

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

DATE: May 4, 2005

TO: Chairmen Schultz and Members of the Planning Commission

FROM: Kelly Broughton, Deputy Director Land Development Review Division

SUBJECT: Fifth Update to the Land Development Code and Local Coastal Program
Amendments Report No. PC-05-099 for April 21 continued to May 12, 2005

The Planning Commission voted to continue the Fifth Update to May 12, 2005. One letter was submitted to the Planning Commission from Joanne Pearson on behalf of the Sierra Club on April 21, 2005 (attached). The letter was written based on an older version of the Fifth Update from January 2005 that uses different issue item numbers and even references an item that is not included in the Fifth Update package. In an effort to address the letter and clarify the correct issue numbers for the Planning Commission, the following response was prepared:

“Item 9: Clarification of Los Penasquitos Watershed Conditions: We do not support the staff recommendation. This is a very complicated matter. If staff were to prevail, the Foundation would not be receiving its court mandated benefits.”

The actual issue number is Issue 8. At the direction of the City Attorney, this item has been withdrawn from the Fifth Update to allow for time to conduct additional research into whether the condition requiring applicant participation in a benefit assessment district or other financing mechanism under Section 126.0721 can be imposed on a Coastal Development Permit. The Los Penasquitos Watershed enhancement fees will continue to be required and collected as conditions of approval of applicable Coastal Development Permits in accordance with Section 126.0720.

“Item 10: Waiver of Appeal Period: We oppose the staff recommendation on the basis that the public’s right to the LDC specified statutory appeal period should supersede the applicant’s opportunity to begin development early.”

This is not an item included in the Fifth Update before the Planning Commission for consideration and is not a part of the staff recommendation.

“Item 18: CEQA: In general, CEQA provisions in the LDC Chapter 12 lack the clarity, specificity, completeness, and user friendliness of Chapter 6 of the Municipal Code. For that reason and others cited below, we ask that this amendment be continued for further review. For example, please see 128.0312 “Adoption of Candidate Findings and Statement of Overriding Considerations by the Decision Maker,” (Attachment 1), where the LDC gives no specific information to help the reader’s understanding. Instead, there is just citation to CEQA Guidelines Sections 15091 and 15093. LDC 128.0313 and 128.0314 are similarly non-user friendly. Attempts to locate CEQA provisions in Biology Guidelines, as stated in the Conversion Chart, were extremely trying. Furthermore, only “habitat acquisition” is identified in the conversion chart as being in the Guidelines.”

The actual issue number is Issue 19. The intent of the code change is to repeal the redundant sections of the CEQA implementation procedures in Chapter 6. No changes are proposed to the existing CEQA implementing regulations and guidelines. Ms. Pearson appears to have concerns about the existing CEQA implementing regulations that were adopted by the City Council in January 2000 with the Land Development Code. As a rule, the Land Development Code does not repeat code sections in multiple places of the code. External documents like CEQA are referred to by reference since these documents are updated outside of the City's control.

Candidate Findings and Statements of Overriding Considerations relate specifically to Environmental Impact Reports (EIRs). These EIR elements are explained in a more user friendly format in the City's EIR Guidelines. The EIR Guidelines are available at the offices of the Land Development Review Division in the Development Services Department. Sections 15091 and 15093 of the CEQA Guidelines provide detailed information on the required contents and use of EIR Findings and Statements of Overriding Considerations. CEQA (both the Statutes and the Guidelines) may be viewed online at <http://ceres.ca.gov/ceqa>.

Section 128.0313 of the LDC addresses Notices of Determination and requires in accordance with CEQA that a Notice of Determination be filed within 5 working days of final project approval (Statutes Section 21152). Section 128.0314 sets forth the procedures to be used for corrective action in the event that a certified environmental document contains erroneous information. Section 15162 of the CEQA Guidelines explains the parameters of "corrective actions" that are available in accordance with CEQA. Neither section is located in Chapter 6 of the Municipal Code proposed for repeal. No changes are proposed to Chapter 12 as a part of this code amendment.

The conversion chart Ms. Pearson is referring to is a staff tool that was generated to show that all sections in Chapter 6 were otherwise covered off in the code before being repealed. Section 69.0216 of Chapter 6 deals with habitat acquisition and preservation of habitat as a mitigation measure. This topic is now covered in Section III of the Council adopted Biology Guidelines under Mitigation Procedures. The Biology Guidelines were developed to aid in the implementation and interpretation of the Environmentally Sensitive Lands Regulations (ESL), San Diego Land Development Code, and to serve as standards for the determination of impact and mitigation under the California Environmental Quality Act (CEQA) and the Coastal Act.

"Item 19: Date of Final Action for Notice of Determination: Please clarify "...each project approval date of final action for which an environmental document was considered" Again, merely citing CEQA sections is of no use to the public, and perhaps not even to decision makers."

The actual issue number is issue item 20. The "date of final action" is a defined term in the Land Development Code that means the date all rights of appeal are exhausted for a permit, map or other matter. In the context of filing a Notice of Determination, CEQA requires that a NOD be filed within 5 working days of the final project approval. The proposed code amendment

Page 3 of 3
Planning Commission
May 4, 2005

clarifies that the date of final action for the final project approval is when the timing for filing of the NOD begins. Ms. Pearson appears to be quoting language other than that proposed as part of the staff report.

As previously mentioned, Issue 8 regarding the Los Penasquitos Watershed Conditions has been withdrawn from the Fifth Update. Staff requests that the Planning Commission recommend approval of the Fifth Update to the Land Development Code and Local Coastal Program Amendments related to the measurement, permit process, use, CEQA implementation procedures, parking, and minor corrections issues including the revisions to Issue 3 Outdoor Lighting as proposed in the memo dated April 20, 2005.

Kelly Broughton

AJL

Attachment

cc: Joanne Pearson, San Diego Sierra Club Representative