

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: September 8, 2004

TO: Chairman and Members of the Planning Commission

FROM: Chris Zirkle, Land Development Review Division

SUBJECT: California Environmental Quality Act (CEQA) Significance
Determination Guidelines

REFERENCE: Staff Report P-04-123, dated July 29, 2004

At its August 12, 2004 meeting, the Planning Commission began a workshop on proposed revisions to the City's CEQA Significance Determination Guidelines. Public comment was taken and discussion occurred after which the workshop was continued to September 16, 2004 in order for staff to provide additional information to the Commission.

Last week, as requested, Commissioners were provided with comments received from the public during the formal March, 2004 public review period and responses thereto. This memo includes staff responses to public comment and Commission comment from the August 12, 2004 workshop. Attached to this memo is the following information:

- Attachment 1: Replacement pages for the July, 2004 version of the significance thresholds to reflect changes made since the August 12 workshop
- Attachment 2: Two-Part Matrix of all changes made to the thresholds since the May 19, 2004 LU&H workshop, including those made since the August 12 workshop
- Attachment 3: Summary of Survey on the use of Police and Fire-Rescue response times as significance thresholds
- Attachments 4, 5, &6: 1993, 1998, and 2003 articles by Dr. Paul Zedler on vernal pool restoration
- Attachment 7: Article by Andrew J. Bohonak on Conservation Genetics and Fairy Shrimp

Attachment 1

Responses to Public and Commission Comment from the August 12, 2004 Planning Commission Workshop on the CEQA Significance Thresholds

Scott Molloy, representing the Building Industry Association

1. Air Quality impacts from PM10 and ozone should always be considered mitigated because of state and federal standards which are being phased in. The section will be difficult to implement.

Health impacts from these pollutants can occur during the phase-in period. Phase-in periods are often delayed by special interest lobbyists and health impacts can occur in the interim. The Citizens for a Better Environment case indicates that reliance on standards does not necessarily mean that a significant impact will not occur.

With respect to implementation, staff has not had problems implementing the section in the past. Staff has agreed to minor changes suggested by the BIA which do contribute to clarity. These changes are summarized in the matrix attached to the staff report.

2. Calling impacts to habitat in Brush Management Zone 2 is a violation of the MSCP Implementing Agreement.

As noted in the staff report, this is a policy change; however comments received from the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the recently-released EIR for changes to the Brush Management regulations do not indicate that the proposed CEQA significance determination is a violation of the Implementing Agreement.

3. Restoration of previously existing vernal pools should be considered to mitigate direct and cumulative impacts to vernal pools.

Although direct impacts to vernal pools have always been considered significant, the current thresholds are silent on whether these impacts could be mitigated. The last project which had direct impacts to vernal pools (Robinhood Ridge, LDR 98-0189, dated June 25, 1998) did allow mitigation to below a level of significance for direct impacts by restoration. The language in the proposed thresholds was an oversight and staff does propose to continue to allow direct and cumulative impacts associated with direct losses

of vernal pools to be mitigated via restoration and enhancement per the Biology Guidelines and reversion to the original language in the Significance Thresholds.

For the restoration/creation component of the mitigation, staff recommends to continue not accepting “creation” of vernal pools. In other words, new vernal pools constructed to mitigate impacts would need to be constructed on a site which previously supported vernal pools. No data exists to support the contention that vernal pools can successfully be replicated on areas which did not previously support them.

The science on vernal pool restoration is still a work in progress. Nonetheless, research to date indicates that “overall, the evidence suggested a gradual convergence of the function and characteristics of artificial basins [studied by Zedler in this paper] toward those of natural pools” (Zedler, 1998). These successes are based on an evaluation of the metrics typically used to assess the success of habitat restoration however, there are concerns that 1) these metrics are not all-encompassing since science does not know of all the functions and values of vernal pools, much less how to measure them and 2) that there has been a limited use of metrics which evaluate the preservation of existing genotypes.

Regarding the first issue, science rarely purports to know something as a truth, rather, it is only willing to state that a theory has a certain percentage likelihood of being true. If scientific certainty was required for a basis for regulation, few regulations would exist. Therefore, staff believes that it could in this case, make the leap from science to regulation by concluding that using vernal pool restoration efforts as measured by known metrics adequately characterize restoration as successful and therefore acceptable as mitigation.

On the second issue, recent research has identified unique genetic patterns among fairy shrimp within individual vernal pools, even those vernal pools within a single complex. The genetic makeup of these fairy shrimp should be considered an “Evolutionary Significant Unit” (Bohanak, 2004) and Bohanak contends that the uniqueness of this makeup, including its current evolutionary status and the direction of its continued evolution, is intrinsically invaluable. It is this feature that could be lost even if a vernal pool were to be closely replicated by a restoration effort and inoculated with fairy shrimp from the impacted pool. Even if the artificial basin closely mimicked the impacted basin, it is suspected that there would be different micro-environmental conditions to which the shrimp would be exposed to. These differences would affect the evolutionary status and direction of the evolution of the shrimp as they begin to adjust to the artificial pool. Staff believes that this loss could be considered less than significant because 1) the shrimp will continue to evolve even if they are not impacted, 2) it is just as likely that changes to the ESU will be beneficial as detrimental, and 3) phenological evaluation of artificial basins indicates that the individuals suffered no impacts from mal-adaption or to their robustness.

Given these positions, staff believes that restored pools could serve to mitigate direct and cumulative impacts if the artificial basins are designed to mimic the estimated

undisturbed condition of the impacted pools in terms of all known metrics and if they are built in an area or areas such that the genetic transfer between pools is not affected. Further, if the impacted pool supports species which are genetically unique on a pool-by-basis, the artificial basin must be inoculated with these individuals from the impacted pools such that the reproduction of these individuals is certain. Using these criteria, any size of impact (single pool or entire complex) and either nature of impact (direct or cumulative) could be mitigated.

4. The significance thresholds should include impacts to Police and Fire/Rescue response times and projects which cannot be served by standard Police and Fire/Rescue response times as being potentially significant.

The staff report details why this recommendation has not been made.

5. BIA disagrees with lowering the threshold for cumulative impacts at LOS F facilities from two seconds to one second.

The staff report details why this recommendation has not been made.

6. Initial Study Question P.4 (page 74 of the thresholds) is inappropriate.

Section 15125(a) of the CEQA guidelines indicates that the “environmental setting” is the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced. This section also indicates that the environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

In Antioch v. Pittsburg (1986) 187 Cal. App. 3d 1325, the court underscored that mere conformity with a general plan (in and of itself) will not justify a finding that the project has no significant environmental effects. In Environmental Information and Planning Council v. County of El Dorado (1982) 131 Cal. App. 3d 350, the court held that in comparing an old general plan with a new county general plan that would allow less growth than the old plan, the EIR had to address the existing level of actual physical development in the county as the base line for the comparison. The two plans could not be compared with each other without showing how they would relate to the existing level of development.

Therefore, the initial study question is appropriate as the existing character of an area is the baseline from which impacts should be measured regardless of what is planned for the area. An example of the result of this threshold is that the first few, new, high-rise buildings in an area currently dominated by low-rise development but planned for high-rise development would be considered to have a potentially significant (and potentially mitigable) Neighborhood Character impact. The impact would be considered less than significant once the existing character changed so as to be consistent with further high-rise development.

A plan-to-plan analysis may be appropriate in cases where a Land Use impact would have secondary Visual Quality impact.

7. Requiring the preparation of Waste Management Plans is unnecessary and infeasible on small construction sites.

The requirement is consistent with the policy recently recommended for approval by LU&H. ESD still has the discretion of whether or not to require the plan or approve creative recycling methods if project circumstances dictate doing so. CEQA does not allow staff to change its significance determination for projects on small sites if the impact to the landfill is the same as projects on larger sites.

Donna Jones, representing herself

1. The Air Quality section should include a distance from sensitive receptors beyond which the impact would not be significant.

Such a distance cannot be generalized; instead, a significance determination would need to be based on a project-specific air quality study. Factors to consider would include not only the nature of the pollutant as a health hazard, but also wind patterns, timing/magnitude of release, potential for accidental releases, and proximity of existing and planned receptors.

2. The Air Quality section should not require applicants to go door-to-door looking for sensitive receptors (i.e., medical patients) in residences.

Page 5 of the thresholds now includes specific language indicating that this is not required.

3. The Biological Resources section should not require mitigation for impacts to sensitive bird species if they are not present.

Staff agrees. However, discretionary review of a project may occur years before project construction commences. During that period, sensitive bird species not found in a survey conducted during discretionary review may begin (or return to) breeding activities on or adjacent to the project site as long as appropriate habitat exists. Therefore, the impact must be considered significant until a pre-construction survey shows otherwise.

4. If an area is planned for development, Neighborhood Character impacts associated with implementation of the plan should not be considered significant.

See response to BIA comment 6. Where possible, staff will tier the environmental document off of the document used to disclose the significant impacts associated with adoption of the plan; however, the fact that an impact was considered significant in a

document previously prepared and certified for the site does not mean that the impact should not be considered significant in subsequent documents.

5. Same as BIA comment 4.

Alex Sachs, representing himself

1. The materials for the workshop were not available.

All materials presented by staff to the Planning Commission, except for the comments received during the March, 2004 public review period and responses thereto, are available on the Development Services website under "News and Updates". The material was posted on the web approximately 10 days before the August 12, 2004 Planning Commission workshop.

Questions from the Commissioners

1. How many more EIRs would be required due to the proposed changes to the transportation thresholds?

It is not possible to quantify the number of EIRs that would be required due to the proposed changes. Many projects which would have less-than-significant impacts under the current thresholds would have significant-but-mitigated impacts under the new thresholds and, therefore, preparation of an EIR would not be required. The availability of mitigation is dependent upon the unique circumstances surrounding the project site, i.e., whether street improvements would mitigate the impact and whether the cost such an improvement could legitimately be required of a project.

2. How does the Land Development Code update impact what we are doing regarding Brush Management?

The proposed amendment to the Land Development Code Brush Management requirements would change the existing, varying Zone 1 and Zone 2 width requirements to a consistent 35 feet for Zone 1 and 65 feet for Zone 2 citywide. Where a 35-foot Zone 1 cannot be achieved, the ordinance would allow for an expanded Zone 2 width in order to achieve a 100-foot brush management area. The Brush Management ordinance as currently proposed includes no changes to the manner in which brush management would occur; however, a second ordinance is being prepared to allow the use of goats to conduct brush management activities and the EIR prepared for the Brush Management ordinance does evaluate the impacts of using goats for this purpose.

3. The biology guidelines say that Brush Management Zone 2 is impact neutral. What is the difference between the significance thresholds and the biology guidelines?

Organizationally, the biology guidelines are part of the San Diego Municipal Code (specifically, Chapter 11, the Land Development Code) while the significance thresholds

are part of the Land Development Manual, an appendix to the Land Development Code. For implementation purposes, the biology guidelines are referenced in the Environmentally Sensitive Lands Ordinance to be used by staff in evaluating permit applications for consistency with this ordinance. The significance thresholds are not used to evaluate permit applications for consistency with City ordinances; rather, they are used by staff to evaluate permit applications per CEQA.