

(O-91-122 REV.1)

ORDINANCE NUMBER O- 17602 (NEW SERIES)

ADOPTED ON FEB 19 1991

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1,
DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE
BY AMENDING SECTION 101.0462 RELATING TO
DEVELOPMENT IN THE ENVIRONMENTALLY SENSITIVE
AREAS OF THE CITY.

BE IT ORDAINED, by the Council of The City of San Diego, as
follows:

Section 1. That Chapter X, Article 1, Division 4, of the
San Diego Municipal Code be and the same is hereby amended by
amending Section 101.0462, to read as follows:

SEC. 101.0462 RESOURCE PROTECTION ORDINANCE

(This section is indexed as follows:

- A. PURPOSE, INTENT AND TITLE
- B. RESOURCE PROTECTION PERMIT REQUIRED
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A. PURPOSE, INTENT AND TITLE

This section shall be known as the Resource Protection Ordinance (RPO).

The purpose and intent of this section is to protect, preserve and, where damaged, restore the environmentally sensitive lands of San Diego, which include wetlands, wetland buffers, floodplains, hillsides, biologically sensitive lands and significant prehistoric and historic resources, as defined herein.

B. RESOURCE PROTECTION PERMIT REQUIRED

Within the areas regulated by the provisions of the Resource Protection Ordinance no building, improvement or portion thereof shall be erected, constructed, converted, established, altered, enlarged, or demolished, nor shall any lot or premises be excavated or graded nor shall any vegetation be cleared or grubbed nor shall any property be subdivided or re-subdivided until a separate Resource Protection Permit is obtained in

accordance with the procedures set forth in this section. Any person violating this section shall be guilty of a misdemeanor and shall be punishable pursuant to the provisions of Section 13.0201 of the San Diego Municipal Code.

C. PROTECTION OF RESOURCES

Within the City of San Diego, the provisions of the Resource Protection Ordinance shall be applicable to the following enumerated resources:

1. All floodways and one hundred (100) year floodplain fringe areas as identified in the Federal Emergency Management Agency (FEMA) maps on file in the office of the City Clerk as Document No. OO-16939-1, all areas within the City's existing Floodway (FW) or Floodplain Fringe (FPF) Zones, and all floodways and one hundred (100) year floodplain fringe areas as identified in the County of San Diego FEMA map panel Nos. 1350, 1363, 1636, as modified, and No. 1650 on file in the office of the City Clerk as Document No. OO-17087, as amended by Document No. RR-277284 on file in the office of the City Clerk.

2. All hillside areas of twenty-five percent (25%) slope or greater as identified by the City's existing Hillside Review Overlay Zone (HROZ).

3. All wetland and wetland buffer areas indicated in Map Drawings C-713 and C-740 on file in the office of the City Clerk as Document Nos. OO-16939-2 and OO-16939-3.

4. All other unmapped hillsides, wetlands and wetland

buffer areas which meet the definitions contained herein.

5. All biologically sensitive lands which meet the definition contained herein.

6. All significant prehistoric and historic sites and resources which meet the definition contained herein.

D. GENERAL PROVISIONS

1. Where any portion of a parcel contains resources regulated by this section, the provisions of the Resource Protection Ordinance shall be applicable to the entire parcel.

2. Any person or persons may propose to the Transportation and Land Use Committee revisions to the resource protection boundaries. These revisions may include deletion of areas of poor environmental quality, or addition of areas of significant environmental value. The Transportation and Land Use Committee may request a report from the Planning Director on this matter and may direct that it be referred to the Planning Commission for hearing. The Planning Commission and Council shall consider any revisions, following review by the appropriate community planning group, in accordance with the provisions of Section 101.0205 et seq. of this Code.

3. In the case of significant prehistoric and historic resources, biologically sensitive lands or unmapped wetlands, a map shall be prepared and maintained by the Planning Department and considered by the City Council for

adoption, and shall be used to identify properties that will not require a prehistoric, historic, or biological resources survey for purposes of obtaining a Resource Protection Permit.

However, if it is demonstrated to the Planning Director that prehistoric, historic or biological resources or unmapped wetlands do in fact exist upon these properties, the appropriate survey shall be required by the Planning Director.

4. The Planning Director is hereby authorized to promulgate administrative guidelines to implement the provisions of this section. The guidelines or any revisions thereto shall be effective without a hearing thirty days after their publication in a newspaper of general circulation by the Planning Director, pursuant to San Diego Municipal Code section 22.0102, unless a timely protest is filed with the Director. In this event, the Director shall conduct a hearing to consider the objections of those affected by the proposed change. As soon thereafter as practicable, the Planning Director may then issue the guidelines with any revisions deemed necessary or appropriate, or decline to so issue them. This provision shall not be applicable to any emergency guideline issued by the Director to preclude an event that will be detrimental to the public health or safety, nor shall it apply to the initial promulgation of the guidelines authorized by

Resolution No. R- 277284 adopted JAN 29 1991.

5. A Resource Protection Permit shall be required in conjunction with the processing of a long range plan, as defined in paragraph F.11., if a subdivision or parcel map or another discretionary permit approval is concurrently processed. In this event, the Resource Protection Permit shall only be required for that portion of the area that is covered by the concurrent discretionary map or permit. However, in any case a consistency determination shall be prepared when required by Council Policy 600-40.

E. EXCLUSIONS

1. Mission Valley.

The Resource Protection Ordinance shall not be applicable to any area within the floor of Mission Valley, defined as that area located within the existing FW and FPF Zones, nor to any lawfully operating sand and gravel extraction facility located within the boundaries of the Mission Valley Community Plan.

2. Calle Cristobal Assessment District.

The construction of the Calle Cristobal Assessment District area in its entirety and the development necessary to fund and support the necessary improvements shall be exempt from the provisions of the Resource Protection Ordinance.

3. Miramar Ranch North.

The Resource Protection Ordinance shall not be

applicable to any area within the Miramar Ranch North Community Plan and the seventy (70) acre high school project in Scripps Ranch.

4. Sorrento Hills

The Resource Protection Ordinance shall not be applicable to development of the 178 acres of land known as Sorrento Hills that was the subject of the land exchange approved by the voters as Proposition D on November 4, 1986.

5. Land Exchange Agreements

The provisions of this ordinance shall not be applicable to any property which the City is contractually obligated to zone for its highest and best use pursuant to the Land Exchange Agreement between the United States of America and the City of San Diego, filed with the City Clerk on December 8, 1986, as Document No. RR-267203-1.

F. DEFINITIONS

The following definitions shall apply only for the purposes of this section.

1. Aquaculture.

A form of agriculture devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish and fresh water.

2. Biologically Sensitive Lands.

Land which supports sensitive vegetation, as defined herein, and/or the habitats of rare, endangered, or threatened species or subspecies of animals or plants as

defined by the California Endangered Species Act, or the Federal Endangered Species Act, or as defined below. Biologically sensitive land also includes the area of native vegetation which is critical to maintaining a balanced natural ecosystem or wildlife corridor. Biologically sensitive lands may also include areas that support sensitive species of plants or animals listed in the administrative guidelines to this section.

A species shall be presumed to be rare, endangered or threatened if it is listed in SEC. 670.2 or 670.5, Title 14, California Code of Regulations, or the Federal Endangered Species Act, Title 50, Code of Federal Regulations, SEC. 17.11 or 17.12. A species not included in any legislative listing may nevertheless be considered by the Planning Director to be rare, endangered or threatened if the species meets the criteria for inclusion in state or federal lists.

Sensitive vegetation is defined as a vegetative community which typically includes, but is not limited to: habitats that are substantially depleted due to development; vegetative community types as identified by the California Department of Fish and Game listing of community associations in "Preliminary Descriptions of the Terrestrial Natural Communities of California," (DFG, Holland 1986 Ed., as updated); or habitats that support sensitive species of plants or animals.

Sensitive species of plants or animals are those

species considered unusual or limited in that the species:
1) are only found in the San Diego region; or 2) are a local representative of a species or association of species not otherwise found in the region; or 3) are severely depleted within their ranges or within the region. Sensitive species of plants and animals are identified in the California Native Plant Society R-E-D List or are listed in the California Department of Fish and Game list of species of special concern and other publications listed in the administrative guidelines promulgated pursuant to this section.

3. Clearing.

The cutting and removal of vegetation from the land without disturbance to the soil, surface or destruction of the root system.

4. Grubbing.

The removal or destruction of vegetation by the removal of or disturbance to the root system and/or soil surface by any means, including chemical.

5. Feasible.

Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

6. Fill.

Any material or substance which is deposited, placed, pushed, dumped, pulled or transported, or moved to a new location and the

conditions resulting therefrom. Fill also includes pilings placed for the purpose of erecting structures thereon when located in a submerged area. Examples of fill materials include but are not limited to earth, excavated or dredged materials, sand, gravel, rock, riprap, and concrete.

7. Floodplain.

The relatively flat areas of low lands adjoining, and including, the channel of a river, stream, water course, bay or other body of water which is subject to inundation by the floodwaters of a one hundred (100) year frequency flood.

8. Floodway.

The river channel and the adjacent land areas, within the floodplain, needed to carry a one hundred (100) year frequency flood without increasing the water surface elevation more than one (1) foot at any point. The natural floodwater profile is the water surface elevation of a nonconfined one hundred (100) year frequency flood in the natural undeveloped floodplain.

9. Floodplain Fringe.

All that land in a floodplain not lying within a delineated floodway. Land within a floodplain fringe is subject to inundation by relatively low velocity flows and shallow water depths.

10. Hillsides.

All lands mapped by the Hillside Review Overlay Zone (Sec. 101.0454) and all other lands having a slope with a natural gradient of twenty-five percent (25%) or greater (twenty-five

(25) feet of vertical distance for each one hundred (100) feet of horizontal distance) and a minimum elevation differential of fifty (50) feet.

11. Long Range Plan.

A new community plan, or a general plan or community plan, plan amendment, precise plan, specific plan or other planning document, and amendments thereto, for long-term future planning.

12. Significant Prehistoric and Historic Sites and Resources.

Locations of prehistoric or historic resources that possess unique cultural, scientific, religious or ethnic value of local, regional, state or federal importance. The above shall be limited to prehistoric or historic districts, sites, buildings, structures, or objects included in the State Landmark Register, or the City of San Diego Historical Sites Board List, or included in or eligible for inclusion in the National Register of Historic Places; areas of past human occupation where important prehistoric or historic activities or events occurred (such as villages or permanent camps); and locations of past or current traditional religious or ceremonial observances as defined by Public Resources Code SEC. 5097.9 et seq., and protected under Public Law 95-341, the American Indian Religious Freedom Act (such as burials, pictographs, petroglyphs, solstice observation sites, and sacred shrines).

13. Wetlands.

Land which is transitional between terrestrial and aquatic

systems where the water table is usually at or near the surface or where the land is covered by shallow water, and waters of the United States. Waters of the United States are accorded the same protection as wetlands. They include all waters subject to the ebb and flow of the tide, rivers, streams (including intermittent streams), mudflats, natural ponds and lakes, and man-made impoundments and drainages with biological value. To be considered a wetland within this definition, the area must have one or more of the following characteristics:

a. At least periodically, the land supports predominantly hydrophytes, as defined in the Unified Federal Method Manual (Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 19, 1989), on file in the City Clerk's Office as Document No. 00-17602

b. The substrate meets the criteria for hydric soils, including aquatic soils, as described in the Unified Federal Method Manual.

c. The substrate is saturated with water or covered by shallow water at some time during the growing season of each year, or if the hydrologic conditions meet the criteria in the Unified Federal Method Manual.

Areas classifiable as wetlands include lagoons, marshes, estuaries, vernal pools, streams and rivers and associated riparian habitat areas.

14. Wetland Buffers

Lands which provide a buffer area of an appropriate size to

protect the environmental and functional habitat values of the wetland.

G. PERMITTED USES AND DEVELOPMENT REGULATIONS

1. Wetlands

Permitted uses allowed in the wetlands shall be limited to the following:

a. Aquaculture, wetlands-related scientific research and wetlands-related educational uses.

b. Wetland restoration projects where the primary purpose is restoration of the habitat.

c. Essential public service projects including water reclamation, where it has been demonstrated that there is no feasible less environmentally damaging location or alternative, and where mitigation measures have been provided to minimize adverse environmental effects.

2. Wetland Buffer Areas.

A 100 foot-wide wetland buffer as mapped on Map Drawings C-713 and C-740 shall be maintained unless the applicant demonstrates that a buffer of lesser width will protect the resources of the wetland, based on site-specific information. Such information shall include, but is not limited to, the type and size of the development and/or proposed mitigations (such as planting of vegetation or construction of fencing) which also achieve the purposes of the buffer.

Wetland buffers for unmapped wetlands shall satisfy the wetland buffer requirements contained in paragraph F.14. The

buffer shall be measured landward from wetland. Maps and supplemental information submitted as part the application shall be used to determine the boundaries of the wetland and buffer. The California Department of Fish and Game and the United States Fish and Wildlife shall be consulted in such determinations.

All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to undertaken adjacent to a wetland shall be located so as not contribute to increased sediment loading of the wetland, disturbance to its habitat values, or otherwise impair the functional capacity of the wetland.

Permitted uses in the wetland buffer areas, shall be limited to the following, provided that such uses are compatible with protecting wetlands, and do not harm the natural ecosystem:

- a. All uses permitted in wetlands.
- b. Passive recreational uses, access paths, and public viewpoints, provided that all necessary mitigation measures are incorporated to protect the adjacent wetlands.
- c. Improvements necessary to protect adjacent wetlands.

3. Floodways.

Permitted uses in the floodway areas, as designated on the Federal Emergency Management Agency (FEMA) Maps on file in the office of the City Clerk or alternatively any area zoned FW, shall be those uses permitted by the FW zone, subject to the following regulations and the regulations and restrictions of the FW zone .

a. New roadways and roadway expansions, except local access roadways, shall be allowed only where indicated in an adopted community plan or identified in the Circulation Element of the General Plan.

b. Floodway encroachments for utility and transportation crossings shall be offset by improvements or modifications to enable the passage of a one hundred (100) year frequency flood.

c. Channelization or other substantial alteration of rivers or streams shall be limited to:

1) Necessary water supply projects.

2) Flood control projects where no other feasible method for protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development.

3) Developments where the primary function is the improvement of fish and wildlife habitat.

d. Any development permitted by paragraphs C.1), C.2), and C.3) above which involves the channelization or other substantial alteration of rivers or streams shall do all of the following:

1) Incorporate into the project design and mitigation measures all relevant findings of hydrological studies for the watershed of the affected stream. Such findings shall include but shall not be

limited to erosional characteristics, flow velocities, and sediment transport.

2) Incorporate mitigation measures designed to assure that there will be no increase in the peak runoff rate from the developed site as compared to the greatest discharge that would occur from the existing undeveloped site as a result of the intensity of rainfall expected during a six (6) hour period once every ten (10) years.

3) Minimize stream scour, avoid increases in and reduce, where feasible, the transport of stream sediment to downstream wetlands and other biologically sensitive lands. Acceptable techniques to control stream sediment include but are not limited to the planting of riparian vegetation in and near the stream.

4) If channelization is determined to be necessary, the floodway of the stream shall accommodate a one hundred (100) year flood. To the extent feasible, all artificial channels shall consist of natural bottoms and sides and be designed and sized to accommodate existing riparian vegetation. Where maintenance is required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party or process shall be identified.

e. Except in wetlands and wetland buffer areas, sand and

gravel extraction may be permitted, subject to an approved conditional use permit and reclamation plan. Use of the floodway area after reclamation shall be subject to all of the requirements of this section.

4. Floodplain Fringe.

Permitted uses in the Floodplain Fringe (property located between the floodway and the limits of the one hundred (100) year floodplain) as designated on the Federal Emergency Management Agency (FEMA) maps on file in the office of the City Clerk or alternatively any area zoned FPF, shall be those uses permitted by the underlying zone subject to the following regulations, the regulations and restrictions of the underlying zone, and the Floodplain Fringe Overlay Zone (SEC. 101.0403.1), where applicable.

a. New roadways and roadway expansions, except local access roadways, shall be allowed only where indicated in an adopted community plan or identified in the Circulation Element of the General Plan.

b. Low-intensity recreational uses may be permitted.

c. Except in wetlands and wetland buffer areas, sand and gravel extraction may be permitted, subject to an approved conditional use permit and reclamation plan. Use of the floodplain fringe area after reclamation shall be subject to all of the requirements of this section.

d. Within the one hundred (100) year floodplain fringe, sand and gravel extraction, permanent structures and/or fill

for permanent structures, roads and other public improvements will be allowed only if the applicant can demonstrate that:

1) The development is capable of withstanding periodic flooding, and does not require the construction of off-site flood protective works including but not limited to artificial flood channels, revetments and levees. Flood protection works may be permitted to protect new or existing roads which are identified in the Circulation Element of The City of San Diego's Progress Guide and General Plan, and applicable community plans.

2) Existing biologically sensitive lands and wetlands and wetland buffers will not be disturbed.

3) Grading and filling are minimized and harm to the environmental values of the floodplain fringe is minimized.

4) The design of the development incorporates the findings and recommendations of both a site-specific and watershed hydrologic study in order that: (a) there will be no increase in the peak runoff rate from the fully developed site as compared to the discharge that would be expected from the existing undeveloped site as a result of the most intense rainfall expected once every ten (10) years during a six (6) hour period; and (b) the development neither significantly increases nor

contributes to downstream bank erosion and sedimentation of wetlands or other biologically sensitive lands.

5) There will be no significant adverse water quality impacts to downstream wetlands and other biologically sensitive lands.

e. All development proposed in the floodplain fringe on property which borders the floodway or is otherwise linked physically or visually with the floodway shall:

1) Provide not less than a twenty-five (25) foot-wide open space strip bordering the floodway, revegetated as determined necessary per Section 7.1 of the City of San Diego Landscape Technical Manual, on file in the office of the City Clerk as Document No. RR-274506;

2) Provide for landscaping of all buildings and parking facilities; and

3) Retain and protect mature trees and other significant existing vegetation. Trees introduced to the site shall be adequately protected from drowning during heavy rains. As a condition of the permit, any drainage or runoff system installed for this purpose shall be serviced regularly during the November 15 to March 31 rainy season so as to avoid the accumulation of standing water around the base of such trees.

f. All landscaping shall be in substantial conformance

with the standards and specifications set forth in Chapter X, Division 7, of the San Diego Municipal Code (City-wide Landscaping Regulations) and the City of San Diego Landscape Technical Manual, on file in the office of the City Clerk.

5. Hillside and Biologically Sensitive Lands.

Permitted uses in hillside areas or biologically sensitive lands, or both, shall be those uses permitted by the underlying zone subject to the following regulations and the regulations and restrictions of the underlying zone, and the Hillside Review Overlay Zone (SEC. 101.0454) when applicable to the hillside portion of a parcel , except that a separate Hillside Review Permit shall not be issued.

Where a development is proposed on hillsides or biologically sensitive lands, or both, the following regulations shall apply:

a. Hillside and biologically sensitive lands shall be preserved in their natural state, provided a minimal encroachment into such lands may be permitted to the extent set forth in the following encroachment table. This encroachment must not adversely impact state or federally-listed rare, threatened or endangered species or wetlands.

All development or grading occurring in hillsides must comply with the regulations of the Hillside Review Overlay Zone ordinance and the Hillside Design and Development Guidelines (October, 1984). Development or grading occurring in biologically sensitive lands over and above the encroachment allowance in column 2 of the following table

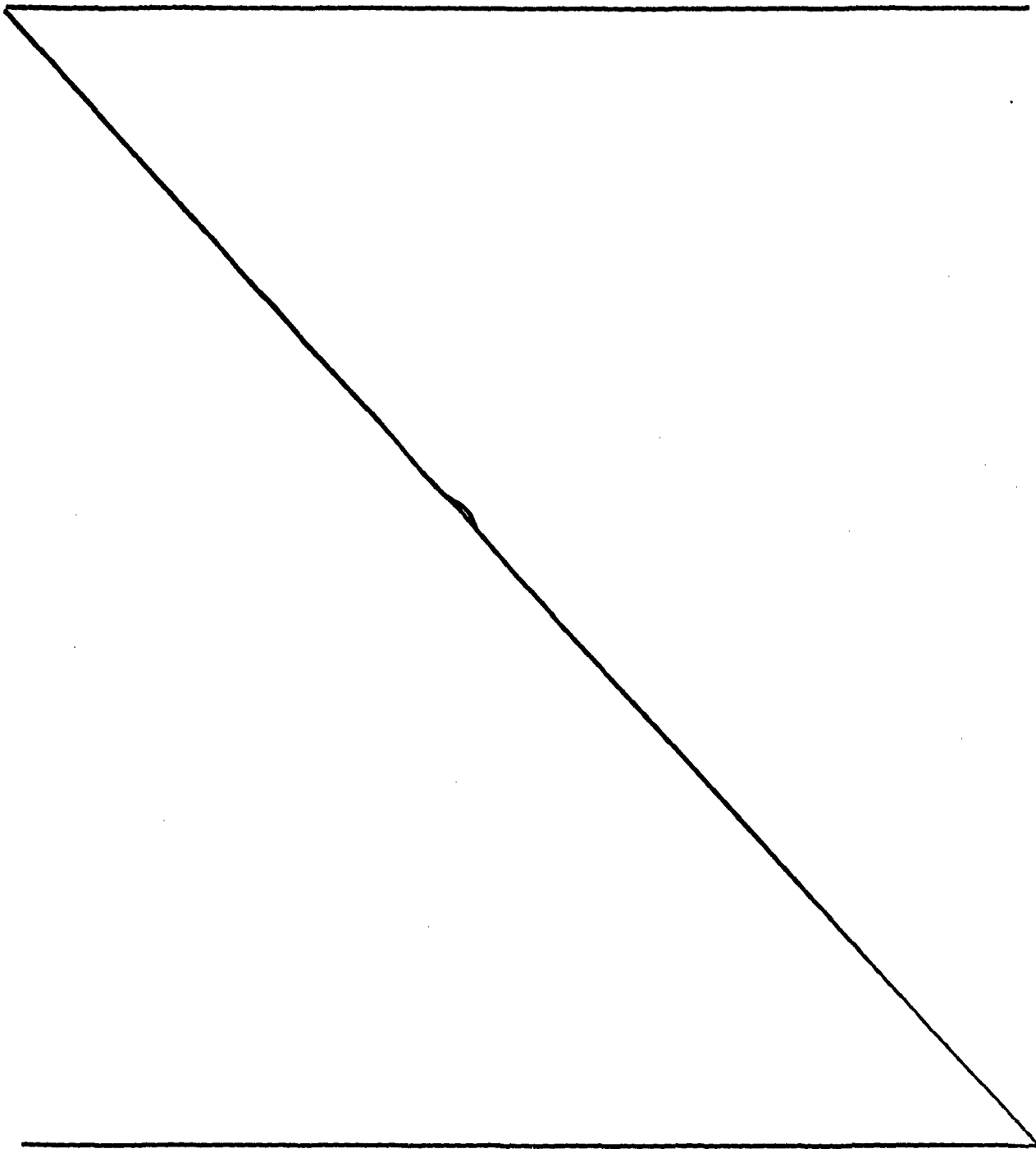
shall not be permitted unless all feasible mitigation to protect and preserve such lands is required as a condition of approval. Mitigation may include any of the following methods, as appropriate to the nature of the impact:

(1) In certain limited circumstances, replacement may be accomplished by creating new habitat or by enhancing existing degraded habitat.

(2) In other circumstances replacement may be accomplished on another site where the biological values of the mitigation site are threatened, provided the mitigation site supports the same biological values. The biological values of the replacement mitigation site must be protected and preserved in a manner acceptable to the Planning Director.

(3) In limited circumstances, where the affected habitat area is small and is isolated from other habitat areas, monetary compensation may be paid into a fund in lieu of other forms of mitigation. The fund shall be used to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Planning Director, with the concurrence of the City Manager, is authorized to enter into agreements with public or private non-profit conservancies, agencies, or foundations to administer the funds and maintain and acquire habitat preservation

areas.



ENCROACHMENT TABLE FOR HILLSIDES AND
BIOLOGICALLY SENSITIVE LANDS

Column 1	Column 2	Column 3	Column 4
Percent of Site Containing Slopes of 25% Grade and Over and/or Biologically Sensitive Lands	Maximum Encroachment Allowance for Development (not including Public Streets, Utilities and Facilities) as Percent of Column 1	Maximum Exemptable Area (Additional Encroachment) for Public Streets, Utilities and Facilities as Percent of Column 1 Subject to Findings in Paragraph G.5.c	Maximum Potential of Total Encroachment as Percent of Column 1
95-100%	20%	15%	35%
90-94	18	15	33
85-89	16	15	31
80-84	14	15	29
75-79	12	15	27
70-74	10	10	20
65-69	10	10	20
60-64	8	10	18
55-59	8	10	18
50-54	6	10	16
45-49	6	5	11
40-44	4	5	9
35-39	4	5	9
30-34	2	5	7
25-29	2	5	7
0-24	0	0	0

(Note: Columns 2, 3 and 4 are expressed as a percentage of that portion which contains the hillside or biologically sensitive lands)

b. The maximum total encroachment allowance (Column 4) for parcels containing both hillsides and biologically sensitive lands shall be allocated proportionally according to the percent of the total area represented by each.

The Planning Director may permit increased encroachment into that portion of a parcel containing hillsides provided that: the total encroachment for each parcel is within the maximum allowable set forth in the above table; there is a corresponding equal reduction of encroachment into the biologically sensitive lands portion; and, the hillsides do not occur in prime viewshed areas. Prime viewshed areas shall mean those areas which are visible from the center median and within one mile of Interstates 5, 8, 15, and 805, Freeways 905, 163, 52, 94 and all primary arterial roadways identified in the City of San Diego's Progress Guide and General Plan, and those areas visible from the midpoint of the streambed and within one mile of the following major canyon and floodplain systems: Tecolote Canyon, Penasquitos Canyon, Lopez Canyon, Carroll Canyon, Rose Canyon, Murphy Canyon, 34th Street Canyon, Maple Canyon, City Heights Southern Perimeter Canyon System, Chollas Creek Canyon System, Gonzales Canyon, Shaw Valley, Carmel Mountain Canyon, Crest Canyon, San Clemente Canyon, San Dieguito River Valley, Otay River Valley, Tijuana River Valley, and Mission Valley.

c. The following exemptions from the encroachment

allowance may be considered up to the maximum allowance in Column 3 of the "Encroachment Table for Hillside and Sensitive Lands" if the Planning Director finds that all such exemptions are sited, designed and constructed to: minimize if not preclude adverse impacts to the biologically sensitive lands; comply with the regulations of the Hillside Review Overlay Zone where applicable, and the Hillside Design and Development Guidelines (October, 1984); and not adversely impact state or federally-listed rare, threatened or endangered species or wetlands:

1. Major public roads and collector streets identified in the Circulation Element of an adopted community plan of the City of San Diego's Progress Guide and General Plan.

2. Local public streets.

3. Public utility systems.

4. The following public facilities, when they are determined by the Planning Director to be of significant benefit to the public: publicly-owned parks and recreational facilities (excluding golf courses); fire and police facilities (excluding jails); publicly-owned libraries and public schools.

- d. Areas with native vegetation which are cleared or thinned to protect existing or proposed structures in potential danger from fire may also be exempted provided that: the area cleared or thinned for such brush management

is the minimum necessary to comply with existing City fire codes; native root stock is retained in biologically sensitive lands, and, in all areas where the root stock is removed, replanting is done with native or naturalized non-native fire retardant vegetation; no reconfiguration of the natural landform is required; no permanent irrigation is provided and no non-native plants are introduced in biologically sensitive lands; and, no sensitive species or vegetation would be significantly adversely impacted.

e. Except as otherwise provided for in existing conditional use permits, sand, gravel and rock extraction is exempt from the hillside encroachment allowance but not from the biologically sensitive lands encroachment allowance, provided that mitigation measures are required that maximize the use of native vegetation to revegetate and landscape cut or fill areas in order to substantially restore the original habitat value and produce final graded slopes with contours and soils which reflect the original landform conditions. Use of the hillsides after reclamation shall thereafter be subject to all requirements of this section.

f. All encroachment allowances shall be subject to a determination by the Planning Director that such encroachment is supported by the findings of fact required under Paragraph L. of this section.

g. All hillsides and biologically sensitive lands which remain undisturbed or which are restored or enhanced

as a result of a development approval shall be conserved as a condition of permit approval through a deed restriction, open space easement or other suitable restriction acceptable to the City Attorney and the Planning Director and, when applicable, the City Manager, that will preclude any future development or grading of such lands.

6. Significant Prehistoric and Historic Sites and Resources.

Permitted uses in lands containing significant prehistoric and historic sites and resources shall be those uses permitted by the underlying zone subject to the following regulations and the regulations and restrictions of the underlying zone.

Development shall not be permitted in significant prehistoric or historic sites or resources unless all feasible measures to protect and preserve the significant prehistoric or historic site or resource are required as a condition of development approval. Alterations and improvements to prehistoric and historic sites and resources that enhance, restore, maintain or repair the site or resource and which do not adversely affect the special character, or special historical, architectural, archaeological or cultural value of the prehistoric and historic site or resource may be permitted. This paragraph is intended to supplement protection provided to significant prehistoric and historic sites and resources by existing local, state and federal law. The City Council shall establish procedures for designating historic sites, with time

frames for determining whether eligible sites shall be so designated, and procedures for protecting such eligible sites during the designation process.

H. APPLICATION SUBMITTAL REQUIREMENTS

Every application for a Resource Protection Permit shall be accompanied by the following information (where applicable) prepared in accordance with the guidelines of Section 2 of the City of San Diego Landscape Technical Manual, on file in the office of the City Clerk:

1. A site plan showing the location of proposed buildings, accessory structures, recreational areas, access roads and driveways, parking areas, storage areas, and any other uses of the site.

2. A landscaping plan showing the location of all plant materials including trees, shrubs, and ground covers.

3. A grading plan for any development which requires the alteration of the existing land configuration.

4. A preliminary elevation plan (including sections) showing basic foundation and roof configurations.

5. A drainage plan showing proposed runoff control measures.

6. An analysis and map showing the precise boundary of wetlands and wetland buffers.

7. In floodway and floodplain fringe areas:

- a. A hydrological study of the site and affected watershed showing existing river channels, streambeds

and proposed channelization alignments.

b. A biological resource inventory and mitigation plan.

8. In hillsides:

a. A slope analysis, based upon a topographic map with contour intervals not exceeding five (5) feet.

The slope analysis shall show the following slope categories for the entire property in acres:

1) Less than twenty-five percent (25%) slope.

2) Twenty-five percent (25%) and greater slopes.

b. A geological reconnaissance report where development is proposed to be located in a "moderate" (C), "high"(D), or "variable" (BC or AC) Risk Zone as identified on the geo-technical land use capability maps referenced by the Seismic Safety Element of The City of San Diego's Progress Guide and General Plan, and on file in the office of the City Engineer. The geological reconnaissance report shall be prepared in accordance with the City's Engineering and Development Department's Guidelines for Geo-technical Reports, and shall address potential geologic hazards. The report shall be considered and made available for public review as part of the standard environmental review process.

Where unstable conditions are indicated but, in

the opinion of the City Engineer, are not sufficiently defined in the geological reconnaissance report, a preliminary engineering geology report shall also be required. Any exploratory work necessary to prepare such a report may be performed pursuant to the conditions set forth in the Land Development Ordinance (Chapter 6, Article 2, Division 4 of the Municipal Code). The preliminary engineering geology report shall include the results of subsurface investigations sufficient to identify the nature and magnitude of such unstable conditions, and shall identify alternative mitigation measures that may be needed.

9. A biological resources survey, as provided for by the administrative guidelines to this section.

10. A prehistoric and historic resources survey.

I. PUBLIC HEARING

The Planning Director shall conduct a noticed public hearing for all project applications in accordance with SEC. 101.0220 of this Code. The Planning Director shall have the authority to consolidate any public hearing on a Resource Protection Permit Application with any other public hearing required in connection with another permit application relating to the same development. Applications for a Resource Protection Permit requested or required in conjunction with other permits or variances requiring discretionary action by more than one decision-making authority or body shall be heard by the senior granting authority or body

in accordance with Section 101.0225 of this Code.

J. PERMIT EXEMPTIONS

A Resource Protection Permit shall not be required for the following types of development; however, this development must comply with all other adopted City plans, ordinances and regulations:

1. Legally permitted agricultural grading on land which has been legally cultivated within the previous five (5) year period or pursuant to an agricultural permit (SEC. 62.0405(h)). This exemption shall not apply when a significant historic or prehistoric resource exists on the site.

2. Any development for which a Building Permit, Grading Permit, Hillside Review Permit, Planned Development Permit, Conditional Use Permit, Development Agreement or Planned District Permit has been requested (application on file) prior to June 22, 1987.

3. Any development which has obtained Coastal Commission approval on or before July 10, 1987.

4. Those phases or elements of a development which have obtained a vested right prior to the effective date of the original adoption of this section, March 29, 1989.

5. Developments for which all final discretionary approvals have been granted prior to July 15, 1988.

6. Except in the case of designated historic sites, the modification of a single-family house on one lot or the

replacement of a single-family house with another single-family house on one lot, brush management for fire protection purposes and any other improvements, alterations and landscaping on such lot. Designated historic sites shall mean sites contained on the State Landmark Register, or the City of San Diego Historical Sites Board List, or included in or eligible for inclusion in the National Register of Historic Places.

7. The construction of a single-family house on an individually-owned single-family lot as defined in Sec.101.0101.34 of the Municipal Code, or combination of lots which are legally joined together for the sole purpose of constructing only one single-family house upon such legally joined lots, provided such lots were or are not joined in ownership to a contiguous lot or parcel on the effective date of this section, and brush management for fire protection purposes and any other improvements, alterations, and landscaping on such lot or combination of lots.

8. Except in the case of designated historic sites, building improvements, including paved areas, on other than single-family lots which do not alter the ground coverage of an existing building or paved area by more than 10 percent and which do not increase the height of the building by more than 12 feet or the height permitted in the underlying zone, whichever is less.

9. Sand, gravel and rock and related asphalt operations, and salt manufacturing operations, which have received valid approvals to conduct such operations prior to the effective date of this section and which continue to operate in compliance with the terms and conditions of those approvals, and redevelopment or reclamation as required by the California Surface Mining and Reclamation Act of 1975 of the area upon which the operations have occurred.

10. Activities to detect and remove ordnance from areas where such explosive devices may exist.

K. EMERGENCY PERMIT

Whenever development is required by order of the City Manager or the Planning Director to protect the public health or safety, the Planning Director may issue an emergency Resource Protection Permit without a public hearing for the minimum amount of work necessary to protect the public health or safety. The emergency permit shall not relieve the permittee from compliance with all provisions of this section.

L. ADMINISTRATION OF PERMIT

The Planning Director or a designated representative shall administer this section. The Planning Director shall approve or conditionally approve the application for a Resource Protection Permit only if all of the following findings of fact are made:

1. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.
2. The proposed development will conform to the

community plan for the area and any other applicable plans, policies and ordinances.

3. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands.

4. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources.

5. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards.

6. Feasible measures, as defined in this section, to protect and preserve the special character or the special historical, architectural, archaeological or cultural value of the affected significant prehistoric or historic site or resource have been provided by of the applicant.

M. ALTERNATIVE COMPLIANCE

Development plans shall, to the maximum extent feasible, comply with the provisions of this section. In a case where a development plan does not comply with the provisions of this section, the Planning Director or designated representative may approve the plan through alternative compliance where it appears from the facts contained in the application, from information

obtained by the Planning Director and from evidence presented in public hearings that the strict application of this section would either: 1) result in unnecessary hardship to the applicant; or 2) create results in conflict with City Council policy, the Progress Guide and General Plan or any adopted community plan; or 3) preclude provisions of extraordinary benefit to the general public.

1. The Planning Director shall grant alternative compliance to prevent unnecessary hardship to the applicant if all of the following findings can be made:

a. There are special circumstances or conditions applying to the land that are peculiar to such land and not of the applicant's making whereby the strict application of the provisions of this section would deprive the property owner of reasonable use of the land;

b. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands;

c. Alternative compliance for the development will not adversely affect the Progress Guide and General Plan for the City of San Diego; and,

d. The proposed development will conform to the adopted community plan for the area and any other applicable plans, policies and ordinances.

2. The Planning Director may grant alternative

compliance for any development plan to preclude a conflict between the application of this section with adopted City Council policy if all of the following findings can be made:

a. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan;

b. The proposed development conforms to the adopted community plan for the area; and,

c. There are no other feasible measures that can be taken to further minimize the potential adverse effect on environmentally sensitive lands and still avoid conflict with the substantially applicable provisions of City Council policy.

3. The Planning Director may grant alternative compliance to ensure the provisions of extraordinary benefit to the general public on making findings of overriding social and economic considerations in addition to the following findings:

a. There are no feasible measures that further minimize the potential adverse effects on environmentally sensitive lands while still providing the extraordinary benefit.

b. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.

c. The proposed development conforms to the

adopted community plan for the area.

For the purposes of this section, coastal development permit approval by the City for projects in the coastal zone and determinations of substantial conformity by the Planning Director for development proposals pursuant to a precise or specific plan prepared and approved in accordance with Council Policy shall constitute alternative compliance.

The decision of the Planning Director with respect to a request for or determination of alternative compliance is appealable to the Planning Commission and City Council in accordance with Paragraph N. of this section.

For other than the approvals of coastal development permits, substantial conformity determinations and determinations of unnecessary hardship under this subsection, alternative compliance shall not be approved unless mitigation measures are adopted. These measures may include, but are not limited to: purchase or exchange by the applicant of like-kind real property of similar or greater quality and quantity from the City's open space retention list or any areas shown as open space in a community plan and donation of that property by fee or easement, as may be determined by the City, for use by the City as open space; or, purchase or exchange of other like-kind real property of similar or greater quality and quantity identified in a sensitive resources management plan prepared by the Planning Department and donation of that property by fee or easement, as may be determined by the City, for use by the City as open space.

"Like-kind real property" shall mean real property containing substantially the same resources as those on the impacted property. Provision of properties in a greater ratio than one to one (1:1) may be required based upon the quality of the resource impacted by the development. The Planning Director may promulgate guidelines for mitigation, and, with the concurrence of the City Manager, enter into agreements with public or private nonprofit agencies and foundations to acquire property and to maintain and administer any funds or property interests donated in furtherance of or pursuant to this section.

N. APPEALS

1. Appeals to the Planning Commission.

The decision of the Planning Director may be appealed to the Planning Commission in accordance with SEC. 101.0230 of this Code, when applicable.

2. Appeals to the City Council.

The decision of the Planning Commission may be appealed to the City Council in accordance with SEC. 101.0240 of this Code.

3. Resource Protection permits which are denied shall not be resubmitted to the Planning Director for one year following the denial.

O. CONDITIONAL USE PERMITS

Conditional Use Permits which would allow development in areas regulated by the provisions of the Resource Protection Ordinance shall be consistent with the use and development restrictions specified in the Resource Protection Ordinance and

shall be subject to all other applicable regulations and restrictions.

P. VIOLATIONS

Any person not complying with the provisions of this ordinance shall be required to restore the land affected to a condition comparable to that existing prior to the violation. Until such restoration is completed and approved by the City, the violators shall be prohibited from doing any development on the land affected. Violators are also subject to civil or criminal penalties and remedies, or both.

Q. EXPIRATION OF PERMIT

A Resource Protection Permit shall expire by limitation and become null and void if the work authorized by such permit is not commenced within three years from the date the permit is issued; provided, however, that if the Resource Protection Permit is issued in conjunction with another permit which extends or is extended by operation of law beyond three years, the permit may be extended by the Planning Director for an equivalent period provided there have been no intervening substantial changes in the affected resource or area requiring mitigation beyond that prescribed in the original permit. In this latter event, the Planning Director is authorized to require a new permit of the applicant.

R. APPLICABILITY OF AMENDMENTS TO EXISTING APPLICATIONS

To the extent that the amendments made by Ordinance No. O- 17602 (New Series), adopted on FEB 19 1991, to this

section shall differ from the provisions of this section, as originally adopted and previously amended, they shall not apply to any project for which a final permit approval has been issued or for which a completed application for a vesting tentative map, a discretionary permit for development, or a building, demolition or grading permit is on file prior to the date of introduction of the ordinance adopting this subsection, (FEB 05 1991) provided, however, that if such permit shall ever expire without the work or development being undertaken, then any subsequent application for a new permit shall be subject to these amendments.

S. APPLICABILITY TO PUBLIC WORKS PROJECTS

Except as provided by Council resolution, the provisions of this section shall apply to City public works construction projects to be constructed commencing on and after July 1, 1991, provided, however, that any project for which plans and specifications have already been approved by the City Council or the City Manager, when appropriate, or for which Council authorization to issue municipal debt financing has already been approved, or any project authorized and funded within the current (1991) or prior years Capital Improvement Projects (CIP) Program, shall be exempt.

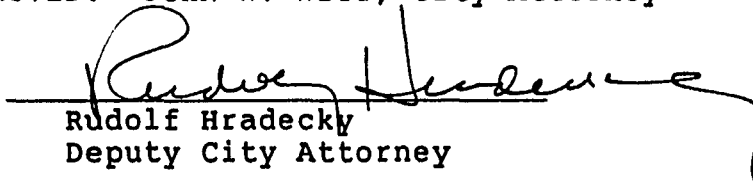
Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Section 3. The City Clerk is hereby authorized and directed to insert this ordinance number and the numbers of accompanying

documents and resolutions and their respective date of adoption or effectiveness, as applicable, into the appropriate subsections of Section 1 of this ordinance.

APPROVED: JOHN W. WITT, City Attorney

By


Rudolf Hradecky
Deputy City Attorney

RH:ps
01/22/91
01/31/91 REV.1
Or.Dept.Plan.
O-91-122

51

Passed and adopted by the Council of The City of San Diego on **FEB 19 1991**,
by the following vote:

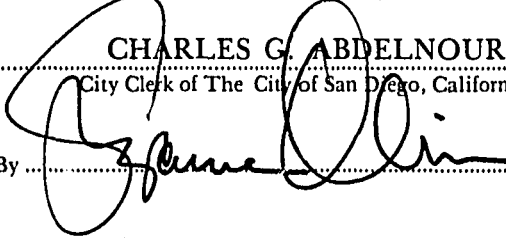
Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Linda Bernhardt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By  , Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

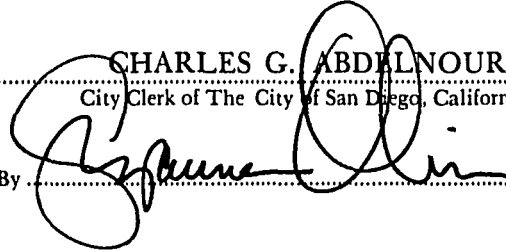
FEB 05 1991, and on **FEB 19 1991**

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By  , Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number	0-17602
Adopted	FEB 19 1991

RECEIVED

97 JAN 62 AM 10:02

OFFICE OF THE ATTORNEY GENERAL
SAN DIEGO, CA

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
91 MAR 11 AM 9:44⁰⁵
SAN DIEGO, CALIF.

CITY CLERK'S OFFICE
CITY ADMN. BLDG.
202 C ST.
SAND IEGO, CA 92101

IN THE MATTER OF

NO.

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 4, OF THE
SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 101.0462 RELATING
~~TO DEVELOPMENT IN THE ENVIRONMENTALLY SENSITIVE AREAS OF THE CITY~~

ORDINANCE NUMBER 0-17602

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 101.0462 RELATING TO DEVELOPMENT IN THE ENVIRONMENTALLY SENSITIVE AREAS OF THE CITY.

This ordinance amends the "Resource Protection Ordinance" (RPO) contained in San Diego Municipal Code Section 101.0462. A number of administrative corrections and clarifications are made to the ordinance, including the relocation of a number of existing subsections into other subsections of RPO.

The ordinance adds new definitions and defines new areas which are regulated by RPO. It provides for the promulgation of administrative regulations by the Planning Director and defines "biologically sensitive lands" with respect to categories of plants or animals found within those lands. The ordinance combines previous regulations and restrictions governing development in wetlands, wetland buffers, floodways, floodplain fringes and hillsides, together with new regulations regarding development within biologically sensitive lands. Encroachment allowances are established for development encroachments into hillsides and biologically sensitive lands regulated by RPO. Procedures are established for mitigation measures when such encroachment occurs.

Encroachment allowances that are granted must meet the requirements established by the ordinance. The ordinance makes provision for alternative compliance procedures to allow for reasonable development upon land based upon findings by the City Council when strict application of RPO would either result in unnecessary hardship to the applicant, create results in conflict with City Council policy, or would preclude provisions of extraordinary benefit to the general public.

Provisions are added for time extensions of a RPO permit beyond three years, and to establish a "pipeline" concerning projects to which the new RPO amendments will apply, as well as for its application to City public works projects under designated circumstances.

A complete copy of the ordinance is available for inspection in the office of the City Clerk of the City of San Diego, second floor, City Administration Building, 202 "C" Street, San Diego, CA 92101.

INTRODUCED ON February 5, 1991
Passed and Adopted by the Council of The City of San Diego on February 19, 1991

AUTHENTICATED BY:
MAUREEN O'CONNOR
Mayor of The City of San Diego, CA
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, CA

(SEAL) By SUZANNE OLIVA, Deputy
Pub. March 5 214804

I, Thomas D. Kelleher, am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

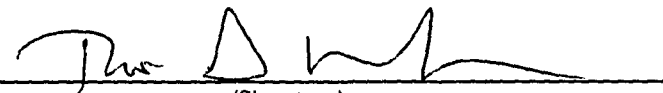
ORDINANCE NUMBER 0-17602

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

MAR. 5

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 5TH day of MAR, 19 91.


(Signature)

Page 1 of 1

8 3/8 = 107.16