

Case File Number PLN21243-A01

April 10, 2024

Location:	13193 Skyline (also known as 13175 Skyline) Boulevard
Assessor's Parcel Number:	037A314204800
Proposal:	Construction of a two-story, 5,537 square-foot, single-family dwelling with an attached two-car garage on a vacant, 103,852 square-foot, downslope parcel within 100' of an existing creek.
Applicant:	Johnny Hoang / (510) 520-8300
Owner:	Lijun Chen
Appellant:	Ifeoma Adams
Case File Number:	PLN21243-A01
Original Case File Number:	PLN21243 and CP23077
Planning Permits Required:	Regular Design Review for a new dwelling unit; a Creek Protection Permit Category III, Section 13.16 of the City of Oakland Creek Protection Ordinance, related to construction within 100' of an existing creek and consideration of a downgrade to Category II due to the project's unlikely significant adverse impact to the creek, based on the project design, distance from the creek and creek protection measures.
General Plan:	Hillside Residential
Zoning:	RH-1 Zone
Environmental Determination:	Exempt per the state CEQA Guidelines Section 15303 - New Construction of Small Structures; Section 15333 – Small Habitat Restoration Project and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning
Historic Status:	Not a historic property
City Council District:	6
Status:	The Zoning Decision Letter was mailed on November 17, 2023, and the Project was appealed on November 27, 2023.
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's decision.
Finality of Decision:	The decision of the Residential Appeals Committee is final.
For Further Information:	Contact case Planner Heather Klein at (510) 238-3659 or hklein@oaklandca.gov

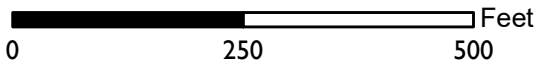
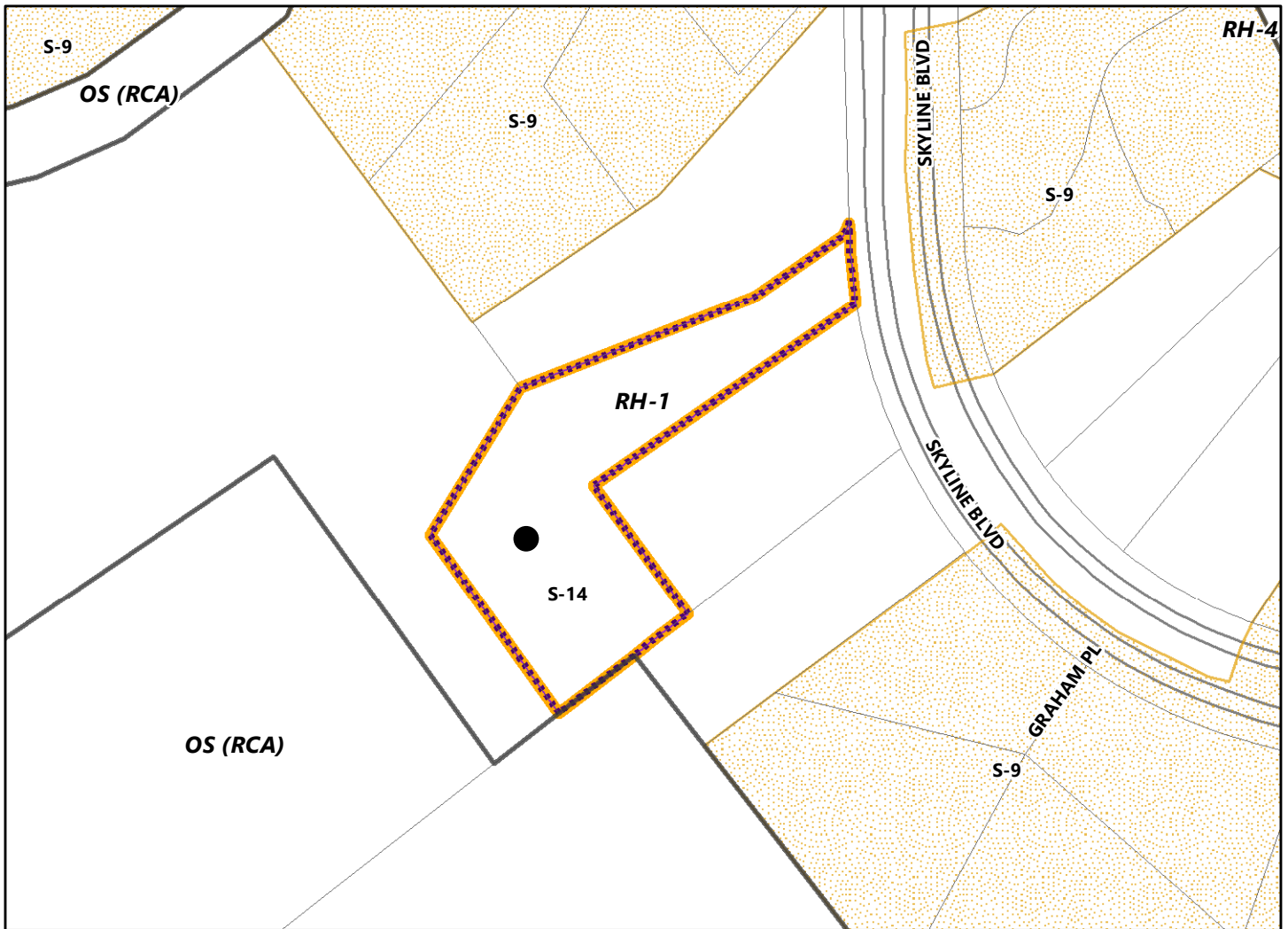
SUMMARY

The Project Applicant submitted a Planning application on December 15, 2021, to construct a two-story, 5,537 square-foot, single-family dwelling and attached garage on a vacant, sloping, creekside parcel (*Attachment A*). The Project was publicly noticed for comment on August 25, 2023, and public comment ended on September 5, 2023.

During this period, staff received public comment from Appellant Ifeoma Adams, an adjoining property owner, in opposition to the proposal. The public comment letter stated that the proposal should not be approved because it allegedly violated the access easement rights of the adjoining property owner across the Project site from the adjoining neighbor's property to Skyline Boulevard (*Attachment B*). The adjoining property owner provided an easement agreement recorded in 2004 in support of her claims.

As is typical practice, staff re-reviewed the submitted survey for any indication of an easement and requested that the Applicant provide a title report. These documents gave no indication of the described easement over the Project site. On November 17, 2023, the Zoning Manager issued an approval of the Project (*Attachment C*) based on adherence to the required Regular Design Review Criteria.

CITY OF OAKLAND PLANNING COMMISSION



 Site Boundary

Case File: PLN21243-A01
Applicant: Jon Liu
Address: 13193 / 13175 Skyline
Base Zone: RH-1
Combining Zone: S-14

The 10-day appeal period ended on November 27, 2023, at 4:00 PM, and a timely Appeal was filed of the Zoning Manager’s decision by Ifeoma Adams (Appellant) (***Attachment D***). In general, the basis of the Appeal is that a 40’ wide emergency vehicle access easement continues to exist across the Project site in favor of the Appellant. The Appellant further alleges that the location of the proposed Project’s building would not allow an access road to Skyline Boulevard to be constructed within the 40’ easement. According to the Appeal, the easement was formed when two property owners (referred in shorthand in this report as Covington and Mbanugo) entered into an easement agreement in 2002 and recorded the agreement in 2004, and the easement was not amended or abandoned in 2014 when a parcel map was approved to split one of those properties. That lot split resulted in the creation of the Project site as it currently exists.¹

The Appellant alleges the Zoning Manager abused his discretion and made a decision not based on substantial evidence, because the City did not recognize or consider the easement or the Appellant’s title report in approving the Project. As such, Appellant holds that the Project should be denied. The Appellant’s specific arguments are discussed and responded to in detail in the *Basis of the Appeals* section of the report below, along with City staff’s response to each argument.

Per Section 17.132.020 of the City of Oakland Planning Code, the Appellant must state where an error or abuse of discretion was made by the Zoning Manager or where the Zoning Manager’s decision is not supported by evidence in the record. As detailed in this report, the Appellant has not demonstrated an error or abuse in discretion by the Zoning Manager as staff conducted thorough due diligence and found that the easement language was not on any document pertaining to the Project site, the validation of disputed easements is not the City’s role to perform, and the consideration of an easement is not a Regular Design Review finding. Therefore, staff recommends the Residential Appeals Committee of the Planning Commission deny the Appeal, thereby, upholding the Zoning Manager’s decision based on the Findings and Conditions of Approval.

PROPERTY AND SURROUNDING AREA DESCRIPTION

The Project site is a 103,852 square-foot, downslope parcel located at 13193 (or 13175) Skyline Boulevard. The reason for the inconsistent address is due to the lot split which was approved in 2014. The parcel is vacant and is considered a creekside parcel.

The surrounding area to the north and east is all residential parcels with single-family homes. To the west and south are either vacant parcels or Leona Canyon Regional Open Space owned by East Bay Regional Park.

In addition to the Project site, this staff report refers to the following properties relevant to discussion using the following names:

- The Appellant’s Property is used to refer to the 13.66-acre property with assessor parcel number 037A314100115. The Appellant Property is immediately to the west of the Project site.
- The Covington Property is used to refer to the 4.3-acre property that upon recordation of Parcel

¹ The easement issue was also the basis of an appeal of the Tree Removal Permit for the Project that was filed on October 18, 2023, and was heard before the Oakland City Council on November 3, 2023. The Council took public testimony and debated. A motion was presented but not seconded and no other Councilmember proposed a subsequent motion. The item was “tabled”, and they did not return to it. The Tree Protection Ordinance requires a decision within 18 working days of an appeal being filed. Since no action was taken and a new hearing date was not set within this timeframe, the decision from staff was deemed affirmed and the tree permit appeal denied.

Map 9998 in 2015 was subdivided into two parcels. Parcel 2 of the Covington Property is now the Project site.

- The Covington Remainder is the remaining 1.94-acre portion of the Covington Property shown as Parcel 1 on Parcel Map 9998. It is the parcel immediately north of the Project site along Skyline Boulevard.

PROJECT DESCRIPTION

The Project is to construct a two-story, 5,537 square-foot, single-family dwelling with an attached two-car garage on a vacant, downslope parcel (*Attachment A*). The lower floor would be 1,767 square-feet, and the upper story would be 3,160 square-feet. The house would be approximately 100' away from a tributary of Rifle Range Creek and would include removal of several trees approved by the Tree Division and upheld after the Oakland City Council failed to act in a timely manner upon appeal. The house has a contemporary design with vertical siding, aluminum facias, large glass windows, and a flat roof.

GENERAL PLAN ANALYSIS

The subject site is in the *Hillside Residential* land use classification per the Land Use and Transportation Element (LUTE) of the City of Oakland's General Plan. This classification is intended to encourage the development of single-family homes, designed for hillsides. The project meets the following LUTE policies:

Objective N3 of the LUTE states: "*Encourage the construction, conservation, and enhancement of housing resources to meet the current and future needs of the Oakland community.*" This proposal, to construct a two-story, 5,537 square-foot, single-family dwelling with an attached two-car garage, will enhance the housing resources of the Oakland community.

Objective N3.2, Encouraging Infill Development: "*In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.*" The project is an infill development on an underutilized, vacant site identified as a Housing Opportunity site.

Objective N3.8 of the LUTE states: "*High-quality design standards should be required of all new residential construction.*" The proposal includes high-quality materials consistent with the neighborhood façade materials.

Objective N3.9 of the LUTE states: "*Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.*" The project is designed to step with the terrain and will not affect neighbor's access to sunlight or views.

The project is consistent with the 2023-2031 Housing Element which identified the realistic capacity of the site as one, above moderate-income unit.

ZONING ANALYSIS

The site is in the RH-1 Hillside Residential - 1 Zone. The intent of the RH-1 Zone is to create, maintain,

and enhance areas for single-family living on lots of one acre or more, and is appropriate in portions of the Oakland Hills. The Project is proposing a single-family home and was found to be consistent with the Planning Code as no Variances were necessary.

Per Section 17.136.040(A)(3) of the Planning Code, construction of dwelling units requires conformance with the Regular Design Review Criteria in Section 17.136.050(A). Staff made the required Findings in the November 17, 2023, decision letter (*Attachment C*).

ENVIRONMENTAL DETERMINATION

Staff evaluated the Project pursuant to the California Environmental Quality Act (CEQA). The CEQA Guidelines list projects that qualify as Categorical Exemptions from further environmental review. The proposed Project is categorically exempt from the environmental review requirements pursuant to Section 15303(a) which includes construction and location of limited numbers of new, small facilities or structures including one single-family residence. The proposal was also found to be categorically exempt under Section 15333 which includes measures to ensure protection of a creek.

As separate and independent basis, staff also found that the Project was consistent with CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning) as noted in the *General Plan Analysis* and *Zoning Analysis* section above.

The Appellant did not challenge the CEQA determination in the Appeal.

BASIS OF THE APPEALS

The Appellant filed a timely Appeal. The following is a summary of the Appeal allegations with language quoted from the Appeal letter **in bold type**. The full Appeal can be found in *Attachment D which includes supplemental documents D1-4*. Staff's response to each point is in normal type.

- 1. The City Zoning does not seem to recognize the existence of easement #2004-104991, stating it to be undetermined, claiming that the PLN 14062/TPM 9998 which approved lot split in July 2014 essentially amended the 2002 Agreement. The 2014 lot split did not and could not amend the EVAE easement # 2004-104991. The easement that was recorded with PM 9998 was the 40 ft. wide easement that came with the lot line adjustment from 1994 and recorded as instrument # 1994-50527.**

This allegation suggests that the City does not recognize the existence of the recorded 2004 easement agreement (easement #2004-104991), that the status of the easement created through this agreement is undetermined, and that the City has concluded that the 2014 approved lot split amended the easement which the Appellant claims it did not do.

Staff Response

Staff do not dispute the existence of the easement agreement recorded in 2004. However, based on more contemporary information such as the Project site title report, staff cannot reach the conclusion that the easement intended by the agreement currently encumbers the Project site. Planning staff must make decisions based on verified and attested title and survey information provided by an applicant and cannot participate in adjudicating property disputes between parties that are appropriately adjudicated by a court or through the agreement of the parties.

A topographic and boundary survey is a Basic Application for Development Review submittal requirement for new construction applications. It is standard practice for staff to review surveys as these documents include important information regarding location of property lines; location of natural features such as trees and creeks; location of physical features such as sheds, walls, and fences; and the steepness of the site which could be impediments or challenges to site planning and construction. Staff also looks for easements such as access and utility easements for the same reasons. The survey for the Project site did not include the 2004 easement in question (*Attachment E*).

During the public comment period, which began on August 25, 2023, and ended on September 5, 2023, staff received a public comment from Appellant related to the existence of a 40 ft. easement from the Appellant's Property across the Project site for roadway access to Skyline Boulevard. The Easement Agreement submitted by the Appellant (recording number 2004-10991) was signed on March 29, 2002, and recorded on March 11, 2004. It noted that the purpose of the easement was for the construction and maintenance of an emergency vehicular access roadway. Under the terms of the easement agreement (paragraph 2), the exact alignment of the emergency vehicular would be determined at the final design stage (when the adjoining Appellant's property was developed), and once the design was approved by the City, a new easement agreement would be entered into reflecting the exact property encompassing the easement.

To investigate the issue further, staff requested that the Applicant provide a title report for the Project Site (*Attachment F*). Like the topographic and boundary survey, this document also gave no indication of the easement over the Project site, despite the Appellant's easement agreement.

There are many intervening events that may have occurred since the easement agreement was recorded in 2004 that could have impacted the easement's existence. However, it is not the City's role to speculate, confirm, validate, or make conclusions regarding easements on development sites or to settle real property disputes. Disputes regarding the validity of easements cannot be conclusively determined by the City since it pertains to the validity and the rights under an agreement between two private parties. If resolution cannot be reached between the parties, a court of competent jurisdiction would need to declare the rights of the parties pertaining to the alleged easement.

Instead, Planning staff must rely on the topographic and boundary survey and title report that pertain to the property proposed for development. Because staff had received a recent title report dated May 2021 specifically for the Project site that did not identify an easement as a component restricting site planning; because disputed easement locations are not one of the five criteria for Regular Design Review Planning Code per Section 17.136.050(A); and because all five criteria could be met, on November 17, 2023, the Zoning Manager issued an approval of the Project (*Attachment C*).

In sum, the Zoning Manager did not abuse his discretion or issue an approval not based on substantial evidence, because he did not deny the project based on the Appellant's Easement Agreement. Staff performed our typical due diligence as it relates to the proposed location of a building on a development site and found that the Applicant's documents made no mention of the easement. Staff was able to make the required finding for approval. Recognition of the easement, especially in instance where the existence of such an easement seems unclear, would have inappropriately placed the Planning Bureau into an apparent property dispute and itself would have been an abuse of discretion.

- 2. EVAE easement # 2004-104991 remains unchanged. . . The TPM 9998 did not amend the 2002 EVAE agreement. It did not address it. It was intended to show the lot lines for the 13175 lot split to include some extended boundaries recorded as instrument number 2000 301842, 2000-348187, final expansion 2008-074584.**

This allegation suggests that easement remains in place and the 2014 lot split approved under Tentative Parcel Map and Final Parcel Map 9998 did not affect it and it was not necessary to show it on that map.

Staff Response

See staff's response to Allegation #1. Neither Tentative Parcel Map 9998 nor the recorded and signed Final Map 9998 (*Attachment G*) which created a new parcel (the Project site) included the 40' easement in question even though other easements were shown, which is unusual.

However, again, it is not the Bureau of Planning's role to authenticate, corroborate, or enforce easement agreement language. Bureau of Planning staff are not making any conclusions as to whether Parcel Map 9998 had any impact to the existence of the easement, or whether an event before or after the recordation of Parcel Map 9998 affected the easement. As such, the Zoning Manager did not abuse his discretion or issue an approval based on insufficient evidence in the record.

- 3. There is absolutely no evidence that the EVAE instrument # 2004-104991 was meant to be abandoned. In fact, it stated that the exact alignment is to be determined at the final design stage, and once approved, a new easement agreement will be entered into and recorded. The City may be confused with two separate easements.**

This allegation suggests that there is no evidence that the easement was meant to be abandoned. The actual easement's location was meant to be determined during the final design stage for the development on the Appellant's property.

Staff Response

See staff's response to Allegations #1 and 2.

- 4. The Zoning Manager also failed to recognize or acknowledge that the Appellant's First American title report presented, still shows on page 3 of 17, the existence of the easement and the several easements on the property. This title report is dated 2019, after the 2014 lot line split.**

This allegation suggests that the Zoning Manager failed to consider the Appellant's title report which included the easement agreement.

Staff Response

See staff's response to Allegation #1. As discussed, this easement is not noted on the survey or the title report for the Project Site. Upon receiving Appellant's preliminary title report, Staff did review the report and did note that it includes reference to the 2004 easement agreement under the list of exceptions and exclusions for the title insurance policy being offered. This document does not appear to make any conclusive determinations about the status of easements created under the agreement. It appears to be an acknowledgement of a document recorded in the chain of title, along

with many other documents. It is not staff’s role to apply title reports for properties other than properties proposed for development or to authenticate or refute the existence of an easement. It is also not staff’s role to settle real property disputes if one does indeed exist. That is a civil matter between two parties. As such, the Zoning Manager did not abuse his discretion or issue an approval based on insufficient evidence in the record.

- 5. APN 037A 3142 04800, the 2.38 part of the split cannot stand alone in terms of legal description but must be accompanied by the legal description for 037A 3142 35, and the Zoning manager needs to take that into account.**

Staff is unsure what this is referring to but believes that the allegation is that the 2.38 portion of the previous lot which included the Applicant’s property cannot be considered without considering the legal description for the **037A 3142 35**.

Staff Response

See staff’s response to Allegations #1-4.

- 6. The Applicant and his agent were informed about the Emergency Vehicular Access easement prior to purchase of the property, had the responsibility to inform their title company for due diligence, chose not to do so, and proceeded to design a home in a different location that violates the EVAE right of the appellant parcel owner.**

This allegation suggests that the Applicant should have informed their title company of the issue and chose not to do so.

Staff Response

The Applicant did discuss the easement issue with their title company. That title company did not recognize the alleged easement in the issued 2021 title report.

Staff requested additional information from the Applicant and title company in response to the allegations in the Appeal and received a formal letter dated January 2, 2024 (*See Attachment H*). This document states on page 2 that when the former property owner (Mbanugo) acquired title to the Covington Property, the 2004 Easement was extinguished by merger.

Specifically, “A servitude is terminated when all the benefits and burdens come into a single ownership. Transfer of a previously benefited or burdened parcel into separate ownership does not revive a servitude terminated under the rule of this section.”

Essentially this subject of case law notes that an easement would be terminated when the easement holder and the property owner are the same. In this case, according to the Chicago Title Insurance Company letter, the previous holder of the easement agreement and the previous owner of the parcel (Mbanugo) which was later subdivided was the same person and so the easement was terminated.

Once again, staff would be exceeding its authority in opining on the status of the easement provided for in the 2004 Easement Agreement. Staff appropriately reviewed the survey and title report for the Project site. As such, the Zoning Manager’s actions were not in error but reasonable and supported by evidence.

CONCLUSION

The Appellant has not demonstrated an error or abuse in discretion by the Zoning Manager, thus City staff believes that the Decision is valid, accurate, and reasonable, and supported by substantial evidence in the entire record. There is no reasonable basis for overturning staff's determination.

In accordance with standard practices, staff reviewed the Applicant's survey and title report which made no mention of the easement in question for the Project site. Staff made the required findings for approval as noted in the November 2023 decision letter.

Subsequent to the Appeal being filed, staff received a letter from the Applicant's title company which noted their belief is that an easement does not exist on the property. This additional information was discussed with the Appellant at a meeting on March 25, 2024.

Finally, it is not the Bureau of Planning's role to validate, refute, or make conclusion regarding the existence of easements. Any outstanding dispute is a civil issue and must be resolved in appropriate legal forums outside this planning process.

As such, staff recommends that the Planning Commission uphold the Zoning Manager's decisions and deny the Appeal.

RECOMMENDATIONS:

1. Affirm staff's environmental determination, and
2. Uphold the Zoning Manager's decision and CEQA determination based on the Findings and Conditions of Approval.

Prepared by:



HEATHER KLEIN
Planner IV

Reviewed by:



ROBERT MERKAMP
Zoning Manager

Approved for forwarding to the
City Planning Commission:



EDWARD MANASSE
Deputy Director

Bureau of Planning

ATTACHMENTS:

- A. Project Plans
- B. Appellant's Comments during public comment period
- C. Zoning Manager's Approval Letter
- D. Appeal Documents
- E. Survey
- F. Applicant's Preliminary Title Report
- G. Recorded and Signed Final Map 9998
- H. Letter from the Chicago Title Insurance Company

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.