unless these activities had already begun before the breeding season and had already removed nesting habitat, or if a breeding bird survey was conducted prior to vegetation removal activities and had determined that no nesting birds were present". Other impacts on sensitive species resulting from implementation of the programmatic projects, as well as the proposed maintenance activities and the Sharp Park Restoration Project, are comprehensively analyzed in Impacts BI-2 through BI-6 provided on Draft EIR pp. 306 through 330, concluding, in all cases, that impacts would be reduced to a less-than-significant level with the implementation of the identified mitigation measures.

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**Comment G-4 Financial considerations for implementation of SNRAMP**

The response to Comment G-4 addresses all or part of the following individual comments:

GGAS-1-11	MPIC-1-14	MPIC-2-06
WTPCC-1-14	Art-1-06	Bartley-1-04
Blum-1-03	Bowman-1-10	Cook-1-07
Delacroix-1-06	Fitzer-1-04	Fox-1-06
Freedman-1-02	Gomez-1-04	Hess-1-07
Johns-1-08	Jungreis-1-07	Lorenz-1-02
Ray-1-06	Rehling-1-03	Risk-1-06
Schlund-1-04	Shepard-A-1-03	Valente-1-10
Wade-1-03		

- Overall, Golden Gate Audubon endorses the Monitoring Program as written, but is concerned that the DEIR does not commit the City to fully executing or funding the Monitoring Program. (DEIR, at 94-95) Golden Gate Audubon strongly recommends that this section be improved to identify funding sources and state an affirmative commitment that monitoring will be conducted and that findings will be made available to the public (via reports or other means of sharing data) in a timely manner. This is of particular importance for the monitoring of special status species. [GGAS-1-11]
- Economic Factors. The DEIR lacks any cost estimate for implementing the SNRAMP and has no information about how it will be funded. It also does not address the potential impact of shifting resources such as park bond funds away from recreation and park maintenance/improvements to complete the SNRAMP. The substantial cost of removing the trees from Mt. Davidson will divert significant resources from providing what the MPIC considers a higher priority for resource use: basic maintenance of Mt. Davidson Park including litter and graffiti removal, forest and trail maintenance, and installation of benches and trail direction signage. [MPIC-1-14]
- The DEIR does not address the economic impact of the significant financial resources that would be diverted from SF Park and Recreation services to implement SNRAMP. There is no cost estimate for implementing the SNRAMP and no information about how it will be funded. It also does not address the potential impact of shifting resources, such as park bond funds, away from recreation and park maintenance and improvements in order to complete the SNRAMP. The substantial cost of removing the trees from Mt. Davidson will divert significant resources from providing what the MPIC considers a higher priority for resource use: basic maintenance of Mt. Davidson Park, including litter and graffiti removal, forest and trail upkeep, and installation of benches and trail direction signage. Ongoing costs for herbicide spraying, erosion control, replanting, and fencing are also not addressed. [MPIC-2-06]

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### Response G-6

These comments express concern that the NAP program currently does not provide sufficient maintenance of the Natural Areas including the DPAs within those Natural Areas. Comment Carrington-1-03 suggests that rather than closing DPA's, NAP should increase maintenance activities. Other comments suggest that NAP should scale back their program to a fraction of the existing Natural Areas.

In terms of maintenance, as described on Draft EIR p. 89, the NAP staff is composed of biologists, ecologists, and natural resource managers that conduct routine maintenance within the Natural Areas on a daily basis. The NAP staff of approximately 10 gardeners conducts management actions within the Natural Areas, and the NAP also uses volunteer groups that range in size from 10 to 50 people. The current levels of funding do not allow the SFRPD to employ additional maintenance staff; however, with the collaboration of SFRPD employees and volunteers, the Natural Areas are maintained to allow positive recreational experiences while enhancing natural habitats.

With respect to comments regarding closure of DPAs, the SNRAMP proposes the closure of only one DPA, located at Lake Merced. As described in Draft EIR Chapter III, Project Description, p. 136, this DPA is proposed for closure not because of poor maintenance, but rather to avoid disturbance to breeding birds. Although the SNRAMP proposes reducing the size of two other DPAs, other than the Lake Merced DPA, no DPAs are proposed for closure at this time.

The SNRAMP does not propose to add new Natural Areas to its program, but rather outlines management activities within existing Natural Areas. The management actions of the SNRAMP are evaluated against the existing management actions as identified in the 1995 Management Plan and considering the existing physical conditions at the time of the Notice of Preparation of the EIR. Similar to the proposed project, the 1995 Management Plan outlines measures to maintain and enhance vegetation, wildlife, water quality, and control of erosion. The proposed SNRAMP, however, includes additional monitoring goals as well as design and aesthetic goals (Draft EIR pp. 86 to 87). The SNRAMP also includes a monitoring program to assess the success of restoration projects in achieving conservation and restoration goals, and proposes to employ an adaptive management approach in achieving those goals (Draft EIR pp. 90 and 94 to 96). It is reasonable to expect that with implementation of the identified monitoring plan, the survival and maintenance of newly planted vegetation would increase compared to existing conditions. According to SFRPD, some successful restoration efforts include those implemented at Glen Canyon and Islais Creek, the oak woodlands at Golden Gate Park, Beacon Street at Billy Goat Hills, and Grandview Park, but there are others, as well.

The Draft EIR analyzes the environmental impacts of the proposed SNRAMP on aesthetic resources on Draft EIR pp. pp. 189 to 199. With respect to scenic resources, the Draft EIR concludes that where nonnative vegetation is replaced with native vegetation that is more appropriate for the area's

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As described on Draft EIR pp. 97 through 104, the project description states that the activities planned for the Natural Areas can generally be divided between routine maintenance and programmatic projects. In the Draft EIR, as further described on pp. 96 to 104, routine maintenance and the Sharp Park restoration are addressed at a project level, while the programmatic projects (e.g., rerouting or constructing trails, stabilizing hillsides, and undertaking initial invasive weed or tree removal projects that typically exceed half an acre (or on average 20 trees) at any one time) are addressed programmatically; programmatic projects would undergo additional environmental review, as appropriate, at the time they are proposed. In the Draft EIR, both the programmatic- and project-level components were described in detail, substantially expanding upon what was provided in the NOP. Since publication of the Draft EIR, the restoration activities proposed at Sharp Park have not changed. As previously described, the Draft EIR includes both a program-level and project-level analysis. As described on Draft EIR pp. 79 to 80, there is sufficient detail to provide a project-level analysis of routine maintenance activities and the Sharp Park Restoration Project. However, because the specific details of programmatic activities, as identified in the Draft EIR, are unknown at this time, the Draft EIR analyzes the activities at a programmatic level. CEQA allows, and it is common practice, for an EIR to include both a programmatic analysis and project-level analysis for those portions of the project where sufficient details have been developed.

Further, an EIR is an "informational document" intended to inform public agency decision makers and the public of the significant environmental effects of a project proposal, identify possible ways to minimize the significant effects, and describe feasible alternatives to the project to reduce or eliminate those significant effects. Certification of an environmental document does not constitute a project approval of any kind. Certification of this EIR (with the Sharp Park Restoration project) included does not preclude decision makers from taking other actions in the future with respect to Sharp Park or the SNRAMP.

#### *Pending Litigation*

The comment notes that litigation is currently pending regarding Sharp Park. This is correct. Currently, there are two actions pending regarding Sharp Park. In one lawsuit, plaintiffs sued the City in federal court, alleging the City's ongoing maintenance and operation of Sharp Park Golf Course violated the federal Clean Water Act and the federal Endangered Species Act. This case was dismissed as moot by the federal trial court, and an appeal of that dismissal is currently pending. In the other lawsuit, petitioners have alleged that the City violated CEQA in its approval of the Sharp Park Safety, Infrastructure Improvement, and Habitat Modification Project. That case is awaiting a hearing in state trial court. But, the ultimate outcome of these cases has no bearing on the analysis or conclusions in the EIR. This is because—as required by CEQA—the Draft EIR analyzes the environmental impacts of the proposed project by comparing the existing physical environmental conditions against the potential physical effects of the proposed project. Regardless of whether the City or the plaintiffs prevail in the two lawsuits, the existing baseline conditions at Sharp Park remain the same, and this project—including both the SNRAMP and the Sharp Park Restoration

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Project—could proceed, if approved by decision makers. [REDACTED]

#### *Transition of Sharp Park to the GGNRA*

The proposed legislation at the Board of Supervisors to transition management of Sharp Park to the Golden Gate Natural Recreation Area has been set aside and is not a foreseeable action at this time. Regardless, even if such management transfer were to occur, it would not affect the analysis or conclusions contained in the EIR. Commenters are correct in stating that the description of proposed actions at Sharp Park has been modified from previously described actions. Draft EIR Section III.G, Changes Made to the SNRAMP Since Publication, pp. 105 to 107, identifies a number of changes that have been made to the SNRAMP because certain proposed actions were (1) found to be infeasible; (2) completed under a separate environmental review; (3) incorrectly described; (4) re-assessed as contrary to policy; or (5) further developed with additional details and specificity.

#### *Scientific Basis of the Sharp Park Restoration Project*

Some comments question the scientific basis of the restoration plan and whether the actions would protect the species or are realistic. The proposed restoration plan at Sharp Park was developed by biologists that are experts in wetland, California red-legged frog, and San Francisco garter snake ecology. In addition, scientific experts from local resource agencies, academic institutions and other organizations reviewed the restoration plan during its development and as part of a science round table. In terms of the scientific basis for the SNRAMP, refer also to Response G-3, RTC p. 4-20, which indicates that the Plan was independently and affirmatively reviewed by three scientists, as well as many other agencies, organizations, and individuals who participated in the preparation and/or review of the document. Whether implementation of proposed actions is realistic is unrelated to the analysis of impacts in the Draft EIR. Refer also to Response PD-13, RTC p. 4-172, for a discussion of the proposed actions for Sharp Park, including the City's scientific studies, deliberations, and decision-making processes that resulted in the decision to pursue the restoration activities at Sharp Park Salada, as well as a discussion of the alterations proposed for the golf course. In summary, and as further explained in Response PD-13, RTC p. 4-172, the golf course would replace one hole (Hole 12) and raise the elevation of four holes (Holes 10, 14, 15, and 18).

#### **Comment PD-13 Proposed actions for Sharp Park**

The response to Comment PD-13 addresses all or part of the following individual comments:

NPS-1-12

NPS-1-16

NPS-1-18

NPS-1-19

SFPGA-3-13

SFPGA-3-15

Sierra Club-1-08

WEI-1-05

Keitelman-1-02

Pfister-1-02

PH-Solomon-01

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**Response AE-6**

These comments suggest that SFRPD staff (along with volunteers) have not adequately maintained Natural Areas, which has led to the adverse impacts on aesthetics and recreation.

Consistent with standard CEQA practice, the Draft EIR assumes implementation of the proposed management actions, including maintenance actions, as presented in the project description. The proposed project consists of both programmatic and project activities to be implemented at each of the existing Natural Areas; it does not propose to convert additional portions of San Francisco parkland to Natural Areas [REDACTED]

[REDACTED] Generally, the level of daily routine maintenance under the proposed project would be similar to the activities currently conducted by the NAP because, as described in Draft EIR Chapter III, Project Description, p. 89, the NAP staff is composed of biologists, ecologists, and natural resource managers that conduct routine maintenance within the Natural Areas on a daily basis. The NAP staff of approximately ten gardeners would continue to conduct the management actions within the Natural Areas; therefore, existing staffing levels are anticipated to be similar to current levels, and maintenance activities are not expected to increase substantially. The NAP also utilizes volunteer groups that range in size from 10 to 50 people; therefore, it is not anticipated that routine maintenance activities, which are substantially similar to current activities, would result in a need for SFRPD to hire additional staff. As also discussed on Draft EIR p. 89, larger projects, identified as programmatic projects in the Draft EIR, would be implemented by the SFRPD's Capital Division.

The impacts from routine maintenance would be unlikely to change, as the proposed maintenance actions would not represent a substantial change from baseline conditions. However, the Draft EIR determined that routine maintenance would have less than significant aesthetic impacts (refer to Draft EIR pp. 190, 195, and 197). Additionally, consistent with the commenters suggestion, the No Project Alternative and the Maintenance Alternative identified in the Draft EIR both consider the effects of reduced management actions relative to the proposed project (refer to Draft EIR pp. 468 and 513). The Draft EIR concludes that neither of these alternatives would have a significant impact on aesthetic resources relative to existing conditions. Also refer to Response AE-1, RTC p. 4-215.

The SNRAMP does not propose any change in the total acreage of Natural Areas as compared to existing conditions. In fact, the acreage of Natural Areas would remain the same under all of the alternatives, whether No Project, Maximum Recreation, Maximum Restoration, or Maintenance; the only difference would be the activities that occur within the existing Natural Areas. Refer also to Response G-4, RTC p. 4-29 for a discussion of the financial considerations associated with the SNRAMP.

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"brought to light the fact that the mountain was not always covered with **stately trees** ... it was but a barren, rocky hill ... [when] "part of the property owned by Adolph Sutro, Joaquin Miller, the poet who was enthusiastically planting trees on 'The Heights' in the east bay, envisioned the beauty that might be created by trees on the San Miguel Hills and suggested the plan to Sutro ... [who] planted thousands of tiny trees: cedars, pines, and eucalyptus."

Richard Walker credits Joaquin Miller as being one of the first to promote preservation of the forests in the Sierra Nevada. The San Francisco Garden Club published vignettes of early San Francisco homes and gardens in December 1935. It quoted from the notes of Emma Sutro:

"There is an account in Joaquin Miller's Poetical Works of the first Arbor Day in San Francisco, celebrated on Nov. 27, 1886. The celebration was promoted by Joaquin Miller, Adolph Sutro, General Vallejo and General O. O. Howard ... Adolph Sutro, as his contribution to the first Arbor Day, gave 50,000 trees to be planted by the school children of Oakland and San Francisco. Climate has been modified and many a sandy bare monotone in San Francisco has been beautified by the massed dark accent of Mr. Sutro's trees."

Mount Davidson Park, among the last remnants in San Francisco of this historic forest that once extended from Ocean Avenue north to Mt. Sutro and was planted to celebrate CA's first Arbor Day and to beautify the City, has been preserved in a City park. The forest has significant historical associations and defines the character of the surrounding neighborhoods. The size and age of the trees are significant and they provide a prominent landscape feature in West of Twin Peaks, especially for Miraloma Park residents. The experience of the forest led to initiation of the historic Easter sunrise event and the residents' campaign to preserve it as public park. Without the forest, there would be no native plants left to protect and the land would be covered with housing. The forest in Mount Davidson Park meets most criteria for protection by the Landmark Tree Ordinance: visual, cultural, ecological, and locational characteristics. The Recreation and Parks Department should fulfill its stewardship responsibility and recommend to the Urban Forestry Council designation of the 30.1 acre forest in Mt. Davidson Park for Landmark status.

A structural engineer should evaluate the historic retaining walls before embarking on the 2008 Park Bond work planned for this area. The HRER notes that the mature vegetation growing on these walls and stairs is historic. The trees along these features should therefore be protected. The forest is also holding the steep slopes of Mt. Davidson intact. The DEIR on page 219 acknowledges that extensive erosion control structures would create an additional substantial adverse impact on this cultural resource. Whether these structures would be necessary if the concentrated tree clearing is implemented should be addressed in the EIR. [MPIC-2-15]

#### Response CP-9



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These comments question the adequacy of the HRER for Mount Davidson, citing concerns about the scope of the report (and the fact that it should be expanded to address cultural landscapes); whether additional data and analysis should be considered, such as the pre-existing rating and survey report dated 2/5/1997 and the analysis completed in 1991 by Marie Bolton for the City Attorney as part of the lawsuit regarding the cross at the summit of Mount Davidson; whether a structural engineer should evaluate the historic retaining walls before any work proceeds; and generally question the impact conclusions.

The SNRAMP (p. 6.2-9) indicates that trees will be removed (or thinned) in both MA-1 and MA-2, while MA-3 will not be thinned. Specifically, tree removals would occur in the central portion of the site and along the eastern edge of the mountain's forest, as follows:

- Remove approximately 1,000 small- and medium-sized eucalyptus trees, leaving large cypress and eucalyptus trees in MA-1c.
- Remove approximately 200 eucalyptus trees, leaving some large trees for structural diversity (MA-2c).
- Remove approximately 300 small to medium sized and 100 large eucalyptus trees, while some large trees will remain (MA-2e).
- Manage all MA-3 areas as urban forests (GR-14), with no removal of trees.
- In addition, approximately 2,867 feet of social trails (or 19 percent) that are subject to erosion or could be used for habitat restoration would be closed.

A Historic Resources Evaluation Response (HRER) (January 12, 2011) was completed by Shelley Caltagirone (Historic Preservation Planner, San Francisco Planning Department) to identify whether any historic resources are present at Mt. Davidson and to address potential impacts caused by implementation of the SNRAMP.

With respect to the urban forest at Mount Davidson, the HRER states that:

Tetra Tech also prepared a memorandum describing the history of the urban forest located at Mount Davidson and the establishment of the city park in this location. Based upon this information the Planning Department finds that the Mount Davidson natural area is potentially eligible for listing on the California Register under Criteria 1 (Event) and 2 (Persons) as an ethnographic landscape. Although further research is required to establish a full historic context for the site, Mount Davidson is a prominent topographical feature in San Francisco that has historically held special natural and cultural significance for the city. The site is associated with local philanthropist Adolph Sutro, with an annual Easter ceremony established in 1923, and with the early development of natural areas dedicated to recreational use within San Francisco. For these reasons, the natural area will be considered a historic resource for the purposes of this review.

Importantly, the historic resources evaluation of the urban forest at Mount Davidson was conducted for the whole of Mount Davidson and identifies the resources character-defining features. The HRER for the urban forest at Mount Davidson states that "The character-defining features of the

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consider new DPAs. In the four years since the DAC was sunset, however, RPD has done nothing on the citywide survey. And now this inaction by RPD is being used to prevent the EIR from considering whether or not creating new DPAs to replace ones closed by NAP could decrease the impacts of the closures. [SFDOG-2-10]

- The NAP EIR incorrectly summarizes RPD's so-called moratorium on creating new DPAs until a systemwide survey of DPAs is conducted. The NAP EIR says that this moratorium was a directive from the Rec and Park Commission that was announced at the October 10, 2006 meeting of the RPD Dog Advisory Committee (DAC). This is not true. The idea of a systemwide survey of where dogs and DPAs are in San Francisco came not from the Commission, but from RPD staff. It was not discussed at the October 2006 DAC meeting. It was not fully discussed in the DAC until 2007 when RPD made the decision to "sunset" the DAC and conduct the citywide survey. While the survey was being conducted, the DAC was told, there would be a hold on new DPAs. The DAC was told the survey would take maybe a year or a year and a half at the most. The idea of the citywide survey was not presented to the Rec and Park Commission until mid-2007. This was no "direction from the Commission." This hold was never meant to be permanent. Yet the NAP EIR implies it will last for decades (the length of time covered by the NAP EIR) and therefore the EIR does not have to consider new DPAs. In the four years since the DAC was sunset, however, RPD has done nothing on the citywide survey. And now this inaction by RPD is being used to prevent the EIR from considering whether or not creating new DPAs to replace ones closed by NAP could decrease the impacts of the closures. The NAP plan will last for decades, and for the NAP EIR not to consider a major mitigation like opening new DPAs to replace closed ones because of a temporary halt on new designations is absurd. Any analysis of alternatives that does not include this possible mitigation is incorrect and inadequate. [Bartolotta-1-09]

## Response RE-2

These comments express the opinion that the Draft EIR incorrectly describes the SFRPD's moratorium on creating new DPAs.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Draft EIR conservatively characterizes the direction from the San Francisco Recreation & Park Commission concerning establishment of new DPAs as a moratorium for the purpose of analyzing of cumulative impacts on recreation in the Natural Areas. This direction was presented at October 10, 2006, meeting of the San Francisco Dog Advisory Committee and was also addressed in a July 19, 2007, SFRPD memorandum on the Status of the Dog Advisory Committee Work Plan and discussed during the August 16, 2007, meeting of the San Francisco Recreation & Park Commission. While some new or improved DPAs may be pursued in San Francisco by the SFRPD and/or through community-driven efforts, none are proposed or envisioned in the Natural Areas. This assumption provides for a conservative worst-case analysis of cumulative impacts in the Draft EIR, but does not preclude the future establishment of new DPAs.

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protected" species under the Fish and Game Code and DFG does not have the authority to authorize the incidental take of fully protected species; and (4) a state take permit for the western pond turtle is not required because this species is not listed as threatened or endangered under CESA. [SFPGA-3-14]

## Response BI-2

This comment suggests revisions to the Draft EIR with respect to the permitting process for implementation of the Sharp Park restoration project.

As further described in Response AL-11, RTC p. 4-581, the Pumphouse Project, while separate and independent from the proposed restoration activities at Sharp Park under the SNRAMP, includes the removal of 435 cubic yards of sediment and emergent vegetation within Horse Stable Pond and the connecting channel that links Horse Stable Pond with Laguna Salada. The purpose of the sediment removal proposed under the Pumphouse Project is to improve breeding habitat for the California red-legged frog and reduce the potential malfunction of the pumps caused either by sediment entering the pump system and/or by preventing water from entering the pump intake.

The proposed activities under the SNRAMP are articulated on Draft EIR pp. 144 to 146. These activities also include dredging excess sediments and accumulated organic matter, including stands of encroaching tules, as well as other restoration activities. Under both projects, the SFRPD would continue to use the pumps to manage water levels in Horse Stable Pond to maintain California red-legged frog habitat. Neither the Pumphouse Project nor the SNRAMP project proposes to modify the operations of the existing pumps at Horse Stable Pond.

On January 16, 2014, the Planning Commission found the Pumphouse Preliminary IS/MND to be adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning and the Planning Commission, and approved the Final Mitigated Negative Declaration (FMND) for the Project in compliance with CEQA, the CEQA Guidelines, and Chapter 31. Further, the Pumphouse Project has a Biological Opinion from the USFWS for the proposed activities.<sup>76</sup>

The SNRAMP Project is in the process of environmental review. If the EIR is certified by the Planning Commission and the Project is approved, the City will begin the permitting process for the

<sup>76</sup>U.S. Fish and Wildlife Service (USFWS), *In Reply Refer To: 08ESMF00-2012-F-0082-2, Formal Endangered Species Consultation on the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project in San Mateo County, California*, October 2, 2012 ("Biological Opinion"). This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.



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enough to show that the plan provides the conditions of possibility for the survival of a subpopulation of 200 snakes. Rather, recent science shows that what is necessary is not only the provision of habitat but "ecological corridors" allowing connectivity between the isolated subpopulations. While the proposal to create an island of snake habitat in the middle of Laguna Salada may have merit, the approach may not be sufficient to satisfy the overall ecological requirements for a viable and self-sustaining snake population. [Sierra Club-1-11]

#### Response BI-4

[REDACTED]  
[REDACTED]  
[REDACTED] This comment focuses on the merits of the proposed San Francisco garter snake habitat improvements at Sharp Park. No specific environmental issues about the adequacy or accuracy of the Draft EIR's coverage of environmental impacts are presented in this comment.

The following is provided for informational purposes only. The USFWS and CDFW have identified the wetland complex at Sharp Park as important habitat for San Francisco garter snake and California red-legged frog. Both agencies have suggested a restoration plan that enhances conditions in and around the wetlands to reduce the possibility of harm to and ensure the viability of the San Francisco garter snake population that is found in and around the wetlands. As described in Response BI-6, RTC p. 4-348, the activities described in the Sharp Park Restoration Plan are voluntary. During planning for the recovery effort, several broad goals were identified by SFRPD and through agency input. These goals are as follows: maintain and restore habitat for listed species, particularly the San Francisco garter snake and California red-legged frog; restore functional wetland and upland habitat that is high-value and low maintenance; comply with the requirements of state and federal regulations, including FESA and the California ESA (CESA) and the Clean Water Act; and, preserve and enhance recreational opportunities that are compatible with the listed species goals. The San Francisco Garter Snake Recovery Plan was consulted when developing the Sharp Park restoration project and a local expert in San Francisco garter snake population biology and ecology guided the development of the plan. The goal of this recovery effort is to restore and enhance the San Francisco garter snake habitat in order to protect the population that currently exists there. While ecological connectivity may be an appropriate conservation strategy for some species, recent genetic data on the San Francisco garter snake may indicate that the next closest population to the one at Sharp Park/Mori Point is genetically different (Lim et al., in review); therefore, connecting the two populations may not be the best strategy to preserving the species beyond Sharp Park and Mori Point. The proposed actions at Sharp Park would not result in any increase in fragmentation of the San Francisco garter snake habitat and would serve to protect and enhance the current population of the species.

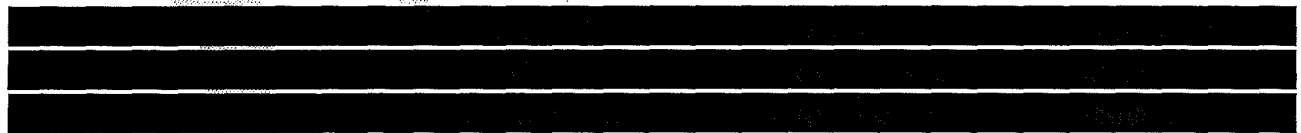
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and hypoxic conditions. Other than the case above, no specific case studies of instances where acid sulfate soils effects have occurred in Bay Area restoration sites have been identified.<sup>82</sup>

Removal of sediment in the connecting channel between Horse Stable Pond and Laguna Salada was reported to have occurred more than 10 years ago. While it was smaller in scale than what is proposed as part of the SNRAMP project, at that time, no effects that would normally be associated with acid sulfate soils, including acidification of waters and sediment surfaces, were identified. Also, at the time of the previous removal, it was reported that the bottom of Horse Stable Pond was lined with gravel. The previous sediment removal activity removed sediments that had accumulated after the seawall was constructed. Because the sediment to be removed as part of the proposed project is likely to have only accumulated since the last removal activity, it is unlikely that acid sulfate soils would exist in the sediments to be excavated. Sources of these sediments include input from the watershed during storms, as well as accumulated organic matter from dead and decaying vegetation in the watershed complex. This means that these sediments accumulated without the saline conditions that allow acid sulfate soils to form and can be eliminated as a contributor to acid sulfate soils conditions,<sup>83</sup> supporting the conclusion that the proposed sediment and vegetation removal would not likely result in the substantial disturbance of acid sulfate soils in the water column and would not, in turn, result in a significant impact to special-status species.

In summary, other reasons supporting the conclusion that it would be unlikely for hypoxic conditions to occur during the proposed sediment and emergent vegetation removal include the following: (1) when sediment was previously removed from the connecting channel approximately 10 years ago, no effects that would normally be associated with acid sulfate soils, including acidification of waters and sediment surfaces, were identified; (2) the sediment to be removed as part of the proposed project has only accumulated since the last removal activity, which would have removed all the sediment that accumulated before the current seawall was constructed, and, therefore, has accumulated without the saline conditions that allow acid sulfate soils to form; and (3) the Biological Opinion for the Pumphouse Project concluded that the project would not jeopardize the continued existence of California red-legged frog or San Francisco garter snake with the implementation of the Conservation Measures included in the Biological Opinion. These conservation measures would likely be included in the SNRAMP Biology Opinion as well, or have already been incorporated into the project mitigation measures identified in this EIR.

In order to ensure potential impacts are mitigated to a less-than-significant level, in the unlikely event that anoxic conditions materialize, pertinent aspects of Pumphouse FMND Mitigation Measure M-BIO-2b, Protection of Special-Status Species and Water Quality from Acid Sulfate Soils and Other Components, p. 124, are incorporated into Draft EIR Mitigation Measure M-BI-6a, Protection of Protected Species during Implementation of the Sharp Park Restoration Project, p. 326.



<sup>82</sup> Harry Gibbons and Robert Plotnikoff, Tetra Tech, Inc. Acid Sulfate Soils Technical Memorandum. This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>83</sup> Harry Gibbons and Robert Plotnikoff, Tetra Tech, Inc. Acid Sulfate Soils Technical Memorandum. This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

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As described in the Pumphouse Project FMND on p. 84, the toxic pathways analysis method for analyzing the potential for bioaccumulation of toxics in the environment is an approach recommended by the USEPA for determining risk to wildlife and plants. Pathways analysis is used to determine environmental conditions that would mobilize toxics and increase exposure that could have chronic or acute effects. If this analysis indicates that their presence could potentially result in substantial stress to special-status species, the mitigation measure requires SFRPD to implement remediation measures, as approved by the USFWS and CDFW, to ensure that impacts to special-status species are reduced to a less-than-significant level. Further, this mitigation measure also provides for post-construction monitoring of pH levels for a period of six weeks after the proposed sediment and vegetation removal is completed to ensure that conditions are within the established toxicity standards; if monitoring indicates that additional remediation is necessary, the mitigation measure requires such remediation to be completed.

Similar to the Pumphouse FMND Mitigation Measure M-BIO-2b, Protection of Special-Status Species and Water Quality from Acid Sulfate Soils and Other Components, p. 80, SNRMAP Mitigation Measure M-BI-6a, Protection of Protected Species during Implementation of the Sharp Park Restoration Project, p. 326, would also require soil sampling tests prior to commencement of the proposed sediment and vegetation removal, and review of the results of such soil sampling tests by resource agencies, including the USFWS, CDFW, and any other applicable responsible agencies. If soil sampling shows that acid sulfate soils could be present and/or there is the potential for anoxic conditions in the water column, the mitigation measure requires SFRPD to perform a toxic pathways analysis to determine potential risks and toxicities to species that may be affected by localized increases in acidity, hypoxia, or dissolved metals concentration and to determine the appropriate remediation measures.

While hypoxic conditions are unlikely to occur for all of the reasons provided in the above text change to the Draft EIR, in the event that they do materialize, the text on Draft EIR pp. 326 to 328 (Mitigation Measure M-BI-6a, Protection of Protected Species during Implementation of the Sharp Park Restoration Project, p. 326,) has been changed, as follows:

**M-BI-6a: Protection of Protected Species during Implementation of the Sharp Park Restoration Project**

The SFRPD shall implement the following, subject to modification during the required regulatory approval processes:

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While native nectar sources are also widespread, and SFRPD vegetation management policy includes treating invasive plants, the Recovery Plan does not recommend intensive treatments to remove the Italian thistle until native nectar sources are enhanced, with the caveat that the species should be watched to make sure it doesn't form dense monocultures.

Issue TP-2, provided on page 6.8-8 of the SNRAMP, states that "Priority shall be given to maintaining the habitat necessary for mission blue butterflies, especially the host plant (silver bush lupine)." Recommendations TP-2a and TP-2b (also provided on page 6.8-8 of the SNRAMP) state that the SFRPD shall continue to monitor the mission blue butterfly population at Twin Peaks in accordance with monitoring guidelines (as outlined in Section 7 of the SNRAMP), and augmentation of host plant populations shall occur whenever possible as part of any grassland revegetation work conducted on Twin Peaks.

The Mission blue butterfly is addressed on Draft EIR p. 285, which concludes that impacts from the proposed project would be reduced to a less-than-significant level with the implementation of Draft EIR Mitigation Measure M-BI-5, Protection of Special Status Species during Routine Maintenance, Draft EIR p. 315. The text on Draft EIR p. 319 (lines 5 to 8) has been changed for clarification, as follows:

- **Mission Blue Butterfly:** This species occurs at Twin Peaks and Sharp Park. The following measures shall apply to these Natural Areas:
  - > To avoid impacts to this species, SFRPD shall adhere to the long-term management and monitoring guidelines as described in the Recovery Action Plan for the Mission Blue Butterfly at Twin Peaks Natural Area and the corresponding Biological Opinion ~~and as that has been issued by~~ agreed to with the US Fish and Wildlife Service. These guidelines include conducting vegetation removal by manual, mechanical, and chemical treatments that would be applied consistent with the SFRPD Integrated Pest Management program, such as hand pulling, cutting and grubbing. To avoid impacts from trampling of host plants by recreational users, the SFRPD shall continue to conduct regular maintenance on the existing trail network including trimming trailside vegetation and replacing trail basematerials.

In summary, the SNRAMP would conduct management activities in accordance with the Recovery Action Plan for the Mission blue butterfly and corresponding Biological Opinion issued by the USFWS, which states the Recovery Plan would not jeopardize the continued existence of the Mission blue butterfly. [REDACTED]

[REDACTED] Further, the EIR concluded impacts to the Mission Blue would be reduced to a less-than-significant level with implementation of Mitigation Measure M-BI-5, Protection of Special Status Species During Routine Maintenance, which has been excerpted, in relevant part, in the preceding paragraph.

Further, refer to Response HZ-1, RTC p. 4-513, for a detailed discussion of the City's IPM program, Reduced Risk Pesticide List, use of the Precautionary Principle, the SFRPD's least-toxic decision-

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**The natural history of trees in San Francisco**

The primary reason why we know that it will not be possible to grow native trees in the natural areas in San Francisco is that there were few native trees in San Francisco before non-native trees were planted by European settlers in the late 19th century. San Francisco's "Urban Forest Plan" which was officially adopted by the Urban Forestry Council in 2006 and approved by the Board of Supervisors, describes the origins of San Francisco's urban forest as follows:

"No forest existed prior to the European settlement of the city and the photographs and written records from that time illustrate a lack of trees ... Towards the Pacific Ocean, one saw vast dunes of sand, moving under the constant wind. While there were oaks and willows along creeks, San Francisco's urban forest had little or nothing in the way of native tree resources. The City's urban forest arose from a brief but intense period of afforestation, which created forests on sand without tree cover."

**The horticultural reality of trees native to San Francisco**

More importantly, the reality is that even if we want to plant more native trees in San Francisco, they will not grow in most places in San Francisco because they do not tolerate San Francisco's climate and growing conditions: wind, fog, and sandy or rocky soil, etc. We know that for several reasons:

- > There are few native trees in San Francisco now. According to the US Forest Service survey of San Francisco's urban forest only two species of tree native to San Francisco were found in sufficient numbers to be counted in the 194 plots they surveyed: Coast live oak was reported as .1% (one-tenth of one percent) and California bay laurel 2.1% of the total tree population of 669,000 trees. (Nowak 2007)
- > The City of San Francisco maintains an official list of recommended species of trees for use by the Friends of the Urban Forest and the Department of Public Works. (CCSF Resolution No. 003-11-UFC)
  - o The most recent list (2011) categorizes 27 species of trees as "Species that perform well in many locations in San Francisco." There is not a single native tree in that category.
  - o Thirty-six tree species are categorized as "Species that perform well in certain locations with special considerations as noted." Only one of these 36 species is native to San Francisco, the Coast live oak and its "special considerations" are described as "uneven performer, prefers heat, wind protection, good drainage."
  - o The third category is "Species that need further evaluation." Only one (Holly leaf cherry) of the 22 species in that category is native to San Francisco.
- > Finally, where native trees have been planted by the Natural Areas Program (NAP) to placate neighbors who objected to the removal of the trees in their neighborhood parks, the trees did not survive. [REDACTED]

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**SNRAMP documents that there is no intention to plant "replacement" trees**

In fact, the SNRAMP documents that the Natural Areas Program (NAP) does not intend to plant replacement trees for the thousands of trees it proposes to destroy.

- > The majority of trees over 15 feet tall designated for removal by SNRAMP (15,000 trees) are in Sharp Park. The DEIR acknowledges that these trees will not be replaced because this area will be converted to native coastal scrub.
- > The DEIR makes no commitment to replace the trees less than 15 feet tall that will be removed but are not quantified by SNRAMP because they are not defined by SNRAMP as trees. There are probably thousands of trees less than 15 feet tall in the "natural areas" that will be removed and not replaced.
- > Because most of the natural areas are rock outcrops and sand hills that were treeless prior to the arrival of Europeans, there is little acreage within the "natural areas" that is capable of supporting trees that are native to San Francisco: "Two native forest series ... comprise approximately 17 acres, 2 percent of total vegetation [in the natural areas]" (SNRAMP, Setting, page 3-11). Obviously, it would not be physically possible to plant thousands of native trees in the small areas in which they would be able to survive.
- > SNRAMP documents the intention to convert all MA-1 and MA-2 areas, comprising 58% of the total acres of "natural areas" to grassland and scrub: "Within MA-1 and MA-2, these sites [of tree removals] would then be replanted with native shrub and grassland species." (SNRAMP, Forestry Statement, page F-3)
- > Only MA-3 areas, comprising 42% of total acreage will continue to support the urban forest: "Within MA-3, urban forest species would be planted or encouraged (see Section 5, GR-15)" (SNRAMP, Forestry Statement, page F-3). However, the Forestry Statement also documents the intention to thin the urban forest in MA-3 areas to a basal area of 60-200 trees per acre (our estimate based on the formula for basal area in SNRAMP). That represents a significant thinning of the urban forest when compared to the tree density of the eucalyptus forest on Mount Sutro documented by UCSF as 740 trees per acre.
- > The "Urban Forestry Statements" in Appendix F of the management plan contain the long-term plans for the natural areas in which trees will be destroyed. All but one of these specific plans is some variation of "conversion of some areas of forest to scrub and grasslands." The exception is Corona Heights for which the plans are "converted gradually to oak woodland." The Corona Heights natural area is 2.4 acres, making it physically impossible to plant thousands of oaks in that location.
- > "Oak woodland" is the only vegetation goal in SNRAMP which foresees the planting of native trees. Yet, the DEIR says nothing about the potential for Sudden Oak Death (SOD) to decimate the oak population in the San Francisco Bay Area. Ironically, the DEIR acknowledges that one of the comments on the Initial Study raised this question. Yet,

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### Conclusion

The final EIR must correct the following errors of FACT in the DEIR:

- > The final EIR cannot claim that all non-native trees that will be destroyed are dead, dying, diseased, or hazardous because they are NOT and the claim contradicts the SNRAMP. [McAllister-3-02]
- In the Interior Greenbelt many healthy, young trees were destroyed to develop a trail under the auspices of the Natural Areas Program. So claims that only dead, dying, diseased trees would be destroyed for implementation of the management plan are totally untrue. [Rotter-E-1-02]
- And we know that the claim that every destroyed tree will be replaced by a native tree is not possible because we've seen what happened on Tank Hill. [Rotter-E-1-03]

### Response BI-33

These comments question the amount of trees that would be replaced when nonnative trees are removed; issues related to sudden oak death; whether the restoration and replacement efforts are likely to be successful; the size and location of trees to be replaced; whether all of the trees proposed for removal are dead, dying, or diseased, insect-infested, storm-damaged, or hazardous, or whose growth is suppressed by overcrowding; and aesthetic impacts related to the removal of trees. A summary of urban forest acres to be converted to other habitats is also requested.

### *Removal of Trees (Including Aesthetic Impacts)*

With respect to trees that would be removed, would remain, and/or would be replaced, Draft EIR Table 5 (provided on p. 114) indicates that of the 117,433 invasive trees located within the Natural Areas (including Sharp Park), 18,448 trees (or 16 percent) would be removed and 98,985 trees (or 84 percent) would remain. As stated on SNRAMP p. 1-3, one of the objectives of the Plan is to identify and prioritize restoration and management actions designed to promote the functioning of San Francisco's native ecosystem, including the maintenance of native biodiversity.

One of the commenters indicates that "the SNRAMP documents that the NAP does not intend to plant replacement trees for the thousands of trees it proposes to destroy." On the contrary, as stated

<sup>130</sup>Lisa Wayne, Open Space Manger, "Tree Removal and Replacement," memorandum to Jessica Range, Environmental Planner, San Francisco Planning Department, November 27, 2012.



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Integrated Pest Management and NAP staff shall work with the golf course operations staff to reduce the use of chemicals to the bare minimum, recognizing that alternative management methods may be more environmentally appropriate for this location (refer specifically to MA-1d to MA-1f of the SNRAMP), the Biological Opinion for the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project (on p. 8) states that "only organic fertilizers are used at Sharp Park and only on the greens, tees and surrounds." Consistent with the Biological Opinion, and as indicated in Response BI-10, RTC p. 4-373, nitrogen- and phosphorous-based fertilizers are not currently used at Sharp Park, and have not been used there for at least five years.

#### 4.D.13 Hazards and Hazardous Materials [HZ]

The comments and corresponding responses in this section cover topics in Draft EIR Chapter V, Section V.I, Hazards and Hazardous Materials. [REDACTED]

##### Comment HZ-1 Use of Herbicides/Pesticides by the Natural Areas Program

The response to Comment HZ-1 addresses all or part of the following individual comments:

CFDG-1-09	DogPACSF-1-02	DogPACSF-1-12
MPIC-2-23	MPIC-2-24	MPIC-2-25
MPIC-2-26	SFDOG-2-13	SFFA-3-07
SFFA-3-08	SFFA-3-09	SFFA-3-10
SFFA-3-11	WTPCC-1-04	WTPCC-1-05
WTPCC-1-06	Bartolotta-1-11	Bose-1-03
Bose-1-12	Bose-1-13	Bowman-1-03
Bowman-1-11	Bowman-2-10	Brown-1-09
Butler-1-03	Hess-1-06	Hull-1-02
Johns-1-03	Johns-1-07	Kessler-1-04
Kessler-1-05	Kessler-1-06	Kessler-1-07
Kessler-1-08	Kessler-2-04	Kessler-2-05
Kessler-2-06	Kessler-2-07	Kessler-2-08
Mattingly-1-02	McAllister-3-04	McAllister-3-05
McAllister-3-06	McAllister-3-07	Milstein-1-01
Otto-1-01	Otto-1-02	Otto-1-03
Pittin-1-02	Reichardt-1-03	Risk-1-05
Schlund-1-02	Thomas-1-01	Thomas-1-05
Valente-1-02	Valente-1-03	Vitulano-1-05
PH-Rotter-P-03		

- This EIR does not adequately consider the impacts of the use of herbicides, especially Garlon, on dogs who walk either within or adjacent to natural areas (this applies whether dogs are on- or off-leash). Dogs are particularly susceptible to problems from Garlon. This distinction



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encroaching vegetation would reverse the effects of a trend that would eventually result in the conversion of the remaining open water to vegetated wetland and ultimately conversion of those wetlands to upland. The project proposes to convert vegetated wetland habitat back to open water, resulting in a permanent loss of vegetated wetland. This conversion of wetland to open water habitat would not result in a loss of waters of the US and would be consistent with the historical conditions of Laguna Salada. Freshwater marsh habitat at Laguna Salada is currently dominated by dense stands of cattails (*Typha angustifolia*) and bulrush (*Scirpus* sp.). These species tend to form monostands and prevent the growth of other species. By converting these wetlands to open water, not only will a higher quality habitat be created for protected species, but the biodiversity of native wetland vegetation along the periphery of the open water will increase. This condition would be more consistent with historical conditions of the wetland complex...

The Pumphouse Project, while separate and independent from the proposed restoration activities at Sharp Park under the SNRAMP, includes the removal of 435 cubic yards of sediment and emergent vegetation within Horse Stable Pond and the connecting channel that links Horse Stable Pond with Laguna Salada. The purpose of the sediment removal proposed under the Pumphouse Project is to improve breeding habitat for the California red-legged frog and reduce the potential malfunction of the pumps caused either by sediment entering the pump system and/or by preventing water from entering the pump intake.

The proposed activities under the SNRAMP are articulated on Draft EIR pp. 144 to 146. These activities also include dredging excess sediments and accumulated organic matter, including stands of encroaching tules. Under both projects, the SFRPD would continue to use the pumps to manage water levels in Horse Stable Pond to maintain California red-legged frog habitat. Neither the Pumphouse Project nor the SNRAMP project proposes to modify the operations of the existing pumps at Horse Stable Pond. As stated on p.7 of the Appeal Response for the Pumphouse Preliminary MND<sup>161</sup> : [REDACTED]

The predominant factors that affect the rate, frequency and duration of pumping are: 1) pump infrastructure and protocols for pump operation; and 2) precipitation and water inflows.<sup>18</sup> The pump infrastructure and protocols would not be adjusted, modified, or altered as part of the proposed project. SFRPD will continue to adjust pump levels throughout the breeding season to protect Frog egg masses and reduce flood potential. The maximum pumping rate (amount/time) is determined by the pumping capacity. Specifically, the small pump can remove water up to a rate of 1,500 gallons per minutes (gpm) and the larger pump up to 10,000 gpm.<sup>19</sup> No changes to the pump infrastructure are proposed as part of the project, therefore the water removal rate would not change with project implementation. Precipitation and inflows are outside the control of SFRPD. The primary factor that drives precipitation and inflows is regional weather conditions. A secondary factor, which is subject to minimal short-term change, is local land use patterns, including the extent of impervious surfaces. The amount of water that is removed over a unit of time via operation of the pumps depends on the amount and timing of precipitation and inflows as

<sup>161</sup> Appeal of Preliminary Mitigated Negative Declaration for the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project, Planning Department Case No. 2012.1427E, Prepared by Kei Zushi, San Francisco Planning Department, Prepared for the San Francisco Planning Commission, January 9, 2014.

PRELIMINARY/ADMINISTRATIVE DRAFT - SUBJECT TO CHANGE.

REVIEW HAS NOT YET BEEN COMPLETED TO VERIFY ACCURACY OF CONTENT.

As discussed in Response HZ-1, RTC p. 4-513, Draft EIR p. 392, lines 26 to 29, has been changed as follows:

Further, the Natural Areas Program would use pesticides that are the least toxic option that effectively controls the weeds. Because the application of herbicides are applied following IPM guidance, as well as the fact that staff remain onsite until the application has dried and it is safe to re-enter the area, dogs that are walked on leash as required by SFRPD rules would not risk an unsafe level of exposure to herbicides.

~~Therefore, For the reasons stated above,~~ impacts from applying herbicides as part of the IPM for programmatic projects under the SNRAMP would be *less than significant*.

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 396, line 28, to p. 397, line 1, has been changed as follows:

Also, implementing recommendation GR-13a would reduce the presence of vegetation with high fire hazard ratings, such as dense and aging French broom and eucalyptus, adjacent to homes and other structures. Recommendation GR-13a further states that, when possible, minimum fire reduction zones of 30 feet should be maintained. Also, no brush piles shall be created within fire reduction zones. Trees determined to be hazardous to adjacent homes by the SFRPD Arborist should be removed. Tree and invasive weed removal ~~would~~ could reduce the amount of available fuel for fires. More important, timber thinning would increase the space between trees, reducing the ability of a fire to rapidly spread in some instances.

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 397, line 7, has been changed as follows:

As Sharp Park and a few Natural Areas within San Francisco are classified as moderate to high fire hazard zones, tree and invasive weed removal as part of the programmatic projects would reduce the available fuel loads and ~~would~~ could reduce the potential of fire hazards within these areas.

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 397, lines 18 to 21, has been changed as follows:

Similar to the impacts described under the programmatic projects, routine maintenance activities that remove fuel loads ~~would~~ could reduce the presence of vegetation with high fire hazard ratings, such as dense and aging French broom and eucalyptus. Therefore, tree and invasive weed removal ~~would~~ could reduce the amount of available fuel for fires.

## 5.A.11 Section V.J: Agriculture and Forest Resources

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 410, line 15, has been changed as follows:

Among the objectives of the recommended actions at Mount Sutro are replacing highly flammable eucalyptus trees with more fire resistant species, increasing age diversity of trees, and improving the health and safety of the remaining trees.

As discussed in Response LU-4, RTC p. 4-213, Draft EIR p. 410, line 20, has been changed as follows:

Further, San Francisco landmark, significant, and street trees are protected by the San Francisco Urban Forestry Ordinance, which requires the replacement of removed trees on a one-to-one basis.



PRELIMINARY/ADMINISTRATIVE DRAFT - SUBJECT TO CHANGE.  
REVIEW HAS NOT YET BEEN COMPLETED TO VERIFY ACCURACY OF CONTENT.

## 5.A.12 Chapter VI: Other CEQA Issues

As discussed in Response G-15, RTC p. 4-64, Draft EIR p. 444, line 6, has been changed as follows:

Fort Funston, located approximately 8,000 feet (about 1.5 miles) from the existing Lake Merced DPA has approximately 200-160 acres open for off-leash dog use. As discussed in Response NO-1, RTC p. 4-275, Draft EIR p. 445, line 14, has been changed as follows:

Tree removal at Mount Davidson would be to the west and south of Juanita Way and would not increase the noise exposure of the residences along Juanita Way from Portola Drive. The existing noise levels within the interior of the park, where most tree removal activities would be conducted, are generally below 55 L<sub>dn</sub>. According to the San Francisco General Plan's Land Use Compatibility Chart, noise levels below 70 L<sub>dn</sub> are acceptable for parks and playgrounds. Alterations to the forest canopy would not be sufficient to substantially increase permanent ambient noise levels within Mount Davidson, and would not result in unacceptable noise levels for park users. Therefore, removal of the trees at Mount Davidson would not expose the nearby residences noise sensitive receptors to new, long-term noise sources.

As discussed in Response GG-1, RTC p. 4-290, Draft EIR pp. 456 to 457, starting with the last paragraph, have been changed as follows:

As trees die and decay, they release much of the stored carbon to the atmosphere. Thus, carbon storage is an indication of the amount of carbon that can be lost if trees are allowed to die and decompose. Of all the species in San Francisco, eucalyptus trees store and sequester the most carbon (approximately 24.4 percent of the total carbon stored and 16.3 percent of all sequestered carbon). Trees removed in the Natural Areas in San Francisco would be replaced at a one-to-one ratio, although not necessarily in the same location. Eucalyptus trees would be replaced with native trees. Although the net effect on carbon sequestration capacity is unknown for the proposed replacement of mature eucalyptus with native saplings, replacing dying trees with healthy trees typically enhances the carbon sequestration process. In fact, one of the urban forest management strategies to help improve air quality is to increase the number of healthy trees. Further, among mitigation measures recommended by the Intergovernmental Panel on Climate Change is forest management, and particularly selection of tree species that sequester the most carbon (IPCC 2007). As such, tree replacement is expected to result in a net increase in the amount of carbon sequestered within the Natural Areas. The total number of trees would not change within the Natural Areas of San Francisco and the amount of carbon sequestered would increase in the long term from replacing dead, dying, or diseased trees. According to the California Registry, dead trees must be replaced within one year of removal. This timeframe allows for planting to occur at the appropriate time of the year. Therefore, the project would not conflict with San Francisco's Greenhouse Gas Ordinance. Further, the project would not conflict with California's goal of reducing GHG emissions set forth by the timetable established in AB32. Therefore, the proposed project would result in less than significant individual and cumulative impacts from GHG emissions and the associated carbon sequestration impacts. An analysis drawing from a number of

THIS DRAFT HAS BEEN PROVIDED IN RESPONSE TO A  
PUBLIC RECORDS REQUEST (SUBMITTED 4/27/16 AND 4/29/16) FROM TOM BORDEN.



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** August 25, 2016  
**TO:** SOTF – Victor Young, Administrator  
**FROM:** Christine L. Silva, Manager of Commission Affairs  
**RE:** File No. 16071

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

On Friday, April 29, 2016, the Planning Department received a request from Tom Borden requesting "a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents."

On Monday, May 2, 2016, staff invoked an extension to the request due to the compilation of electronic information and proceeded to collect responsive documents from project planners working on the subject project. Files were saved to a designated folder on the Department's internal shared drive.

On Tuesday, May 3, 2016, the responsive records were placed onto a CD and an email was sent to the requestor for payment and pickup.

Below is a list of all records/filenames that were produced to the requestor on the CD:

- 3a. AdminDraftRTC-11-2015-for Tom Borden request.pdf
- 3b. AttA\_AdminDraftRTC-11-2015-for Tom Borden request.pdf
- 3c. AttB\_AdminDraftRTC-11-2015-for Tom Borden request.pdf
- 3d. AttC\_AdminDraftRTC-11-2015-for Tom Borden request.pdf
- Memo-for Tom Borden request.pdf
- Request.pdf

All relevant documents have been provided to the requestor.

At this time, the Department is aware that it erroneously failed to inform the requestor in the May 3<sup>rd</sup> email that portions of the produced records were partially exempt from disclosure pursuant to Administrative Code Section 67.24. This information was clarified in a later email from staff on Friday, August 12, 2016.

**Attachments:**

Email – April 29, 2016 email from Tom Borden  
Email – May 2, 2016 email to Tom Borden  
Email – May 3, 2016 email to Tom Borden  
Email – August 12, 2016 email to Tom Borden

**From:** Tom Borden  
**To:** Silva, Christine (CPC)  
**Subject:** Sunshine Request for SNRAMP EIR  
**Date:** Friday, April 29, 2016 4:09:40 PM

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Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

I would be happy to receive it via FTP or on a mailed CD or DVD. If mailed, please send to my work address below.

Thank you,

Tom

--

Tom Borden  
2353 3rd. Street  
San Francisco, CA 94107  
tel: 415-252-5902  
fax: 415-252-1624

**From:** [Silva, Christine \(CPC\)](#)  
**To:** [Tom Borden](#)  
**Cc:** [Hue, Melinda \(CPC\)](#)  
**Subject:** RE: Sunshine Request for SNRAMP EIR  
**Date:** Monday, May 02, 2016 2:17:34 PM

---

Mr. Borden -

We are searching for and preparing the responsive records. Due to the compilation of electronic information, we are invoking an extension of up to 14 days (CA Govt Code Section 6253), though we anticipate having the records ready within the next day or two. We will contact you as soon as they're ready.

Feel free to contact me directly with any questions regarding the coordination of this request.

Christine Lamorena Silva, AICP  
Manager of Commission Affairs

-----Original Message-----

From: Tom Borden [mailto:[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)]  
Sent: Friday, April 29, 2016 4:10 PM  
To: Silva, Christine (CPC)  
Subject: Sunshine Request for SNRAMP EIR

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

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Thank you,

Tom

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Tom Borden  
2353 3rd. Street  
San Francisco, CA 94107  
tel: 415-252-5902  
fax: 415-252-1624

**From:** [Silva, Christine \(CPC\)](#)  
**To:** [tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)  
**Cc:** [Hue, Melinda \(CPC\)](#)  
**Subject:** RE: RE: Sunshine Request for SNRAMP EIR  
**Date:** Tuesday, May 03, 2016 11:06:17 AM

---

Mr. Borden -

The responsive records were too large to send via email and instead placed on a CD, which is ready for payment (\$0.25) and pick-up. Because we require payment, we cannot mail this CD to you.

Please check in with our receptionist upon arrival. Our office is located at 1650 Mission Street, Suite 400 and we are open between 8 am – 5 pm.

Thank you,

**Christine Lamorena Silva, AICP**  
Manager of Commission Affairs

**From:** Tom Borden [<mailto:intri9@intrinsicdevices.com>]  
**Sent:** Monday, May 02, 2016 3:17 PM  
**To:** Silva, Christine (CPC); [tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)  
**Cc:** Hue, Melinda (CPC)  
**Subject:** RE: RE: Sunshine Request for SNRAMP EIR

Christine,

If it would be easier to just load it on a CD or DVD, that would be fine. My postal address is at the end of this email string.

Tom

----- Original Message ----- On 5/2/2016 2:17 PM Silva, Christine (CPC) wrote:

Mr. Borden -

We are searching for and preparing the responsive records. Due to the compilation of electronic information, we are invoking an extension of up to 14 days (CA Govt Code Section 6253), though we anticipate having the records ready within the next day or two. We will contact you as soon as they're ready.

Feel free to contact me directly with any questions regarding the coordination of this request.



Christine Lamorena Silva, AICP

Manager of Commission Affairs

-----Original Message-----

From: Tom Borden [<mailto:tom@intrinsicdevices.com>]

Sent: Friday, April 29, 2016 4:10 PM

To: Silva, Christine (CPC)

Subject: Sunshine Request for SNRAMP EIR

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section

67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

I would be happy to receive it via FTP or on a mailed CD or DVD. If mailed, please send to my work address below.

Thank you,

Tom

--

Tom Borden

2353 3rd. Street

San Francisco, CA 94107

tel: 415-252-5902

fax: 415-252-1624

**From:** [Hue, Melinda \(CPC\)](#)  
**To:** [Tom Borden](#)  
**Cc:** [Silva, Christine \(CPC\)](#); [Range, Jessica \(CPC\)](#)  
**Subject:** RE: Improper Redactions of SNRAMP EIR RTC  
**Date:** Friday, August 12, 2016 3:12:00 PM

---

Hi Tom,

We provided the justification of our redactions in my August 9 email below:

“The copy of the SNRAMP RTC that was provided to you was a preliminary draft that is currently being reviewed by the Planning Department and the Recreation and Parks Department. Because it is a preliminary draft and it is not normally kept on file (since a final draft will ultimately be published) the recommendations of the author in the preliminary draft is exempt from disclosure per Section 67.24 of the Sunshine Ordinance. The items in the preliminary draft SNRAMP RTC that were considered recommendations of the author were therefore redacted in accordance with Section 67.24. Please consider the above reasoning as the Planning Department’s justification for withholding in accordance with Section 67.27 of the Sunshine Ordinance.”

The author of the SNRAMP RTC is the consultant who prepared the document. The items that were redacted were opinions and suggestions from the consultant for consideration by Planning, RPD, and legal review by the City Attorney. These recommendations were embedded in the body text of the document using brackets, which makes review of the document easier as the recommended text is bigger, easier to identify and to read when printed.

In regards to the your requests, I am only aware of your August 3 and 5 emails. I did not see a question about the redactions in your August 3 emails, but saw the questions in the August 5 emails. We provided a response after the weekend on August 9.

Thanks,

Melinda

**Melinda Hue, AICP, LEED AP  
Environmental Planner**

Planning Department | City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-575-9041 | Fax: 415-558-6409  
Email: [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

---

**From:** Tom Borden [mailto:[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)]  
**Sent:** Tuesday, August 09, 2016 11:23 AM  
**To:** Hue, Melinda (CPC); Silva, Christine (CPC); Range, Jessica (CPC)  
**Cc:** Jones, Sarah (CPC)  
**Subject:** Improper Redactions of SNRAMP EIR RTC

Melinda,

Your department made redactions to the Response to Comments for the SNRAMP EIR that was provided to me under San Francisco's Sunshine Ordinance. You failed to note the justification for withholding information as required by the ordinance.

Sec. 67.26. Withholding Kept To A Minimum. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. **Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article.**

I submitted six requests for the redacted information and never received a reply from Planning until your response this morning. The dates of those requests and who they were sent to are:

April 29 [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) original request for EIR RTC  
July 7 [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) request for redactions  
July 19 [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) repeat request for redactions  
August 1 [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) & [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) repeat request for redactions  
August 3 [sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org), [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org), [jessica.range@sfgov.org](mailto:jessica.range@sfgov.org) request for redactions  
August 5 [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org) & [Christine.L.Silva@sfgov.org](mailto:Christine.L.Silva@sfgov.org) repeat request for redactions

Given your response below, it is clear that Planning did not want to honor my information request and purposefully ignored one inquiry after another. You hoped I would give up.

You cite section 67.24 as justification for the redactions, claiming they are all "recommendations of the author". First of all, who is the "author"? I cannot find a name on the documents. I assume the recommendations of the author that would be held exempt from disclosure would be expressions of that person's personal opinions. If this document is the product of an outside consulting company we paid for, how would anything qualify as exempt? Aren't any explanatory comments part of the contract deliverables?

Some of the redactions are clearly made to the body text of the document. They are not "recommendations of the author". These obviously improper redactions are highlighted in the list below.

*page 4-25 top*

*page 4-34 bottom*

*page 4-169 top*

page 4-226 top clearly part of the document and not an author recommendation, cuts off end of sentence

page 4-263 bottom

page 4-306 bottom clearly part of the document and not an author recommendation, evidenced by formatting

page 4-343 top

page 4-346 top clearly part of the document and not an author recommendation, evidenced

by formatting  
page 4-357 bottom  
page 4-358 top  
Page 4-422 bottom clearly part of the document and not an author recommendation,  
evidenced by formatting  
Page 4-438 bottom  
page 4-439 top  
page 4-443 mid.  
page 4-487 clearly part of the document and not an author recommendation, evidenced by  
formatting  
page 4-582 mid page  
page 5-33 bottom  
page 5-34 top

I hope your department will reconsider your position on this. It is hard to imagine  
withholding this information is in the public good, or that there is any legal requirement  
forcing you to withhold the information.

Tom

Tom Borden  
tel: 415-252-5902

On 8/9/2016 9:23 AM, Hue, Melinda (CPC) wrote:

Hi Tom,

The copy of the SNRAMP RTC that was provided to you was a preliminary draft that is  
currently being reviewed by the Planning Department and the Recreation and Parks  
Department. Because it is a preliminary draft and it is not normally kept on file (since a  
final draft will ultimately be published) the recommendations of the author in the  
preliminary draft is exempt from disclosure per Section 67.24 of the Sunshine  
Ordinance. The items in the preliminary draft SNRAMP RTC that were considered  
recommendations of the author were therefore redacted in accordance with Section  
67.24. Please consider the above reasoning as the Planning Department's justification  
for withholding in accordance with Section 67.27 of the Sunshine Ordinance.

Thanks,

Melinda

**Melinda Hue, AICP, LEED AP  
Environmental Planner**

Planning Department | City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-575-9041 | Fax: 415-558-6409  
Email: [melinda.hue@sfgov.org](mailto:melinda.hue@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

---

**From:** Tom Borden [<mailto:tom@intrinsicdevices.com>]  
**Sent:** Friday, August 05, 2016 12:24 PM

**To:** Hue, Melinda (CPC)  
**Cc:** Silva, Christine (CPC)  
**Subject:** Sunshine Request for Redactions of SNRAMP EIR RTC

Melinda,

Thanks for stepping in. I don't know what happened with Christine. I've sent multiple emails to her and to the [CPC-RecordRequest@sfgov.org](mailto:CPC-RecordRequest@sfgov.org) address. No response.

The copy of the SNRAMP EIR RTC Christine provided to me has blacked out text in multiple locations. See me email below. It is not normal editing for a document of this type. I tried to send you a copy of what she provided, but the file is too large.

Thanks for any help.

Tom Borden  
415 252 5902 W  
415 297 6084 cell

----- Forwarded Message -----

**Subject:** Sunshine Request for Redactions of SNRAMP EIR  
**Date:** Thu, 7 Jul 2016 15:14:11 -0700  
**From:** Tom Borden <[tom@intrinsicdevices.com](mailto:tom@intrinsicdevices.com)>  
**To:** Christine.L.Silva@[sfgov.org](mailto:sfgov.org)  
**CC:** Dee Seligman <[deese191@gmail.com](mailto:deese191@gmail.com)>

Christine,

I sent you the Sunshine request below some time ago. Thank you for producing the EIR RTC.

I am troubled by what appear to be redactions in the document. These appear as masked over text at the following locations in the document you provided titled, "3a. AdminDraftRTC-11-2015-for Tom Borden request".

*page 4-25 top*

*page 4-34 bottom*

*page 4-169 top*

page 4-226 top clearly part of the document and not an author comment

**page 4-263 bottom**

page 4-306 bottom

**page 4-343 top**

**page 4-346 top**

**page 4-357 bottom**

**page 4-358 top**

**Page 4-422 bottom**

**Page 4-438 bottom**  
**page 4-439 top**  
**page 4-443 mid.**  
**page 4-487**  
page 4-582 mid page  
page 5-33 bottom  
page 5-34 top

Section 67.26 of the Sunshine ordinance requires that the justification for each redaction be noted on the document. In addition, Section 67.27 lays out additional requirements for documenting the justification.

Would you please provide copies of those pages showing the redacted text or document the nature of the redacted information and the justification for withholding it as required by the ordinance? Also, if there are redactions in the other documents that I have not found yet, please provide the same information for those.

In terms of the timing of your response, please treat this as an Immediate Sunshine Request.

Thank you,

Tom



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

[www.avast.com](http://www.avast.com)



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

[www.avast.com](http://www.avast.com)

## Young, Victor

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**From:** SOTF, (BOS)  
**Sent:** Friday, August 19, 2016 3:08 PM  
**To:** Rahaim, John (CPC); Ionin, Jonas (CPC); Silva, Christine (CPC)  
**Cc:** Colla, Nicholas (CAT); 'Tom Borden'; Calvillo, Angela (BOS)  
**Subject:** SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint Nos. 16071  
**Attachments:** SOTF - Complaint Procedure 2014-11-05.pdf; SOTF Complaint 16071.pdf

Good Afternoon,

You have been named as a Respondent in the attached complaint filed with the Sunshine Ordinance Task Force. In an attempt to mediate and avoid a hearing before the Sunshine Ordinance Task Force, please respond to the following complaint/request within five business days.

**The Respondent is required to submit a written response to the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice.** This is your opportunity to provide a full explanation to allow the Task Force to be fully informed in considering your response prior its meeting.

Please include the following information in your response if applicable:

1. List all relevant records with descriptions that have been provided pursuant to the Complainant request.
2. Date the relevant records were provided to the Complainant.
3. Description of the method used, along with any relevant search terms used, to search for the relevant records.
4. Statement/declaration that all relevant documents have been provided, does not exist, or has been excluded.
5. Copy of the original request for records (if applicable).

Please refer to the File Number when submitting any new information and/or supporting documents pertaining to this complaint.

The Complainant alleges:

File No. 16071: Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.

*Complaint Attached.*

**Both parties (Complainant and Respondent) will be contacted once a hearing date is determined.**

**Complainants:** Your attendance is required at this meeting/hearing.

**Respondents/Departments:** Pursuant to Section 67.21 (e) of the Ordinance, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.



Pursuant to Section 67.21(b), If the custodian of public records believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of the Sunshine Ordinance.

Thank you.

**Victor Young**  
**Administrator**

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place, City Hall., Room 244

San Francisco CA 94102

phone 415-554-7724 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org



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*Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

## Young, Victor

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**From:** SOTF, (BOS)  
**Sent:** Monday, September 19, 2016 9:43 AM  
**To:** 'mpetrelis@aol.com'; Wiener, Scott; Peskin, Aaron (BOS); 'Ray'; Farrell, Mark (BOS); 'Tom Borden'; Rahaim, John (CPC); Ionin, Jonas (CPC); Silva, Christine (CPC)  
**Cc:** Colla, Nicholas (CAT); Ng, Wilson (BOS); Taylor, Adam (BOS); Cretan, Jeff (BOS); Power, Andres; Hepner, Lee (BOS); Karunaratne, Kanishka (BOS); Kelly, Margaux (BOS); Montejano, Jess (BOS); Calvillo, Angela (BOS)  
**Subject:** SOTF - Notice of Hearing- Sunshine Ordinance Task Force - October 5, 2016  
**Attachments:** SOTF - Complaint Procedure 2014-11-05.pdf

Good Morning,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: October 5, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

### **Complaints -**

**File No. 16063:** Complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner and inappropriately invoking an extension of time to respond.

**File No. 16067:** Complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

**File No. 16076:** Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.34, by willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act, as evidenced in the failure to respond to a Sunshine Ordinance Task Force (SOTF) complaint, failure to attend SOTF hearings, and failure to comply with SOTF's Order of Determination in regards to SOTF File No. 15071.

**SPECIAL ORDER – The hearings on File No. 16071 will not begin earlier than 6:00 p.m.**

**File No. 16071:** Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to

respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.

**Documentation (evidence supporting/disputing complaint)**

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

For inclusion in the agenda packet, supplemental/supporting documents must be received by **5:00 pm, September 28, 2016.**

**Victor Young**

**Administrator**


Sunshine Ordinance Task Force

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