



# Memorandum

**TO:** TRANSPORTATION &  
ENVIRONMENT COMMITTEE

**FROM:** Joseph Horwedel

**SUBJECT: SEE BELOW**

**DATE:** January 21, 2011

Approved

Date

*1/27/11*

**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 ongoing improvements to the City's Mitigation Monitoring or Reporting Program (MMRP) to be more successful in fulfilling environmental mitigation commitments and enhance CEQA compliance in accordance with State requirements.

## BACKGROUND

This is the second quarterly progress report on the status of the implementation of and improvements to the City's Mitigation Monitoring or Reporting Program. The previous status report was accepted by the Council on October 26, 2010.

The California Environmental Quality Act (CEQA) requires the City to mitigate (i.e. 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

measures 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. CEQA requires 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.

### **ANALYSIS**

The previous status report included an attachment identifying a number of staff recommendations on actions that could be undertaken to improve the City meeting its CEQA obligations for MMRPs. In the past three months staff has implemented the first phase of those previous recommendations as indicated on Attachment 1. Many of these changes will be implemented on an ongoing basis. Attachment 1 also identifies the actions staff will be implementing over the next three to six months, depending on the nature and implications of the proposed changes and availability of staff resources.

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

The priority during the past quarter has been to make system improvements to better ensure CEQA compliance of private and public projects going forward. One example is the creation of a MMRP home page on the Planning Division website where a list of projects being monitored for compliance is being compiled and maintained for public access at (<http://www.sanjoseca.gov/planning/eir/MMR.asp>). This list is being expanded as additional projects are identified for tracking. During this upcoming quarter staff will be identifying and analyzing enforcement options for past and future projects, as well as working on increasing available resources for this state mandate.

### **EVALUATION AND FOLLOW-UP**

This is the second quarterly 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 will be prepared 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, information is posted on the Planning Division Environmental Review web page. Additionally, 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.

### 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: Work Plan

## ATTACHMENT 1

### WORK PLAN ITEMS TO IMPROVE THE CITY'S MITIGATION MONITORING OR REPORTING PROGRAM

#### COMPLETED 4<sup>TH</sup> QUARTER 2010

##### On-going

1. Collapsed the mitigation measure "consent agreement" form into the MMRP to reflect mitigation commitment by applicants.
2. Providing the Council with quarterly status reports on MMRP performance and improvements.
3. Incorporated adoption of MMRP into MND resolutions adopted by project decision-making bodies in accordance with Environmental Clearance Ordinance (SJMC Title 21).
4. Clearly identifying and conveying that the Planning Division is the custodian for MMRP documentation as a part of adopted MND resolutions and project conditions.
5. Improved MMRP documentation handling by posting recently received MMRP reports on the Planning Division Environmental website and making available to public by having them imaged soon after receipt.
6. Reminding City Departments that the MMRP requirement applies to their public projects and contracts as individual projects are submitted for environmental review.
7. Standardized the use of the term Mitigation Monitoring or Reporting Program and consistently having this be a stand alone document.

##### In process, to be completed and fully operational by June 2011

8. Reviewing standard/general permit conditions for revision to improve requirements for MMRP completion, timing, compliance, enforcement and that all related information is considered public.

#### PRIORITIES FOR COMPLETION 1<sup>ST</sup> QUARTER 2011

9. Continue to revise project conditions to reflect and align with project's MMRP.
10. Prepare Draft MMRP "guidelines" or protocols.
11. Make MMRP requirements and responsibilities easily available to the public.
12. Research similar MMRP efforts by other local jurisdictions that are considered to have good programs, such as the City of Santa Barbara.
13. Assess the resource needs to adequately maintain an on-going program for monitoring and compliance.

## WORK ITEMS FOR FUTURE QUARTERS

14. Revise the development/environmental review system to ensure mitigation measures are included as project conditions, including document trail and subsequent permits.
15. Revise the sample MMRP template to include missing important information.
16. Adopt MMRP "guidelines" or protocols.
17. Identify and communicate enforcement and compliance system, roles and responsibilities.
18. Prioritize past projects for follow-up on outstanding mitigation measures compliance. (Resource commitment for this effort needs to be balanced with resource needs for day forward improvements.)
19. Ensure the AMANDA system is being properly used and identify any further improvements.
20. Assess the MMRP fee program for adequate cost recovery at appropriate staffing level.

## RECENTLY RECEIVED MMRP REPORTS

List is available at: <http://www.sanjoseca.gov/planning/eir/MMR.asp>

Last revised 1/21/2011