



THE CITY OF SAN DIEGO

DATE ISSUED: February 3, 2011 **REPORT NO. PC-11-018**

ATTENTION: **Planning Commission, Agenda of February 10, 2011**

SUBJECT: AMENDMENTS TO ENVIRONMENTALLY SENSITIVE LANDS REGULATIONS PERTAINING TO WETLAND DEVIATIONS - PROJECT NO.150488. PROCESS LEVEL 5.

REFERENCE: REPORT TO CITY COUNCIL NO. 10-140; CITY MANAGER'S REPORT NO. 04-046

APPLICANT: **CITY PLANNING & COMMUNITY INVESTMENT AND DEVELOPMENT SERVICES DEPARTMENTS**

SUMMARY

Issue(s): Should the Planning Commission recommend City Council adoption of the proposed amendments to the Environmentally Sensitive Lands Regulations pertaining to Wetland Deviations?

Staff Recommendation:

1. Recommend that the City Council **Certify** Supplement to Environmental Impact Report No. 96-0333.
2. Recommend that the City Council **Approve** Amendments to the Environmentally Sensitive Lands Regulations of the Land Development Code, including the establishment of the three development scenarios under which a deviation from the sensitive biological resources regulations may be requested outside of the Coastal Overlay Zone- Essential Public Project Option (EPP), Economic Viability Option and Biologically Superior Option.
3. Recommend that the City Council **Approve** revisions to the Land Development Manual - Biology Guidelines to establish criteria for each development scenario against which the existing deviation findings will be evaluated.

Community Planning Group Recommendation: On September 22, 2009, the Community Planners Committee approved a motion 17-5-1 directing staff to return with revised regulations that provided appropriate trail and public access language.

Other Recommendations: The Wetland Advisory Board submitted a letter, received on June 27, 2010, objecting to the Economic Viability Option, types of projects on the Essential Public Projects List, the criteria used to determine wetland quality in the Biologically Superior Option, and the SEIR conclusions.

Environmental Review: In accordance with Sections 15162 and 15163 of the State CEQA Guidelines, a Supplement to EIR No. 96-0333 has been prepared covering this activity.

Fiscal Impact Statement: The processing of amendments to the Land Development Code is funded as an overhead expense of the Development Services Department (DSD) budget enterprise fund.

Code Enforcement Impact: None with this action.

Housing Impact Statement: None with this action.

BACKGROUND

The Environmentally Sensitive Land Regulations (ESL) housed in Chapter 14, Article 3, Division 1 of the Land Development Code (LDC) were adopted to assure that development occurs in a manner that protects the overall quality of the resources consistent with sound resource conservation principles and the rights of private property owners. Currently, impacts to sensitive biological resources wetlands are allowed per the Land Development Code only through a deviation if an applicant obtains a Site Development Permit (SDP) and the required findings can be made for approval as specified in Sections 126.0504 (a) (b) (c). Specifically, LDC Section 126.0504 (c) requires that two supplemental findings be made to allow for a deviation from the Sensitive Biological Resources regulations. The existing LDC language, however, provides only limited guidance to city staff, the applicant and the decision maker regarding the evaluation of impacts to these resources and under what circumstances it is reasonable to consider and recommend approval of such a deviation.

The City Council first directed staff to examine the deviation findings in 1998 after determining that additional clarification was necessary to establish under what development scenarios impacts to wetlands may be allowed, and what criteria and analyses must be submitted to support the required findings and justify the decision. As described in more detail below, the City has incorporated the input of several working groups over the past ten years to clarify the wetland deviation process for three scenarios: the Essential Public Project Option, the Economic Viability Option, and the Biologically Superior Option.

Working Group Process

Following initial efforts, the first of three working groups was formed. This working group included environmental and development industry stakeholders, including the Building Industry Association

(BIA), the Southwest Center for Biological Diversity, Endangered Habitats League, and staff from the Mayor's office. The working group developed draft language to address the deviation process for the city's Wetland Advisory Board (WAB) to review. In September 2000, the WAB submitted a letter to the City Manager outlining conditions under which a biologically superior result could be attained despite allowing the loss of certain low quality wetlands. Subsequently, work was halted on the project pending resolution of a lawsuit filed against the City related to vernal pools.

In 2001, a second working group was formed which included representatives from what is now the City Planning & Community Investment Department, the development industry and environmental groups not party to the vernal pool lawsuit, and the Mayor's office. The Land Use and Housing (LU&H) Council Committee directed this group to work with a larger committee of stakeholders, including those affiliated with the lawsuit.

In January 2003, a third working group convened to continue working on the wetland deviation regulatory language. Membership was expanded to include: city staff, the Alliance for Habitat Conservation, San Diego Audubon Society, BIA, Center for Biological Diversity, McMillan Land Development, RMA consultants, Sheppard Mullin Attorneys at Law, and the Sierra Club. Based upon LU&H direction, this group met to develop language for incorporation into the LDC to specifically address the wetland deviation process. They were unable to reach consensus in three major issues areas: 1) limiting the Essential Public Projects Option to linear infrastructure; 2) precluding the Economic Viability Option when an offer at fair market value had been made; and 3) allowing a perpetual management endowment (versus extraordinary mitigation) to be considered as mitigation for the Biologically Superior Option.

At the LU&H meeting on March 10, 2004, staff presented the draft wetland deviation language and the three major issues on which the working groups had been unable to reach resolution. The Committee directed staff to: 1) develop a list of projects potentially qualifying for the Essential Public Project Option; 2) establish a definition for the term "Public Project"; 3) require extraordinary mitigation for the Biologically Superior Option and eliminate the option to provide standard mitigation with an endowment and; 4) complete the environmental review for the Project prior to returning to City Council.

Over the past few years, staff has continued to work, intermittently, on responding to City Council direction and completing all of the identified tasks to begin the public hearing process for the LDC amendments. In doing so, three versions of the proposed amendments, including the Biology Guidelines revisions, have evolved. They include: the Project as drafted by city staff, the Working Group alternative from 2004, and a Wildlife Agencies' (California Department of Fish and Game and U.S. Fish and Wildlife Service) version that differs only slightly from the Project. A discussion of these alternatives is provided in Attachment 1.

DISCUSSION

The proposed project consists of Amendments to the Environmentally Sensitive Lands Regulations of the Land Development Code and to the Biology Guidelines found in the Land Development Manual. A summary table of the proposed changes and the existing regulations and guidelines is proved below.

Project Description

The proposed LDC amendments establish the three situations in which a deviation from the sensitive biological resource regulations may be requested unlike the current regulations which provide no limits based on project types or quality of the wetland resource. Furthermore, the amendments do not establish any type of exemption or delete any existing findings that must be made in order to approve a deviation from the regulations. Projects making application in these instances must still process a permit to allow for the deviation. This will require extensive analysis, environmental review, public participation, findings, and a public hearing.

Land Development Code Amendments

The Land Development Code, including Sections 143.0110 – Table 143-01A, 143.0141 and 143.0150 (Attachment 2) and the Land Development Manual – Biology Guidelines, is being amended to establish the three development scenarios under which a deviation from the sensitive biological resources regulations may be approved outside of the Coastal Overlay Zone - Essential Public Project Option (EPP), Economic Viability Option, and Biologically Superior Option.

The Essential Public Project (EPP) Option would allow for a wetland deviation in cases where it is not feasible for the City to avoid wetland impacts in the development of necessary public facilities and infrastructure projects. This option defines and limits public projects to the following: a) specific design/construction projects identified in a community or implementing plan and identified on the EPP list, b) linear infrastructure, c) maintenance of existing infrastructure, and d) projects initiated by the City to meet state and federal regulatory requirements. The EPP list has been reviewed throughout the process and several potential projects have been removed. The remaining 36 projects are organized into two categories: unknown potential for wetland impacts and minor or no anticipated impacts. Project sites were included on the list if there was a potential for wetlands to exist on-site. In many cases, project specific site design and analysis has not yet been conducted to determine if wetland impacts would actually occur. These projects will be required to comply with ESL Section 143.0150 and a deviation may only be requested where no feasible alternative exists that would avoid impacts to wetlands. It is intended that this list be final.

The Economic Viability Option would allow a deviation to preserve an applicant's right to an economically viable use of property, only for circumstances not of the applicant's making and where avoidance of wetland impact is infeasible. It provides stringent criteria for the preparation of an analysis to determine the economic viability of a project with and without the deviation and would be consistent with the existing regulations within the Coastal Overlay Zone.

All other proposed deviations would be limited to the biologically superior option. This amendment would allow a deviation from the LDC under the Biologically Superior Option if an alternative project or design achieves a superior biological result through either project design with standard mitigation or extraordinary mitigation and is limited to low quality wetland resources.

Table 1. Summary of Existing and Proposed Amendments to ESL Regulations and Biology Guidelines	
Existing LDC/ESL Regulations	Proposed LDC/ESL Amendments
<ol style="list-style-type: none"> 1. Applicants may apply for a deviation only after demonstrating avoidance is not feasible 2. All applicable state and federal permits required prior to issuance of any grading permits 3. Deviations: allowed for all types of projects 4. Separate requirements for Coastal Overlay Zone 	<ol style="list-style-type: none"> 1. No change 2. No change 3. Deviations limited to three types of projects: Essential Public Projects, Economic Viability and Biologically Superior; under the Biological Superior Option, impacts are further limited to low quality wetland resources 4. No change within the Coastal Overlay Zone. Amendments only apply to areas outside of the Coastal Overlay Zone 5. Requirement to fund management and monitoring of mitigation sites in-perpetuity
Existing Findings for a Deviation from ESL	Proposed Findings for a Deviation from ESL
There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands.	No change
The proposed deviation is the minimum necessary to afford relief from special circumstance or conditions applicable to the land and not of the applicant's making.	No change
Existing Biology Guidelines	Proposed Amendments to the Biology Guidelines
<u>Public and Private Projects</u>	<u>Public and Private Projects</u>
<ol style="list-style-type: none"> 1. Applicants must demonstrate that avoidance is infeasible 2. Projects are sent to Wetland Advisory Board as part of CEQA public review process. Any comments are included in final CEQA document 3. Demonstrate how wetland impacts have been minimized to the maximum extend feasible 	<ol style="list-style-type: none"> 1. No change 2. No change 3. No change 4.a. Defines & limits essential public projects (EPP) to: <ol style="list-style-type: none"> 1. linear projects 2. maintenance of linear projects 3. state and federally mandated projects (e.g., projects required to clean up an impaired water body) 4. public projects identified in an adopted land use plan or implementing document and on the EPP list 4.b. Additional requirements for biological analysis: <ol style="list-style-type: none"> 1. no project alternative 2. wetland avoidance alternative, including alternative sites 5.a. Defines and limits all other projects to the biologically superior option: <ol style="list-style-type: none"> 1. deviation considered for low quality wetland resources only; 2. no deviations allowed within tidal-influence wetlands (e.g. coastal salt marsh, saltpan & mudflats) 3. Project must result in a biologically superior project 4. Opinion of the Wetland Advisory Board included in report to City decision maker 5. Requires concurrence from the Wildlife Agencies 5.b. Additional requirements for biological analysis: <ol style="list-style-type: none"> 1. include no project alternative 2. include a wetland avoidance alternative 3. include biologically superior alternative 4. extensive documentation, including species diversity, restoration potential, connectivity, hydrologic function, source and quality of water, to make determination on wetland quality

<p><u>Economic Viability:</u></p> <ol style="list-style-type: none"> 1. Deviation only allowed if denied viable use of land and avoidance is not feasible 2. Project must be the minimum necessary to achieve economic viability 3. Demonstrate how wetland impacts have been minimized to the maximum extent feasible 4. Project is sent to Wetland Advisory Board as part of CEQA public review process. Any comments are included in the final CEQA document 5. Economic viability analysis and deviation findings must be made available to City decision-maker and public 6. Inside the Coastal Overlay Zone: extensive requirements related to supporting documentation 	<p><u>Economic Viability:</u></p> <ol style="list-style-type: none"> 1. No change 2. No change 3. No change 4. No change 5. No change 6. No change 7. Requirements added outside Coastal Overlay Zone: <ol style="list-style-type: none"> a) consistency with Coastal Overlay Zone requirements b) deviation cannot be based solely on a rezone c) biological analysis must include: no project alternative and an avoidance alternative d) Real Estate Assets Department would hire and supervise an outside qualified appraiser to prepare an appraisal including prior and current purchase information e) economic analysis required consistent with federal 404 b(1) guidelines under the Clean Water Act f) Real Estate Assets Department would select a qualified outside economic consultant to prepared an economic viability analysis g) City staff including DSD, CPCI, and READ would review the supporting documentation h) Wildlife Agency concurrence required if full biological mitigation is not provided
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Biology Guidelines

The Land Development Manual – Biology Guidelines are also being revised to establish criteria for each development scenario to assist in making the existing deviation findings.

In the case of the EPP Option, a deviation may be allowed when such projects serving basic infrastructure needs of the community or the region must be implemented and no feasible alternative exists which would comply with the ESL Regulations. The following four criteria must be met for a project to qualify under the EPP Option:

1. The project is an EPP as defined above. If the City has options on the location of an EPP, the City should not knowingly acquire property for an EPP, which would impact wetlands.
2. The proposed EPP and all biological options, both practicable and impracticable, are fully described and analyzed in an appropriate CEQA document.
3. The potential impacts to wetland resources have been minimized to the maximum extent practicable which may include, but is not limited to, adequate buffers and/or designs that maintain full hydrologic function and wildlife movement (e.g., pipeline tunneling, bridging, Arizona crossings, arch culverts).
4. The proposed project has fully mitigated its impacts in accordance with the Biology Guidelines.

In the case of the Economic Viability Option, the Land Development Manual would also be revised to add criteria for preparation and review of the required economic analysis. Applicants would be required to provide extensive information related to the site in question including but not limited to: purchase price, date of acquisition, fair market value, land use/zoning at time of acquisition and any changes to such, development restrictions at time of acquisition, change in size, offers for purchase, a biological report with a no project alternative and a wetland avoidance alternative, and ownership costs. The proposed amendments were modeled on and are consistent with the existing economic analysis requirements for projects within the Coastal Overlay Zone. Additionally, applicants requesting a deviation under this scenario, with projects that provide less than full biological mitigation, will require concurrence from the Wildlife Agencies prior to project approval. No amendments are proposed to the regulations already in effect in the Coastal Overlay Zone.

Amendments related to the Biologically Superior Option would limit potential deviations to low quality wetland resources and no deviations would be allowed within tidal-influence wetlands. Criteria have been added to aid in the determination of the wetland quality. The proposed criteria are extensive and include both general and habitat-specific factors related to vernal pools, salt marsh/salt panne/mudflats, and freshwater, riparian or brackish wetlands. The general criteria covers use of wetlands by species, diversity of native flora and fauna, enhancement or restoration potential, habitat function, connectivity, long-term viability, hydrologic function, status of watershed, and source and quality of water. Other requirements include a biology report with analyses of no project, wetland avoidance project, and biologically superior project; project review and concurrence by the Wildlife Agencies; two mitigation options; wetland management and monitoring provisions; and forwarding the recommendation of the Wetland Advisory Board to the decision-maker.

Mitigation

As described above, the proposed project allows applicants to apply for a deviation from the wetland regulations under this option if providing either a biologically superior project design with standard mitigation for wetland impacts, or by providing extraordinary mitigation at higher mitigation ratios for wetland impacts. Further, the proposed project requires the applicant to provide funding for all required in-perpetuity management and monitoring. The Wildlife Agencies concur with the mitigation ratios identified in the proposed project. Additionally, the agencies have asked that the City require in-perpetuity monitoring and management to ensure in all cases the future health of the wetland habitat that is being preserved. The Working Group alternative is silent about monitoring and buffer requirements but recommends extraordinary mitigation for all impacts to wetland resources.

Environmental Review

A Supplemental Environmental Impact Report (EIR) to the Land Development Code EIR (No. 96-0333) was prepared that analyzed Land Use, Biological Resources, Hydrology and Water Quality issues. The environmental document determined that no additional impacts beyond those that were analyzed in the original environmental document would result. The original EIR anticipated that adoption of the Land Development Code could result in future development that could incrementally increase the potential for cumulatively significant Biological Resources impacts. The SEIR was distributed for a 45-day public review period beginning on September 15, 2009 ending October 30, 2009. During the public review period both the San Diego Canyon Lands and the Wetlands Advisory Board requested a 30-day

extension on the comment period. Development Services Department granted a three week extension which ended on November 20, 2009. A total of five comment letters were received during the public review period. These letter and responses to individual comments are provided in the Final Supplemental EIR.

Public Outreach and Comment

Public review of the proposed amendments began on September 17, 2009 with notification of the availability of project documents to over 2000 contacts. Additionally, staff provided formal presentations to the Community Planners Committee (CPC) on September 22, 2009, the Wetland Advisory Board (WAB) on November 12, 2009 and January 14, 2010 and the Open Space Citizens Advisory Committee (OSCAC) on April 8, 2010.

CPC approved a motion 17-5-1 directing staff to return with revised regulations that provided "appropriate trail and public access language." Addition of such language would be contrary to the City Council direction and the project purpose. Staff, therefore, declined to revise the language. The WAB sent a letter, received on June 27, 2010, objecting to the Economic Viability Option, types of projects on the Essential Public Projects List, the criteria used to determine wetland quality in the Biologically Superior Option, and the SEIR conclusions. The Essential Public Projects list was reexamined and revised in response to this and other public comments. Also, development of the criteria to assess the quality of wetlands was achieved through input from the working group, Wildlife Agencies, and staff. The added language will greatly assist staff and the decision maker in determining if permit findings can be made to allow impacts to wetlands to occur.

Ten letters that commented on the proposed project were received via mail and e-mail. These letters came from the California Department of Fish and Game, San Dieguito Regional Open Space Park, Rancho Bernardo Community Planning Group, California Native Plant Society, San Diego Mountain Biking Association, Allied Climbers, and members of the public. Comments focused on concerns regarding whether the adoption of the regulations would further limit access to trails in the City's open space areas, objections to the proposed Economic Viability Option and the impact analysis related to the application of this option, the criteria used to determine the quality of a wetland, number and type of projects included on the Essential Public Projects List, and the lack of a requirement for in-perpetuity management and monitoring.

Additionally, the San Dieguito Regional Open Space Park staff objected to the time and expense that processing wetland deviations incurs and recommended that the deviation process be lowered from a Process Level Four to a Process Level Three to reduce those costs. The permit process level for deviations from the wetland regulations was established with the adoption of the Land Development Code and is appropriately set at Process 4, Planning Commission hearing.

Land Use and Housing Committee Meeting

Staff presented the proposed project to the Land Use and Housing Committee (LU&H) as a status report on November 10, 2010, due to the amount of time that had elapsed since the previous LU&H meeting. Prior to the meeting, a coalition of environmental groups submitted a letter (Attachment 3) and presented testimony about concerns regarding the proposed amendments. LU&H also received a joint letter from

Preserve Wild Santee and The Center for Biological Diversity. These groups concerns focus around the number of projects on the EPP list, the application of the Economic Viability Option, misconception that the proposed new regulations create an exemption, mitigation ratios, monitoring and maintenance program, and the criteria to be utilized to determine wetland quality. At the same time, the Wildlife Agencies provided a letter to the City Council members in support of the proposed amendments (Attachment 4). After hearing the presentation and testimony, LU&H voted unanimously to direct staff to work with the Coalition of Environmental Organizations to resolve the issues identified in the letter, final the environmental document and back up material for the adoption hearings, and include a pipeline provision in the final draft of the ordinance.

Subsequent to LU&H, the City responded to the joint letters detailing how both the existing regulations and the proposed amendment provide for the protection and preservation of wetland resources (Attachment 5). As previously mentioned, staff continued to review the Essential Public Project List, and as result was able to remove additional projects. The revised Essential Public Project List is included as part of Attachment 4 of this report along with a Summary of Existing and Proposed Amendments to ESL Regulations and Biology Guidelines.

Conclusion

Staff recommends adoption of the amendments to LDC Sections 143.0110 – Table 143-01A, 143.0141 and 143.0150 and the Land Development Manual – Biology Guidelines as proposed. The proposed amendments will clarify for city staff, the applicant, and the decision maker how to evaluate impacts to wetland resources, and most importantly, under what circumstances it is reasonable to consider and to recommend approval of a deviation to the regulations for wetland impacts. Adoption of the amendments will further the purpose of the Environmentally Sensitive Lands Ordinance, to assure that development occurs in a manner that protects the overall quality of the resources consistent with sound resource conservation principles and the rights of private property owners.

Respectfully submitted,



FOR

Kelly Broughton, Director
Development Services Department



Bill Anderson, FAICP, Director
City Planning & Community Investment

BROUGHTON/ANDERSON/WINTERROWD/ALM/JK

Attachments:

1. Report to City Council No. 10-140 (without attachments)
2. Amendments to Land Development Code to Address Wetland Deviations
3. Letter from Coalition of Environmental Groups, dated November 5, 2010 and Letter from Preserve Wild Santee/Center for Biological Diversity, dated November 4, 2010
4. Letter from Wildlife Agencies dated November 9, 2010
5. Response to Comment Letters from CPCI and DSD, dated January 18, 2011



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 3, 2010 REPORT NO: 10-140
ATTENTION: Committee on Land Use and Housing
SUBJECT: Amendments to the Environmentally Sensitive Lands Ordinance
Pertaining to Wetland Deviations
REFERENCES: CMR 04-046

REQUESTED ACTION:

Committee recommendation to the City Council that it adopt amendments to the Land Development Code and Land Development Manual – Biology Guidelines to address Wetland Deviations.

STAFF RECOMMENDATION:

Staff recommends that the Environmentally Sensitive Lands regulations be amended to:

- 1) Establish the three development scenarios under which a deviation from the sensitive biological resources regulations may be requested outside of the Coastal Zone (including vernal pools) - Essential Public Project Option (EPP), Economic Viability Option, and Biologically Superior Option and;
- 2) Revise the Land Development Manual – Biology Guidelines to establish criteria for each development scenario against which the already adopted deviation findings will be evaluated.

SUMMARY:

Background

The Environmentally Sensitive Land Regulations (ESL) housed in Chapter 14, Article 3, Division 1 of the Land Development Code (LDC) were adopted to assure that development occurs in a manner that protects the overall quality of the resources consistent with sound resource conservation principles and the rights of private property owners. Currently, impacts to sensitive biological resources wetlands are allowed per the Land Development Code only if an applicant obtains a Site Development Permit (SDP) and the

required findings can be made for approval as specified in Sections 126.0504 (a) (b) (c). Specifically, LDC Section 126.0504 (c) requires that two supplemental findings be made to allow for a deviation from the Sensitive Biological Resources regulations. The existing LDC language, however, provides only limited guidance to city staff, the applicant and the decision maker regarding the evaluation of impacts to these resources, under what circumstances it is reasonable to consider and to recommend approval of such a deviation.

The City Council first directed staff to examine the deviation findings in 1998 after determining that additional clarification was necessary to establish in what development situations impacts to wetlands may be allowed, and what criteria and analyses must be submitted to justify the decision to make the findings. As described in more detail below, the City has incorporated the input of several working groups over the past ten years to clarify the wetland deviation process for three scenarios: The Essential Public Project Option, the Economic Viability Option, and the Biologically Superior Option.

Working Group Process

Following initial efforts, the first of three working groups was formed. This working group included environmental and development industry stakeholders, including the Building Industry Association (BIA), the Southwest Center for Biological Diversity, Endangered Habitats League, and staff from the Mayor's office. The working group developed draft language to address the deviation process for the city's Wetland Advisory Board (WAB) to review. The WAB consists of nine members (appointed by the Mayor and confirmed by the City Council); it advises the Mayor and City Council on policy matters regarding the conservation of wetlands. In September 2000, the WAB submitted a letter to the City Manager outlining conditions under which a biologically superior result could be attained despite allowing the loss of certain low quality wetlands. Subsequently, work was halted on the project pending resolution of a lawsuit filed against the City related to vernal pools.

In 2001, a second working group was formed which included representatives from what is now the City Planning and Community Investment Department, the development industry and environmental groups not party to the vernal pool lawsuit, and the Mayor's office. The Land Use and Housing (LU&H) Council Committee directed this working group to work with a larger committee of stakeholders, including those affiliated with the lawsuit.

In January 2003, a third working group convened to continue working on the wetland deviation regulatory language. Membership was expanded to include: city staff, the Alliance for Habitat Conservation, San Diego Audubon Society, BIA, Center for Biological Diversity, McMillan Land Development, RMA consultants, Sheppard Mullin Attorneys at Law, and the Sierra Club. Based upon LU&H direction, this group met to develop language for incorporation into the LDC to specifically address the wetland deviation process. They were unable to reach consensus in three major issues areas: 1) limiting the Essential Public Projects Option to linear infrastructure; 2) precluding the Economic Viability Option when an offer at fair market value had been made; and 3)

allowing a perpetual management endowment (versus extraordinary mitigation) to be considered as mitigation for the Biologically Superior Option.

At the March 10, 2004, staff presented the draft wetland deviation language and the three major issues on which the working groups had been unable to reach resolution. The Committee directed staff to: 1) develop a list of essential public projects potentially qualifying for the Essential Public Project Option; 2) establish a definition for the term "Public Project"; 3) require extraordinary mitigation for the Biologically Superior Option and eliminate the option to provide standard mitigation with an endowment and; 4) complete the environmental review for the Project prior to returning to City Council.

Over the past few years, staff has continued to work, intermittently, on responding to City Council direction and completing all of the identified tasks to begin the public hearing process for the LDC amendments. In doing so, three versions of the proposed amendments, including the Biology Guidelines revisions, have evolved. They include: the Project as drafted by city staff, the Working Group alternative from 2004, and a Wildlife agency version that differs only slightly from the Project.

Project Description

Land Development Code Amendments

The Land Development Code, including Sections 143.0110 – Table 143-01A, 143.0141 and 143.0150 (Attachment 1 – Amendments to Land Development Code to Address Wetland Deviations) and the Land Development Manual – Biology Guidelines, is being amended to establish the three development scenarios under which a deviation from the sensitive biological resources regulations may be approved outside of the Coastal Zone (including vernal pools) - Essential Public Project Option (EPP), Economic Viability Option, and Biologically Superior Option.

The Essential Public Project Option (EPP) allows for a wetland deviation to enable the City to implement necessary public facilities and infrastructure projects including: a) specific design/construction projects identified in a community or implementing plan and identified on the Essential Public Projects List, b) linear infrastructure, c) maintenance of existing infrastructure, and d) projects initiated by the City to meet state and federal regulatory requirements.

The Economic Viability Option would allow a deviation to preserve an applicant's right to an economically viable use of property, only for circumstances not of the applicant's making. It provides criteria for the preparation of an economic analysis to determine the economic viability of a project with and without the deviation.

The existing wetland regulations do not allow consideration of a biologically superior option to mitigate impacts. This amendment would allow a deviation from the LDC under the Biologically Superior Option if an alternative project or design achieves a superior biological result through either project design or extraordinary mitigation.

It should be noted, that LDC amendments establish the only three situations in which a deviation from the sensitive biological resource regulations can be requested. **It does not establish any type of exemption.** Projects making application in these instances must still process a permit to allow for the deviation. This will require extensive analysis, environmental review, public participation, findings, and a public hearing.

Biology Guidelines

The Land Development Manual – Biology Guidelines are also being revised to establish criteria for each development scenario to assist in making the already adopted deviation findings.

Essential Public Projects Option

In the case of the EPP option, a deviation may be allowed when such projects serving basic infrastructure needs of the community or the region must be implemented and no feasible alternative exists which would comply with the ESL Regulations. The following four criteria must be met for a project to qualify under the EPP Option:

1. The project is an EPP as defined above. If the City has options on the location of an EPP, the City should not knowingly acquire property for an EPP, which would impact wetlands.
2. The proposed EPP and all biological options, both practicable and impracticable, are fully described and analyzed in an appropriate CEQA document.
3. The potential impacts to wetland resources have been minimized to the maximum extent practicable. Recognizing the wetland resources involved, minimization to the maximum extent practicable may include, but is not limited to, adequate buffers and/or designs that maintain full hydrologic function and wildlife movement (e.g., pipeline tunneling, bridging, Arizona crossings, arch culverts).
4. The proposed project has fully mitigated its impacts in accordance with the Biology Guidelines.

Projects that would meet the definition of an EPP under category “a” but are not on the EPP List would not qualify for a deviation under the EPP Option. The only avenue for approval of wetland impacts from such projects would be under the Biologically Superior Option.

Economic Viability Option

In the case of the Economic Viability Option, the Land Development Manual would also be revised to add criteria for preparation and review of the required economic analysis. Applicants are required to provide extensive information related to the site in question

including but not limited to: purchase price, date of acquisition, fair market value, land use/zoning at time of acquisition and any changes to such, development restrictions at time of acquisition, change in size, offers for purchase, a biological report, an ownership costs. The proposed amendments were modeled on and are consistent with the existing economic analysis requirements for projects within the Coastal Zone. One additional criterion is being proposed; applicants requesting a deviation under this scenario, with projects that provide less than full biological mitigation, will require concurrence from the Wildlife Agencies prior to project approval. No amendments are proposed to the regulations already in effect in the Coastal Overlay Zone.

Biologically Superior Option

Amendments related to the Biologically Superior Option include: the analysis to determine what a low quality wetland is, when impacts to fairy shrimp are allowed, and mitigation ratios and extraordinary mitigation ratios depending upon project design, and vernal pool buffer and wetland management and monitoring requirements. The proposed criteria to determine biological quality of all wetland types are extensive and include both general and habitat-specific factors related to vernal pools, salt marsh/salt panne/mudflats, and freshwater, riparian or brackish wetlands. The general criteria covers: use of wetlands by species, diversity of native flora and fauna, enhancement or restoration potential, habitat function, connectivity, long-term viability, hydrologic function, status of watershed, and source and quality of water.

Environmental Review

A Supplemental to the Land Development Code Environmental Impact Report (No. 96-0333) was prepared that analyzed Land Use, Biological Resources, Hydrology and Water Quality. The environmental document determined that no additional impacts beyond those that were analyzed in the original environmental document would result. The original EIR anticipated that adoption of the Land Development Code could result in future development that could incrementally increase the potential for cumulatively significant Biological Resources impacts. The SEIR was distributed for a 45-day public review period beginning on September 15, 2009 ending October 30, 2010. During the public review period both the San Diego Canyon Lands and the Wetlands Advisory Board requested a 30-day extension on the comment period. Development Services Department granted a three week extension which ended on November 20, 2009. A total of five comment letters were received during the public review period. At the time of report preparation, environmental staff was preparing to final the document.

Analysis

Major Differences Between Project and Alternatives

Differences between the three are few, especially between the Project and the Wildlife Agencies; those that remain between the project and the Working Group are largely

attributable to the time that has elapsed since the amendment process began (see Attachment 2 – Comparison Table – Major Differences between Project and Alternatives.

Essential Public Projects

The list (Attachment 3 – Essential Public Project List) as revised contains 47 public facility projects organized as follows: General, Wetland Restoration and Wetland Buffers, and Projects Located on Graded Pads with Minor Potential Drainage Impacts. **All sites/projects on the Essential Public Project List were included if there was potential for wetlands to occur on-site. Project specific site design and analysis has not yet been conducted to determine if wetland impacts would even occur. All projects will be required to comply with the ESL Section 143.0150 – the deviation may only be requested where no feasible alternative exists that would avoid impacts to wetlands.** Staff proposes that the City Council adopt the Essential Public Project List by resolution. It is intended that this list be final. Please note, that the category of Essential Public Projects also includes linear facilities, maintenance of existing public infrastructure, and state and federally mandated projects. The Essential Public Project List identifies primarily non-linear type of facilities such as parks, libraries, and fire stations.

As previously described, in 2004, LU&H directed staff to establish a definition for Essential Public Projects and to compile a list of projects that would meet the definition. Originally, only projects identified in community plans (or other land use plans such as specific, subarea, park, or precise) and implementing documents (CIP, PFFPs, DIFs and FBAs) prior to January 1, 2000 (effective date of the Land Development Code) were to be included. The list however, was compiled over a multi-year period, and as the project timeline expanded, city staff began to look at all projects that were listed in plan documents, even those added as a result of a community plan amendment or projects added as policy implementation documents became more detailed (i.e. population and resource based park plans). This occurred with the preparation of General Development Plans for Neighborhood and Community Parks (i.e. Serra Mesa Community Park Community Park Recreation Building and the development of maintenance and oversight facilities for resource parks, such as the Otay Valley Regional Park- Beyer Way Equestrian and Regional Staging Area. City staff and Wildlife Agencies are in agreement with the list and the definition. The Working Group definition limits essential public projects to public projects identified in City land use plans adopted prior to January 1, 2000 and to linear infrastructure identified in adopted City land use plans.

The proposed Essential Public Project List limits essential public projects that may be considered under this deviation and would still allow the City to utilize land currently identified for public facilities. Property currently owned by the City for fire stations, libraries, and parks is limited. Locations for fire and police stations are further restricted due to service area requirements including response times. Additionally, purchase of replacement lands could cause additional fiscal hardships to the City.

In response to public comment and input from the Agencies, City staff reexamined the proposed list to determine if revisions were possible. After research and review, staff was

able to eliminate 12 projects after determining that the projects in question were: already built (with no impacts or required mitigation was provided), project design had proceeded to the point that staff could determine that no impacts would occur, or a specific site had not yet been identified or acquired for a particular project.

Mitigation

Differences between the Project and Alternatives concern the Biologically Superior mitigation ratios, management and monitoring, and buffer requirements. As described earlier in this report, the Project allows applicants to apply for a deviation from the wetland regulations under this option if providing either a biologically superior project design with standard mitigation for wetland impacts, or by providing extraordinary mitigation at higher mitigation ratios. Applicants must demonstrate that the vernal pool buffer provided is based upon an analysis of functions and values. If such an analysis is not conducted, the Project requires a default of a 100-foot buffer from the watershed. Additionally, all public and private projects include a standard permit condition, which requires the applicant to adhere to all State and Federal requirements, which may include any obligations for in-perpetuity management, and monitoring deemed necessary by the permitting agencies. Further, the Project requires the applicant to provide funding for all required in-perpetuity management and monitoring if the applicant requests that the City take a mitigation site in fee title.

The Wildlife Agencies concur with the mitigation ratios identified in the Project. They would require, however, that all projects preserve the entire watershed plus a 100-foot biological buffer from the boundary of the watershed of each vernal pool preserved. Additionally, the agencies have asked that the City require in-perpetuity monitoring and management to ensure in all cases the future health of the wetland habitat that is being preserved. The Working Group alternative is silent upon monitoring and buffer requirements but requires extraordinary mitigation for all impacts to wetland resources.

In order to impact wetlands within the City of San Diego, an applicant must obtain and provide to the City all appropriate State and Federal permits which authorize the "take" of impacted wetland habitat and/or species. The City does not have authority to issue "take" within wetland areas as defined by the Army Corps of Engineers. Therefore, as described above, all public and private projects include a standard permit condition, which requires the applicant to adhere to all State and Federal requirements, which may include any obligations for in-perpetuity management, and monitoring deemed necessary by the permitting agencies. Additionally, the Biologically Superior Option requires review and concurrence by the Wildlife Agencies. Mitigation measures determined through this process will include all conditions identified by the Wildlife Agencies that will be required to obtain State and Federal permits. Therefore, if the Wildlife Agencies determine the project would require in-perpetuity management and monitoring, the City's project mitigation would include this requirement. It should also be noted, that the existing Biology Guidelines also require that all known State and Federal requirements must be incorporated into the project.

Based upon this information, and in response to public comment and discussions with Wildlife Agencies, staff has revised the Project to require in-perpetuity monitoring and management regardless of whether the site is dedicated to the city or retained by the applicant. The City concurred that such a measure would ensure a more successful mitigation program.

Regarding the vernal pool buffer issue, on March 16, 2010, the City Council authorized staff to proceed with preparation of a vernal pool habitat conservation plan (HCP). As part of the vernal pool HCP, hard-line vernal pool conservation areas will be established which will include vernal pool basins, their watersheds, functional buffers and areas necessary to maintain vernal pool ecosystem function and species viability. The Wildlife Agencies will be aiding in the identification of the vernal pool conservation areas that will be analyzed as part of the HCP process. Furthermore, approval of the HCP including the conservation areas will require approval by the Wildlife Agencies. Based upon this, and the Project requirement for an analysis to demonstrate the efficacy of a reduced buffer (from 100-feet) based upon functions and values, staff continues to recommend the buffer requirement as drafted.

Concurrence

All three alternatives require concurrence from the Wildlife Agencies for a project to proceed under the deviation process for the Biologically Superior Option. All require that the concurrence is in writing and is provided prior to or during public review of the CEQA document in which project design has been fully described and analyzed. The Project and the Working Group, however, provide that lack of an unequivocal response from the Wildlife Agencies during the CEQA review period is deemed to be concurrence. The Wildlife Agencies have objected to the concurrence by default based upon their own staffing and workload constraints.

City staff recognizes the staffing and workload constraints. Projects, however, must be processed in a reasonable timeframe. As part of this process, staff from both the City and the Wildlife Agencies will be meeting on a regular basis to review projects with potential wetland impacts. City staff has accepted responsibility for maintaining minutes regarding project design and proposed mitigation. This will be provided in a timely fashion to the Wildlife Agencies for review and concurrence. This will be in addition to the CEQA public review period. If, the Agencies are unable provide concurrence prior to the end of the CEQA public review, projects can still precede to a public hearing. If the project is approved, the City will still include the standard permit condition requiring the applicant to obtain all applicable State and Federal permits prior to the issuance of a grading permit. The goal is for the applicant, City and Agencies to work together early on in the project design and permit process to ensure good project design and a more predictable and successful outcome.

Public Outreach and Comment

Public review of the proposed amendments began on September 17, 2009 with an e-blast to a list with over 2000 contacts. The e-blast is an e-mail which briefly describes the project and provides links to the entire project document list and also provides contact information and information regarding how to provide public comment. Additionally, staff provided formal presentations to the Community Planners Committee (CPC) on September 22, 2009, the Wetland Advisory Board (WAB) on November 12, 2009 and January 14, 2010 and the Open Space Citizens Advisory Committee (OSCAC) on April 8, 2010.

Comments provided during these forums were at both ends of the spectrum. CPC approved a motion 17-5-1 directing staff to return with revised regulations that provided "appropriate trail and public access language." The regulations are focused upon the preservation of wetland resources. Increasing public trail and public access is not the purview of the regulations or this project. Addition of such language would be contrary to the City Council direction and the project purpose. Additionally, staff would be required to revise the SEIR and recirculate the document because analysis of revised LDC language would likely conclude potential environmental impacts. Staff, therefore, declined to revise the language. The Wetland Advisory Board voted to send a letter, received on June 27, 2010, objecting to the Economic Viability Option, types of projects on the Essential Public Projects List, the criteria used to determine wetland quality in the Biologically Superior Option, and the SEIR conclusions. As explained earlier in the report (Biology Guidelines section), the criteria added to address economic viability are modeled upon already adopted criteria implemented in the Coastal Zone. As noted, the Essential Public Projects list was reexamined and revised in response to this and other public comments. Also, staff worked closely with the Wildlife Agencies to develop the criteria to assess quality of wetlands. The added language will greatly assist staff and the decision maker in determining if permit findings can be made to allow impacts to wetlands to occur.

A total of ten comment letters were received via mail and e-mail. Comment was received from the: Department of Cal Fish and Game, San Dieguito Regional Open Space Park, Rancho Bernardo Community Planning Group, California Native Plant Society, San Diego Mountain Biking Association, Allied Climbers, and concerned members of the public. Comment focused upon primarily five areas: concerns regarding whether the adoption of the regulations would further limit access to trails in the City's open space areas, objections to the proposed Economic Viability Option and the impact analysis related to the application of this option, the criteria used to determine the quality of a wetland, number and type of projects included on the Essential Public Projects List, and the lack of a requirement for in-perpetuity management and monitoring.

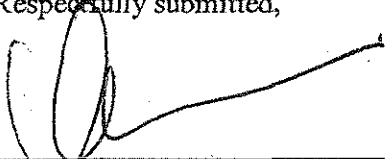
Additionally, the San Dieguito Regional Open Space Park staff objected to the time and expense that processing wetland deviations incurs. They further recommended that the deviation process be lowered from a Process Level Four (Planning Commission decision with appeal to City Council) to a Process Level Three (Hearing Officer decision with appeal to Planning Commission) to reduce those costs. The permit process level for deviations from the wetland regulations was established with the adoption of the Land

Development Code. Proposing to lower the process level was not part of the City Council direction on this package of amendments. Also, it is intended that the proposed amendments will simplify the type and level of analysis involved in processing deviation requests. That could potentially reduce processing time and costs.

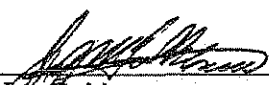
CONCLUSION

For the reasons described in the body of this report, staff recommends adoption of the amendments to LDC Sections 143.0110 – Table 143-01A, 143.0141 and 143.0150 and the Land Development Manual – Biology Guidelines as proposed. The amendments are a result of an open public process and have received a thorough review. The proposed amendments will clarify for city staff, the applicant, and the decision maker how to evaluate impacts to wetland resources, and most importantly, under what circumstances it is reasonable to consider and to recommend approval of a deviation to the regulations to allow impacts. Staff believes that adoption of the amendments will further the purpose of the Environmentally Sensitive Lands Ordinance, to assure that development occurs in a manner that protects the overall quality of the resources consistent with sound resource conservation principles and the rights of private property owners.

Respectfully submitted,



Kelly Broughton
Development Services Director



Jay Goldstone
Chief Operating Officer of
Office of the Mayor

BROUGHTON/MCPHERSON

Attachments:

1. Amendments to Land Development Code to Address Wetland Deviations
2. Comparison Table – Major Differences Between Project and Alternatives
3. Essential Public Project List

ATTACHMENT 2 – AMENDMENTS TO THE LAND DEVELOPMENT CODE TO
ADDRESS WETLAND DEVIATIONS

§143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes *encroachment* into *sensitive biological resources* or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(a) General Regulations for Sensitive Biological Resources

(1) ~~(1)~~ All *development* occurring in *sensitive biological resources* is subject to a site-specific impact analysis conducted by a qualified Biologist ~~the City Manager~~, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to *sensitive biological resources* and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact.

(A) Dedication in fee title to the City of San Diego; or

(B) Dedication of a covenant of easement in favor of the City of San Diego and the Wildlife Agencies either:

~~(1)(i)~~ Acquisition or dedication of another site that can serve to mitigate project impacts, For an off-site location with long-term viability and biological values equal to or greater than the impacted site, and with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site; or

~~(2)(ii)~~ Preservation or dedication of For on-site sensitive biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted area.

~~(3)(C)~~ In circumstances where the area of impact is small, monetary payment of compensation into a fund may be accepted in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds

and acquire or maintain habitat preservation areas.

(2) ~~(f)~~ *Grading* during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego *MSCP Subarea Plan*.

(3) ~~(k)~~ *Sensitive biological resources* that are outside of the allowable development area on a *premises*, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.

(4) ~~(e)~~ Inside and adjacent to the *MHPA*, all *development* proposals shall be consistent with the City of San Diego *MSCP Subarea Plan*.

(5) Projects located Inside the MHPA

~~(d)~~ ~~(A)~~ ~~Inside the MHPA~~, ~~d~~*Development* is permitted only if necessary to achieve the allowable development area in accordance with the regulations set forth in the OR-1-2 zone, pursuant to Section 131.0250(b), unless exempted from the development area regulations pursuant to Section 143.0111.

~~(f)~~ ~~(B)~~ ~~Inside the MHPA~~, ~~a~~Any change of an agricultural use to a non-agricultural use is subject to the development area regulations of Section 143.0141 ~~(d)~~ (a)(5)(A). Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable development area.

(6) Projects Located Outside of the MHPA

~~(g)~~ ~~(A)~~ ~~Outside the MHPA~~, ~~d~~*Development* of lands that are designated as open space in the applicable *land use plan* and zoned OR-1-1 is permitted only if necessary to achieve the allowable development area, in accordance with Section 131.0250 (a).

~~(h)~~ ~~(B)~~ ~~Outside the MHPA~~, ~~e~~*Encroachment* into *sensitive biological resources* is not limited, except as set forth in Section 143.0141 ~~(a)~~(6)(A) and ~~(b)~~ and ~~(g)~~.

(7) Narrow Endemic Species

Inside the *MHPA*, *development* shall avoid impacts to narrow endemic species. Outside the *MHPA*, measures for protection of narrow endemic species shall be

required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

(b) Wetland Regulations

- (a) (1) State and federal law ~~precludes~~ regulates adverse impacts to ~~wetlands or~~ and listed ~~non-covered~~ species habitat. The *applicant* shall confer, when as applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the *development* proposal.
- (2) The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat.
- (3) The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing.
- (4) *Grading or construction permits* shall not be issued for any project that impacts *wetlands* or listed ~~non-covered~~ species habitat until all necessary federal and state permits have been obtained.
- (b) (5) ~~Outside and inside the MHPA, i~~mpacts to *wetlands*, including vernal pools in naturally occurring complexes, shall be avoided. A *wetland buffer* shall be maintained around all *wetlands* as appropriate to protect the functions and values of the *wetland*. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). ~~Mitigation for impacts associated with a deviation shall achieve the goal of no net loss and retain in-kind functions and values.~~

§143.0150 **Deviations from Environmentally Sensitive Lands Regulations**

Plans submitted in accordance with this section shall, to the maximum extent feasible, comply with the regulations of this division. If a proposed *development* does not comply with all applicable development regulations of this division and a deviation is requested as indicated in Table 143-01A, the Planning Commission may approve, conditionally approve, or deny the proposed Site Development Permit in accordance with Process Four, subject to the following:

- (a) (No Change)
- (b) (No Change)
- (c) (No Change)

(d) Deviations to the wetland regulations of this division for *development* located outside of the Coastal Overlay Zone may be granted only if the *development* qualifies to be processed as one of the three options set forth in the following regulations and in accordance with the Biology Guidelines in the Land Development Manual:

(1) Essential Public Projects Option

(A) A deviation may only be requested for an Essential Public Project where no feasible alternative exists that would avoid impacts to wetlands.

(B) For the purpose of this section, Essential Public Projects shall include:

(i) Any public project identified in an adopted *land use plan* or implementing document and identified on the Essential Public Projects List adopted by Resolution No.[insert No.] as Appendix III to the Biology Guidelines; or

(ii) Linear infrastructure, including but not limited to major roads and *land use plan* circulation element roads and facilities including bike lanes, water and sewer pipelines including appurtenances, and stormwater conveyance systems including appurtenances; or

(iii) Maintenance of existing public infrastructure; or

(iv) State and federally mandated projects.

(2) Economic Viability Option

A deviation may be requested to preserve economically viable use of a property that would otherwise be deprived by a strict application of the regulations. Such a deviation shall be the minimum necessary to achieve economically viable use of the property and shall avoid wetland resources to the maximum extent practicable.

(3) Biologically Superior Option

(A) A deviation may be requested to achieve a superior biological result which would provide a net increase in

quality and viability (functions and value), relative to existing conditions or the project originally proposed by the applicant, and long term biological benefit.

(B) Wetland resources that would be impacted by the project shall be demonstrated to be of low biological quality.

§143.0110 When Environmentally Sensitive Lands Regulations Apply

Table 143-01A
Applicability of Environmentally Sensitive Lands Regulations

Environmentally Sensitive Lands Potentially Impacted by Project						
Type of Development Proposal		Wetlands, listed non-covered species habitat ⁽¹⁾	Other Sensitive Biological Resources other than Wetlands and listed noncovered species habitat	Steep Hillides	Sensitive Coastal Bluffs and Coastal Beaches	Floodplains
1. Single dwelling units on individual lots equal to or less than 15,000 square feet ⁽²⁾	R	143.0141(a),(b)	143.0141	143.0142 except (a) ⁽⁵⁾	143.0143, 143.0144	143.0145 143.0146
	P	NDP/ Process Two	NDP/ Process Two	NDP/ Process Two	SDP/ Process Three	NDP/ Process Two
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
2. Single dwelling units on lots or multiple lots totaling more than 15,000 square feet	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145
	P	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
3. Multiple dwelling unit and non-residential development and public works projects	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145 143.0146
	P	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
4. Any subdivision of a premises	R	143.0141(a),(b)	143.0141	143.0142 ⁽³⁾	143.0143, 143.0144	143.0145 143.0146
	P	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)	--	--	143.0130 (a), (b)	143.0130 (c)
5. Project-specific land use plans	R	143.0141(a),(b), 143.0115	143.0141, 143.0115	143.0142, 143.0115	143.0143, 143.0144, 143.0115	143.0115, 143.0145 143.0146
	P	SDP/Process Four/Five	SDP/ Process Four/Five	SDP/Process Four/Five	SDP/ Process Four/Five	SDP/Process Four/Five
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
6. Any development that proposes deviations from any portion of the Environmentally Sensitive Lands Regulations	R	143.0141(a),(b), 143.0150	143.0141, 143.0150	143.0142, 143.0150 ⁽⁴⁾	143.0143, 143.0144, 143.0150	143.0145, 143.0146 143.0150
	P	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
7. Development other than single dwelling	R	--	--	143.0142 except (a),	--	--

units on individual lots, that proposes alternative compliance for development area in steep hillsides.				143.0151		
	P	--	--	SDP/ Process Four	--	--
	U	--	--	--	--	--

Legend to Table 143-01A	
R	Development regulation sections (in addition to Section 143.0140) applicable to the <i>environmentally sensitive lands</i> present.
P	Type of Permit/Decision process required. Neighborhood Development Permit (NDP) Site Development Permit (SDP)
U	Regulations that identify permitted uses when they are different than the applicable zone due to the <i>environmentally sensitive lands</i> present.

Footnotes to Table 143-01A

¹ ~~This includes listed species and their habitat not covered by the Take Authorizations issued to the City by the State and Federal governments under the Multiple Species Conservation Program. State and federal laws and regulations regulate adverse impacts to wetlands and listed species habitat. The City does not have incidental take authorization for listed species within jurisdictional waters.~~

Footnotes 2-5 [No change]

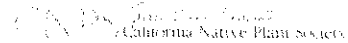
Attachment 3



Friends of Rose Canyon



San Diego Chapter



November 5, 2010

Via e-mail to dslldc@sandiego.gov

City of San Diego
Development Services Department
Attn: Amanda Lee, Senior Planner
1222 First Avenue, MS 501
San Diego, CA 92101-4155

Re: Comments Opposing Proposed Wetland Exceptions in Environmentally Sensitive Land Ordinance

Dear Ms. Lee:

San Diego Coastkeeper, San Diego Audubon Society, San Diego Canyonlands, Friends of Rose Canyon, Sierra Club—San Diego Chapter, Friends of Rose Creek, California Native Plant Society – San Diego Chapter, and Coastal Environmental Rights Foundation respectfully submit the following comments on the City's proposed amendments to the Land Development Code that set forth situations in which the City may waive wetland protections. Wetlands are extremely rare and valuable resources. Any proposal to reduce wetland protections must be narrowly tailored to address the rare situation in which these protections cannot be fully implemented. The current proposed amendments to the Land Development Code are not so narrowly drawn. We urge that the amendments be modified to avoid future excessive impacts.

I. Wetlands are a Rare, Valuable Resource in San Diego.

Wetlands serve many important green-infrastructure services for our city, including flood and erosion control, filtration of pollutants out of urban runoff, and filtration of our air by vegetation. They also provide important habitat, wildlife corridors, and foraging for wildlife including endangered species.

should think long and hard about foregoing the cheapest and most efficient pollution control option—protecting wetlands before they are destroyed.

C. Wetland Mitigation Areas Are Getting Harder to Find.

In 2008, the City placed a moratorium on the efforts of non-profits and citizen groups seeking grant funds to restore blighted and degraded wetlands because it would preclude opportunities to use these areas for future mitigation needs. Our region is said to have lost over 90% of its wetlands due to past development. When we have to impact wetlands for linear projects that cannot avoid impacts, such as major roads and sewer lines, wetland mitigation opportunities are difficult to find.

Many of the projects that the proposed amendments allow would both destroy wetlands and eliminate important opportunities to restore wetland resources. For example, new parks near wetlands should expand the wetlands and incorporate them into the park design, not further encroach on the resources.

II. The “Essential Public Projects” Exception Must Be Narrowly Tailored To Include Only Those Projects that Cannot Avoid Wetland Impacts.

The City proposes to waive wetland protections for “Essential Public Projects.” We recognize that, in some very limited situations, it is impossible for infrastructure—like gravity-flow sewer mains or stormwater pipes—to avoid wetland impacts. In this rare situation, we would support consideration of an exception to strict compliance with the wetland regulations.

However, instead of narrowly tailoring the exception to linear infrastructure that cannot avoid wetlands, the City has broadened the scope to include four separate groups of projects: (1) public projects; (2) linear infrastructure; (3) maintenance of existing infrastructure; and (4) state and federally mandated projects.

The “public projects” group includes a list of 59 public projects ranging from playing fields to sewer mains. These projects will take a significant portion of our remaining wetlands and waterways. While all of the projects included are important for our communities, none are wetland dependent (i.e., none need the wetlands resources to serve the project purpose), and most can be constructed in other locations. The vast majority of the listed “public projects” projects are parks. Wetlands can be included in park design and improve the value of the park. Likewise, there is no showing that the other facilities that are listed for this exception could not be modified through project redesign, or relocated in other locations to avoid wetland impacts. The total area of wetlands impacts are not identified so the cumulative impact of this exception is unknown.

be deprived by a strict application of the regulations.” This rule over-simplifies takings law and puts an intricate legal assessment into the hands of non-lawyer City staff members.

The City suggests that it will, at some point in the future, amend the Land Development Manual to require applicants seeking to avail themselves of this section to provide a list of project and financial information. But the City has provided no criteria for analyzing or assessing the information and no guidelines or rules for determining when the exception actually applies. The City's attempt to avoid takings claims has led to an overbroad exception that would allow wetlands destruction outside of the narrow instances in which applying wetlands restrictions would lead to a Constitutional taking.

We believe that it is unnecessary for the City to include an exception related specifically to addressing takings law. The City makes hundreds of regulatory decisions every year without a specific takings analysis completed for each project. However, if the City deems it important to specifically address the potential for takings in the Land Development Code, the City must limit the exceptions to only those instances where an actual Constitutional taking would occur if the City strictly applied the wetland regulations. In that case, we would urge the City to adopt the following language in place of the current “Economic Viability” exception:

(2) **Constitutional Taking**

The City may consider a request for deviation from the wetland regulations where a project applicant alleges that strict application of the regulations would constitute a taking of the applicant's property without just compensation under the Fifth Amendment of the United States Constitution. The City Attorney shall review the evidence the applicant submits to support his or her claim that strictly applying the wetland regulations would constitute a taking and opine on the merits of the claim under controlling takings law as it exists at the time the request for a deviation is made. The City may grant a deviation under this section only if the City Attorney concludes that strict application of the wetland regulations would constitute a taking under Fifth Amendment of the United States Constitution. Any deviation granted shall be the minimum necessary to avoid a Constitutional taking.

IV. The “Biologically Superior Alternatives” Exception Must Protect Wetlands That Can Be Restored, Recognize Wetlands' Hydrological and Water Quality Values, and Require Double Mitigation for All Projects.

The City proposes that wetland regulations need not be strictly applied in cases in which the Development Services Department deems that the wetlands are of relatively low value and the resulting mitigation would provide a greater biological benefit than preserving the wetland. We

V. The City Should Mandate Mitigation for Each Exception.

We urge that, for all projects under each exception, the City require mitigation to replace any loss of wildlife connectivity due to the destruction of the initial wetland, as well as mitigating for the other wetlands functions and values lost, including hydrological and water quality benefits.

VI. Conclusion

We urge that the City's proposal be amended to:

- Limit the applicability of the "Essential Public Projects" exception to those projects which really are essential and where the applicant proves that wetland impacts are unavoidable;
- Revise the "Economic Viability" exception so it only applies to projects that would constitute a "taking" under the Fifth Amendment if the wetland regulations were strictly applied;
- Limit the "Biologically Superior" exception to those wetlands where there is no reasonable restoration potential;
- Require double mitigation, fully sustainable sites, and assure long term maintenance to make sure that the alternative will actually be biologically superior for all projects approved under the "Biologically Superior" exception;
- Acknowledge the hydrological, flood control, and water quality functions wetlands play, regardless of their biological values, and limiting the "Biologically Superior" exception to those wetlands that have no hydrological, flood control, or water quality values.

We disagree with the EIR's unsupported conclusion that these amendments, in their present form would not result in a significant environmental impact. Many of these changes will directly result in additional losses of our local wetlands. We recommend that the amendments be modified as described above, if they are adopted. If this is done appropriately, the modified amendments will provide reasonable protections for the remaining wetlands of our City.

Finally, we note that the City's proposed exceptions to the wetland regulations cannot trump federal law. This means that all applicants that propose to impact wetlands must comply with the Clean Water Act's wetland rules and regulations, regardless of any waiver the City may attempt to give. Adopting exceptions out of line with State and Federal protections will provide regulatory uncertainties for developers as they move through the permitting processes and will likely result in more intense oversight from federal and state agencies. The City should clarify that whatever exceptions to full implementation of the wetland regulations that an applicant may



CENTER for BIOLOGICAL DIVERSITY



Preserve Wild Santee

November 4, 2010

Amanda Lee, Senior Planner
City of San Diego
Development Service Department
1222 First Avenue, MS 501
San Diego, CA. 92101-4155

Via email dsdldc@sandiego.gov

Re: 7th Update to Land Development Code/Environmentally Sensitive Lands Ordinance/Biology Guidelines

Dear Ms. Lee,

Preserve Wild Santee and the Center for Biological Diversity have keen interests in the conservation of our region's wetland resources. Hence, we offer the following comments regarding the circumstances proposed for how the City of San Diego would allow impacts to our extremely valuable and dwindling wetland resources. Overall, more specificity is needed in the Biological Guidelines to prevent unintended losses of critical wetland resources.

“Essential Public Property (EPP) Option”/ “Essential Public Projects Option”

The definition of an “EPP as identified in Section IV” is not clear because it is not sufficiently defined in Section IV. There does not appear to be any existing list of “Essential Public Projects” as referenced on page 53 of the updated Biology Guidelines. Furthermore, any public project contemplated for a qualification list should be limited to projects that have no other alternative to impacting wetlands. For instance, a solar project might be identified as an essential public project, but could certainly be constructed outside of a wetland even if the specific project site controlled has no other feasible lands on-site.

“Economic Viability Option”

Economic viability is extremely difficult to determine and the input of economic variables as well as the models utilized are subject to bias, manipulation, economic cycles and subjective judgment. Any economic consultant retained should be subject to approval of



U. S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011
(760) 431-9440
FAX (760) 431-5902



California Department of Fish and Game
South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4299

In Reply Refer To:
FWS/CDFG-SDG-08B0470-11TA0085

NOV 09 2010

Councilmember Lightner, District 1
Councilmember Faulconer District 2
Councilmember Todd, District 3
Councilmember Young, District 4
Councilmember DeMaio, District 5
Councilmember Frye, District 6
Councilmember Emerald, District 7
Councilmember Hueso, District 8
202 "C" Street, MS #10A
San Diego, California 92101

Subject: ITEM-17 on November 10, 2010, Agenda for the Committee of Land Use and Housing of the City Council of the City of San Diego – Report from City Planning and Community Investment Department regarding Clarification to the LDC/Wetland Deviations and Amendments to the Biology Guidelines

Honorable Councilmembers:

Since 2004, the California Department of Fish and Game (Department) and U.S. Fish and Wildlife Service (Service) (collectively, "Wildlife Agencies") have worked closely with staff from the City of San Diego (City) on the proposed clarifications to the City's Land Development Code (Sections 143.0110, 143.0141, 143.0150, and Table 143-01A) and amendments to the Biology Guidelines. In our May 6, 2008, letter on the Notice of Preparation (NOP) for the associated Environmental Impact Report, we presented the *Wildlife Agencies Alternative* to the proposed regulatory changes, primarily to facilitate the future interpretation and implementation of the existing process for deviations from the City's Environmentally Sensitive Lands (ESL) regulations to allow unavoidable impacts on wetlands (wetland deviation process). We support City staff's recommendation and appreciate the inclusion in the recommendation a key element of the *Wildlife Agencies Alternative* - funding in-perpetuity monitoring and management of all wetland mitigation areas set aside through application of the Biologically Superior Option. Monitoring and management of mitigation areas is critical to ensuring the persistence of their biological functions and values.

The City's existing ESL regulations and Biology Guidelines allow the unavoidable loss of wetlands under certain scenarios (e.g., for essential public facilities where no feasible alternative exists, and for reasonable use of a parcel). The proposed regulatory changes provide much-needed (a) guidance on how to apply the wetland deviation process, and (b) specificity on the only three scenarios for which the process can be employed - essential public projects option,

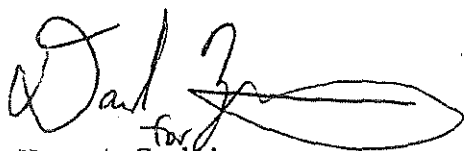
TAKE PRIDE
IN AMERICA 

economic viability option, and biologically superior option. Under the existing regulations, the wetland deviation process is available to any kind of project, even projects that propose impacts on high-quality wetlands.

The Wildlife Agencies concur with the City's conclusion under CEQA that, relative to existing conditions (i.e., the existing ESL regulations and Biology Guidelines), the implementation of the proposed regulatory changes would not result in significant biological impacts. For the most part, the proposed changes only clarify the existing ESL regulations pertaining to wetlands.

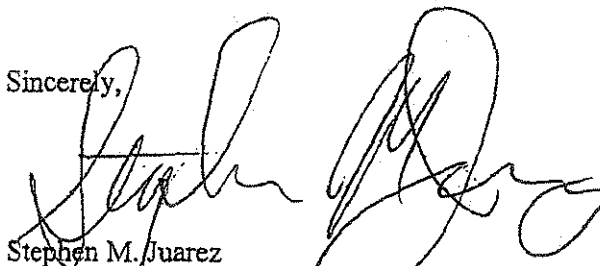
While the proposed regulatory changes allow use of: (a) the essential public project option for a broader range of projects than do the existing ESL regulations and the City's Multiple Species Conservation Program (MSCP) Subarea Plan for essential public facilities; and (b) the biologically superior option for situations the existing ESL regulations and MSCP Subarea Plan do not contemplate at all, the processes applied to projects proposing to use these options is intended to ensure that such projects not result in significant unmitigated impacts. Note that site-specific design and analysis has not been conducted for the all the essential public projects on the City's list (Attachment 3 in Report to the City Council No. 10-140), and wetland impacts may not occur as a result of each of these projects. Also, while projects using the economic viability option could result in significant unmitigated impacts, this potential exists under the existing ESL regulations both inside and outside of the Coastal Zone. Furthermore, neither the existing ESL regulations nor the proposed regulatory changes supersede the State and Federal wetland regulatory permitting processes.

We appreciate the work of all those involved since 1998 in producing the framework of the proposed regulatory changes to the City's ESL regulations and the Biology Guidelines and the opportunity to participate over the last six years in the preparation of the proposed changes. Based on our years of experience in implementing the ESL regulations and the Biology Guidelines, we believe that the proposed regulatory changes will benefit not only wetland resources, but also all involved in applying the wetland deviation process. If you have any questions, please contact Libby Lucas of the Department at (858) 467-4230 or Susan Wynn of the Service at (760) 431-9440 extension 216.



Karen A. Goebel
Assistant Field Supervisor
U.S. Fish and Wildlife Service

Sincerely,



Stephen M. Juarez
Environmental Program Manager
California Department of Fish and Game



Attachment 5

THE CITY OF SAN DIEGO

January 18, 2011

San Diego Coastkeeper
Ms. Jill Witkowski
2825 Dewey Road, Suite 200
San Diego, CA 92106

Preserve Wild Santee
Mr. Van K. Collinsworth, M.A.
9222 Lake Canyon Road
Santee, CA 92071

Center for Biological Diversity
Mr. John Buse
PMB 447, 8033 Sunset Blvd.
Los Angeles, CA 90046

Subject: Response to Comment Letters regarding the Proposed Amendments to the Land Development Code (LDC) Environmentally Sensitive Land Ordinance Regulations and Biology Guidelines dated November 4 and 5, 2010 from San Diego Coastkeeper, San Diego Canyonlands, California Native Plant Society, Friends of Rose Creek, San Diego Audubon Society, Sierra Club, Coastal Environmental Rights Foundation, Preserve Wild Santee, and Center for Biological Diversity

Dear Ms. Witkowski, Mr. Collinsworth, and Mr. Buse,

The City agrees that wetlands are rare and valuable resources that must be protected. Therefore, the City in coordination with several working groups and the Wildlife Agencies, reviewed the existing Environmentally Sensitive Lands (ESL) regulations and proposed amendments to strengthen, limit and clarify the ESL regulations and the City's Biology Guidelines. No changes are proposed within the Coastal Overlay Zone.

Under the current regulations, avoidance of wetland impacts is the first requirements for both public and private projects. A deviation may be requested only if findings can be made; no change is proposed to this requirement. No waivers, exemptions or reduction in requirements are proposed for any projects. The proposed revisions would strengthen the current regulations by limiting the possible deviations to three options (Essential Public Projects, Economic Viability, and Biologically Superior) and providing stringent criteria that must be met in order to apply for a deviation. A summary table has been attached which highlights the existing and the proposed amendments to the regulations, findings, and biology guidelines.

Currently, there is no definition or limitation related to public projects within the ESL regulations for wetland impacts. The proposal defines and limits Essential Public Projects (EPP) to the four categories identified in your letter. The EPP list includes sites and projects where project-level design and analysis has not yet been conducted. Therefore, a conservative approach was taken and inclusion on the project list was based on the potential for a wetland or an intermittent drainage to occur on the project site. Inclusion on the list does not mean that the project would be impacting wetlands. The EPP list is intended to be a final list and would be adopted by a City resolution. The EPP list was included in the SEIR as Appendix III of the Biology Guidelines and Appendix D included the associated figures. The list has been updated and 23 projects have been removed because the projects have either been completed, deleted, or no wetland impacts would occur. Please see the attached EPP list with the remaining projects.

The City agrees that the applicant should bear the burden of proving there are no feasible alternatives when a proposed project would impact a wetland. The existing regulations require the applicant to demonstrate that wetland impacts cannot be avoided and have been minimized to the maximum extent feasible. No changes to these requirements are proposed. Under the Essential Public Project option, the proposed amendments would further require that the biological analysis include a no project alternative, a wetland avoidance alternative, and review of alternative sites.

Under the current regulations, a deviation may be requested based on economic viability only if the applicant can demonstrate that it is infeasible to avoid wetland impacts and the project is the minimum necessary to achieve economic viability. No change or waivers from the existing regulations are proposed.

Currently, within the Coastal Overlay Zone the existing regulations require an applicant to provide extensive documentation to support a deviation based on the contention that strict application of the regulations would result in denial of all economically viable use to the property. Outside the Coastal Overlay Zone there are no existing requirements related to the preparation, review, and acceptance of a deviation based on economic viability. In order to strengthen the existing regulations, the proposed amendments would require that the same standards for the Coastal Overlay Zone be applied City-wide. The proposed amendments would additionally require written concurrence from the Wildlife Agencies if less than full biological mitigation is proposed.

The proposed amendments also add specific requirements for preparation and review of the economic viability documentation which would be reviewed by City staff including Development Services Department (DSD), City Planning and Community Investment (CPCI), and Real Estate Asset Department (READ). The applicant would be required to deposit money into a special fund for the City to hire and supervise an outside appraiser to prepare the detailed analysis and an economic consultant to review it. All documentation and findings would be provided to the City decision-maker and public prior to any discretionary hearing. The proposed amendments were developed to address the current lack of criteria and guidelines outside the Coastal Overlay Zone for analyzing and assessing economic viability information to determine when it may be appropriate to allow for a deviation based on economic viability.

The City Attorney's Office would work with staff and the decision making body to ensure the action complies with all applicable laws. The City Attorney's role, however, is to advise and that advice is

necessarily confidential and privileged. It would not be appropriate for the City Attorney's Office to make official findings as part of a decision making process; in fact, it would be contrary to the duties laid out for this office in the city charter. Finally, regardless of a City Attorney official opinion on a particular project, only a court can determine whether a regulatory taking has truly occurred.

Under the existing regulations and Biology Guidelines, an applicant may apply for a deviation if documentation is provided that demonstrates impacts to wetland habitat cannot be avoided. There are no further limitations and a deviation may be processed for all types of projects. Under the proposed Biologically Superior option, future deviations would be limited to projects that would impact low quality wetland resources only. Under this option, there will be a new project review process whereby the Wildlife Agencies will review all projects proposing to impact wetlands prior to public review of the environmental document. This would ensure consistency with State and Federal requirements, the criteria outlined in the biologically superior option, and the vernal pool habitat conservation plan (HCP) which is currently underway. Additionally, no deviations would be allowed within tidal-influence wetlands (e.g., coastal salt marsh, saltpan & mudflats) and the project must result in a biologically superior project and would require concurrence from the Wildlife Agencies.

The City agrees with your determination that hydrologic, flood control, and water quality functions of the wetland as well as restoration potential should be considered when evaluating wetland quality. The proposed amendments to the Biology Guidelines include these factors plus other overall wetland and habitat-specific factors. Additionally, the project-specific biology report must include a no project alternative, a wetland avoidance alternative, and a biologically superior alternative and/or project. The goal is to provide increased clarification and guidance along with specific biological reporting requirements in order to accurately determine wetland quality, identify a biologically superior project, and determine when it may be appropriate to grant a deviation.

The "Biologically Superior Alternative" in the project SEIR is the Wildlife Agencies' alternative. This Alternative provides two mitigation options: a) standard mitigation (i.e., mitigation ratios in the existing Biology Guidelines, Table 2) and a biologically superior project design, and/or b) extraordinary mitigation (i.e., twice the mitigation ratios in the existing Biology Guideline, Table 2). The Wildlife Agency alternative was selected as the Biologically Superior Alternative because it also required funding in perpetuity for management and monitoring of mitigation sites. The proposed amendments include the same mitigation options as the Wildlife Agency alternative and have been revised to require funding in-perpetuity for all mitigation sites. Therefore, the proposed project is now consistent with the Biologically Superior Alternative.

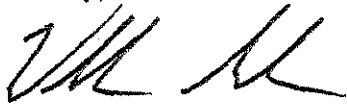
The City agrees that successful wetland mitigation must include monitoring and follow-up requirements. The existing Guidelines for Conducting Biology Surveys, Attachment III outlines the general requirements for restoration plans and includes: identification of a financially responsible party and performance bonds, implementation of a 5-year maintenance and monitoring program under the direction of a project biologist, 5-year performance/success criteria, a reporting program, and a requirement for remediation measures if success criteria is not met. No changes are proposed to these requirements.

The proposed amendments to the ESL regulations and Biology Guidelines were developed in coordination with the Wildlife Agencies. On November 9, 2010, the Wildlife Agencies provided a

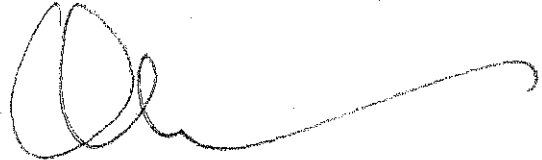
letter to the City Councilmembers in support of the proposed project and concurred with the City's conclusion under CEQA that, relative to existing condition (i.e., the existing ESL regulations and biology Guidelines), the implementation of the proposed regulatory changes would not result in significant biological impacts. Existing City regulations require that all appropriate State and Federal permits must be obtained prior to the issuance of any City grading and/or construction permits. No changes are proposed to this requirement.

The purpose of this project is to strengthen, limit, and clarify the City's existing ESL/wetland deviation process. We believe these regulatory changes will benefit the City's wetland resources and provide guidance in implementation of the wetland regulations and policies. If you have any questions, please call Jeanne Krosch at (619) 236-7225 or Anna McPherson at (619) 446-5276.

Sincerely,



William Anderson, FAICP
Director
City Planning and Community Investment



Kelly Broughton
Director
Development Services Department

Attachments:

1. Summary of Existing and Proposed Amendments to ESL Regulations and Biology Guidelines
2. Essential Public Project List, January 2011

Cc: San Diego Canyonlands, Eric Bowlby
California Native Plant Society, Carrie Schneider
Friends of Rose Creek, Karin Zirk
San Diego Audubon Society, Jim Peugh
Friends of Rose Creek, Debby Knight
Sierra Club, Pamela Epstein
Coastal Environmental Rights Foundation, Livia Borak
U.S. Fish and Wildlife Service, David Zoutendyk
California Department of Fish and Game, David Mayer
California Department of Fish and Game, Elizabeth Lucas
Office of the Mayor
Council President Alvarez, District 8
Councilmember Lightner, District 1
Councilmember Faulconer, District 2
Councilmember Gloria, District 3
Councilmember Young, District 4
Councilmember DeMaio, District 5
Councilmember Zapf, District 6
Councilmember Emerald, District 7
Deputy City Attorney, Andrea Dixon

Attachment 1	
Summary of Existing and Proposed Amendments to ESL Regulations and Biology Guidelines	
Existing LDC/ESL Regulations	Proposed LDC/ESL Amendments
<ol style="list-style-type: none"> 1. Applicants may apply for a deviation only after demonstrating avoidance is not feasible 2. All applicable state and federal permits required prior to issuance of any grading permits 3. Deviations: allowed for all types of projects 4. Separate requirements for Coastal Overlay Zone 	<ol style="list-style-type: none"> 1. No change 2. No change 3. Deviations limited to three types of projects: Essential Public Projects, Economic Viability and Biologically Superior; under the Biological Superior Option, impacts are further limited to low quality wetland resources 4. No change within the Coastal Overlay Zone. Amendments only apply to areas outside of the Coastal Overlay Zone 5. Requirement to fund management and monitoring of mitigation sites in-perpetuity
Existing Findings for a Deviation from ESL	Proposed Findings for a Deviation from ESL
There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands.	No change
The proposed deviation is the minimum necessary to afford relief from special circumstance or conditions applicable to the land and not of the applicant's making.	No change
Existing Biology Guidelines	Proposed Amendments to the Biology Guidelines
<u>Public and Private Projects</u>	<u>Public and Private Projects</u>
<ol style="list-style-type: none"> 1. Applicants must demonstrate that avoidance is infeasible 2. Projects are sent to Wetland Advisory Board as part of CEQA public review process. Any comments are included in final CEQA document 3. Demonstrate how wetland impacts have been minimized to the maximum extend feasible 	<ol style="list-style-type: none"> 1. No change 2. No change 3. No change 4.a. Defines & limits essential public projects (EPP) to: <ol style="list-style-type: none"> 1. linear projects 2. maintenance of linear projects 3. state and federally mandated projects (e.g., projects required to clean up an impaired water body) 4. public projects indentified in an adopted land use plan or implementing document and on the EPP list 4.b. Additional requirements for biological analysis: <ol style="list-style-type: none"> 1. no project alternative 2. wetland avoidance alternative, including alternative sites 5.a. Defines and limits all other projects to the biologically superior option: <ol style="list-style-type: none"> 1. deviation considered for low quality wetland resources only; 2. no deviations allowed within tidal-influence wetlands (e.g. coastal salt marsh, saltpan & mudflats)

- 3. Project must result in a biologically superior project
- 4. Opinion of the Wetland Advisory Board included in report to City decision maker
- 5. Requires concurrence from the Wildlife Agencies
- 5.b. Additional requirements for biological analysis:
 - 1. include no project alternative
 - 2. include a wetland avoidance alternative
 - 3. include biologically superior alternative
 - 4. extensive documentation, including species diversity, restoration potential, connectivity, hydrologic function, source and quality of water, to make determination on wetland quality

- Economic Viability:
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. Requirements added outside Coastal Overlay Zone:
 - a) consistency with Coastal Overlay Zone requirements
 - b) deviation cannot be based solely on a rezone
 - c) biological analysis must include: no project alternative and an avoidance alternative
 - d) Real Estate Assets Department would hire and supervise an outside qualified appraiser to prepare an appraisal including prior and current purchase information
 - e) economic analysis required consistent with federal 404 b(1) guidelines under the Clean Water Act
 - f) Real Estate Assets Department would select a qualified outside economic consultant to prepared an economic viability analysis
 - g) City staff including DSD, CPCI, and READ would review the supporting documentation
 - h) Wildlife Agency concurrence required if full biological mitigation is not provided

- Economic Viability:
- 1. Deviation only allowed if denied viable use of land and avoidance is not feasible
 - 2. Project must be the minimum necessary to achieve economic viability
 - 3. Demonstrate how wetland impacts have been minimized to the maximum extend feasible
 - 4. Project is sent to Wetland Advisory Board as part of CEQA public review process. Any comments are included in the final CEQA document
 - 5. Economic viability analysis and deviation findings must be made available to City decision-maker and public
 - 6. Inside the Coastal Overlay Zone: extensive requirements related to supporting documentation

Essential Public Project List

Update and renumbered since public review of draft SEIR

January 2011

Fig	Title	Community & Council Dist.	Site/Project Description
<u>Unknown potential for wetland impacts:</u>			
1	Mission Valley Water Reclamation System - Clean Water Program Modifications to the Sewage System	Mission Valley/CD6	Camino Del Rio North, between I-805 and I-15- Clean Water Program Modifications to the sewage system.
2	Lake Murray Community Park - Improvements	Navajo/CD7	Construction of parking lots, and road expansion to the park. The parking lot will add 200 parking spaces, and riparian landscaping/ xeriscaping at San Carlos Point.
3	Old Mission Dam Preservation Project	Navajo/CD7	Dredging required for restoration of Old Mission Dam site. Dredging project was approved in 2005. LDR #s 92-0322 & 42-0120/SDP #4972. Includes associated mitigation site & future permitting for long-term maintenance.
4	Pasatiempo Open Space Park	Navajo/CD7	Passive open space park, including picnic facilities. Site contains vernal pools & will be reviewed as part of the vernal pool habitat conservation plan (HCP) process.
5	Lower Otay Reservoir Emergency Sluice Gates	Otay Mesa/CD8	Provide new sluice gates at an existing check dam to allow for an emergency drawdown.
6	Elementary School No. 2 - Joint Use Improvements	Pacific Highlands Ranch/CD1	The development of a 5-acre Joint Use facility at Elementary School No. 2
7	McGonigle Neighborhood Park	Pacific Highlands Ranch/CD1	Development of a 5 useable acre neighborhood park to be located adjacent to a proposed elementary school in the McGonigle Park area. Park also includes half-width street improvements for the local roadway.
8	Penasquitos Village Neighborhood Park	Rancho Penasquitos/CD1	The development of an approximately 5-acre neighborhood park site located along the west side of Carmel Mountain Road, and southwest of Cuca Street.
9	Beyer Park Expansion	San Ysidro/CD8	The development of a 15-acre addition to the 5-acre Beyer Neighborhood Park site.
10	Fire Station #28	Serra Mesa/CD6	Development of a 16, 780 square foot fire station.
11	Montgomery Field South Heliport	Serra Mesa/CD6	Development of an FAA-certified landing area for rotor crafts, utilized by the public, public-safety, and military entities. Contraints study has been prepared and proposed location would not impact wetland resources.
12	Serra Mesa Community Park Recreation Building	Serra Mesa/CD6	Development of a new 20,000 sq ft recreation building.
13	Camp Elliot Elementary School - Joint Use Improvements	Tierrasanta/CD7	The development of a 2-acre joint use facility on the future Camp Elliot Elementary School when it is constructed, located adjacent to the Camp Elliot Neighborhood Park.
14	Camp Elliot Neighborhood Park	Tierrasanta/CD7	The development of a 5-acre neighborhood park located adjacent to Mission Trails Regional Park, and the future Camp Elliot Elementary School.
15	Kumeyaay Lakes Berm Restoration and Dredging	Tierrasanta/CD7	Project provides for the dredging of two lakes & reconstruction of a lake berm within the Kumeyaay Lake system at Mission Trails Regional Park.
<u>Subtotal: 15 projects</u>			
<u>Minor or no anticipated wetland impacts (i.e., graded pad, restoration, wetland buffer requirements, culvert, pedestrian bridge)</u>			
16	North Fire Station - No. 48	Black Mountain Ranch/CD1	Creek located on-site; Project design will include a minimum 75-foot buffer. No impacts to wetland would occur; wetland buffer requirements only.
17	City Heights Hamilton Elementary School Park - Joint Use	Mid-City/City Heights/CD3	3-acre joint use park at the corner of Olive and 44th.

18	Eastern Area Kalmia Street Neighborhood Park	Mid-City/Eastern Area/CD4	Development of a 8.2-acre neighborhood Park.
19	Home Avenue Neighborhood Park	Mid-City/Eastern Area/CD4	Development of a Neighborhood Park at Home Avenue North of Menlo Street. Minor wetland impacts due to installation of a box culvert adjacent to Home Ave. Project includes 1.26 acres of habitat restoration of Auburn Creek & adjacent
20	North Chollas Community Park Improvements	Mid-City/Eastern Area/CD4	Improvements to a 94-acre community park including a comfort station, walkways, trails, and creek enhancement.
21	Sunshine Berardini Field-Improvements (formerly Mid-City Athletic Area)	Mid-City/CD4	Development of approximately 14.31 acres within the existing park. Amenities include a play area, multi-purpose courts, sports fields, walkways, trails, landscaping, and enhancements to Chollas Creek. Installing a bridge to cross
22	McAuliffe (Winterwood) Community Park	Mira Mesa/CD5	Approximately 12 acres are currently under consideration as a mitigation site for Salk Elementary School. Remaining approximate 7.5 acres may be developed but no wetland impacts are anticipated.
23	Parkdale Site Neighborhood Park	Mira Mesa/CD5	Development of a 5-acre neighborhood park at the south end of Parkdale Avenue. Park amenities include play & turf areas, picnic facilities, landscaping, & a 1,000 sq. ft. interpretative center for an adjoining 7- acre vernal pool site.
24	Rattlesnake Canyon Neighborhood Park	Mira Mesa/CD5	The development of a 10-acre neighborhood park, as well as a trail connection to Maddox Neighborhood Park within Carroll Canyon. Amenities include play areas, turf areas, courts, picnic facilities, and landscaping.
25	Fire Station #34	Navajo/CD7	Project would expand the existing fire station, adding dorms and expanding the kitchen.
26	Dennery Ranch Neighborhood Park #2	Otay Mesa/CD8	The development of a 9-acre neighborhood park. Anticipated that this site will be relocated & no wetland impacts would occur.
27	Fire Station #6	Otay Mesa/CD8	Relocation to : Ocean View Hills & Del Sol Blvd., 12,000 sq ft building. Site is graded, but depending on location of vernal pools on adjacent site, a buffer area may be required on this parcel.
28	Hidden Trails Neighborhood Park	Otay Mesa/CD8	Development of a 3.7-acre neighborhood park within the Hidden Trails subdivision.
29	Ocean View Hills Community Park	Otay Mesa/CD8	Development of a 15-acre community park north of SR-905 adjacent to the middle school within the California Terraces Specific Plan.
30	Otay Mesa Branch Library	Otay Mesa/CD8	Construct a 15,000-sf Library on 3-acre site near Ocean View Hills Parkway and Del Sol Blvd.
31	Los Altos Neighborhood Park Improvements	Otay Mesa-Nestor/CD8	The development of 10.00 gross/ useable 7.5 acres, and will include a new comfort station.
32	Southwest Neighborhood Park	Otay Mesa-Nestor/CD8	The development of a 11.54 gross/6.92 usable acres, and will include a new comfort station.
33	Los Penasquitos Ranger Station	Rancho Penasquitos/CD1	The development of a new ranger station to replace an existing temporary facility at the NE corner of Black Mountain Road and Mercy Road. No impacts to wetlands would occur with project; wetland buffer requirements only.
34	Paradise Hills Community Park Phase III	Skyline Paradise Hills/CD4	Improvements to the lower part of Paradise Hills community park.
35	Chollas Creek South Branch Phase I Implementation	Southeast San Diego/CD 4&8	The project provides for the development/implementation of the Chollas Creek Enhancement Program which began in the 1970s.
36	252 Corridor Park Improvements - Phase II	Southeast San Diego/CD8	Development of an approximately 5.8 gross acre, 2.0 useable acre, neighborhood park in the Southcrest Neighborhood. Improvements include picnic shelters, children's play area, hard courts, walkways, fencing, amphitheater, open turf
	Subtotal: 21 projects		
	Total Projects: 36		

Note: Sites/projects have been included if there was a potential for wetlands to occur on-site. Site specific design/analysis has not been conducted to determine if wetland impacts would occur. All projects would be developed in accordance with ESL Section 143.0150 (deviation may only be requested where no feasible alternative exists that would avoid impacts to wetlands).