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RESOLUTION NUMBER R- 303274

DATE OF FINAL PASSAGE DEC 18 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CONSIDERING THE COASTAL COMMISSION PROPOSED AMENDMENTS TO THE CITY'S LOCAL COASTAL PROGRAM RELATED TO BRUSH MANAGEMENT ON JANUARY 11, 2007, AND FEBRUARY 15, 2007.

WHEREAS, the Coastal Commission considered proposed amendments to the City's Local Coastal Program related to brush management on January 11, 2007, and February 15, 2007. On February 15, 2007, the Coastal Commission took action to conditionally certify City of San Diego LCPA No. 1-07 as amended during the public hearing (pursuant to the Executive Director's certification letter).

WHEREAS, the City received the Coastal Commission letter of conditional certification dated July 25, 2007 (attached hereto as Exhibit A), and subsequent notice that a one year extension of time was granted on Thursday, August 8, 2007 for City of San Diego LCPA No. 1-07.


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

1. The above recitals are true, correct, and incorporated by reference herein.
2. That the Mayor is directed to submit the final ordinance and resolution to the Coastal Commission for final certification of LCPA No. 1-07.
3. That the City staff are directed to submit an annual monitoring report to the Coastal Commission documenting the dates and locations of each instance of goat use, the number of acres managed, number of goats per acre, and analysis of success in reducing height

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and volume of vegetation for five years following the first use of goats for brush management in the coastal zone. The monitoring report shall be accompanied by photographs documenting the before and after condition of the areas managed by goats. The report shall document any instance of violation and/or required mediation during the previous year. If at the end of five years, the monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal overlay zone shall be discontinued.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Jana L. Garmo
Deputy City Attorney

JLG:als
11/20/07
Or.Dept:DSD
R-2008-366

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 04 2007

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12118.07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



July 25, 2007

Ms. Marcela Escobar-Eck
City of San Diego
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101-4155

Re: Certification of City of San Diego LCP Amendment No. 1-07 (Brush Management)

Dear Ms. Escobar-Eck,

On February 15, 2007, the California Coastal Commission approved the above referenced amendment to the City of San Diego Local Coastal Program (LCP). First, let me apologize for the delay in getting this acknowledgment of the Commission's action to you. The City's amendment involves new brush management regulations to be applied citywide. Primary features of the new regulations include expanding the total required brush management area to 100 feet in width, including 35 feet of Zone One, the area closest to habitable structures, and 65 feet of Zone Two, the area between Zone One and undisturbed lands; changes in the method of brush management, particularly in Zone Two, consisting of reducing the height of half the existing vegetation over 24 inches in height to 6 inches in height, and thinning and pruning the remaining vegetation instead of complete removal of half of all vegetation within Zone Two; and the adoption of regulations addressing the use of goats in brush management.

The Commission approved the LCP amendment with suggested modifications, the most significant of which prohibits impacts to environmentally sensitive habitat areas (ESHA) from brush management within protected open space and the designated multi-species habitat preserve area (MHPA) in association with new subdivisions. In working with your staff on this LCP Amendment, the Commission staff and the Commission fully appreciate both the complexity and serious concerns that the City and Fire Department have relative to fire hazard, brush management requirements and public safety. We share those concerns, but must also recognize the Coastal Act's mandate to balance those objectives with the need to preserve environmentally sensitive habitat areas, and particularly those that have been set aside in public open space and the multi-species habitat preserve.

While both the Commission and staff acknowledged the need to recognize the constraints presented with existing development along the existing urban/wildland interface and accordingly made substantial concessions related to permitting and mitigation requirements for existing development, the Commission could not support such a position when considering new development related to the subdivision of larger parcels. When new development/subdivision of land is sought within or adjacent to native vegetation protected as open space or designated MHPA, for the protection of the residents, the new development should be sited a sufficient distance from the vegetation to prevent a future fire hazard and protect the habitat value of the open space/habitat preserve. The sole exception, which the Commission supported, would be to allow some encroachment into ESHA for both the development and requisite brush management to attain the 25% development area provided for in the certified Land Development Code.

Exhibit "A"

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Other suggested modifications which were adopted by the Commission require alternative measures, including fire-resistive building materials and design techniques be utilized to minimize the extent of vegetation removal and habitat disruption in the required 100 foot brush management zones; and establish regulations to accommodate the use of goats for brush management for a five-year trial period. Also, since ESHA is not currently a defined term in the City of San Diego certified LCP, a definition has been added for purposes of implementation of the brush management regulations. The attached modifications contain the specific changes adopted by the Commission.

While the Commission recognizes that the City's updated brush management regulations retain a greater extent of the adjacent plant communities, the impacts are still considered significant. Over the last couple of years, the Commission has endorsed stronger resource protection measures which no longer allow selective thinning and pruning activities within ESHA as an "impact neutral" activity in other coastal communities. As proposed, the loss of at least half of the vegetative cover and the extensive thinning of the remaining vegetation in secondary brush management zones provides limited habitat value. Nonetheless, we worked very hard with City staff to still exempt the City's revised regulations when related to protecting existing structures and when performed in accordance with the proposed new regulations. In addition, in those same cases, we also agreed to not pursue mitigation for such impacts.

However, as indicated, the Commission could not support such a position when considering new development related to the new subdivision of larger parcels, within or adjacent to protected open space or designated MHPA properties. On such properties, pursuant to the City's Land Development Code, a 25% development envelope is established and all new development/subdivision, along with its required brush management, should occur within that envelope. There is no compromise to fire protection with this approach; it just requires that the requisite brush management be accounted for in the otherwise allowable development footprint. The Commission also endorsed the use of alternative compliance measures and has repeatedly supported increased density, such as apartments, townhomes and/or smaller lot residential layouts, within the appropriate development envelope to concentrate development, preserve habitat/open space, reduce brush management requirements and establish adequate distance between future development and potential hazards.

In addition, at the hearing, there were "takings" concerns raised by both City representatives and members of the public relative to the Commission staff recommendation; however, this is a land use planning decision and the question in the review of future permit applications will not be whether or not any development is authorized but how many units can be developed on a particular site. Initially, City staff indicated there were only a few properties in the coastal zone that would even be affected by this provision. Therefore, the Commission did not find this assertion to be a credible challenge.

Relative to the allowance for the use of goats in brush management activities, Commission staff appreciates the City's incorporation of added management measures and enforcement for this work. However, given evidence of the adverse impacts of goat operations on other habitat areas, the Commission supported the need for additional monitoring and limited the goat operations to a five year trial period.

Before the amendment request can become effectively certified, the Executive Director must determine that implementation of the approved amendment will be consistent with the

Marcela Escobar-Eck

July 25, 2007

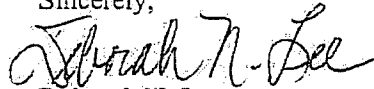
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Commission's certification order. This is necessary because the amendment was certified with suggested modifications. In order for the Executive Director to make this determination, the local government must formally acknowledge receipt of the Commission's resolution of certification, including any terms or suggested modifications; and take any formal action which is required to satisfy them, such as rezonings or other ordinance revisions. This certification must also include production of new LCP text, maps, and/or other graphics demonstrating that the amendment, as approved by the Commission and accepted by the City, will be incorporated into the City's certified Local Coastal Program immediately upon concurrence by the Commission of the Executive Director's determination.

The City Council action must normally occur within sixty days of the Commission's action, otherwise the Commission certification becomes null and void, and the previously-certified regulations remain effective in the coastal zone. In that instance, none of the amendments approved on February 15, 2007 would be valid within the coastal zone, including the use of goats for brush management. However, given the delay incurred by the City due to our delay in transmitting these suggested modifications and certification letter to you, as well as the City Council summer recess, we are asking the Commission for a one year time extension and the requested time extension is scheduled for the August 9, 2007 Commission hearing.

If you have any questions about the Commission's action or this final certification procedure, please contact our office. Thank you and the other staff members who worked on this planning effort. We realize this has been a challenging task; and, as offered at the hearing, we remain available to discuss both the substance and implementation measures for brush management that will both minimize discretionary review but also provide maximum resource protection when there are clear alternatives.

Sincerely,



Deborah N. Lee
District Manager

cc: Mayor Jerry Sanders
Council President Scott Peters
Sherilyn Sarb
Ellen Lirley

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SUGGESTED MODIFICATIONS

As modified and adopted by the Coastal Commission on February 15, 2007

Note: These revisions show changes the Commission is suggesting to the LCP as it is proposed to be amended. Text with a single underlining is text proposed by the City as part of this proposed LCP amendment; text with no underlining but that is struck out is text the City is proposing for deletion. Double underlined text is Commission suggested new language or change to City-proposed language. Double-strike-out is Commission suggested deletion of City-proposed language. All Commission suggested language is also bolded.

1. §142.0402 When Landscape Regulations Apply – Table 142-04A should be modified as follows:

Table 142-04A

Landscape Regulations Applicability

Type of <i>Development</i> Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 8 [No change.]				
9.	New <i>structures</i>; additions to <i>structures</i>; or <i>subdivisions</i> that create <i>lots</i> where new <i>structures</i> could be located on properties adjacent to any contiguous, highly flammable area of native or naturalized vegetation greater than 10 acres or contiguous area of native or naturalized vegetation greater than 50 acres. All City owned property, dedicated in perpetuity for park or recreation purposes, within 100 feet of a structure.		142.0403, 142.0412, and 142.0413	Building Permit/ Process OneNo permit required by this division if work is performed in accordance with applicable regulations

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Type of <i>Development</i> Proposal	Applicable Regulations	Required Permit Type/ Decision Process
10. Existing structures on properties that are adjacent to any area of highly flammable native or naturalized vegetation. Undeveloped <u>Publicly or privately owned premises that are</u> within 100 feet of a <u>structure that and</u> contain native or naturalized vegetation or environmentally sensitive lands	142.0403, 142.0412, and 142.0413	No permit required by this division if work is performed in accordance with applicable regulations
11. <u>New Structures, additions to structures, or subdivisions that create lots where new structures could be located on premises adjacent to native or naturalized vegetation</u>	<u>142.0403, 142.0412, and 142.0413</u>	<u>Building Permit/ Process One</u>
11. <u>12.</u> New Trees or shrubs planted in the public right-of-way	62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One

2. §142.0412 **Brush Management** – the introduction to this section, and subsections (a), (b), and (c) should be modified as follows:

- (a) Brush management is required in all base zones on ~~the following types of premises:~~ premises: for the types of ~~development~~ listed below when they are adjacent to any highly flammable area of native or naturalized vegetation that is greater than 10 acres as mapped by the City of San Diego, or adjacent to any area of native or naturalized vegetation that is greater than 50 acres, as shown in Table 142.04A. However, within the Coastal Overlay Zone, brush management is

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~~required for all coastal development within the MHPA and/or adjacent to steep hillsides containing sensitive biological resources~~

~~(1) Publicly or privately owned premises that are within 100 feet of a structure, and contain native or naturalized vegetation.~~

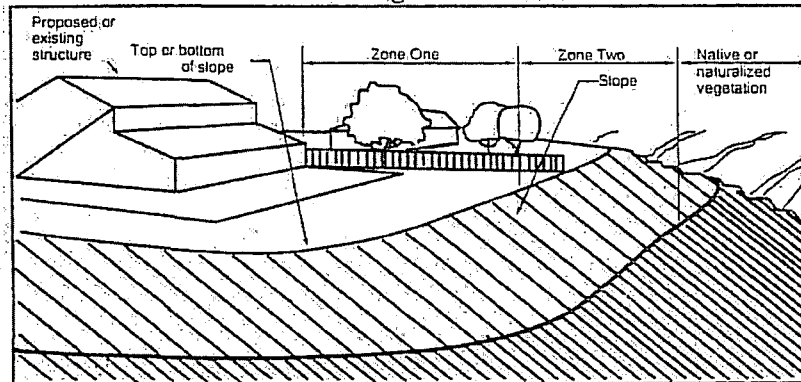
~~(2)(a) Brush management activity is permitted within Additions to structures Except for wetlands, environmentally sensitive lands (except for wetlands) that are located within 100 feet of an existing structure, in accordance with Section 143.0110(c)(7). Brush management in wetlands may be requested with a development permit in accordance with Section 143.0110 where unless the Fire Chief deems brush management necessary in wetlands in accordance with Section 142.0412(i). Where brush management in wetlands is deemed necessary by the Fire Chief, that brush management shall not qualify for an exemption under the Environmentally Sensitive Lands Regulations, Section 143.0110(c)(7).~~

(b) Brush Management Zones. Where brush management is required, a comprehensive program shall be implemented that reduces fire hazards around structures by providing an effective fire break between all structures and contiguous areas of flammable native or naturalized vegetation. This fire break shall consist of two distinct brush management areas called "Zone One" and "Zone Two" as shown in Diagram 142-04D.

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Diagram 142-04D

Brush Management Zones



- (1) Brush management Zone One is the area adjacent to the *structure*, shall be least flammable, and ~~shall~~ typically consists of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with a gradient greater than 4:1 (4 horizontal feet to 1 vertical foot) unless the property ~~that~~ received *tentative map* approval before November 15, 1989. However, within the Coastal Overlay Zone *coastal development* shall be subject to the encroachment limitations set forth in Section 143.0142(a)(4) of the Environmentally Sensitive Lands Regulations.
- (2) Brush management Zone Two is the area between Zone One and any area of native or naturalized vegetation and ~~shall~~ typically consists of thinned, native or naturalized, ~~non-irrigated~~ vegetation.
- (c) ~~Except as provided in Sections 142.0412(f) or 142.0412(i),~~ The width of Zone One and Zone Two shall not exceed 100 feet and shall meet or exceed that the width requirements shown in Table 142-04H unless modified based on existing conditions pursuant to 142.0412(i) and the following: Where ~~development~~ is adjacent to slopes or vegetation that meets the criteria shown in the table, the required Zone One and Zone Two width shall be increased by the dimension shown:

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- (1) Both Zone One and Zone Two shall be provided on the subject property unless a recorded easement is granted by an adjacent property owner to the owner of the subject property to establish and maintain the required brush management zone(s) on the adjacent property in perpetuity.
- (2) Where Zone Two is located within City-owned property, a Right of Entry agreement shall be executed in accordance with 63.0103 prior to conducting any brush management activity. Zone Two brush management is not permitted in City-owned open space for new development proposals. For properties in the Coastal Overlay Zone, additional requirements for new development are found in subsection (n).

3. §142.0412 Brush Management – subsections (h) and (i) should be modified as follows:

(h) Zone Two Requirements

- (1) The required Zone Two width shall be provided between Zone One and the undisturbed, native or naturalized vegetation, and shall be measured from the edge of Zone One that is farthest from the habitable *structure*, to the edge of undisturbed vegetation.
- (2) No *structures* shall be constructed in Zone Two.
- (3) Within Zone Two, 50 percent of the plants over 24 inches in height shall be reduced to a height of 6 inches. Non-native plants shall be reduced in height before native plants are reduced in height.
- (4) Within Zone Two, all plants remaining after 50 percent are reduced in height, shall be pruned to reduce fuel loading in accordance with the Landscape Standards in the Land Development Manual. Non-native plants shall be pruned before native plants are pruned.

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- (5) The following standards shall be used where Zone Two is in an area previously *graded* as part of legal *development* activity and is proposed to be planted with new plant material instead of *clearing* existing native or naturalized vegetation:
- (A) All new plant material for Zone Two shall be native, ~~or naturalized~~ ~~non-irrigated~~, low-fuel, and fire-resistive. No non-native plant material may be planted in Zone Two either inside the MHPA or in the Coastal Overlay Zone, adjacent to areas containing *sensitive biological resources*.
- (B) New plants shall be low-growing with a maximum height at maturity of ~~2 feet~~ 24 inches. Single specimens of ~~fire-resistant~~ fire resistive native trees and tree form shrubs may exceed this limitation if they are located to reduce the chance of transmitting fire from native or naturalized vegetation to habitable *structures* and if the vertical distance between the lowest branches of the trees and the top of adjacent plants are three times the height of the adjacent plants to reduce the spread of fire through ladder fueling.
- (C) All new Zone Two plantings shall be irrigated temporarily until established to the satisfaction of the City Manager. Only low-flow, low-gallonage spray heads may be used in Zone Two. Overspray and runoff from the irrigation shall not drift or flow into adjacent areas of native or naturalized vegetation. Temporary irrigation systems shall be removed upon approved establishment of the plantings. Permanent irrigation is not allowed in Zone Two.
- (D) Where Zone Two is being revegetated as a requirement of Section 142.0411(a), revegetation shall comply with the spacing standards in the Land Development Manual. Fifty percent of the planting area shall be planted with material that does not grow taller than 24 inches. The remaining planting area may be planted with taller

material, but this material shall be maintained in accordance with the requirements for existing plant material in Zone Two.

- (6) Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing invasive species, and controlling weeds, ~~and maintaining any temporary irrigation system.~~
 - (7) Except as provided in Section 142.0412(i), where the required Zone One width shown in Table 142-04H cannot be provided on *premises* with existing *structures*, the required Zone Two width shall be increased by one foot for each foot of required Zone One width that cannot be provided.
 - (i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, ~~the Fire Chief may modify the requirements of this section, and where applicable, with the approval of the Building Official, may require building standards for fire protection in addition to those required in accordance with Chapter 14 Article 5 Division 5 (Additional Building Standards for Buildings Located Adjacent to Hazardous Areas of Native or Naturalized Vegetation)~~ if the following conditions exist:
 - (1) In the written opinion of the Fire Chief, based upon a fire fuel load model report conducted by a certified fire behavior analyst, the requirements of Section 142.0412 fail to achieve the level of fire protection intended by the application of Zones One and Two; and
 - ~~(2)~~ (2) The modification to the requirements achieves an equivalent level of fire protection as provided by Section 142.0412, other regulations of the Land Development Code, and the minimum standards contained in the Land Development Manual; and
 - ~~(3)~~ (3) The modification to the requirements is not detrimental to the public health, safety, and welfare of persons residing or working in the area.
4. §142.0412 **Brush Management** – new subsection (m) should be added as follows:

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(m) Where specifically authorized by the Fire Chief, goats may be used for brush management in accordance with the following:

- (1) In order to prevent escapes, harassment from predators or humans, or over browsing, goats shall be managed and monitored 24-hours a day by a contractor who has at least two years experience in the raising, handling, and controlling of goats. The goat contractor shall carry a minimum of \$1 million of liability insurance.
- (2) At least 10 business days prior to using goats for brush management, the property owner shall apply to the Fire Rescue Department for a permit to use goats for brush management. The application shall include:
 - (a) Obtain written permission from the owner of any property through which the goats must gain access to the area to be browsed by, and
 - (b) Provide written notice to the City of San Diego Fire Chief and all owners and residents of property located immediately adjacent to the area to be browsed. This notice shall identify Sections 44.0307 and 142.0412 (m) as the authority for temporary use of goats.
 - (c) Provide photographs of the existing condition of the site, and a plan describing the methods to be employed and measures to retain existing vegetation in compliance with subsection (h)
- (3) The area to be browsed shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the Zone Two brush management areas. Signs must be posted at 25-foot intervals along the fence warning of the possibility of mild electric shock.
- (4) The timing of brush management activities shall be consistent with Section 142.0412(d).

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- (5) While goats are browsing:
- (a) No more than 75 goats are permitted on a single acre of the premises.
 - (b) Goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced.
 - (c) The goats shall remain within a secure enclosure at all times.
 - (d) Goats shall be moved into a separate holding pen at night, which shall be located the maximum distance practicable from residences.
 - (e) Droppings in the holding pen, and, to the extent possible, within the brush clearance area, shall be removed and properly disposed of daily in accordance with Section 44.0307.
 - (f) The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished.
- (6) No later than 5 business days from the date of removal of the goats, the property owner shall notify the City of San Diego Fire Chief, in writing, of the removal of the goats.
- (7) Negligent or irresponsible goat contractors shall be subject to debarment in accordance with Chapter 2, Article 2, Division 8.
- (8) For five years after the first use of goats in the Coastal Overlay Zone, monitoring of each instance of goat use shall be conducted to document the effects of using goats for brush management. The City shall submit an annual monitoring report to the Coastal Commission documenting the following:
- (a) dates and locations of each instance of goat use;
 - (b) number of acres managed and number of goats used per acre; and

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(c) analysis of success in meeting the specific criteria of Section 142.0412 (h), subsections (3) and (4)

The monitoring report shall be accompanied by photographs documenting the before and after condition of the areas managed by goats. The monitoring report shall also document any instances of violation and/or required mediation during the previous year. If, at the end of five years, the monitoring reports indicate that use of goats has adversely impacted ESHA, the use of goats in the Coastal Overlay Zone shall be discontinued.

5. §142.0412. Brush Management – new subsection (n) should be added as follows:

(n) Within the Coastal Overlay Zone, new subdivisions shall not be permitted to encroach into ESHA, except for properties within the MHPA, where encroachment is allowed to attain the allowable 25% development area. The following ordinance provisions shall be in addition to those identified in Section 142.0412, subsections (a) through (m). Where any conflicts exist between the following provisions of subsection (n) and the provisions of subsections (a) through (m) or other provisions of the Land Development Code or Land Development Manual, the following provisions of subsection (n) shall be controlling.

(1) For purposes of these brush management regulations, environmentally sensitive habitat area (ESHA) within protected open space or designated MHPA shall be preserved. For purposes of these brush management regulations, ESHA shall include southern foredunes, torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, oak woodlands, coastal sage scrub and coastal sage scrub/communities, and any vegetative communities that support threatened or endangered species. In addition, the term "protected open space" includes public lands, private lands deed restricted to protect open space, and private lands where easements have been granted to a public agency.

(2) Brush management requirements shall be reviewed as part of the development review process. Brush management shall be addressed in a site-specific brush management plan acceptable to the Fire Marshal. Impacts to ESHA within protected open space or designated MHPA shall not be permitted for Zone One or Zone Two brush management. In addition, all creative site and/or structural design features shall be incorporated into the approved subdivision design to avoid or minimize impacts to any existing undisturbed native vegetation from

allowable brush management requirements. Measures such as replacing cleared or thinned native vegetation with fire-resistant native vegetation that does not require fuel modification and is compatible with existing habitat, and maintenance of at least 50% of the existing ground cover shall be implemented, when possible, to avoid significant disruption of existing undisturbed native vegetation. For properties within the MHPA, all brush management, Zone One and Zone Two, shall be contained within the 25% developable area of the site.

6. §142.0412 Brush Management – new subsection (o) should be added as follows:

(o) Violations and Remedies

(1) The provisions of this division shall be enforced pursuant to Chapter 12, Article 1, Division 2, Enforcement Authorities for the Land Development Code and Chapter 12 Article 1, Division 3 Violations of the Land Development Code and General Remedies.

(2) In accordance with Section 121.0312, the City Manager may order reasonable restoration of the premises and any adjacent affected site to its lawful condition or may require reasonable mitigation at the sole cost of the responsible person.

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