

# California Native Plant Society

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## **RE: Comments on proposed changes to ESL Regulations to address wetland deviations**

Dear Ms. McPherson:

We understand that the City of San Diego is amending the Environmentally Sensitive Lands Regulations in order to provide better guidance to staff, decision makers, and applicants as to when deviations should be allowed.

The proposed changes include:

- clarifications to the development regulations for sensitive biological resources,
- the establishment of 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, Economic Viability Option, and Biologically Superior Option
- revisions to the Biology Guidelines to establish criteria for each development scenario against which the already adopted deviation findings will be evaluated.

Below are our recommendations for improvements to the draft update to the Biology Guidelines.

- Page 9: The code update process affords an opportunity to define the phrase “maximum extent practicable”, but the opportunity was not addressed. Could this phrase be better defined? The point of these changes is to clarify the code, and this phrase causes confusion.
- Page 16: we object to the following draft language:

*Biological surveys for projects that have not yet been approved are valid for three years. If over three years old, the survey and report must be updated to reflect the most current conditions affecting the project site.*

This proposed language allows projects with negative survey results to be considered valid for up to three years. Given the natural year-to-year variation in precipitation levels in the City, and the variations in distributions of plant populations, this could lead to numerous



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"false negatives" because ephemeral and seasonally restricted plants may only be present under some environmental conditions. **We strongly recommend that field survey data be collected, at a minimum, each year during the season most suitable for detection so as to not miss essential populations of rare and endangered plants.**

- Page 18: We object to inclusion of the *Application of Economically Viable Use Determination* (begins on page 18) in the Biology Guidelines). This language is out of place in this section (A. Identification of Impacts 1. Biological Survey Report), as the project biologist may not be privy to information regarding *the purchase price and the documentary transfer tax paid by the applicant for the property*. This is not the responsibility of the project biologist; rather, this information would be appropriate, if needed, in the economic analysis section of an Environmental Impact Report. **We recommend that all of this draft language be removed from the proposed Biology Guidelines and placed in a more appropriate location.**

Page 30: we object to the following draft language:

*Additional Requirements for Vernal Pool Mitigation:*

*Mitigation for projects impacting vernal pools shall include salvage of sensitive species from vernal pools to be impacted, introduction of salvaged material into restored vernal pool habitat where appropriate (e.g., same vernal pool series), and maintenance of salvaged material pending successful restoration of the vernal pools. Salvaged material shall not be introduced to existing vernal pools containing the same species outside the vernal pool series absent consultation with and endorsement by vernal pool species experts not associated with the project (e.g., independent expert). The mitigation sites shall include preservation of the entire watershed and a buffer based on functions and values; however, if such an analysis is not conducted, there shall be a default of a 100 foot buffer from the watershed.*

We object to inclusion of this language as it pertains to vernal pool mitigation because the City has a poor track record with respect to vernal pool conservation. The language suggests that additional vernal pools, including pools that support rare and endangered plants, will be destroyed in the future, and that mitigation will be attempted in the form of salvage. This is inappropriate, as over 97 percent of the vernal pools once found in the City have already been destroyed and it is not feasible to create vernal pools in areas where they have never existed because the underlying soil structure is critical. **Avoidance of vernal pools is the only acceptable "mitigation" if the goal is to preserve this ecosystem for future generations.**

- Page 46: please provide clarification on the formula used to calculate the payment into a fund, in lieu of mitigation.
- Page 47: The California Native Plant Society specifically objects to the use of transplantation as mitigation because success is often very poor (for reference see [www.cnps.org/cnps/archive/transplanting.php](http://www.cnps.org/cnps/archive/transplanting.php)). **We recommend either removing transplantation as an appropriate method for conservation of the named species, or providing scientific references showing success using transplantation.**
- Page 96: we object to the following draft language:

*Road ruts and other seasonal depressions which are not vernal pools may contain wildlife associated with vernal pools, such as fairy shrimp, but will not contain vernal pool plant*

*indicator species. Seasonal depressions not containing indicator plant species are usually not considered vernal pools by the City of San Diego. Careful consideration should be given to road ruts or other seasonal depressions adjacent to vernal pool complexes. These depressions are likely to contain vernal pool plant indicator species and should be examined thoroughly (e.g., multiple surveys) before they are dismissed as not being vernal pools.*

Many of the City's vernal pools are highly degraded by human activities and may be incapable (in the short-run) of supporting vernal pool plant indicator species. Most of these are located in areas with high off-highway vehicular traffic or other vehicle impacts. "Road ruts" that contain vernal pool animals are clearly formerly intact vernal pools that have been damaged by vehicles. These pools can be restored to functioning vernal pool ecosystems and should be included with vernal pools in any survey. During salvage operations on Otay Mesa, prior to the destruction of a number of "degraded" vernal pools, numerous vernal pool plants were detected in these basins once the pools were protected from vehicular access for several months. **We recommend that all "road ruts" that occur near vernal pools, or contain any indicator species for vernal pools, be counted as vernal pools unless proven otherwise by several annual surveys.**

- Page 109: **We recommend removal of the Appendix III. Essential Public Project List as an attachment to the proposed revised Biology Guidelines.** The list does not belong in the Biology Guidelines; it is not the role of the project biologist to determine whether a project is considered "essential". Furthermore, inclusion of a list, instead of a definition of "essential public project" suggests an attempt to pre-approve these projects in the process of a code update; this would be more appropriate in an Environmental Impact Report that will provide fuller disclosure of the projects' benefits and costs to decisions-makers at the time of the project's development.

#### Comments on the draft EIR

- S-4: The EIR states that there are no impacts from the project. Changes in the code are likely to cause impacts to Biology (including wetlands) and to Land Use; the SEIR and the recommended code changes may result in increased loss of wetlands. Therefore, this SEIR has not adequately addressed impacts of the project. **The city must address this question in accepting any deviation from wetland protection: will the wetland habitats in the City be intact now and into the future? Where will the preservation take place?**
- What process is currently used to inform decision makers about whether proposed wetland deviations will further damage the ability of the species and ecosystem to be maintained for future generations?
- The SEIR lists a number of "essential public projects", however the term "essential public project" remains undefined. Most or all of these projects could be placed in areas that do not have wetland impacts – for example, a park can be placed in many different areas and still serve as a park. Parks can also be designed to be consistent with wetlands. Therefore, it is not acceptable to state that a Park is an Essential Public Project that justifies the destruction of wetlands. The inclusion of a list of 59 public projects has the appearance of an attempt to use the SEIR to create a *fait accompli* for wetlands deviations for these projects without impact analysis.

- In the plan for the “City Recommended Project”, no provision is made for monitoring and management for the “Biologically Superior Option”. This makes this option significantly less useful as mitigation. How does the City propose to understand the effect of new development on wetlands if no monitoring is carried out? Also, what IS the current state of wetland extent and health in the City of San Diego? Without a way to monitor and report this, decision makers cannot know whether any particular deviation request will ultimately result in a loss of wetland function.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Schneider".

Carrie Schneider, Conservation Chair CNPS-San Diego