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In Reply Refer To:
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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.

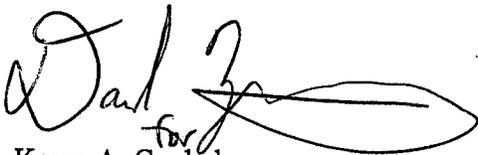
The City’s existing ESL regulations and Biology Guidelines allow the unavoidable loss of wetlands under certain scenarios (e.g., for essential public facilities where no feasible alternative exists, and for reasonable use of a parcel). The proposed regulatory changes provide much-needed (a) guidance 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,



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