

**DATE ISSUED:** April 23, 2003

**REPORT NO. 03-071**

**ATTENTION:** Honorable Mayor & City Council  
Docket of April 28, 2003

**SUBJECT:** GRADING ACTIVITY ON SENSITIVE RESOURCES AND  
CANYONS

**REFERENCE:** Christiansen/Samuels memorandum dated May 11, 2001;  
Natural Resources & Culture Committee meetings of May 16, 2001,  
September 19, 2001, and December 12, 2001

### **SUMMARY**

**Issues** - Should the Council direct the City Manager to: a) Implement a series of modifications to procedures relating to enforcement and reporting of grading violations; b) Establish an educational outreach program for contractors and property owners, including those adjacent to canyons and sensitive resources; and, c) Modify the Municipal Code relating to the ADetermination of Civil Penalties,@ including a Penalty Schedule for Violations Regarding Environmentally Sensitive Lands, Historical Resources and Paleontological Resources?

**Manager=s Recommendations** - Direct the City Manager to implement Items a and b, and proceed with Item c as proposed in Attachments 1, 2 and 3.

**Fiscal Impact** – The total cost for implementing the modifications, procedures and outreach relating to enforcement and reporting of grading violations will either be absorbed by modifying department operations and/or is recoverable through fees. In the Neighborhood Code Compliance Department, while additional enforcement has in some part been absorbed by modifying department operations, workload increases to enforce grading violations have displaced other lower priority cases. At present, there is 1.0 full-time Land Development Investigator solely dedicated to enforcing grading violations.

In the Development Services Department, staff support to enforce grading violations will be cost recovered through fees (double the normal permit fee) for work done without a permit. A cost recoverable Biologist I position (\$60,556 per year) will be added to next year's budget to support this activity. Approximately 100 new code enforcement cases that require permits from the Development Services Department are identified by Neighborhood Code Compliance annually. Double permit fees can range between \$1,000 to \$10,000 depending on the violation and required permit. It is anticipated that the revenues collected will meet and/or exceed the costs of the position (\$60,556). Based on the level of enforcement activity experienced following the adoption of these new regulations, additional staff (Neighborhood Code Compliance - Land Development

Investigator; Deputy City Attorney; Development Services - Associate Engineer or Associate Planner) may be requested if the continued increase in workload merits such a request. These positions may be requested overbudget or during the formal budget process, depending on the timing of the request and its relation to the budget process.

## **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 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 the City Council's consideration and approval. This report is intended to summarize the decisions of those three meetings into one report.

## **DISCUSSION**

Since the December 12, 2001 Committee meeting to the current time, staff has actively responded to Council's direction by:

1. Elevating grading violations to the highest level of enforcement to which the Neighborhood Code Compliance Department responds. NCCD has also redistributed cases in order to dedicate 1.00 full-time Land Development Investigator to work solely on illegal grading cases.
2. Conducting several staff workshops to inform the involved departments about the City's regulations.
3. Forming the Grading Violation Assessment Team (G-VAT) as the coordination and enforcement vehicle for handling grading violations. Data collected during calendar year 2002 indicates:

<b>170</b>	<b>Cases Opened</b>
<b>83</b>	<b>Cases Successfully Closed via Enforcement Actions</b>
<b>87</b>	<b>Cases Currently Active</b>

4. Judicial actions by the City Attorney's Office in cooperation with the Neighborhood Code Compliance and Development Services Departments have proven to be highly successful. Past settlements have obtained high fines against developers, e.g., up to \$364,500 in one case, \$225,000 of which was donated to the City's "Habitat Acquisition Fund" to purchase and preserve environmentally sensitive lands for future generations. In addition, this defendant was required to provide funds to develop an educational brochure for contractors and developers highlighting the importance of protecting environmentally sensitive lands. Attachment 1 is a grid outlining significant cases prosecuted by the City Attorney's Office. The following staff recommendations were unanimously approved by the Committee. With Council approval, these recommendations can be initiated immediately.

 An increase in the maximum limit for Administrative Civil Penalties from \$100,000 to

\$250,000. Upon collection, these penalties are deposited in the Civil Penalties Code Enforcement Fund and are used for future code enforcement-related activities;

- ☐ Conduct a workshop for the City’s Administrative Hearing Officers to provide training on environmental and historical land regulations. There are no additional costs for this recommendation;
- ☐ Continue the use of Judicial Actions to enforce grading violations;
- ☐ Routinely assess costs for field inspection, enforcement and monitoring services and make these costs the responsibility of the violator. These funds will be used to reimburse operating departments for staff expenses;
- ☐ Continue enforcement of the Land Development Code (Section 143.0112) prohibiting future development permit processing until conclusion of enforcement actions;
- ☐ Implementation of an Aafter hours@ reporting system by the Neighborhood Code Compliance Department. This cost will be absorbed by modifying department operations;
- ☐ Continue to utilize the Grading Violation Assessment Team (G-VAT) as the coordination vehicle for handling grading violations;
- ☐ Educational outreach program including: development of an informational brochure and video; addition of grading information on the City’s web site; articles in community newspapers and the Union Tribune on grading and development in sensitive areas; and outreach to equipment rental companies, home improvement stores, engineering firms, surrounding cities, and to agencies that routinely perform grading activity in San Diego (e.g., CalTrans, County Water Authority, etc.). The Building Industry Association (BIA) has agreed to assist the City with public outreach efforts. The cost of the outreach program will be paid by funds that were collected from settlements for past judicial actions regarding illegal grading violations;
- ☐ Quarterly posting of the fines collected from enforcement actions on the Neighborhood Code Compliance Department web page;
- ☐ Continuing pre-construction conferences;
- ☐ Implementing a new, on-line, web-based project tracking system. This system was already in development prior to this Council action, so there are no new additional expenses for this recommendation; and
- ☐ Increased enforcement measures against contractors, subcontractors, and equipment operators including reporting of grading violations to the State Contractors Licensing Board.

**Mandatory Minimum Penalties and Non-Discretionary Fines.**

1. Attachment 2 includes proposed amendments to Section 12.0805 of the San Diego Municipal Code (SDMC) which authorizes the imposition of administrative civil penalties for serious violations. These amendments are designed to strengthen the ordinance by allowing departments to consider additional factors in calculating an appropriate fine against someone who has violated the SDMC.

At a meeting with representatives of the building community on March 11, 2002, staff was asked to remove the proposed factor (7) "Responsible Person's assets, liabilities and net worth." Staff agrees that this proposed amendment be stricken as it duplicates present subsection 12.0805 (c) (10) which authorizes the consideration of "The economic impact of the penalty on the Responsible Person."

2. Attachment 3 represents a proposed penalty schedule drafted by City staff for grading violations. The proposed schedule takes into consideration the extent of the violations and the amount of damage incurred. The penalty schedule may be filed with the City Clerk and revised or updated as appropriate. These penalties would apply to both public and private projects. This proposed schedule is authorized by San Diego Municipal Code (SDMC) section 12.0805 (d) which states:

"The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of civil penalties in appropriate cases. The Manager shall also establish procedures for the use of this schedule."

At a meeting with representatives of the environmental community on January 24, 2002, staff was asked to remove the impacted resource "Disturbed Wetland (excluding vernal pool)" since most wetlands are already disturbed to some degree. Staff agrees with this modification and recommends this line be stricken.

3. Attachment 4 is the ordinance language to increase the maximum Administrative Civil Penalties limit from \$100,000 to \$250,000.

"Natural" in Reference to the Determination of Sensitive Slope Gradient.  
Permit Processing for Geotechnical Exploration.

Given the complexity of these issues, and the land use and Land Development Code implications, these two items were referred to the Land Use and Housing Committee (LU&H) for further staff review and policy discussion. Staff was directed to work with the environmental and development communities to resolve outstanding issues. These items will be forwarded for Council consideration in a separate action.

Land Development Code Amendments.

- ☐ Revising Land Development Code Section 121.0312 (c) allowing the City Manager to consider mitigation for land designated as open space and/or in a Multi-Habitat Planning Area (MHPA) as a result of illegal grading activities if sensitive resources are impacted; and
- ☐ Revising the Land Development Code to require that approved permits and plans be kept at the work site and made available to City officials upon request.

These two recommendations were approved by the Natural Resources and Culture Committee. However, since all LDC amendments require review by LU&H, the Planning Commission and the Land Development Code Review Team before they can be implemented, it was felt that the update process would be more comprehensive and efficient if all LDC amendments regarding this topic were considered at one time. LU&H heard the items on grading at their May 29, 2002 meeting. The committee directed staff to bring forward revisions to the grading regulations that would require site development permits when grading is proposed in community designated open space. Staff was also directed to develop regulations for a Process 1 level decision for geotechnical testing in areas containing environmentally sensitive lands. These changes, combined with the two approved by the Natural Resources and Culture Committee, will be carried through the normal code update process within the next 8-12 months. This will include review by the Community Planners Committee, Code Monitoring Team, Planning Commission, and finally City Council for approval.

## **CONCLUSION**

In analyzing the Neighborhood Code Compliance Department's past handling of grading violation cases and their coordination with the Development Services Department, several general themes emerged. The enforcement remedies used in some cases did not provide for the most efficient and expeditious resolution of the grading violation. Additionally, the enforcement remedies did not always provide a disincentive to violate the Municipal Code from the onset. There have been problems with coordination and in some cases conflicting information and direction to the property owner from numerous departments that can and do become involved in land development issues. This report provides recommendations which should minimize these problems by providing a team specifically to deal with complaints and violations. Increased penalties and modified procedures should also help to better protect environmentally sensitive lands, historical and paleontological resources, and ensure that San Diego's enforcement program is one of the most comprehensive and aggressive in the nation.

**ALTERNATIVE**

Adopt selected items from the City Manager=s list of recommendations.

Respectfully submitted,

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Development Services Director

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Marcia K. Samuels  
Neighborhood Code Compliance Director

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Approved: George I. Loveland  
Senior Deputy City Manager

SAMUELS

Attachments:

- [1. City Attorney Illegal Grading Cases](#)
- [2. Determination of Civil Penalties - SDMC Section 12.0805](#)
- [3. Proposed Civil Penalty Criteria and Schedule](#)
- [4. Ordinance Revisions - SDMC Section 12.08](#)
- [5. City Manager's Report 01-274 – Grading Activity on Sensitive Habitat and Canyons](#)