

RECOMMENDATIONS

COMMUNITY PLANNING GROUP/STAFF'S/PLANNING COMMISSION

Project Manager **must** complete the following information for the Council docket:

CASE NO.

STAFF'S

Please indicate recommendation for each action. ie: resolution/ ordinance

- Introduce and adopt the ordinance amending Municipal Code Chapter 4, Article 4 and Chapter 14, Article 2 of the Land Development Code and Local Coastal Program.
- Adopt the resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Direct staff to submit for a determination of consistency with the certification order.

PLANNING COMMISSION (list names of Commissioners voting yea or nay)

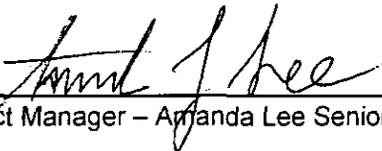
N/A

COMMUNITY PLANNING GROUP (choose one)

LIST NAME OF GROUP:

- No officially recognized community planning group for this area.
- Community Planning Group has been notified of this project and has not submitted a recommendation.
- Community Planning Group has been notified of this project and has not taken a position.
- Community Planning Group has recommended approval of this project.
- Community Planning Group has recommended denial of this project.
- This is a matter of City-wide effect. The following community group(s) has taken a position on the item:

In favor:
Opposed:

By 
Project Manager – Amanda Lee Senior Planner

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____				
<input type="checkbox"/> Supplemental	<input type="checkbox"/> Adoption	<input type="checkbox"/> Consent	<input type="checkbox"/> Unanimous Consent	Rules Committee Consultant Review

R -

O -

Use of Goats in the City of San Diego for Brush Management

Reviewed Initiated By NR&C On 9/22/04 Item No. 1

RECOMMENDATION TO:

Direct the City Manager to change the term "Competent Goat Contractor" to "Qualified Goat Contractor"

VOTED YEA: Madaffer, Zucchet, Frye

ABSTAINED: Inzunza

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO. 04-181

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Ann Hix's September 20, 2004, memorandum; Robert C. Leif, Ph. D.'s September 21, 2004, letter

COUNCIL COMMITTEE CONSULTANT 

prepared for consideration and certification by the City Council as part of adoption process.

The Park and Recreation Department Open Space Division manages over 23,000 acres of City-owned open space, and is responsible for Zone 2 brush management along the urban edge where these lands adjoin developed areas. A recently-completed GIS study shows that, assuming adoption of the proposed brush management code amendments (100 feet total for Zones 1 and 2), this brush management area would be approximately 1,200 acres. The Open Space Division currently has 3.25 budgeted positions for brush management, as well as funding for one contract crew. At this current staffing level, an average of approximately 70 acres of brush is thinned per year. Additionally, there are thousands of acres of privately-owned property needing property owner brush management throughout the City. The Fire-Rescue Department Fire Prevention Bureau, which implements and enforces the City's brush management code requirements on private property, currently has 3.5 staff positions.

Following the October 2003 fires, Park and Recreation Department Open Space Division staff began seriously exploring the possibility of using goats to assist in performing Zone 2 brush management in certain areas of city-owned open space. Goats have been used by other cities in California for weed abatement and brush management on public property, including the Cities of Laguna Beach, Sunnyvale, San Luis Obispo, Escondido (State Historic Park Site), Los Angeles, Claremont, San Francisco and the Bay area, Berkeley Hills, Menlo Park, Sacramento (Marina), Mill Valley, Los Altos Hills, Oakland, San Mateo, and Santa Cruz.

City staff implemented a small pilot project with a herd of 40 goats on a 1/3-acre City-owned open space hillside in Tierrasanta in April 2004. A goat contractor provided his goat herd free of charge for this pilot. Initial evaluation indicated the goats accomplished a form of the required 50% Zone 2 brush thinning with few problems, although it took six days to complete the 1/3 of an acre due some start up challenges and an unusually high rate of goat births during that period. (Conventional crews typically can do 1/3 of an acre per day.) It is generally thought that goats can perform brush management for approximately 25%-50% of the cost of a contract crew, although at a slower rate per day. Under ideal circumstances, 75-100 goats may be able to thin approximately one acre per day.

Based on the success of this goat pilot project, city staff was requested to determine how goats could be used on a citywide basis to assist with brush management.

DISCUSSION

In order to implement the use of goats for brush management in the City of San Diego, certain sections of Chapter 4 of the Municipal Code, Health and Sanitation, will need to be amended. Currently, Article 4, Division 3, Section 44.0307 states, in part: "No person shall bring or maintain, within a non-agricultural area within the City, any cattle, bovine animals, goats or sheep." **Attachment 1** is a preliminary draft of potential code amendment language to create an exemption for the use of goats for brush management. The goal of this amendment would be to allow the use of goats on private and public land if certain criteria in the code are met, without the requirement to obtain a permit. At least one other Municipal Code Section (142.0360) addressing the use of electric fences would also need to be amended.

The code amendments could be adopted as a one-year interim ordinance, to allow staff to determine the effectiveness of using goats for brush management. The ordinance could become permanent at the end of the first year if the program is determined to be successful.

It should be noted that the goats would be a supplement to conventional landscape crews, and could not replace them. Goats would most typically be used in steeper areas that are difficult for crews to access, and/or where the habitat is not sensitive. Under the draft proposed criteria in Attachment 1, appropriate staging areas and access would have to be available.

Review and analysis of the draft code amendment language by other affected City departments and divisions--including Fire-Rescue, Planning, Development Services, Neighborhood Code Compliance, Storm Water, and the City Attorney's Office--is on-going, and final draft language will incorporate that input. Preliminary inquiries of other jurisdictions indicates that goats have generally been used for brush management or weed abatement only on public property, and that these jurisdictions have apparently not needed to amend existing codes or procedures. A more complete review is underway.

Prior to adoption of any municipal code amendments, environmental review must be completed. Using goats for brush management was addressed in the Draft Subsequent Brush Management EIR/EA, which completed public review on July 9, 2004. Staff is currently in the process of revising and finalizing the EIR/EA in response to extensive public and resource agency comments.

ALTERNATIVES

Do not direct the City Manager to take the necessary steps to allow the use of goats for brush management within the City of San Diego.

Respectfully submitted,

Ellen Oppenheim, Director
Park and Recreation Department

Approved: Bruce A. Herring
Deputy City Manager

OPPENHEIM/AH

Attachment: Draft Municipal Code Amendments to Chapter 4, Article 4, Division 3, Section 44.0307.

CITY OF SAN DIEGO
MEMORANDUM

DATE: September 20, 2004

TO: Members of the City Council Natural Resources and Culture Committee

FROM: Ann Hix, Deputy Director, Park and Recreation Department Open Space Division

SUBJECT: Use of Goats for Brush Management - Draft Amendment to Municipal Code Section 142.0360, Electric Fence Regulations

Attached is a proposed amendment to Section 142.0360 of the City's Fence Regulations (Chapter 14, Article 2, Division 3), which will permit the use of "electrically charged fences" in non-agricultural areas for temporary control of goats used for brush management. This amendment is necessary to allow the implementation of the proposed amendments to Section 44.0307 (Chapter 4, Article 4, Division 3) which would permit the use of goats for brush management. Portable electric fences are used to contain the goats in a specific area, and are moved as needed so that no more than 50% of the vegetation in any one area is thinned or reduced through browsing.



Ann Hix

Attachment: San Diego Municipal Code Preliminary Draft Electric Fence Amendments

**SAN DIEGO MUNICIPAL CODE
PRELIMINARY DRAFT ELECTRIC FENCE AMENDMENTS**

September 17, 2004

**Chapter 14: General Regulations
Article 2: General Development Regulations
Division 3: Fence Regulations**

§142.0360 Electrically Charged and Sharp-Pointed Fence Regulations

(a) Electrically Charged Fences

(1) Electrically charged fences are permitted in the IH and IS zones, ~~and~~ for agricultural uses in agricultural zones if the fence is at least 600 feet from a residential zone, and for temporary control of goats used for brush management in any non-agricultural zones in compliance with Chapter 14, Article 2, Division 4, Section 142.0412 et seq and Chapter 4, Article 4, Division 3, Section 44.0307 et seq.

(2) Electrically charged fences must be approved by the Underwriter's Laboratory or subject to the approval of the City Manager.

(3) Electrically charged fences shall bear an identifying and warning sign every 100 linear feet or fraction thereof.

(b) Sharp-Pointed Metal Fences

Sharp-pointed metal fences are permitted for agricultural uses in agricultural zones only. (Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

Hix rev. 9/17/04

002551

Robert C. Leif, Ph.D.
5648 Toyon Road
San Diego, CA 92115-1022
Tel. & Fax (619) 582-0437
e-mail rleif@rleif.com
21 September 2004

I live in the Alvarado Estates near San Diego State University. My property, as do many others, includes part of a side of a canyon. Last year because of the air pollution from the Cedar fire, we had to move to Mission Beach. I have been investigating the possibility of using a goat based brush clearing service. In spite of the clear and present danger of fire, this is still illegal in San Diego. I am here to ask that you immediately remedy this situation and improve San Diego's procedures to permit timely responses to immediate problems. In this election year, I support the Old Goats.

The long-term solution to this problem is to restock these fuel filled canyons with a suitable herbivore. Because of the presence of Freeway 8 and human habitation, restocking with a large animal, such as the native mule deer is impractical. Unfortunately, it appears from my talks with Ms. Jan Eby and Ms. Ann Hicks that they have not obtained assistance from experts at the San Diego Wild Animal Park or from our major universities. This problem is not unique to these city employees. The government of San Diego needs to learn how to benefit from its unique availability of the wisdom of world class scientists.

Yours respectfully

Robert C. Leif, Ph.D.



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 28, 2007 REPORT NO: 07-193

ATTENTION: Council President and City Council
Docket of December 4, 2007

SUBJECT: Revisions to Brush Management Regulations to Finalize LCPA
Certification

REFERENCES: Reports 05-174, 04-181, and 04-017

REQUESTED ACTION:

Amend the municipal code to clarify the brush management regulations and clarify the approval process for the use of goats for brush management. Adopt resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Consider whether to adopt the new policy related to calculation of development area for new coastal subdivisions with environmentally sensitive lands.

STAFF RECOMMENDATION:

Introduce and adopt the ordinance amending Municipal Code Chapter 4, Article 4 and Chapter 14, Article 2 of the Land Development Code and Local Coastal Program. Adopt the resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Direct staff to submit for a determination of consistency with the certification order.

SUMMARY:

In September 2005, the City Council unanimously approved amendments to the brush management regulations to improve fire safety including: a standardized 100 feet of defensible space from structures, requirements for new development adjacent to hazardous vegetation areas to incorporate fire resistive building features, and authorization for the use of goats for brush management. The City Council also adopted a Resolution (R-300799) to increase the amount of protected core habitat under the City's MSCP Subarea Plan by adding 715 acres (including 113.6 acres in the coastal zone) to the City's MHPA conservation lands, in accordance with resource agency recommendations. The revised brush management regulations became effective outside of the coastal zone in October 2005.

of defensible space. The amendment proposal also incorporates a more environmentally sensitive methodology that includes restrictions on timing of the brush management activity and requires selective thinning and pruning of vegetation.

On February 15, 2007, the Coastal Commission conditionally certified the City's LCPA application with suggested modifications, and granted the City a one-year extension (on August 9, 2007) to complete the certification process. The majority of the language added by the Coastal Commission clarifies and strengthens the City's existing code. However, some of the language drafted by Coastal Commission staff is inconsistent with the City's Land Development Code and Local Coastal Program, and was therefore modified without changing the Commission intent to protect environmentally sensitive habitat areas (ESHA). As proposed, the City would commit to a 5-year trial program and annual monitoring requirements for the use of goats for brush management in the coastal zone by Resolution (R-2008-366). The proposed ordinance also reflects a new land use policy that would prohibit brush management impacts by new coastal subdivision developments within Coastal Act protected ESHA, beyond a 25 percent development area, consistent with the Commission's certification order.

ENVIRONMENTAL IMPACT:

The final Subsequent Environmental Impact Report/Environmental Assessment and Addendum, Project No. 31245, on file in the Office of the City Clerk, has been completed and certified in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), and the National Environmental Policy Act (NEPA), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the above project.

BACKGROUND:

The City's pre-2005 brush management regulations, currently effective in the coastal zone, are inconsistent with recognized fire protection policies and standards across the state of California. In accordance with recommendations by the Fire Chief, the City Council adopted a series of fire safety improvements and associated code amendments to protect the public health and safety, including a standard 100 foot defensible space between structures and wild lands (September 2005). Since that time, City staff has been working to obtain certification from the Coastal Commission to apply the new regulations in the coastal zone for consistent application of brush management across the City. The proposed brush management amendments are especially important for public health and safety in consideration of the City's overall susceptibility to seasonal brush fires, as evidenced by the devastating Cedar (2003) and Witch Creek (2007) fires.

Code Amendment Process

On September 6, 2005, the City Council considered multiple fire safety ordinances that were prepared in response to previous direction in January 2004 following the Cedar fire (Council Resolution R-298827). The Council adopted amendments to require fire resistant building design features, which became effective citywide in October 2005 (not subject to Coastal Commission certification). As a result, new development within 300 feet of the native vegetation is required

to incorporate fire resistive design features. The Council also adopted a separate ordinance amending the City's local coastal program that included requirements for a citywide standard 100 feet of defensible space and measures for long term protection of environmental resources, which became effective outside the coastal overlay zone on October 19, 2005. Since that time, staff has been working to obtain certification of the corresponding Local Coastal Program Amendment (LCPA) for the coastal zone. In the interim, the pre-2005 brush management regulations that were certified by the Coastal Commission in 1999 are still applicable in the coastal overlay zone. The proposed amendments would result in a single set of regulations for improved consistency and application of brush management across the City.

Coastal Commission Action on Local Coastal Program Amendment (LCPA)

Processing of the brush management LCPA has been complicated by Coastal Commission attempts to incorporate new policies into the City's LCP. During the first Coastal Commission hearing on the City's Brush Management LCPA application (January 11, 2007), Commission staff suggested new permit and processing requirements that were counter productive to the goals of the brush management project. The Coastal Commission was sympathetic to concerns raised during the hearing and requested the 2005 LCPA application be withdrawn and resubmitted as a new application in order to meet state time limits and allow additional time to work out details at the staff level. Commission staff subsequently agreed to remove the onerous permit requirements and limitations on existing development that would have infringed on property rights and discouraged voluntary compliance; however, they also unintentionally included new language that created additional conflicts with City regulations. For example, Coastal Commission staff included provisions which would have required that the 100 foot brush management zones be measured not only from the structure, as is typical for fire protection, but also established a new conflicting brush management setback from environmentally sensitive habitat areas (ESHA). In consideration of the City's expressed concern, the Commissioners attempted to modify the language on the floor during the February 15, 2007 hearing, and acted to conditionally certify the City's Brush Management LCPA.

Staff received confirmation of the official certification order via a letter dated July 25, 2007 (Attachment 1), which clarified the Coastal Commission's intent to prohibit brush management impacts to ESHA associated with new subdivision development; however, their draft version of the amendment language would not accomplish the intended results explained within the certification letter. To address the conflicts and avoid unintended consequences, staff modified the organization of the LCPA language for consistency with both the Commission's certification order and the City's Land Development Code. A tracking table (Attachment 2) was prepared to describe the changes included in the proposed ordinance in comparison with the original Council approved ordinance. Additionally, comments were incorporated in the margin of Attachment 1 to indicate where the Coastal Commission suggested language would be included in the Local Coastal Program.

Following is a summary of the proposed changes:

- New policy for environmentally sensitive lands in the coastal zone, which would require that new subdivision developments locate the entire 100 feet of brush management within the 25 percent development area of a premises
- Clarifies applicability of the brush management regulations
- Clarifies the review process and requirements related to brush management for new development projects
- Clarifies limitations and requirements for brush management on public property
- Clarifies alternative compliance
- Clarifies the enforcement authorities and remedies in case of violations
- Clarifies the approval process for the use of goats for brush management
- Commits the City (by Council Resolution) to a five year trial period for the use of goats in the coastal zone with a commitment to submit annual monitoring reports to the Coastal Commission

DISCUSSION:

One of the most widely accepted and proven management actions for fire protection is to create a defensible space of 100 feet between the structure and the vegetation. Brush management is an important tool to create this defensible space to help reduce the size and intensity of the fire, and allow the Fire-Rescue Department time and space to combat the impending threat of fire. The City's 100 foot brush management requirement is consistent with the existing MOU between the fire districts and resource agencies, the 1997 MSCP agreement, the certified brush management EIR, and the 2005 Council resolution to increase the MHPA conservation lands.

The City addresses brush management through required zones measured from any structure located adjacent to native or naturalized vegetation. Zone one includes the first 35 feet adjacent to a structure, and typically consists of pavement and permanently irrigated ornamental plantings. Zone two includes the next 65 feet adjacent to zone one, and typically consists of thinned native plant material.

Currently, brush management in the coastal zone consists of a two-zone system based upon the location of the property in relationship to Interstate 805 and El Camino Real. In the coastal zone, the width of zone one currently varies from 20 feet to 40 feet west of Interstate 805 and El Camino Real, and varies from 30 feet to 45 feet east of Interstate 805 and El Camino Real. Brush management zone two currently varies from 20 feet to 30 feet west of Interstate 805 and El Camino Real, and 40 to 50 feet east of Interstate 805 and El Camino Real. The proposed amendments would result in a single set of regulations for improved consistency and application of brush management across the City and would adopt the state recognized 100 foot standard for fire protection.

The application and measurement of brush management zones to new development is accomplished through site specific permit review by the Development Services Department in consultation with the Fire-Rescue Department. Modifications may be approved where an equivalent level of fire protection can be accomplished; often by incorporation of a variety of fire resistive building features to protect the structure. In such cases, the Fire Chief would consider the topography, existing and potential fuel load, and other characteristics of the site related to fire

protection as part of the development permit review process. Brush management for new development is not permitted within public open space.

Coastal Commission

The main issues raised by Coastal Commission were related to brush management for new subdivisions, the City's program for addressing brush management violations, and the use of goats for brush management.

Coastal Commission Policy for New Subdivision Developments in the Coastal Zone

The Coastal Act contains policies for protection of ESHA from coastal development. ESHA as defined by Coastal Commission staff for the purposes of the City's LCP would include southern fordures, torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, oak woodlands, coastal sage scrub and coastal sage scribe communities, and any vegetative communities that support threatened or endangered species, which has been incorporated into proposed Section 142.0412(n).

The Commission staff originally recommended new brush management policies related to both existing and new development. However, as explained by the City's Fire Chief, this would have compromised the public health and safety and would not have met the state recognized standard of 100 feet of defensible space. As a compromise, the Coastal Commission is now requesting that the Council adopt a new policy that would change the way that development area is calculated for future subdivision proposals in the coastal zone. As proposed, new subdivision development in the coastal zone would be required to locate brush management zones one and two within the maximum 25 percent development area (for sites proposing development impacts to environmentally sensitive lands). Under the current code that was certified by the Coastal Commission in 1999, the development area of a premises is only required to include zone one in the development area calculation. Zone two, which is limited to thinning and pruning of vegetation in accordance with Section 142.0412, may be located outside of the 25 percent development area under the current code.

The City's adopted MSCP plan and the associated certified environmental impact report anticipated that brush management for development would occur within a 200 foot area of edge effects in the urban-wild land interface. At the time the City's required brush management widths were less than 100 feet in some areas, so as part of the September 2005 action to adopt a citywide standard 100 foot brush management width, the Council also approved the addition of 715 acres (including 113.6 acres in the coastal zone) to the City's MHPA conservation lands to account for the additional brush management area within the urban interface. Despite existing environmentally sensitive lands policies and regulations within the existing certified LCP, the Coastal Commission is requesting that a new policy be adopted for new coastal subdivision development, which may limit future lot splits and subdivisions in the coastal zone.

Staff anticipates there will be limited application of such a policy since there are only nine existing vacant, developable parcels in the coastal zone with the potential for development (with required brush management) in the communities of La Jolla (4), Peninsula (1), San Ysidro (1), and Torrey Pines (3) based on the 2006 SANDAG regional database. And for each vacant parcel with environmentally sensitive lands in the coastal zone, any future development would require

discretionary permits and environmental review and mitigation to prevent adverse impacts on environmentally sensitive lands. Nonetheless, the Coastal Commission is requiring as a condition of LCPA certification that a new policy be incorporated to limit future subdivisions in the coastal zone from locating brush management zone two within ESHA, which is reflected in proposed Section 142.0412(n).

Monitoring Programs for Brush Management and Remedies to Address Violations

Brush management activity for private property is monitored by the Fire-Rescue and Development Services Departments. The Fire-Rescue Department receives reports of potential violation and evaluates the site specific conditions to determine whether vegetation is in violation of the code and poses a potential threat. The brush weed section conducts an inspection and issues a Notice of Violation to the property owner, where necessary. The Fire Rescue Department also monitors the Proactive Weed Abatement Program which involves a no fee contract with a private company (Fire Prevention Services Inc.) that performs inspections, sends violations notices, and conducts abatement in case of non-voluntary compliance.

Brush management activity on public land is monitored by the Fire-Rescue and Park and Recreation Departments. The brush weed section of the Fire-Rescue Department conducts inspections on a complaint basis and notifies the responsible City Department in case of violations. The City Non-Profit Weed Abatement program is a yearly program to identify weed violations on City owned property and monitor the weed removal process by private contractors. The Park and Recreation Department also authorizes Right of Entry for private applicants to conduct brush management thinning and pruning on public park land in vegetation areas within 100 feet of existing development, which was clarified under Section 142.0412(c).

A code provision was added to clarify the City's existing authority to enforce any violation of the code by referencing existing Chapter 12 which includes existing enforcement authorities and general remedies. For example, the City can require restoration and mitigation at the sole cost of the responsible party as described in new Section 141.0412(o).

Goats for Brush Management

In September 2005, the City Council approved the use of goats for brush management. Goats can be used to supplement landscape crews to conduct brush management. Applicants must obtain approval from the Fire-Rescue Department and demonstrate compliance with the regulations, which require 24-hour monitoring by an experienced goat contractor and other required notices and protections. In accordance with Coastal Commission's certification order, the goat regulations have been transferred from Chapter 4 to Chapter 14. Additional language is proposed in new Section 142.0412(m) to clarify the following requirements for the use of goats: a no-fee permit, the submittal of photographs of existing site conditions and a plan describing the proposed methodology, limitations while goats are browsing, removal of droppings from the brush management area, and debarment of negligent or irresponsible contractors.

In addition to San Diego, goats are currently used by a number of cities and counties throughout the state for weed abatement and brush management including but not limited to: Laguna Beach, Sunnyvale, San Luis Obispo, Escondido (State Historic Park Site), Los Angeles, Claremont, San Francisco, Berkeley Hills, Menlo Park, Sacramento, Mill valley, Los Altos Hills, Oakland, San Mateo, Santa Cruz. The Coastal Commission expressed concern over instances where goats

were not properly managed in other jurisdictions and required as a condition of LCPA certification that goats only be authorized in the coastal zone for a 5-year trial period during which time annual monitoring reports would be submitted to the Coastal Commission. If at the end of 5 years the monitoring reports indicate that the use of goats is adversely impacting ESHA, the use of goats in the coastal zone shall be discontinued. This language has been incorporated into a resolution subject to Council approval.

FISCAL CONSIDERATIONS:

Processing of the code amendments has been funded by a combination of the general fund and the Development Services enterprise fund. Private property owners are responsible for the costs of brush management on private property; while brush management activity on public land is paid for by the general fund and coordinated by the Park and Recreation and Fire-Rescue Departments. There are approximately 1,180 acres of public land subject to brush management that requires management and participation by both administrative and field staff. For the past decade, the City has budgeted resources to cover brush management for 70 acres per year. Additional funding to the City's Brush Management Program in FY08 has enabled staff to increase the number of acres thinned from 70 acres to a goal of 210 acres. The City is currently seeking additional funding sources to offset future general fund costs as part of a long term public brush management program. The goat monitoring program required by the Coastal Commission would be in addition to existing monitoring conducted by the Fire-Rescue Department. The monitoring program would require that annual reports be prepared and submitted, which would generate additional costs without any mechanism for cost recovery.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On January 27, 2004, the City Council adopted a resolution (R-298827) directing staff to amend the Municipal Code to require a standard 100 foot defensible space between structures and native wild lands, to consider the fiscal cost of ongoing brush management on public lands, and to develop a public outreach and training program.

On August 11, 2004, the Council Committee on Natural Resources & Culture (NR&C) reviewed information on the concept of goats for brush management and approved a pilot program for the use of goats.

On September 22, 2004, NR&C received a status update on the use of goats for brush management and recommended a draft ordinance to authorize the use of goats for brush management citywide.

On September 6, 2005, the City Council introduced the brush management ordinance (adopted September 19) and certified the associated brush management EIR. The Council also adopted a separate ordinance to require fire resistive building features for new development proposed within 300 feet of native vegetation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There have been multiple public meetings and hearings on the brush management regulations. Information has been posted on the City website and also distributed in various formats including handouts, brochures, and an informational training video.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Property owners in the coastal zone are a main stakeholder in the proposed amendments since any action by the Coastal Commission to deny the amendments would leave the coastal zone with the pre-2005 regulations that are less protective of environmental resources and provide less fire safety. However, a number of stakeholders have expressed interest in the proposed brush management regulations including property owners, resource agencies, environmental groups, and brush management contractors including goat contractors. Various staff groups have been involved in drafting the proposed amendments including the Fire Department, Park and Recreation, City Planning and Community Investment, City Attorney, Risk Management, and Development Services. The Coastal Commission also has an interest in the adoption of the proposed amendments that provide protection for environmentally sensitive habitat area consistent with the Coastal Act.

ALTERNATIVES:

Staff recommendation- Adopt the ordinance amending Municipal Code Chapter 4, Article 4 and Chapter 14, Article 2 of the Land Development Code and Local Coastal Program. Adopt the resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone.

Alternative 1- Modify the ordinance and/or do not adopt the resolution to incorporate code amendment language exactly as written per the Coastal Commission recommendation in Attachment 1. Adopting the amendment language verbatim as transmitted in the Coastal Commission's certification order would give the City greater certainty regarding certification of the ordinance by the Coastal Commission, however, there are expected to be implementation challenges and unintended consequences associated with this alternative due to unclear language and applicability.

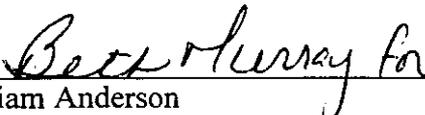
Alternative 2- Modify the ordinance to include additional changes to clarify brush management or to reject the new Coastal Commission policy related to new subdivisions with environmentally sensitive habitat areas. This type of modification would require additional hearings by the City Council and Coastal Commission, and may result in separate brush management codes for inside and outside of the coastal zone.

Alternative 3- Do not adopt the ordinance or resolution, which would result in separate brush management codes for areas inside and outside of the coastal zone. This alternative would not achieve the recommended 100 foot standard for defensible space for areas in the coastal zone.

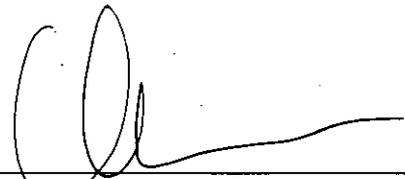
CONCLUSION:

The proposed amendments are expected to improve the ability of the Fire Department to protect life and property. Approval of the Local Coastal Program Amendments would extend an equivalent level of fire protection to the City's coastal zone areas, as recommended by the Fire Chief. Staff recommends that the ordinance and resolution be adopted by the City Council and submitted to the Coastal Commission for final certification.

Respectfully submitted,



William Anderson
Deputy Chief Operating Officer of
City Planning and Development



Kelly Broughton
Director, Development Services

- Attachments: 1. Coastal Commission Certification order
2. Tracking Table (amendments since September 2005 Council approval)

01 APR 20 10 43 AM
9
MECT

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

(619) 437-2372



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.

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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.

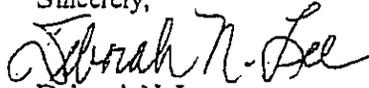
Before the amendment request can become effectively certified, the Executive Director must determine that implementation of the approved amendment will be consistent with the

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

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 structures; additions to structures; or subdivisions that create lots where new structures 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 One No permit required by this division <u>if work is performed in accordance with applicable regulations</u>

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. <u>Undeveloped</u> Publicly or privately owned premises that are within 100 feet of a structure that and 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
<u>11. 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, 12. 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:~~ 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

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

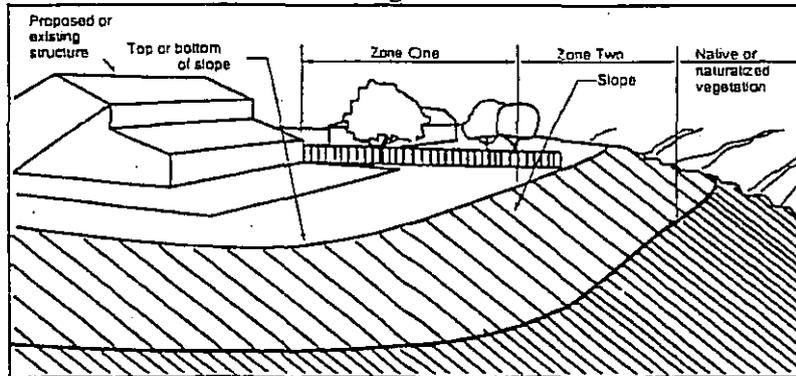
~~(1) Publicly or privately owned premises that are within 100 feet of a structure, and contain native or naturalized vegetation.~~

~~(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.

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.

- (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.

- (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
 - (1) (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
 - (2) (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:

(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).

- (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

(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

CCC draft (n) conflicts with City's LCP and points made in letter: that properties may only encroach to obtain 25% development area

States only properties in MHPA may encroach into ESHA; LCP allows all properties a minimum 25% development area

All sections in 142.0412 apply; no sections should be written to result in conflicts

City LCP already protects ESL in open space and MHPA

Definition of ESHA included in subsection (n)

Site specific review is done citywide (not just coastal) clarified in subsection (c)

Statement preventing all brush management impacts to ESHA conflicts with allowance for encroachment to obtain 25% area

Use of creative design features is applicable citywide; clarified in subsection (c)(1)

City already
requires fire
resistive features
on existing Ch 14,
Art 5, Div 5

Should apply to
all properties
with ESL not just
MHPA as
written; in
proposed
subsection (n),
properties may
only encroach to
obtain 25%
development area

allowable brush management requirements. Measures such as replacing cleared or thinned native vegetation with fire-resistive 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.

Brush Management LCPA

Tracking Table

(Incorporation of Coastal Commission Suggested Modifications into Land Development Code)

Proposed Section No. / Title	No Change	New/ Revised	Comment
44.0307 Cattle Goats and Sheep	x		
44.0307(a)	x		
44.0307(b)	x		
44.0307(b)(1)	x		
44.0307(b)(2)		x	Existing Sections 44.0307(b)(2) and (3) that regulate the use of goats for brush management would be relocated to new Section 142.0412(m) for certification as part of the City's Local Coastal Program.
44.0307(c)	x		
142.0402 When Landscape Regulations Apply	x		
142.0402(a)	x		
142.0402(b)	x		
142.0402(b) Table 142-04A		x	Proposed modifications to the Landscape Regulations Applicability Table clarify applicability of brush management regulations to new structures, additions, or subdivisions adjacent to native or naturalized vegetation.
142.0412 Brush Management		x	For consistency with the Landscape Regulations Applicability Table, proposed language clarifies brush management is required in all base zones on publicly or privately owned premises that are within 100 feet of a structure and contain native or naturalized vegetation.
142.0412(a)		x	Proposed modifications clarify the language that permits brush management activity within environmentally sensitive lands without a permit. (Brush management within wetlands requires a discretionary permit.)
142.0412(b)	x		
142.0412(b)(1)		x	Proposed clarification helps describe Zone One as typically consisting of pavement and permanently irrigated ornamental planting. Also, adds italics for existing defined term encroachment.
142.0412(b)(2)		x	Proposed clarification helps describe Zone Two as typically consisting of thinned, native or naturalized non-irrigated vegetation.
142.0412(c)		x	Proposed modification clarifies that the width of Zone One and Zone Two shall not exceed 100 feet unless modified pursuant to 142.0412(i).
142.0412(c)(1)		x	Proposed language clarifies that brush management review for new development requires a site specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation. The Coastal Commission proposed this language to apply to the coastal zone only, but the statement was modified to apply citywide as is consistent with current application of the brush management and environmentally sensitive lands requirements.
142.0412(c)(2)			Proposed language clarifies that where Zone Two is located within city-owned property, a Right of Entry shall be executed and that Zone Two brush management is not permitted in city owned open space for new development proposals.

Brush Management LCPA

Tracking Table

(Incorporation of Coastal Commission Suggested Modifications into Land Development Code)

Proposed Section No. / Title	No Change	New/ Revised	Comment
142.0412(d)	x		
142.0412(e)	x		
142.0412(f)	x		
142.0412(g)	x		
142.0412(h)	x		
142.0412(h)(1)	x		
142.0412(h)(2)	x		
142.0412(h)(3)	x		
142.0412(h)(4)	x		
142.0412(h)(5)	x		
142.0412(h)(5)(A)		x	Proposed deletion of the reference to non-irrigated plant material in Zone Two, since new plant material often requires temporary irrigation to establish the plants.
142.0412(h)(5)(B)		x	Proposed change replaces the term "fire resistant" with "fire resistive" for consistency with 142.0412(h)(5)(A).
142.0412(h)(5)(C)	x		
142.0412(h)(5)(D)	x		
142.0412(h)(6)		x	Proposed clarification that Zone Two shall be maintained on a regular basis by removing invasive species in addition to pruning and thinning plants, and controlling weeds.
142.0412(h)(7)	x		
142.0412(i)		x	Proposed change clarifies the alternative compliance authority of the Fire Chief, which allows the Fire Chief to modify the brush management requirements where an equivalent level of fire protection can be achieved to the standard 100 foot requirement. Approval of alternative compliance is based on the site topography, existing and potential fuel load, and other site specific characteristics related to fire protection.
142.0412(i)(1)	x		
142.0412(i)(2)	x		
142.0412(i)(3)	x		
142.0412(j)	x		
142.0412(k)	x		
142.0412(l)	x		
142.0412(m)		x	Proposed subsection (m) includes existing regulatory language transferred from Sections 44.0307(b)(2) and (3) and adds new language to clarify the process for an applicant to obtain approval from the Fire Chief to use goats for brush management.
142.0412(m)(1)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(A) that requires 24-hour management by an experienced goat contractor with liability insurance. The City Attorney added language that the liability insurance shall be subject to approval by the City Attorney.
142.0412(m)(2)		x	Proposed language clarifies that a permit is required from the Fire Chief in order to use goats for brush management.

**Brush Management LCPA
Tracking Table**

(Incorporation of Coastal Commission Suggested Modifications into Land Development Code)

Proposed Section No. / Title	No Change	New/ Revised	Comment
142.0412(m)(2)(A)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(C) that requires submittal of written permission from all property owners to allow goat access.
142.0412(m)(2)(B)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(B) that requires written notice to the Fire Chief and adjacent owners and residents for properties located immediately adjacent.
142.0412(m)(2)(C)		x	Proposed language requires the submittal of photographs of existing site conditions and a plan describing methodology to ensure compliance with the regulations.
142.0412(m)(3)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(D) that requires electrically charged fencing and associated warning signage.
142.0412(m)(4)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(H) that clarifies the restrictions on the timing of brush management activity related to the breeding season.
142.0412(m)(5)		x	Proposed language clarifies limitations while goats are browsing.
142.0412(m)(5)(A)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(E) that limits the number of goats to 75 goats per acre.
142.0412(m)(5)(B)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(F) that requires goats be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced.
142.0412(m)(5)(C)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(G) that requires goats remain in a secure enclosure at all times.
142.0412(m)(5)(D)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(G) that requires goats be moved into a separate holding pen at night.
142.0412(m)(5)(E)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(G) that requires droppings in the holding pen be removed and properly disposed of daily. The Coastal Commission also added that droppings be removed from the brush management area to the extent possible.
142.0412(m)(5)(F)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(I) that states goats shall be used for brush management purposes only and shall be immediately removed when the brush thinning has been accomplished.
142.0412(m)(6)		x	Proposed transfer of existing language from Section 44.0307(b)(2)(I) that requires an applicant to notify the Fire Chief in writing within 5 days of the date of removal of the goats.
142.0412(m)(7)		x	Proposed language clarifies that negligent or irresponsible contractors shall be subject to debarment in accordance with Chapter 2, Article 2, Division 8.
142.0412(n)		x	Proposed subsection (n) includes a new Coastal Commission policy related to environmentally sensitive

**Brush Management LCPA
Tracking Table**

(Incorporation of Coastal Commission Suggested Modifications into Land Development Code)

Proposed Section No. / Title	No Change	New/ Revised	Comment
			lands. The City's existing certified LCP does not require brush management zone two to be located within the 25 percent development area of a premises containing environmentally sensitive lands. As a condition of LCP certification, the Coastal Commission is requiring that language be added to the City's LCP to restrict brush management zones associated with new subdivisions from being located in environmentally sensitive habitat areas (ESHA), except where necessary to obtain a 25 percent developable area that includes brush management Zones One and Two. A new definition of ESHA was incorporated into proposed subsection (n) for the purpose of implementing this regulation.
142.0412(o)		x	Proposed language clarifies the violations and remedies available in case of violations.
142.0412(o)(1)		x	Proposed language references the existing enforcement authorities and general remedies in Chapter 12.
142.0412(o)(2)		x	Proposed language explicitly states that restoration or mitigation may be required at sole cost of responsible person.
142.0412 Editors Note		x	In accordance with the standard format of the Land Development Code, if the proposed regulations are passed, a note would be added at the end of Section 142.0412 to alert code users that a Resolution (R-2008-366) was passed by the Council to temporarily allow goat monitoring in the coastal overlay zone for a 5 year trial period during which annual monitoring reports would be distributed to the Coastal Commission. If at the end of 5 years, monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal zone would be discontinued.

002581

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 340
N/A 12/04

TO: CITY ATTORNEY 2. FROM (ORIGINATING DEPARTMENT): DEVELOPMENT SERVICES DEPARTMENT 3. DATE: 11/9/2007

4. SUBJECT: REVISIONS TO BRUSH MANAGEMENT REGULATIONS TO FINALIZE LCPA CERTIFICATION PROCESS

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Amanda Lee (619) 446-5367, MS 501 6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Dan Joyce (619) 446-5388, MS 501 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED [X] Executive Summary []

8. COMPLETE FOR ACCOUNTING PURPOSES

Table with columns: FUND, DEPT., ORGANIZATION, OBJECT ACCOUNT, JOB ORDER, C.I.P. NUMBER, AMOUNT, 9. ADDITIONAL INFORMATION / ESTIMATED COST: Work on this project is funded as an overhead expense in the Development Services (enterprise fund) budget.

10. ROUTING AND APPROVALS

Table with columns: ROUTE (#), APPROVING AUTHORITY, APPROVAL SIGNATURE, DATE SIGNED, ROUTE (#), APPROVING AUTHORITY, APPROVAL SIGNATURE, DATE SIGNED. Includes handwritten signatures and dates for routes 1-7.

11. PREPARATION OF: [X] RESOLUTION(S) [X] ORDINANCE(S) [] AGREEMENT(S) [] DEED(S)

Preparation of ordinance to amend Municipal Code Chapter 4, Article 4 and Land Development Code Chapter 14, Article 2 to:

- 1. Amend 44.0307 and transfer the specific regulations related to goats for brush management to Section 142.0412.
2. Amend 142.0402 to clarify when brush management landscape regulations apply.
3. Amend 142.0412 to clarify revised brush management regulations.

Preparation of resolution:

- 1. Stating for the record that 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).
2. Stating for the record that the City received the Coastal Commission letter of conditional certification dated July 25, 2007, 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.
3. Directing the Mayor to submit the final ordinance and resolution to the Coastal Commission for final certification of LCPA No. 1-07.
4. Directing City staff 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 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.

11A. STAFF RECOMMENDATIONS:

Introduce and adopt the ordinance. Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Citywide

ENVIRONMENTAL IMPACT: The final Subsequent Environmental Impact Report/Environmental Assessment and Addendum, Project No. 31245, on file in the Office of the City Clerk, has been completed and certified in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), and the National Environmental Policy Act (NEPA), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the above project.

HOUSING IMPACT: The existing MSCP agreement and Land Development Code allow brush management Zone Two activity to occur within environmentally sensitive lands and within designated MHPA areas. However, the proposed language would not permit brush management for new coastal zone subdivision development within environmentally sensitive habitat areas (ESHA). While there is limited vacant, developable land remaining in the coastal zone, this proposed regulation may prevent future lot splits and subdivisions in the coastal zone.

CITY CLERK INSTRUCTIONS: Mail Notice of Public Hearing to *citywide always* and *local coastal program* lists. Publish Notice of Public Hearing as one-eighth page advertisement in newspaper. Send draft copy of docket entry to Project Manager for review.

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: November 28, 2007 REPORT NO: 07-193
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Development Services
SUBJECT: Revisions to Brush Management Regulations to Finalize
LCPA Certification Process
COUNCIL DISTRICT(S): Citywide
CONTACT/PHONE NUMBER: Amanda Lee (619) 446-5367

REQUESTED ACTION:

Amend the municipal code to clarify the brush management regulations and clarify the approval process for the use of goats for brush management. Adopt resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Consider whether to adopt the new policy related to calculation of development area for new coastal subdivisions with environmentally sensitive lands.

STAFF RECOMMENDATION:

Introduce and adopt the ordinance amending Municipal Code Chapter 4, Article 4 and Chapter 14, Article 2 of the Land Development Code and Local Coastal Program. Adopt the resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Direct staff to submit for a determination of consistency with the certification order.

EXECUTIVE SUMMARY:

In September 2005, the City Council unanimously approved amendments to the brush management regulations to improve fire safety including: a standardized 100 feet of defensible space from structures, requirements for new development adjacent to hazardous vegetation areas to incorporate fire resistive building features, and authorization for the use of goats for brush management. The City Council also adopted a Resolution (R-300799) to increase the amount of protected core habitat under the City's MSCP Subarea Plan by adding 715 acres (including 113.6 acres in the coastal zone) to the City's MHPA conservation lands, in accordance with resource agency recommendations. The revised brush management regulations became effective outside of the coastal zone in October 2005.

Since that time, City staff has been working to obtain certification from the Coastal Commission to apply the new regulations in the coastal zone for consistent application of brush management across the City. As re-emphasized following the devastating Cedar (2003) and Witch Creek (2007) fires, the San Diego region is susceptible to seasonal brush fires. It is imperative that the coastal zone be afforded an equivalent level of fire protection. Currently, in the coastal zone, the brush management zone width varies between 40 and 95 feet total (based on geographic location), which is less protective than the statewide recognized standard of a minimum 100 feet of defensible space. The amendment proposal also incorporates a more environmentally sensitive methodology that includes restrictions on timing of the brush management activity and requires selective thinning and pruning of vegetation:

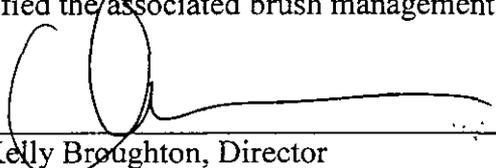
On February 15, 2007, the Coastal Commission conditionally certified the City's LCPA application with suggested modifications, and granted the City a one-year extension (on August 9, 2007) to complete the certification process. The majority of the language added by the Coastal Commission clarifies and strengthens the City's existing code. However, some of the language drafted by Coastal Commission staff is inconsistent with the City's Land Development Code and Local Coastal Program, and was therefore modified without changing the Commission intent to protect environmentally sensitive habitat areas (ESHA). As proposed, the City would commit to a 5-year trial program and annual monitoring requirements for the use of goats for brush management in the coastal zone by Resolution (R-2008-366). The proposed ordinance also reflects a new land use policy that would prohibit brush management impacts by new coastal subdivision developments within Coastal Act protected ESHA, beyond a 25 percent development area, consistent with the Commission's certification order.

FISCAL CONSIDERATIONS:

Processing of the code amendments has been funded by a combination of the general fund and the Development Services enterprise fund. Private property owners are responsible for the costs of brush management on private property; while brush management activity on public land is paid for by the general fund and coordinated by the Park and Recreation and Fire-Rescue Departments. There are approximately 1,180 acres of public land subject to brush management that requires management and participation by both administrative and field staff. For the past decade, the City has budgeted resources to cover brush management for 70 acres per year. Additional funding to the City's Brush Management Program in FY08 has enabled staff to increase the number of acres thinned from 70 acres to a goal of 210 acres. The City is currently seeking additional funding sources to offset future general fund costs as part of a long term public brush management program. The goat monitoring program required by the Coastal Commission would be in addition to existing monitoring conducted by the Fire-Rescue Department. The monitoring program would require that annual reports be prepared and submitted, which would generate additional costs without any mechanism for cost recovery.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On January 27, 2004, the City Council adopted a resolution (R-298827) directing staff to amend the Municipal Code to require a standard 100 foot defensible space between structures and native wild lands, consider the fiscal cost of ongoing brush management on public lands, and develop a public outreach and training program. On August 11, 2004, NR&C reviewed information on the concept of goats for brush management and approved a pilot program for the use of goats. On September 22, 2004, NR&C received a status update on the use of goats and recommended a draft ordinance to authorize the use of goats for brush management citywide. On September 6, 2005, the City Council introduced the brush management ordinance (adopted September 19) and certified the associated brush management EIR.


 Kelly Broughton, Director
 Development Services Department


 William Anderson
 Deputy Chief/Chief Operating Officer

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

This ordinance amends San Diego Municipal Code [Code] section 44.0307 by repealing regulations relating to the use of goats for brush management and transferring them to Section 142.0412(m). Additionally, new language in Section 142.0412(m) clarifies the following requirements for the use of goats: a no-fee permit, the submittal of photographs of existing site conditions and a plan describing the proposed methodology, limitations while goats are browsing, removal of droppings from brush management area, and permit denial for negligent contractors.

Code section 142.0402(b), Table A clarifies existing language in column 10, and column 11 is added to clarify the applicability of brush management regulations to new structures, additions, or subdivisions adjacent to native or naturalized vegetation.

Code section 142.0412 clarifies brush management is required in all base zones on publicly or privately owned premises that are within 100 feet of a structure and contain native or naturalized vegetation; clarifies that brush management is allowed within environmentally sensitive lands without a permit (with the exception of brush management within wetlands

which requires a discretionary permit); clarifies the types of things Zones One and Two typically consist of; clarifies the width of Zones One and Two shall not exceed 100 feet unless modified pursuant to Section 142.0412(j); clarifies that brush management review for new development requires a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation; clarifies that where Zone Two is located within city-owned property, a Right of Entry shall be executed and that Zone Two brush management is not permitted in city owned open space for new development proposals; paragraph (h)(5)(A) deletes reference to non-irrigated plant material in Zone Two; paragraph (h)(5)(B) replaces the term "fire resistant" with "fire resistive"; clarifies that Zone Two shall be maintained on a regular basis by removing invasive species in addition to pruning and thinning plants, and controlling weeds; clarifies the alternative compliance authority of the Fire Chief and Building Official; paragraph (n) includes the new Coastal Commission policy related to new subdivisions within environmentally sensitive habitat areas (ESHA) and a new definition of ESHA; paragraph (o) clarifies violations and remedies available, references existing enforcement remedies, and expressly states that restoration or mitigation may be required at the sole cost of responsible person; and a new editor's note would alert users that (if passed) Resolution (R-2008-366) was in effect to temporarily allow goat monitoring in the Coastal Zone for a trial 5 year period.

The ordinance contains the City's standard implementation provisions, including a provision that this ordinance shall take effect and be in force on the thirtieth day after its final passage. However, this ordinance will not apply within the Coastal Zone until the California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

002587

(O-2008-60) A

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11/20/07
Or.Dept:DSD
O-2008-60

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

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

Section 1. That Chapter 4, Article 4, Division 3, of the San Diego Municipal Code is amended by amending Section 44.0307 to transfer the regulations related to use of goats for brush management to Chapter 14, Article 2, Division 4, and amending Section 142.0402, Table 142-04A, and Section 142.0412, to read as follows:

§44.0307 Cattle, Goats and Sheep

- (a) [No change.]
- (b) Section 44.0307(a) shall not apply to the following:
 - (1) Dairies or dairy farms licensed during the month of July 1953.
 - (2) Any goats brought in temporarily, to privately-owned non-agricultural zones for the purpose of performing brush management in accordance with the Land Development Code section 142.0412.
- (c) [No change.]

03 JUN 2008 15:02

§142.0402 When Landscape Regulations Apply

- (a) [No change.]
- (b) [No change to first paragraph.]

Table 142-04A

Landscape Regulations Applicability

Type of Development Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 9 [No change.]				
10.	Publicly or privately owned <i>premises</i> , that are within 100 feet of a <i>structure</i> , and contain native or naturalized vegetation.		142.0403, 142.0412, and 142.0413	No permit required by this division if work is performed in accordance with applicable regulations
11.	New <i>structures</i> , additions to <i>structures</i> , or subdivisions that create <i>lots</i> where new <i>structures</i> could be located on <i>premises</i> adjacent to native or naturalized vegetation		142.0403, 142.0412, and 142.0413	Building Permit/ Process One
12.	New Trees or shrubs planted in the <i>public right-of-way</i>		62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One
13.	<i>Condominium Conversions</i>		142.0403, 142.0404, 142.0405(b)(1), 142.0409(a), 142.0412, and 142.0413	No permit required by this division

§142.0412 Brush Management

Brush management is required in all base zones on publicly or privately owned *premises* that are within 100 feet of a *structure* and contain native or naturalized vegetation.

(a) Brush management activity is permitted within *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 the Fire Chief deems brush management necessary 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) [No change.]

(1) Brush management Zone One is the area adjacent to the structure, shall be least flammable, and shall typically consist of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with gradient greater than 4:1 (4 horizontal feet to 1 vertical foot) unless the property 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 typically consists of thinned, native or naturalized non-irrigated vegetation.
- (c) The width of Zone One and Zone Two shall not exceed 100 feet and shall meet the width requirements in Table 142-04H unless modified based on existing conditions pursuant to Section 142.0412(i) and the following:
 - (1) The establishment of brush management Zones One and Two for new *development* shall be addressed in a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation. 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 shall be executed in accordance with Section 63.0103 prior to 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 *subdivisions* are found in Section 142.0412 (n).

Table 142-04H
Brush Management Zone Width Requirements

Zone One Width	35 ft.
Zone Two Width	65 ft.

(d) through (g) [No changes.]

(h) Zone Two Requirements

(1) through (4) [No changes.]

(5) [No change first paragraph.]

(A) All new plant material for Zone Two shall be native, low-fuel, and fire-resistant. 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 24 inches. Single specimens of fire resistant 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) through (D) [No change.]

(6) Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing invasive species, and controlling weeds.

(7) [No change.]

(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 features 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) through (3) [No changes.]

(j) – (l) [No changes.]

(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 with at least two years experience in raising, handling, and controlling of goats. The goat contractor shall maintain a minimum of \$1 million of liability insurance subject to approval by the Office of the City Attorney.

- (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 *applicant* shall:
- (A) Obtain and submit written permission from the owner of any property through which the goats must gain access to the area to be browsed.
 - (B) Provide written notice to the 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 Section 142.0412(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 comply with Section 142.0412(d).
- (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 reasonably practicable from residences.
 - (E) Droppings in the holding pen, and to the extent reasonably possible within the brush management 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 *applicant* shall notify the Fire Chief in writing of the removal of the goats.

- (7) Negligent contractors shall be denied permits for future brush management services for a period of three years from the date of the negligent act(s).
- (n) Within the Coastal Overlay Zone, brush management for new *subdivisions* shall not be permitted to encroach into an environmentally sensitive habitat area [ESHA], except that *encroachment* may be permitted where necessary to achieve a maximum *development* area of 25 percent including Zones One and Two. For purposes of this Section, ESHA shall include southern fordunes, 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.
- (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.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day after its final passage. However, this ordinance will not apply within the Coastal Zone until the California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

[Note to City Clerk: Add new Editors note at the end of Section 142.0412 to alert code users that a Resolution (R-2008-366) was passed by the Council to temporarily allow goat monitoring in the coastal overlay zone for a 5 year trial period during which annual monitoring reports would be distributed to the Coastal Commission. If at the end of 5 years, monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal zone would be discontinued. Delete Editors note at the end of Chapter 13, Article 2, Division 4 and delete Sections 132.0404, 132.0405, 132.0406, 132.0407, and 132.0408 following unconditional certification by the Coastal Commission.]

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Jana L. Garmo
Deputy City Attorney

JLG:als
11/20//07
Or.Dept:DSD
O-2008-60

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

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

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
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 _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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"

12604

Marcela Escobar-Eck

July 25, 2007

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Other suggested modifications which were adopted by the Commission require alternative measures, including fire-resistant 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.

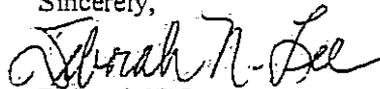
Before the amendment request can become effectively certified, the Executive Director must determine that implementation of the approved amendment will be consistent with the

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

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 Development Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 8: [No change.]				
9. New structures; additions to structures; or subdivisions that create lots where new structures 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 One No permit required by this division <u>if work is performed in accordance with applicable regulations.</u>

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 within 100 feet of a structure that and contain native or naturalized vegetation or environmentally sensitive lands</u>	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

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

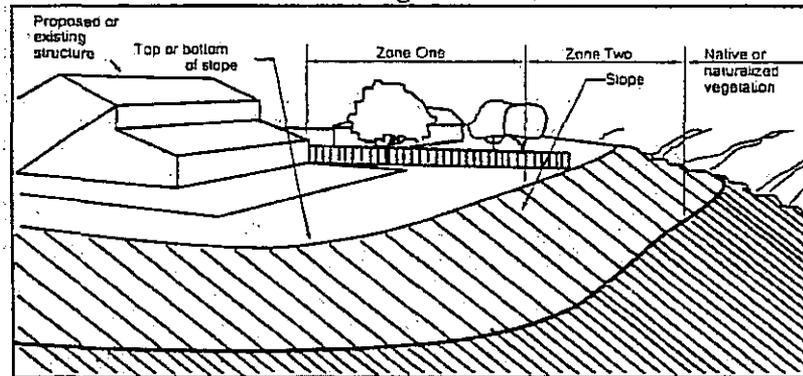
(1) ~~Publicly or privately owned premises~~ that are within 100 feet of a ~~structure~~, and contain native or naturalized vegetation.

(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.

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.

- (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.

- (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-resistant. 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
- (1) (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
- (2) (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:

(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).

- (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

(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-resistive 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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STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Underlined

(O-2008-60)

ORDINANCE NUMBER O- _____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

§44.0307 **Cattle, Goats and Sheep**

(a) [No change.]

(b) Section 44.0307(a) shall not apply to the following:

Dairies or dairy farms licensed during the month of July 1953.

(2) Any goats brought in temporarily, to privately-owned non-agricultural zones for the purpose of performing brush management in accordance with the Land Development Code section 142.0412, ~~Brush Management~~, subject to the following requirements:

~~The goats shall be managed and monitored 24 hours a day by a person who has at least two years experience in the raising,~~

~~handling, and controlling of goats, and who carries a minimum of \$1 million of liability insurance, to prevent escapes, harassment from predators or humans, or over browsing.~~

~~The owner of the property to be browsed by the goats shall notify, in writing, the City of San Diego Fire Marshal and all owners and residents with property located immediately adjacent to the area to be browsed by goats, at least 10 business days prior to beginning operation. This notice shall identify section 44.0307 as the authority for the temporary use of goats.~~

~~The owner of the property to be browsed by the goats shall obtain written permission from the owner of any property through which the goats must gain access to the area to be browsed by goats, at least 10 business days prior to beginning operation.~~

~~The area to be browsed by goats shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the brush management areas required under the Land Development Code section 142.0412, Brush Management. Signs must be posted at 25-foot intervals along the fence warning the possibility of mild electric shock.~~

~~When browsing, no more than 75 goats are permitted on any single acre of the premises.~~

~~When browsing, the goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced, in accordance with the Land Development Code section 142.0412, Brush Management.~~

~~The goats shall remain within a secure enclosure at all times. The goats may be moved to a separate holding pen at night, which shall be located the maximum distance practicable from residences. In addition to the requirements set forth in section 44.0307(e), droppings in the holding pen shall be removed and properly disposed of daily.~~

~~Brush Management activities are prohibited within coastal sage scrub, maritime succulent scrub, and coastal sage chaparral habitats from March 1 through August 15, except where documented to the satisfaction of the City Manager that the clearing would be consistent with conditions of species coverage described in the City of San Diego's MSCP Subarea Plan.~~

~~The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished. No later than 5 business days from the date of the removal of the goats, the owner of the property browsed by the goats shall notify, in writing, the City of San Diego Fire Marshal of the removal of the goats.~~

~~(3) Any use of goats by the City of San Diego or its permittee for the purpose of performing brush management on City owned property in non-agricultural zones in accordance with the Land Development Code section 142.0412, Brush Management, or for weed abatement, are subject to the requirements set forth in section 44.0307(b) (2) (A) (I) and 44.0307(e).~~

(c) [No change.]

§142.0402 When Landscape Regulations Apply

(a) [No change.]

(b) [No change to first paragraph.]

Table 142-04A

Landscape Regulations Applicability

Type of Development Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 9 [No change.]				
10.	Undeveloped <u>Publicly or privately owned premises, that are within 100 feet of a structure, that and contain native or naturalized vegetation or environmentally sensitive lands</u>		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>		142.0403, 142.0412, and 142.0413	<u>Building Permit/ Process One</u>

Type of Development Proposal	Applicable Regulations	Required Permit Type/ Decision Process
11. 12. New Trees or shrubs planted in the <i>public right-of-way</i>	62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One
12. 13. <i>Condominium Conversions</i>	142.0403, 142.0404, 142.0405(b)(1), 142.0409(a), 142.0412, and 142.0413	No permit required by this division

§142.0412 Brush Management

(a) Brush management is required in all base zones on the following types of premises:

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

(2)(a) ~~Except for wetlands,~~ Brush management activity is permitted within 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) [No change.]
- (1) Brush management Zone One is the area adjacent to the structure, shall be least flammable, and shall typically consist of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with 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~~ *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 that the width requirements shown in Table 142-04H unless modified based on existing conditions pursuant to Section 142.0412(i) and the following:
- (1) The establishment of brush management Zones One and Two for new development shall be addressed in a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation. 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 shall be executed in accordance with Section 63.0103 prior to 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 subdivisions are found in Section 142.0412 (n).

**Table 142-04H
Brush Management Zone Width Requirements**

Zone One Width	35 ft.
Zone Two Width	65 ft.

(d) through (g) [No changes.]

(h) Zone Two Requirements

(1) through (4) [No changes.]

(5) [No change first paragraph.]

(A) All new plant material for Zone Two shall be native ~~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 24 inches. Single specimens of fire ~~resistant~~ 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) through (D) [No change.]

(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) [No change.]

(i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, Tthe Fire Chief may modify the requirements of this sSection, and where applicable with the approval of the Building Official, may require building features 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) through (3) [No changes.]

(j) – (l) [No changes.]

(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 with at least two years experience in raising, handling, and controlling of goats. The goat contractor shall maintain a minimum of \$1 million of liability insurance subject to approval by the Office of the City Attorney.

(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 applicant shall:

(A) Obtain and submit written permission from the owner of any property through which the goats must gain access to the area to be browsed.

(B) Provide written notice to the 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 Section 142.0412 (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 comply with Section 142.0412(d).

- (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 reasonably practicable from residences.

- (E) Droppings in the holding pen, and to the extent reasonably possible within the brush management 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 *applicant* shall notify the Fire Chief in writing of the removal of the goats.
- (7) Negligent contractors shall be denied permits for future brush management services for a period of three years from the date of the negligent act(s).
- (n) Within the Coastal Overlay Zone, brush management for new *subdivisions* shall not be permitted to encroach into an environmentally sensitive habitat area (ESHA), except that *encroachment* may be permitted where necessary to achieve a maximum *development* area of 25 percent including Zones One and Two. For purposes of this Section, ESHA shall include southern *fordunes*, *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.

(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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