THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: May 13, 2004 REPORT NO. 04-106

ATTENTION: Committee on Land Use and Housing
Agenda of May 19, 2004

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

REFERENCE: Committee on Land Use and Housing Meetings of May 1, 2002 & August 6, 2003

SUMMARY

Issues - Should the Committee on Land Use and Housing recommend that City Council approve the revisions to the City's Significance Determination Thresholds, Appendix A of the Land Development Manual?

Manager's Recommendations -

Recommend that the City Council approve the amendment to Appendix A of the City's Land Development Manual and revise the Significance Determination Guidelines except for the significance thresholds related to Police and Fire-Rescue response times. Instead, direct staff to pursue a code amendment to include the Police and Fire response time as permit findings for projects exceeding 75 dwelling units and/or 100,000 square feet of non-residential uses. The finding will require a determination by Police and Fire Safety Services that approval of the proposed development will not substantially affect Police or Fire-Rescue response times for these development projects. Refer all these items to the Planning Commission for a recommendation to the City Council.

Other Recommendations - On May 12, 2004, Development Services' Technical Advisory Committee unanimously passed the following motion: 1) That the Significance Thresholds should not be lowered unless except in response to federal, state, or court requirements, and 2) That the Technical Advisory Committee supports a Planning Commission public workshop on this issue.

Housing Affordability Impact - The degree of CEQA review and, therefore, project processing timelines and associated costs will increase for those projects which require preparation of an Environmental Impact Report as opposed to an exemption, mitigated negative declaration, or negative declaration. New thresholds associated with traffic generation and Police and Fire-Rescue response times in some cases would require preparation of an EIR rather than a different document for affordable housing projects.

Fiscal Impact - None with the recommended action. However, if significant thresholds are lowered more EIRs will be prepared and processing times and cost will increase for those projects. This includes CIP, private and affordable housing projects. (An EIR takes at least 185 days longer than a Mitigated Negative Declaration). Staffing requirements in the Development Services, Police, and Fire-Rescue Departments could increase if additional EIRs are required. While the cost of review of development applications for private projects is covered by the applicant's deposit account, any additional review required for public projects would be borne by the party proposing the project.

BACKGROUND

The Environmental Analysis Section (EAS) of the Land Development Review Division in the Development Services Department is responsible for implementing the California Environmental Quality Act ("CEQA," Public Resource Code 21000 et. seq.) on behalf of the City of San Diego. One of the tools used by EAS to evaluate development project impacts is the "Significance Determination Guidelines." The Significance Determination Guidelines, which provide thresholds above which projects are considered to have significant environmental impacts, were initially promulgated by EAS in the form of internal memoranda dating back to the 1980s; however, the format shifted in the early 1990s to a single, publicly-available booklet. Many California cities and counties use such guidelines or thresholds as one of many tools to determine whether or not a project proposal many have a significant effect on the environment, although only a few agencies have formally adopted, through an elected body, a comprehensive set of significance thresholds.

Section 15064.7 (a) of the CEQA Guidelines (California Code of Regulations) was added in 1998 and encourages each public agency to "develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects." The guideline further defines a threshold of significance as "an identifiable quantitative, qualitative, or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." Section 15064.7 (b) of the CEQA Guidelines requires that significance thresholds, if they are to be adopted, "must be adopted via ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence." The City's "CEQA guidelines" which include the Significance Determination Guidelines," were added to the Land Development

Manual, Appendix A in January 2000 by City Council as part of the Land Development Code update.
The Significance Determination Guidelines assist staff and consultants in the preparation of environmental documents. They do not change the authority of the decision-makers for certification of the environmental document or approval of those projects requiring discretionary approval, but staff has found that use of the Guidelines has the following benefits:

1. Provides for predictability, promotes consistency and efficiency in the early stages of environmental review; i.e., the initial study process;

2. Enables the Lead Agency to make consistent and independent determinations based on substantial evidence; provides for a rational basis for such determinations;

3. Bolsters the defensibility of environmental documents;

4. Encourages project proponents to incorporate project design features to lessen environmental impacts; and

5. Provides for an early scoping method to determine the significant effects of a project.

Thresholds do not substitute for the agency's use of careful judgment in determining significance and they do not replace the legal standard for significance (i.e., if there is a fair argument, based on substantial evidence, in light of the whole record that a project may have a significant effect, the effect should be considered significant). Significance thresholds are intended to supplement other provisions in CEQA for determining significant environmental effects. These other sections include CEQA Guideline Section15064 (Determining the Significance of the Environmental Effects Caused by a Project), 15065 (Mandatory Findings of Significance), 15382 (Significant Effect on the Environment), and Appendix G (Environmental Checklist Form).

The issue of CEQA significance guidelines has been discussed at two previous LU&H meetings:

1. <u>CEQA Administrative Guidelines</u> - At the May 1, 2002 meeting, the Committee directed staff to address the CEQA guidelines amendment procedures. This direction was in response to a letter to the Committee from Joanne H. Pearson urging the Committee to review environmental procedures and require EAS to bring proposed guideline changes through a public hearing process.

2. <u>Master Environmental Assessment (MEA)</u> - At the August 6, 2003 meeting regarding the preparation of a Master Environmental Assessment (MEA), staff was directed among other things to develop new criteria for the CEQA Significance Determination Thresholds including adding criteria that discuss a project's impact on infrastructure and City services such as police, fire, parks, streams, and wetlands. Criteria should also be developed for a determination of cumulative impacts of a particular project based on the Master Environmental Assessment. Once the MEA is completed, it is anticipated that the

Cumulative section of the Thresholds will be updated accordingly.

The issue of CEQA significance guidelines has also been discussed at the March 17, 2004 Public Safety and Neighborhood Services during the "Comprehensive Public Safety Needs Assessment." The Committee's motion directed staff to expedite moving the California Environmental Quality Act Significance Threshold determination review process through the Council Committees for action.

On May 12, 2004, staff presented the Significance Determination Guidelines to the Development Services Technical Advisory Committee. The Technical Advisory Committee passed a motion, unanimously, that the Significance Thresholds should not be lowered unless except in response to federal, state, or court requirements, and supports holding a Planning Commission workshop.

This report and the proposed amendments to the Significance Determination Guidelines have been prepared in response to the above directives and also to respond to recent regulatory changes (air quality standards, codification of requirements for best management practices for storm water runoff, etc.). Staff completed a comprehensive update of the Significance Determination Guidelines and sent them out to 290 organizations and individuals for a 30-day public review period (March 1-30, 2004). Twenty comment letters were received (Attachment 2).

DISCUSSION

Staff recommends approval of the revised Significance Determination Guidelines in accordance with Section 15064.7 of the State CEQA Guidelines. City Council approval of the attached Significance Determination Guidelines (with the exception of the Police and Fire-Rescue thresholds regarding response time) would provide three important advantages, particularly in light of the fact that environmental documents are now appealable to the City Council:

1. They will carry the full authority of the City.
2. The adoption process is a fully public undertaking.
3. Decision-makers will have made a commitment to the Thresholds by participating in their preparation and adoption.

It is important to note that application of the Significance Determination Guidelines and almost all analysis conducted pursuant to CEQA, is conducted without regard to the nature of a project and whether a project is perceived as having beneficial impacts (environmental or otherwise). Also important is the time and cost involved in complying with CEQA. The type of environmental document prepared for a project is directly affected by the significance thresholds – lowering the thresholds will result in the preparation of more Environmental Impact Reports while raising the thresholds will result in the preparation of more negative declarations and mitigated negative declarations. Staff believes that the overall result of the proposed revisions to the thresholds (other than Police and Fire-Rescue thresholds related to response times and more restrictive traffic generation thresholds) will not substantially change the historical ratio of various document types produced (see Table 1). The Police and Fire Rescue response times and

traffic thresholds, if approved, could substantially increase the number of Environmental Impact Reports required, and increase the time and cost in the process for those projects.

Table 1
CEQA Documents Produced and Estimated Completion Times

Document Type	Percentage (last 5 years)	Time Required
Exemptions	51.9%	30 days
Negative Declarations*	14.8%	90 days
Mitigated Negative Declarations	27.6%	180 days
EIRs	1.8%	>365 days
Addenda	3.7%	**

*Includes Mitigated Negative Declarations where preparation of a technical report is not required.
**Time requirements for addenda vary dramatically based on the details of a project; a single estimate is not meaningful.

Current Practices and Recent Updates

Section 128.0103 of the City's Land Development Code establishes the powers and duties of the Development Services Director regarding the conduct of environmental review. Among these responsibilities is the issuance of administrative guidelines consistent with CEQA, current case law, City Council policy, and the determination of environmental significance of project impacts. In implementing this directive, City staff regularly updates the Significance Determination Thresholds in response to changing environmental regulations, ongoing project evaluations, and applicable current case law. The result is that staff had already been applying most of the thresholds that the general public saw for the first time during public review; however, recent Development Services customers and their consultants are familiar with the ones that have already been put into use.

Recent changes to regulations in water quality initiated an update to the Guidelines document approximately a year ago. Further review of other issue areas resulted in the need to revise several other sections of the guidelines. In addition, further revisions were included in response to comments received during the public review of the revised guidelines. These revisions are shown in a strike-out/underline version (see Attachment No. 1). Comments received were extremely varied, but the primary controversy surrounds Biological Resources, Air Quality, and Traffic/Circulation. The comments are attached as Attachment 2.

The most notable changes to the Guidelines include formatting, adding questions from the Initial Study Checklist (the questions are based on Appendix G of the State CEQA guidelines), adding four new sections described below, and providing additional guidance to staff in all the issues areas (see Attachment 3). Some highlights are as follows:

1. Air Quality: This issue area has been revised to reflect current federal, state and local standards and provide additional guidance regarding attainment standards, examples of possible project scenarios and references.

2. Biology: Clarification and additional information has been included to provide a mechanism for mitigating cumulative impacts to perennial native grasslands and cumulative impacts. Also, based on research conducted for the draft Environmental Impact Report being prepared for revisions to the Land Development Code Brush Management regulations, impacts to Brush Management Zone 2 are now considered significant.

3. Traffic: This proposed change reduces threshold for impacts on facilities operating at Level of Service (LOS) F as compared to LOS E. This means there may be more projects showing significant traffic impacts; therefore possibly requiring the preparation of more Environmental Impact Reports. For cumulative impact analysis, this change has been proposed in response to the recent court case "*Communities for a Better Environment*" in which the Court indicated that a threshold should be lower when existing environmental conditions are worse.

4. Public Services and Facilities: Additional guidance has been provided for Fire-Rescue and Police services, schools, libraries and parks/recreational services. In consultation with Police and Fire-Rescue staff, references to response times for Fire-Rescue and Police services, as well as complicating factors for Fire-Rescue response (e.g., hazardous materials, poor access, etc.) have been added to the Public Services section. In that substandard response times would generally not be mitigable by the applicant, it should be expected that more Environmental Impact Reports would be prepared for projects which exceed 75 dwelling units and/or 100,000 square feet of non- residential space. However, staff is recommending that these thresholds not be implemented because they create a dilemma. This is because mitigation could, in some cases, be achieved only by mandatory City Council funding of Police and Fire-Rescue service levels in significantly impacted areas, and the projects could be approved by a lower decision-maker (i.e., Hearing Officer or Planning Commission). In these situations, un-elected decision-makers would be making assumptions on the City's future budgeting in these areas. To resolve this problem, staff recommends that LU&H direct staff to not include these changes to the significance thresholds as they were originally published for the 30-day review and instead prepare a revision to the Land Development Code to include a Police and Fire Life Safe response time finding for those development projects that require a development permit and exceed 75 dwelling units or 100,000 square feet of non-residential uses. The new proposal finding would require a determination by Police and Fire Life Safety Services that approval of the proposed development will not substantially affect Police or Fire-Rescue response times. If the finding could not be made, the project could not be approved.

Staff also consulted with the Fire-Rescue Department to determine whether it would be feasible to add significance thresholds for Lifeguard Services. No clear link exists between development or population growth and recent, marked beach attendance. While such a nexus could possibly be developed in the review of an individual project or by additional study, no substantial evidence is currently available to support such a threshold.

5. Water Quality and Hydrology: These two sections have been separated to be in compliance with the new City Water Quality Standards.

6. Noise: New tables and clarification of standards were added to the text.

7. New sections were added to describe the significance threshold for impacts to agricultural lands and land containing mineral resources. The Initial Study checklist found in Appendix G of the CEQA Guidelines; however, this issue area has not been previously addressed in the Significance Determination Guidelines. References, but no specific significance threshold, were added for agricultural lands. For mineral resources, the revision requires staff to evaluate the feasibility of mining a site in terms of a 10-acre minimum size and surrounding development.

8. A new section was added in response to public comment to describe how Growth Inducing impacts, an analysis required in Environmental Impact Reports should be evaluated. In general, secondary impacts would have to be found significant in order to determine that the Growth Inducement impacts are significant. No new threshold was added.

9. A new section was added to discuss the Mandatory Findings of Significance found in Section 15065 of the CEQA Guidelines. A major focus of this discussion is to remind staff of the CEQA definitions of "significance" and "substantial evidence." No new threshold was added.

CONCLUSIONS:

In accordance with Section 15064.7 (b) of the CEQA Guidelines, if a public agency intends to adopt the thresholds, it must be done by ordinance, resolution, rule, or regulation, developed through a public review process and be supported by substantial evidence. Staff believes that the thresholds are supported by substantial evidence and recommends their adoption as discussed above.

ALTERNATIVES:

1. Recommend that City Council approve the City's Significance Determination Thresholds with revisions directed by LU&H.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: George Loveland
Assistant City Manager

CHRISTIANSEN/CZ/CC

Note: Attachment 2 is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments:

1. Environmental Analysis Section Significance Determination Guidelines under the California Environmental Quality Act (Provided to LU&H Committee members only due to size. Copies are available for review at the Development Services Department, 1222 First Avenue, San Diego, CA 92101)

2. Public Comments and Staff Responses

3. Summary of Proposed Changes

ATTACHMENT 3: SIGNIFICANCE DETERMINATION THRESHOLDS SUMMARY OF CHANGES*					
	Change In Threshold?	**New Issue?**	**Clarity Added**	**Updated to Comply with New Regulations**	**Other**
1. Air Quality/Odor	**NO**	**NO**	✓	✓	Expanded to include stationary industrial sources, updated VOC, ozone, and dust requirements, updated to parallel County thresholds and Air Pollution Control District Rules and Guidance for California Air Quality Standards (CAAQS), updated odor thresholds.
2. Agricultural Resources	**Guidance given relative to Soils**	**YES**			
3. Biological Resources	**YES**	**NO**	✓		Added 3 notes regarding non-native grasslands and clarified habitat and noise mitigation; clarified Cumulative Impacts. Zone 2 brush management changed from "impact neutral" to "significant"
4. Geologic Conditions	**NO**	**NO**	✓	✓	Renamed from Geology/Soils
5. Growth Inducement	**NO;Guid-ance per CEQA**	**YES**			Info. incorporated from EIR Guidelines
6. Health & Safety	**NO; Guidance**	**NO**			Renamed from Human Health &

	for Vector Control provided.		✓	✓	Public Safety; added Vector Control.
7. Historical Resources	**NO**	**NO**			No Change
8. Hydrology	**YES; Changed to reflect new stormwater standards**	**NO**		✓	Separated from Water Quality
9. Land Use	**YES**	**NO**	✓		Added CLUP; referenced MSCP, Strategic Framework Elem.
10. Mineral Resources	**Guidance given relative to deposits.**	**YES**			
11. Noise	**NO**	**NO**		✓	Added Tables; included General Plan Land Use Compatibility Chart; added discussion for HUD-funded projects
12. Paleontological Resources	**NO**	**NO**	✓		
13. Public Services and Facilities	**YES**	**NO**	✓	✓	Revised to include Police and Fire-Rescue services; Public Facilities to include schools, libraries, parks and recreational resources.
14. Public Utilities	**YES**	**NO**	✓	✓	Revised solid Waste Generation/Disposal, and Water and Sewer threshold discussions. Included Water Conservation, Solar Energy, and Water Reuse threshold discussions. Moved

					Storm Drainage to Hydrology Section.
15. Transportation/Circulation/Parking	**YES**	**NO**	✓	✓	Reduced Significance Threshold for LOS F vs. LOS E
16. Visual Effects and Neighborhood Character	**NO**	**NO**			Renamed; Formerly Visual Quality
17. Water Quality	**YES; changed to reflect new stormwater standards.**	**NO**	✓	✓	Separated from Hydrology
18. Cumulative Impacts	**YES; additional guidance per CDE Case**	**NO**	✓	✓	Added info. regarding CBE Case
19. Mandatory Findings of Significance	**NO; Guidance per CEQA**	**YES**			Same as Appendix G, CEQA; cut/paste info. from Introduction

***NOTE: The entire format has been changed; issues arranged alphabetically; and Initial Study Checklist Questions added.**