

DATE ISSUED: July 18, 2003

REPORT NO. 03-154

ATTENTION: Committee on Land Use and Housing  
Agenda of July 23, 2003

SUBJECT: Proposed Amendments to the Land Development Code to Further Restrict  
Grading in Community Plan Designated Open Space Areas

REFERENCE: City Manager Report Nos. 01-247, 02-127 and 02-192

### SUMMARY

#### Issues -

1. Should the Committee on Land Use and Housing recommend that City Council approve the amendments to the Land Development Code to further restrict grading in community plan designated open space areas by creating a new Community Plan Open Space Overlay Zone and direct staff to prepare the work program, staffing, and fiscal impacts to complete the associated Citywide rezonings and bring the rezoning work program to City Council for consideration?
2. Should the Committee on Land Use and Housing recommend that the City Council approve the amendments to the Land Development Code to require a Process One grading permit for geotechnical exploration as identified in Attachment 1?

#### Managers Recommendations -

1. Recommend that instead of creating a new Community Plan Open Space Overlay Zone, the Committee on Land Use and Housing direct staff to utilize existing Open Space Residential (OR) zones and develop a time and cost estimate to rezone all community plan designated open space to the OR zones for City Council consideration.
2. Recommend that the City Council approve the amendments to the Land Development Code to require a Process One grading permit for geotechnical exploration as identified in Attachment 1.

Environmental Impact - An addendum to the Environmental Impact Report for the Land Development Code (No. 96-0333) has been prepared and circulated for public review. This addendum addresses the proposed amendments to the grading regulations and the proposed Process One grading permit for geotechnical exploration as identified in Attachment 1. Public review of that document will end on July 18, 2003.

Code Monitoring Team (CMT) Recommendation - 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 designated open space. The CMT recommended: 1) that a Site Development Permit (Process Three) 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 7-1-0 to recommend that staff be directed to create a Process One grading permit to address the geotechnical investigation process. The CMT has not reviewed the proposal to rezone all of the community plan designated open space to the existing OR zones as anticipated during the Zoning Code Update.

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Community Planning Committee (CPC) Recommendation - On April 23, 2002 the CPC voted 17-6-1 to request that LU&H approve revisions to the LDC included in CPC Resolution 06-2002. The CPC also voted 23-2-1 to establish a ministerial process for geotechnical work and to fast track the item to the LDC team so that the industry would have time for comments, input and modifications.

Fiscal Impact - Staff was directed to work on creation of new zoning regulations described above as part of the Land Development Code Implementation work program for Fiscal Year 2003 by the Committee on Land Use and Housing at its meeting on September 4, 2002 (CMR No. 02-192). The staffing costs and fiscal impact to prepare the proposed regulations are part of the Land Development Code Implementation work program. However, the work program, staffing costs, and fiscal impact to prepare the required rezoning actions and apply the new zoning citywide were not included in the FY 2003 work program. This part of the work program exceeds available staff resources.

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Housing Impact - Due to the increase in discretionary review for all development within community plan designated open space, this proposal could have a negative impact on the development of housing within the City of San Diego.

Code Enforcement Impact - Based on the proposal to require a Process Three Site Development Permit, where no discretionary review hearing may be required now, there is a potential for increased illegal activity by parties trying to avoid the permit process. This could create additional code enforcement impacts. However, staff does not anticipate significant levels of increased illegal activity.

## BACKGROUND

Staff was directed to review the September 19, 2001 Natural Resources and Culture Committee (NR&C) minutes for Council direction on grading regulation changes and to outline a schedule and work program to bring changes forward. The September 19, 2001 NR&C meeting was the second of three meetings held by NR&C on issues related to grading and grading enforcement. NR&C conducted meetings on May 16, September 19, and December 12, 2001. Direction to staff at the September 19, 2001 meeting was to return to NR&C with a report that incorporated staff recommendations on changes to the Municipal Code and an additional 9 committee recommendations, including elimination of the term “natural” in the definition of steep hillsides. Staff prepared the report as directed (CMR No. 01-274), addressed each of the 9 recommendations, and scheduled the December 12, 2001 meeting in accordance with the time line directed by NR&C. After the public hearing and Committee deliberation on December 12,

2001, NR&C approved the recommendations of the City Manager (4-0 vote) to make changes to the Municipal Code regarding enforcement, to not make changes to the code recommended by the Clairemont Mesa Planning Committee, and to direct that the issue of defendants assets, liabilities and net worth be decided by Council. In addition, NR&C referred code changes on deletion of the word “natural” from the definition of steep hillsides and on simplification of geotechnical exploration regulations to the Land Use and Housing Committee for further review.

After holding meetings with stakeholder and interest groups including the Sierra Club, Community Planners Committee, Building Industry Association, and others, staff prepared a report consistent with NR&C direction for a Land Use and Housing Committee (LU&H) meeting held on May 29, 2002 (CMR No. 02-127). After public testimony and committee deliberation, LU&H directed staff (5-0 vote) to make changes to the grading regulations per the Community Planners Committee recommendations with specific modifications; to keep, but clarify the word natural; and to make the new permit requirement a Process 3 rather than a Process 5. LU&H further directed staff (3-2 vote) to bring forward decision process simplifications for geotechnical exploration. These code changes were added to the Land Development Code (LDC) Implementation Work Program.

## DISCUSSION

### Creation of a new Community Plan Open Space Overlay Zone

As directed by LU&H, staff has drafted the Community Planners Committee proposal to create a new overlay zone (Attachment 1). This new overlay zone, the Community Plan Open Space Overlay Zone (CPOSOZ), would include all areas designated as open space in all adopted community plans. Any development within these mapped lands would require the approval of a Site Development Permit (Process Three), with the exception of development that would otherwise be exempt from having to obtain a building or grading permit. These areas would still be subject to the Environmentally Sensitive Lands regulations (Chapter 14, Article 3, Division 1) if sensitive lands are located on the project premise. Should the committee wish to adopt this overlay zone in lieu of the OR zones recommended by the City Manager, it should include Attachment 1 in its recommendation to Council.

If approved, implementation of this new overlay zone would ultimately require the processing of a rezone for each affected parcel citywide as well as a significant mapping effort on the part of the City. This work would exceed available staff and budget.

### Rezoning Community Plan Designated Open Space to the OR Zones

Rezoning community plan designated open space to an OR zone was something that was intended when these zones were created as part of the Zoning Code Update. The purpose of the OR zones (much like the intent a new overlay zone) is to “preserve privately owned property that is designated as open space in land use plans for such purposes as preservation of public health and safety, visual quality, sensitive biological resources, steep hillsides, and control of urban form while retaining private development potential.” More specifically, the OR zones provided specific development controls while allowing limited development consistent with the purpose of the community plan designated open space.

For example, the OR-1-1 zone would be placed on the rear portions of parcels with a residential zone (such as RS-1-7) along the right-of-way. The zone typically splits along the top of a hillside or other significant feature. The OR-1-1 zone guarantees the applicant a 25% development area that would have to be utilized in the residential zoned area first and then would allow development encroachment into the OR-1-1 zoned area to achieve the remainder of the 25% development area. So in effect, many properties would be prohibited from encroaching into the OR-1-1 zone based on the fact that the upper portions of the site equal at least 25% of the lot. This could actually be more restrictive than the proposed overlay zone. The proposed CPOSOZ would be more restrictive than the OR zones in that all development that requires a building or grading permit would now require a Process Three Site Development Permit. Staff believes that the time (4-6 months) and the additional cost (\$5,000 - \$10,000) would be burdensome for homeowners wishing to do room additions or minor grading in their backyard areas.

Another notable difference in using the OR zones, as opposed to the proposed CPOSOZ, would be that the property owner would have some development rights without going through a discretionary process. Uses such as passive recreation, some residential uses and some institutional uses could locate in these zones by right. Development of lands within the OR zones would also be subject to the Environmentally Sensitive Lands regulations should sensitive resources be present on the site.

Implementation of this proposal would also require rezoning all parcels within community plan designated open space and a significant mapping effort on the part of the City. This rezoning and mapping effort would be the same as required for the implementation of the proposed overlay zone, but would not add any additional regulations to the Land Development Code.

The cost and staff resources to apply this zone to all parcels citywide will exceed budgeted resources. If the committee wishes to forward the issue for consideration by the full Council, staff will prepare a cost estimate for application of the zone to all affected parcels.

#### Process One Grading Permit for Geotechnical Exploration

At the May 2002 LU&H meeting staff was also directed to create a Process One grading permit for geotechnical exploration. Staff has developed a process for permitting site reconnaissance and testing (Attachment 1). This process would allow an applicant to perform testing as long as it complies with the Biological and Historical Resources Guidelines (including any prescribed mitigation). Applicants would also be required to post an Engineering Bond to ensure revegetation of any disturbed areas. This amendment will enable testing without having to obtain a Site Development Permit prior to submitting for second Site Development Permit for the proposed development.

#### Other Minor Changes

The proposed amendments to the Land Development Code also contain minor amendments that were directed by the Land Use and Housing Committee and the City Council. These amendments would allow for linear trail and public maintenance projects to be exempted from the development area regulations of the OR-1-2 zone as well as clarifying the definition of the

term “natural” in the definition of steep hillsides. Given the discussion, of legal and illegal grading and its effects on steep hillsides, at the last LU&H hearing, a minor modification to the definition as proposed would differentiate between slopes that were disturbed illegally versus slopes that were legally graded.

CONCLUSION

Since the OR zones were intended to protect community plan open space and extensive rezonings would be necessary under either scenario, staff recommends that LU&H direct staff to develop a program to rezone all community plan designated open space to the appropriate existing OR zone. Further, staff will need to prepare a cost estimate for the application of this zone to the affected parcels citywide for Council consideration as this work exceeds existing budgeted resources. Additionally, Development Services recommends that LU&H recommends City Council approval of the Process One grading permit for site reconnaissance and testing and other directed changes.

ALTERNATIVES

1. Recommend that City Council approve the creation of the new Community Plan Open Space Overlay Zone and direct staff to rezone all parcels within community plan designated open space to be included in this new overlay zone.
2. Recommend approval of the proposed changes for the Process One site reconnaissance and testing but do not direct staff to prepare the work program for rezoning action but instead, direct staff to address appropriate rezoning actions as part of the normal, community plan update process.

Respectfully submitted,

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

CHRISTIANSEN/SDD

Attachments: [1. Proposed Strikeout/Underline Language for the Proposed Community Plan Open Space Overlay Zone, Process One Grading Permit for Site Reconnaissance and Testing and Minor Amendments.](#)

[2. San Diego Municipal Code Chapter 13, Article 1, Division 2 \(Open Space Base Zones\).](#)