

DATE ISSUED: May 24, 2002

REPORT NO. 02-127

ATTENTION: Committee on Land Use and Housing
Agenda of May 29, 2002

SUBJECT: Proposed Amendments to the Land Development Code to Address Illegal
Grading in Community Plan Identified Open Space Areas

REFERENCE: Natural Resources and Culture Committee meetings of May 16, 2001,
September 19, 2001 and December 12, 2001

SUMMARY

Issues -

.....1.Should the Committee on Land Use and Housing (LU&H) direct staff to prepare amendments to the Land Development Code to remove the word “natural” from the definition of steep hillsides within Section 113.0103 (Definitions)?

.....2.Should the LU&H direct staff to develop a Process One grading permit for geotechnical exploration by amending the Land Development Code?

Managers Recommendations -

.....1.Direct staff to retain the current definition of steep hillsides consistent with past City Council direction on the Land Development Code update to eliminate subjectivity, to simplify regulations, and to make the development review process more predictable.

.....2.Direct staff to develop a Process One grading permit for geotechnical exploration by amending the Land Development Code.

Natural Resources and Culture Committee Recommendations -Recommend that staff seek direction from LU&H on amending the definition of “steep hillsides” and on amending the Land Development Code to create a less restrictive process for geotechnical exploration.

Code Monitoring Team Recommendations - On May 8, 2002 the Code Monitoring Team (CMT) voted 7-1-0 to recommend that staff amend the Land Development Code to address grading impacts on community plan identified open space. The CMT recommended: 1) that a Site Development Permit (Process 3) be required for grading within community plan open space; 2) that the word “natural” should not be deleted from the definition of steep hillsides; 3) that the language in the Site Development Permit finding stating that a project “should not adversely impact” the community plan be retained; and 4) that the City Manager have the discretion of requiring restoration or mitigation. The CMT also voted 7-1 to recommend that staff be directed to create a Process One grading permit to address the geotechnical investigation process.

Environmental Impact - None.

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Fiscal Impact - Staff capacity to work on additional code update efforts is limited because of current update efforts in process and work on amendments to two Planned District Ordinances. Staff anticipates that with these limitations, the earliest that grading regulation revisions to the Land Development Code could be developed would be late 2002 or early 2003.

BACKGROUND

On May 16, 2001, September 19, 2001 and December 12, 2001 representatives from the Development Services Department, Neighborhood Code Compliance Department and the City Attorney's Office appeared before the Natural Resources and Culture Committee (NR&C) to discuss City policies regarding unapproved grading in sensitive habitat areas and canyons. Following the staff reports, public testimony, and discussion by the Committee, a wide range of new initiatives were developed for City Council's consideration and approval. Two of these issues required amendments to the Land Development Code and were referred to the Committee on Land Use and Housing (LU&H) for direction. The first issue is the proposal to remove the word "natural" from the definition of steep hillsides, and the second relates to creating a less restrictive process to allow geotechnical investigations.

DISCUSSION

Amending the Definition of Steep Hillsides

During the hearing at NR&C members of the public expressed concern that the Land Development Code (LDC) did not offer the same protections to environmentally sensitive areas as the previous code and that there were fewer disincentives to violate those regulations. They wanted to establish a process that would provide a higher level of review for those areas that are designated as open space in a community plan.

In an effort to protect canyons and areas designated as open space in a community plan, one of the original proposals was to remove the word "natural" from the definition of steep hillsides in Chapter 11 of the LDC. Unfortunately, the wholesale removal of "natural" from the definition would have many unintended consequences. For instance, any slope of 25% or greater with a height of 50 feet would then require a discretionary review where only a building permit is necessary today. In a worst case scenario, a single dwelling unit owner wanting to expand their house would have to go through a three to six month process because they had a "steep hillside" in their backyard in the form of a graded embankment. Staff recommended that this change not be made due to the unintended consequences, and the matter was forwarded to LU&H for their direction. Staff was also directed to meet with the interested parties to work on the details.

Staff met with members of the Community Planners Committee (CPC), Geotechnical consultants and members of the building industry to create viable alternatives. On April 23, 2002 the CPC adopted a resolution (Attachment 1) detailing the changes they deemed necessary to protect these

resources. Staff reviewed the resolution and sought input from all of the interested parties. After meeting with these parties staff has outlined their concerns in the attached matrix (Attachment 2). This matrix identifies the issue that staff heard and summaries of community planners committee, development industry, code monitoring team, and staff recommendations.

The range of proposed changes that were discussed in these meetings included changes to decision processes for projects proposing grading in community designated open space; looking at application of open space zones that contain development restrictions to these areas; and making changes to specific development regulations that affect design of structures in highly visible areas. Staff believes that the suggested change that best addresses community concerns are the changes suggested by the Code Monitoring Team. The CMT recommended that development in areas designated as open space in community plans be required to obtain a site development permit in accordance with a Process 3 decision (initial decision by a staff Hearing Officer with ability to appeal to Planning Commission). This would allow both staff and the community to review the development in areas designated for open space while still allowing development to be requested.

While this change would address a number of community concerns, it is inconsistent with the originally established goals of the Land Development Code Update. This change would increase the time and costs for projects proposing to do development in an area designated as open space. It would also add subjectivity to the decision process for new development and would potentially limit development that today could be allowed by right. This would likely increase the development costs for housing, commercial, and industrial projects.

Should LU&H desire to move these changes forward, staff would recommend that the Committee support the CMT recommendation. This would require changes be made in the site development permit regulations in the LDC. It would also require the creation of a new Geographic Information System map layer that corresponded with all community designated open space in our 43 community plans. This map would be used by staff to clearly identify when a project would be subject to this new requirement. Staff would bring back the associated mapping costs and staffing that would be necessary to implement this revision when the regulations are developed and the number of projects that would be impacted are identified.

Geotechnical Exploration

The Land Development Code requires a Site Development Permit for any development upon a premise that includes environmentally sensitive lands as identified in Chapter 14, Article 3, Division 1. Currently, geotechnical investigation meets the LDC definition of “development” and, therefore, when done on a parcel that contains environmentally sensitive lands, would require the approval of a Site Development Permit (a 3 to 6 month process). Geotechnical investigations are typically done before the project has been designed in order to determine the existence of geotechnical hazards and aid in the design of the project. After that investigation is completed, the applicant would then have to process another Site Development Permit for the actual project. In essence, a requirement to obtain a permit for a geotechnical investigation in order to apply for another permit.

As with the previous issues, staff has met with the interested parties to develop a less restrictive process for geotechnical exploration and the concerns are outlined in the attached matrix

(Attachment 2). Staff believes that by strictly regulating a grading permit (Process One) that all concerns can be addressed. For instance, a grading permit could be issued if the geotechnical consultant provides an environmental assessment that details what resources are present on the site, how they will access the site in the least sensitive areas and how they will mitigate any impacts. This is essentially the same information that would be used to process the Site Development Permit but the approval process would be weeks instead of months. The geotechnical community is largely in favor of this amendment (Attachment 3) and the Community Planners Committee also voted to support a simplified process.

CONCLUSION

Development Services recommends that the word “natural” in the definition of steep hillsides be maintained and that staff be directed to develop a strictly regulated grading permit (Process One) to address the geotechnical investigation process. If the Committee wishes to address the issue of development in community designated open space, Development Services recommends that the Committee direct staff to create a process to address grading, and development, within areas designated as open space in a community plan through the addition of a permit and review process.

ALTERNATIVES

1. Direct staff to prepare changes to the Land Development Code as recommended by the Code Monitoring Team to address grading impacts on community plan identified open space.
2. Direct staff to remove the word “natural” from the definition of steep hillsides in Section 113.0103.
3. Direct staff to leave the permitting process for geotechnical exploration as is.

Respectfully submitted,

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Tina P. Christiansen, A.I.A.. ...Approved by: P. Lamont Ewell
Development Services Director... .. Assistant City Manager

KGB/SDD. ...

- Attachments: [1. Community Planners Committee Resolution No. 05-2002](#)
[2. Grading Issues and Recommendations Summary Matrix](#)
[3. Letter from Geocon Dated May 3, 2002](#)