



M E M O R A N D U M

DATE: September 16, 2009

TO: Community Planners Committee (CPC)

FROM: Kelly Broughton, Development Services Director

SUBJECT: Environmentally Sensitive Lands –Land Development Code/Land Development Manual Amendments to Address Wetland Deviations

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.

As a result, the City Council directed staff to examine the deviation findings 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. Based upon input from several working groups over the last ten years, amendments to the Land Development Code, including Sections 143.0110 – Table 143-01A, 143.0141 and 143.0150 and the Land Development Manual – Biology Guidelines are proposed for adoption as described below. The Land Development Code amendments and Biology Guidelines are also attached to this memo.

Land Development Code Amendments

The Land Development Code 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 allows for a wetland deviation to enable the City to implement necessary public facilities and infrastructure projects including, but not limited to, specific design/construction projects identified in a community or implementing plan and identified on the Essential Public Projects List, maintenance of existing infrastructure, and 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.

Biology Guidelines

The Land Development Manual – Biology Guidelines are being revised to establish criteria for each development scenario against which the already adopted deviation findings will be evaluated.

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 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.

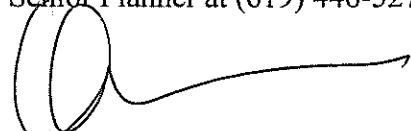
In the case of the Economic Viability Option, the Land Development Manual would also be revised to add criteria for preparation and review of the required economic analysis; the proposed

amendments are consistent with the existing requirements for projects within the Coastal Zone. **No amendments are proposed to the regulations already in effect in the Coastal Overlay Zone.**

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 establishes vernal pool buffer requirements and wetland management and monitoring requirements.

The Supplemental Environmental Impact Report (SEIR) for the proposed amendment to the Land Development Code/Land Development Manual was distributed for public review and comment on September 14, 2009. Each community planning group received a CD copy of the DSEIR. The public comment period for the DSEIR ends October 30, 2009.

During this public review and comment period, the proposed amendments will also be presented to the Wetland Advisory Board, Land Use and Housing Committee, Natural Resources and Conservation Committee, and Planning Commission, prior to consideration for adoption by the City Council. If you have questions related to this project, please contact Anna McPherson, Senior Planner at (619) 446-5276.



Kelly Broughton
Development Services Director

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- Attachments:
1. Amendments to the Environmentally Sensitive Lands Section – Section 143.0110-Table 143-01A When Environmentally Sensitive Lands Regulations Apply
 2. Amendments Section 143.0141 Development Regulations for Sensitive Biological Resources
 3. Section 143.0150 Deviations from Environmentally Sensitive Lands Regulations

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