



COUNCIL AGENDA: 10-26-10
ITEM: 4.4

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: SEE BELOW

DATE: 10-13-10

SUBJECT: ACCEPT THE STAFF REPORT ON ENVIRONMENTAL MITIGATION
MONITORING OR REPORTING PROGRAM (MMRP)

RECOMMENDATION

As recommended by the Transportation and Environment Committee on October 4, 2010 and outlined in the attached memo previously submitted to the Transportation and Environment Committee, accept the Staff Report on Environmental Mitigation Monitoring or Reporting Program (MMRP).



Memorandum

TO: TRANSPORTATION &
ENVIRONMENT COMMITTEE

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: September 17, 2010

Approved

Date

9/24/10

COUNCIL DISTRICT: City-Wide
SNI AREA: All

**SUBJECT: CEQA MITIGATION MONITORING OR REPORTING PROGRAM STATUS
REPORT**

RECOMMENDATION

Staff recommends that the Committee accept the status report regarding the CEQA Mitigation Monitoring or Reporting Program.

OUTCOME

Comments from the Transportation and Environment Committee and the City Council will provide guidance to staff for improving the City's Mitigation Monitoring or Reporting Program (MMRP) to be more successful in fulfilling environmental mitigation commitments and CEQA compliance.

BACKGROUND

The California Environmental Quality Act (CEQA) requires the City to attempt to mitigate (reduce or eliminate) significant environmental impacts from a proposed project as identified in either a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR). At the time of project approval the City is required to make findings as to how specifically the project will avoid or substantially reduce the significant environmental effects. In order to ensure that the required mitigation measures and imposed project revisions are implemented in accordance with those identified in the MND or EIR, CEQA mandates the City to adopt a program for mitigation monitoring or reporting (MMRP) until the mitigation measures are completed. The CEQA statutes require mitigation measures to be fully enforceable through permit conditions, agreements or other measures. The expectation is that there will be consequences to the project for noncompliance with performance objectives.

The City does routinely prepare and adopt a MMRP for projects in accordance with CEQA. The City has been less consistent in ensuring that monitoring or reporting is taking place and required project mitigation has been completed. There are constructed projects which have either not completed required mitigation or not provided adequate, or in some cases any, documentation for how the project complied with mitigation measures or conditions of approval. In the spirit of continuous improvement, the intent of this report is to "shine a light" on and to improve the City's MMRP program. Attachment 1 includes some initial staff ideas for how this can be done.

ANALYSIS

Similar to the vast majority of other local jurisdictions, the City has done a less than stellar job of fulfilling its obligations to verify that all project mitigation measures have been completed as required, particularly with regard to biological mitigation. The work by Craig Breon and the Santa Clara Valley Audubon Society made this painfully obvious to staff. Unfortunately, there seems to be an example project for all the different kinds of mitigation monitoring or reporting problems. While progress has been made since beginning the dialogue with Mr. Breon, there is much more room for improvement with past and future projects.

The scope of the MMRP improvements presents two different, but related, sets of issues. This distinction is particularly important for maintaining a proper balance of limited resource allocation. First, there is the enforcement issue of bringing past projects into compliance with their mitigation requirements. Second, there is the investment in process improvements to ensure current and future projects avoid the mistakes of the past.

Past Project Compliance

With regard to enforcement on past projects, staff has utilized the AMANDA system to prepare and maintain a spreadsheet that tracks the MMRP status of 35 different public and private projects. The list includes larger, older projects that have been constructed dating back to the late 1990's and more recent projects either currently pending or yet to complete construction. The list of projects is predominantly focused on those with biologic mitigation measures. Staff has used this list to send written requests to project contacts for monitoring or reporting documentation. This approach has been productive in some cases and generated no response in others. Based on this initial effort, it is evident that vigilant maintenance and regular communication with project applicants by staff is necessary for this tracking system to be successful. Documentation that has been received has been made publicly available by posting on the Planning Division web site.

The primary staff recommendations for getting compliance on past projects are:

1. Focus staff efforts by prioritizing past projects in order of those with the most serious outstanding mitigation measures being first for getting compliance.
2. Assess the staff resources necessary to adequately maintain an on-going enforcement program.
3. Identify the most effective enforcement options to obtain compliance.
4. Ensure full opportunity and utilization is being made of existing technology (e.g. AMANDA).

Current and Future Project Compliance

Implementing MMRP process improvements is critical to avoid or lessen mitigation compliance problems for projects in the future. The opportunities for improvement break down into two groups, those process changes for pre-approval of projects and those subsequent to project approval.

A successful MMRP is dependent on clearly communicating expectations, requirements and responsibilities to applicants early in the development review and CEQA processes. Systems must be in place to ensure that environmental mitigation measures are consistently and accurately imposed as project conditions and included in subsequent permits. Project conditions must be complete, clearly written and enforceable. The creation of new standard conditions related to MMRP may be necessary.

Some key recommendations by staff for pre-project approval improvements include the following:

1. Adopt administrative guidelines or protocol for MMRP to inform project applicants of expectations and requirements.
2. Revise the current MMRP template to include additional information critical for tracking, enforcement and cross reference to the development permit.
3. Evaluate existing systems and identify for weaknesses and strength in support of MMRP.
4. Prepare new standard project conditions as deemed necessary to better convey MMRP requirements, such as timing, completion, compliance, enforcement, documentation, etc.
5. Assess MMRP fee program for cost recovery to support adequate staff resources.
6. Revise the mitigation measure "consent agreement" for inclusion of MMRP commitments by applicant.

The following list identifies some process improvements that should be considered for MMRP implementation after projects are approved.

1. Improve MMRP documentation handling and the timeliness of making documentation available to the public.
2. Clearly convey that the Director of Planning is the MMRP document "custodian" and all related information is considered public.
3. Identify and communicate roles, responsibilities, compliance requirements and enforcement actions to project applicants on an on-going basis.
4. Monitor MMRP performance and provide quarterly reports to the City Council.

EVALUATION AND FOLLOW-UP

This is the initial memo to establish a schedule for on-going quarterly status reports regarding the performance and improvement of the CEQA Mitigation Monitoring or Reporting Program. The next status quarterly report provided to the T&E Committee will be in the first quarter of 2011.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, during the next three months staff will conduct initial stakeholder outreach to solicit ideas and feedback on the various staff ideas for improving project compliance with the CEQA MMRP requirements.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

Not applicable, required by CEQA.

COST SUMMARY/IMPLICATIONS

Not applicable.

CEQA

This status report is not a project under CEQA.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Darryl Boyd, Principal Planner, at 408-535-7898.

ATTACHMENT 1

RECOMMENDATIONS TO IMPROVE THE MITIGATION MONITORING OR REPORTING PROGRAM

1. Adopt MMRP "guidelines" or protocol.
2. Revise the sample MMRP template to include some essential information.
3. Revise the development/environmental review system to ensure mitigation measures are included as project conditions, including document trail and subsequent permits.
4. Implement new standard/general permit conditions for MMRP completion, timing, compliance, enforcement and that all related information is considered public.
5. Make MMRP requirements and responsibilities easily available to the public.
6. Improve MMRP documentation handling and making available to public, e.g. posting on website.
7. Clearly identify and convey that the Planning Division is the custodian for MMRP documentation.
8. Identify and communicate enforcement and compliance system, roles and responsibilities.
9. Provide the Council with quarterly status reports on MMRP performance and improvements.
10. Prioritize past projects for follow-up on outstanding mitigation measure compliance. (Resource commitment for this effort needs to be balanced with resource needs for day forward improvements.)
11. Assess the MMRP fee program for adequate cost recovery at appropriate staffing level.
12. Assess the resource needs to adequately maintain an on-going program for monitoring and compliance.
13. Ensure the AMANDA system is being properly used and identify any further improvements.
14. Review and revise the mitigation measure "consent agreement" for inclusion of MMRP commitments by applicants.
15. Remind City Departments that the MMRP requirement applies to public projects and contracts.
16. Research similar efforts by other local jurisdictions that are considered to have good programs, such as the City of Santa Barbara.