



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: July 16, 2004 REPORT NO. 04-162

ATTENTION: Committee on Land Use and Housing
Agenda of July 21, 2004

SUBJECT: Proposed Amendments to the Grading Regulations of the Land
Development Code

REFERENCE: City Manager Report Nos. 01-247, 02-127, 02-192, and 03-154

SUMMARY

Issues -

1. Should the Committee on Land Use and Housing (LU&H) direct staff to amend the Land Development Code by removing the word “natural” from the definition of steep hillsides within Section 113.0103 (Definitions) and by modifying Section 143.0110(c)(1) (Environmentally Sensitive Lands Regulations) to not require a site development permit where development is within 40 feet of the top of a steep hillside, manmade or natural?
2. Should LU&H direct staff to amend the Land Development Code by redefining “steep hillsides” to eliminate the word illegal from the proposed definition?
3. Should LU&H direct staff to amend the Land Development Code to exempt linear trail and public maintenance access projects from the development area restrictions of Section 131.0250(b) (OR Zone) and 143.0141(d) and 143.0142(a) (Environmentally Sensitive Lands Regulations)?
4. Should LU&H direct staff to amend the Land Development Code Section 143.0126 (Environmentally Sensitive Lands Regulations) to decrease the time between completing emergency work and the submittal of a restoration plan to the City Manager from 60 days to 30 days and to add a requirement that restoration work must commence in 60 days from the emergency work completion date?

Managers Recommendations -

1. Do not direct staff to amend the Land Development Code by removing the word “natural” from the definition of steep hillsides within Section 113.0103 (Definitions). Direct staff to modify Section 143.0110 (c)(1) (Environmentally Sensitive Lands Regulations) to not require a site development permit where development is within 10 feet of the top of a natural steep hillside.
2. Direct staff to revise the steep hillsides definition as shown on Attachment No.1 and to retain the word illegal in the definition previously proposed.
3. Direct staff to amend the Land Development Code to exempt linear trail and public maintenance access projects from the development area restrictions of Section 131.0250(b) and 143.0141(d) and 143.0142(a).
4. Do not direct staff to amend the Land Development Code to decrease the time between completing emergency work and the submittal of a restoration plan.

Environmental Impact - San Diego as Lead Agency under CEQA has reviewed and considered an Addendum to Environmental Impact Report (LDR No. 42-1548), dated August 18, 2003, covering this activity. Adopted May 11, 2004 by Resolution No. R-299249. This addendum addresses the proposed amendments to the grading regulations as identified in Attachment No 1.

Code Monitoring Team (CMT) Recommendation - On May 8, 2002 the Code Monitoring Team (CMT) voted 7-1-0 to recommend that staff not amend the Land Development Code to eliminate the word “natural” definition of steep hillsides.

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 (Attachment No. 2).

Fiscal Impact - The staffing costs and fiscal impact to prepare the proposed regulations are part of the Land Development Code Implementation work program.

Housing Impact – If changes are made to include manufactured slopes in the definition of steep hillsides, more discretionary review for development would result and could have a negative impact on the development of housing within the City of San Diego. It is anticipated that projects subject to this revision could have increased costs of approximately \$8,000 in permit processing costs and increased processing times of 4 to 6 months.

Code Enforcement Impact - Staff does not anticipate an impact to code enforcement as a result of these changes.

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.

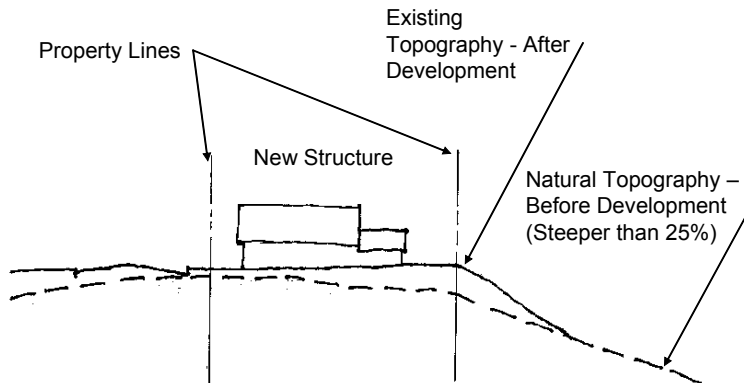
On July 23, 2003, LU&H directed that staff prepare revisions to the code addressing restoration and geotechnical exploration for City Council consideration. These were added to the 4th Update to the Land Development and will be scheduled for hearing in September 2004. Four items were directed by LU&H for further study and to be returned to LU&H for additional direction. These items are discussed in detail below.

DISCUSSION

At their July 23, 2003 meeting, the Committee, by a 5-0 vote, directed staff to bring back a discussion on regulation changes regarding natural vs. manmade slopes, the definition of steep hillsides, linear trail development area exemption, and emergency restoration work timelines.

Regulation of Natural vs. Manmade Slopes

LU&H directed staff to revise the definition of steep hillsides to eliminate the word natural but to also explore how this change would impact both new and infill development. The following diagram was used at the public hearing on July 23, 2003 to discuss some of these impacts.



This diagram shows one very common development condition where a structure was placed on fill, creating a steep, manufactured slope in the rear yard that joins into an also steeply sloping natural topography. Both the manufactured slope and the natural topography are depicted to be over a 25% (4:1) slope. It was also assumed, in the committee discussion, that the slope was also over 50 feet in height and, therefore, subject to the environmentally sensitive lands (ESL) regulations.

Staff identified two primary concerns with how the elimination of the word natural from the definition of steep hillsides would affect projects with these conditions. The first concern is with how ESL regulations would affect any future development of the property shown. Eliminating the word natural would make the top of the manufactured slope shown the edge of a defined environmentally sensitive land. Under the ESL regulations, any development in the rear yard of the structure and within 40 feet of this manufactured slope would require a site development permit (Process 3 Decision, a Hearing Officer hearing with appeal rights to Planning Commission). Therefore, for simple room additions to this structure, rear yard patios or walls, and other minor development would force these property owners to have to expend significant permit processing costs and time for what could be very minor development. The Committee acknowledged this issue and asked staff to suggest a way to eliminate this problem. Staff proposes that a distance of 10 feet from a steep hillside be used as the threshold to trigger the more costly permit.

The other staff concern with elimination of the word natural from the definition is on the impact that it could have with any redevelopment. Many constructed projects, including commercial and industrial parks, multifamily housing projects, residential subdivisions, and significant public improvement projects, have all created manufactured slopes that are steeper than 25% and that are 50 feet or more in height. Many of these were created to respond to topography that

existed prior to development. By eliminating the word natural from the definition, all of these slopes would be considered environmentally sensitive resources subject to the ESL regulations. Because of the development area restrictions in these regulations, virtually no redevelopment of these projects could occur because no further encroachment into these slopes would be allowed. Even simple encroachments such as retaining walls to provide for a dumpster or transformer, changes to an existing parking lot, providing additional space for a room addition or business expansion, or widening an existing public roadway would be prohibited or forced into an ESL deviation request. The cost and time impacts of this permit process (Process 4 or 5 Decision) could be prohibitive for even relatively minor redevelopment.

Because of these potentially negative impacts, staff does not recommend that the word “natural” be eliminated from the definition of steep hillsides. Staff does, however, recommend that the distance restriction that triggers a site development permit be changed from 40 feet to 10 feet.

Should the Committee still desire to regulate future development on or adjacent to manufactured slopes, staff would recommend that new regulations be created to regulate such development, rather than rely on existing ESL regulations that were intended to deal with undisturbed habitats and resources. These regulations could define the important manufactured slopes, could limit or regulate development encroachments on them, and could propose a less cumbersome permit process that would not have significant impacts on redevelopment.

Steep Hillside Definition Changes

In addition to the issues related to the term natural, LU&H gave direction on other staff proposed changes to the definition of steep hillsides. These changes attempted to clarify that natural slopes should also include any that were disturbed by non-permitted activities.

While the committee directed staff to remove the word illegal from this proposed revision, staff does not recommend it. If the word “illegal” were to be removed from this proposed definition, then a property owner, that legally obtained permits for development of their property, in full compliance with ESL, could later be again subjected to ESL regulations and permits for redevelopment of areas already legally disturbed by their prior development activity. Staff recommends that LU&H direct staff to take the revised definition as shown on Attachment No. 1 to City Council for consideration.

Linear Trails

The proposed amendments considered by the Committee on July 23, 2003 also contained changes that were previously 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 and ESL. Concerns were identified at the hearing with the proposed exemption and staff was asked to address these concerns.

Both linear trail and public access projects are project types that have very narrow footprints but often extend for long distances. Where these projects are proposed on properties that contain any environmentally sensitive land (steep hillsides, sensitive habitat, wetlands), they are also then subject to the development area restrictions in the OR zones and in the ESL regulations. These restrictions provide for a maximum development area (total disturbance allowed by a development) of 25% on any property. If a property is completely covered by environmentally sensitive lands, then the regulations permit a disturbance area of up to 25% of those resources. If a property has 75% or less of the area covered by environmentally sensitive lands, then no disturbance of resources is allowed unless a deviation is granted per the provisions contained in the ESL regulations.

All recent trail and public maintenance access projects that have been subject to these regulations have fallen on multiple, large, properties that contain varied amounts and types of environmentally sensitive lands. In order to substantiate compliance with the previously described development area regulations, the project proponents (Joint Powers Authority, Park and Recreation Department, Metro Wastewater Department, Water Department, etc.) have had to expend significant amounts of time and money to document each and every type of resource on these large properties in order to show that they do not exceed the 25% development area restriction. No linear trail or public access projects processed under the regulations of the OR Zone or ESL has come close to exceeding this development area restriction.

Staff's recommended change would exempt these projects only from the development area restriction of the OR Zone and ESL regulations. These projects would still need to obtain a site development permit (Process 3 decision), would need to substantiate that the trail or access path impacted the least amount of environmentally sensitive lands, would still need to provide for full mitigation of any impacts to environmentally sensitive lands, and would need to be reviewed in full compliance with the California Environmental Quality Act (CEQA). The change being proposed by staff would only eliminate the unnecessary costs and time associated with documentation of resources on those portions of the site that will not be in any way affected by the trail or access road project.

Emergency Restoration Timeline

The last issue that LU&H directed staff to provide additional information on was Eric Bowlby's proposal to change required timeframes in the code to submit restoration plans and to begin restoration when City Manager authorized emergency repair work has been performed. The suggested changes were to reduce the time for a restoration plan to be submitted to the City Manager from 60 to 30 days following authorized emergency work, and to require that restoration work be started no later than 60 days after the emergency work has been completed.

Staff was directed by the Committee to evaluate the potential increased costs that would be required of the City to comply with these changes. After consulting with representatives of capital improvement project departments, it was difficult to obtain a cost impact range because of the variation in type, size, and timing of restoration projects. Many of the departments contacted indicated that going through the City contracting process is already difficult to accommodate the existing 60-day time frame. They felt the only way to accommodate the

proposed tighter time frames would be to have the restoration work be considered as part of the emergency work so the contract award process could be waived and expedited. Many contacted also indicated that their standard operating procedure was to seek community input on any proposed restoration plan, prior to beginning the restoration work. They noted that the proposed 60 day requirement would make it infeasible to still allow community input on a restoration project. In addition to these issues, staff is also concerned about mandating the time line for when the restoration work must begin. Restoration of many of the habitat types that could be impacted by emergency projects would not be appropriate to begin at all times of the year. If the time that the restoration would be required by this proposed change occurred outside of the normal rainy season for the area, irrigation and other activities would be required that could have additional impacts in order to successfully establish the damaged habitat. Staff, therefore, recommends that no change be made to the time requirements for restoration plan preparation or for the timeline to begin restoration work.

CONCLUSION

Based on staff's analysis of the impacts associated with the proposed changes to the definition of steep hillsides, the City Manager does not recommend eliminating the word natural from the definition. In addition, staff feels that changing the restoration time lines would have cost and timing impacts to the City and potentially result in performing restoration work outside of the optimum time for successful restoration. Staff recommends that LU&H direct the changes outlined in Attachment No. 1 for the definition of steep hillsides, exemption for linear trail and access projects, and minor changes to the restoration provisions be recommended for approval by City Council.

ALTERNATIVES

1. Recommend that the word natural be eliminated from the definition of steep hillsides but that staff develop regulations that allow certain encroachment into manmade slopes without requiring site development permits.
2. Recommend approval of the change to the time for beginning restoration work following an emergency, only when the City Manager has determined that the time of year is appropriate for the proposed restoration work.

Respectfully submitted,

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Approved by: George Loveland
Assistant City Manager

Halbert/KGB

Attachments: [1. Draft Strikeout/Underline Language Grading Regulation Changes](#)
[2. CPC Resolution](#)