

DATE ISSUED: April 14, 2005

REPORT NO. 05-096

ATTENTION: Honorable Mayor and City Council  
Docket of April 19, 2005

SUBJECT: 2005 Winter Storms Disaster Waiver of City Fees and Expedited  
Permit Processing

#### SUMMARY

Issue -- Should City Council waive building permit and waste disposal fees, and expedite permit processing for the reconstruction of building damage and restoration of property site damage caused by the 2005 winter storms?

Manager's Recommendations - 1) Waive building permit fees for reconstruction of building structures, including accessory building structures, damaged as a result of the winter storms that occurred from December 27, 2004 to January 11, 2005 and February 12 to 24, 2005.

2) Waive landfill waste disposal fees for disposal of debris and soil from sites that were posted with a "red tag" (building damage that posed an imminent threat to life or safety) or "yellow tag" (building damage that posed some risk to life or safety) as a result of the damage from winter storms that occurred from December 27, 2004 to January 11, 2005 and February 12 to 24, 2005.

3) Establish October 15, 2005 as the final date for City of San Diego property owners to apply for building permit and waste disposal fee waivers, and to apply for an expedited development review for building structure or site damage as a result of the 2005 winter storms.

4) Approve the use of the San Diego Municipal Code provisions contained in this report to exempt certain site restoration activities from Coastal and Site Development Permit requirements and designate reconstruction permits resulting from the 2005 winter storm damage to be the highest priority for expedited site development review in the City of San Diego.

Other Recommendation – None.

Fiscal Impact – The estimated combined cost of waiving building permit and waste disposal fees associated with building reconstruction required as a result of the storm damage is \$205,000. The waiver of building permit fees for service will require that the General Fund reimburse the impacted Development Services Enterprise Fund for an estimated \$5,000. The General Fund would reimburse the Environmental Services Refuse Disposal and Recycling Funds by an estimated \$115,000 and \$35,000 respectively. Approval of this action will require reprioritization of the Fiscal Year 2005 General Fund Budget including possible reductions to departments and programs. Also, fee waivers will result in forgoing additional General Fund revenue of an estimated \$50,000 in Solid Waste Collection Franchise Fees.

## BACKGROUND

Severe damage to land and building property from heavy rains, mudslides, flooding and landslides occurred in the City of San Diego as well as other regions of California as the result of winter storm activity that occurred during the periods from December 27, 2004 to January 11, 2005, and February 12 to 24, 2005. On February 28, 2005, the Mayor and City Council voted unanimously to proclaim a local state of emergency due to flooding during the February rain storms.

The Governor of California has declared a state of emergency as a result of both the January and February winter storms for six California counties, including San Diego County which includes the City of San Diego. President George W. Bush has declared a major disaster for the January winter rainstorms and a similar declaration for the February winter storm is currently being reviewed by the Federal Emergency Management Agency (FEMA).

Authorized State and Federal assistance is being provided as a result of the rainstorm disasters making homeowners, renters, and businesses eligible for disaster aid. Assistance includes grants to help pay for temporary housing, home repairs, and other disaster-related expenses not met by insurance or other aid programs. Low-interest loans from the U.S. Small Business Administration are also available to cover residential and business losses not fully compensated by insurance.

The Federal Emergency Management Agency (FEMA) has established a Disaster Recovery Center (DRC) at the City of San Diego Tierrasanta Recreation Center. The DRC will be open March 30 to mid-April, Thursday through Saturday. Development Services staff will be available at the DRC to answer citizens questions related to fee waivers and site restoration simplified permit processing.

## DISCUSSION

Development Services inspectors and geologists conducted preliminary assessments of storm damage to property sites and building structures. As of April 5, 2005, an estimated ten homes have sustained damage to the extent that a building permit will be required to do reconstruction work on residential building structures or accessory building structures such as wood decks or sheds. Sixteen building structures were posted with a “red tag” placard due to imminent threat to life or safety caused by winter storm damage. Twenty-nine building structures were posted with a “yellow tag” placard due to the danger of some risk caused by winter storm damage.

### Homeowners’ Insurance

Most homeowners will not have insurance coverage to pay for reconstruction building permit fees and landfill waste disposal fees as a result of the winter storms. Homeowners’ liability insurance provides coverage for water damage but not flood damage. Rainwater that comes in contact with a home first and causes damage is water damage. Rainwater that comes in contact with the ground first then comes into contact with a home and causes damage is considered flood damage. Most homeowners nationwide do not carry flood insurance.

Site or building structure damage due to “earth movement” is not covered by homeowner’s liability insurance or flood insurance. Earth movement is considered to be landslides, mudslides, sinkholes, subsidence or erosion. Most homeowners nationwide do not carry an “earth movement” insurance rider that some homeowners’ liability insurance companies may provide.

### Building Permit Fees Waivers

It is currently estimated that ten homeowners will require building permits to reconstruct damaged accessory building structures, primarily backyard wood decks. The estimated total cost of waiving building permit fees for these structures is \$5,000. Waiving the building permit fees requires reimbursement by the General Fund or other source. Development Services Department is an enterprise fund, financed and operated by development fees in accordance with California Government Code sections 66000 through 66025. Payment of fees by some users cannot be used to subsidize services provided to other users.

Development Services Department has established a web page at <http://www.sandiego.gov/newsflash/stormupdate/> with information and URL links related to development permit processing for property site restoration. A Development Services 2005 Storm Recovery Hotline, tel: (619)-446-5135, has been established that citizens can call with their building structures reconstruction and site restoration related questions.

### Simplified Permit Processing

The City plans to fully utilize provisions contained in the San Diego Municipal Code to allow for a simplified permit review process for reconstruction of site damage, including grading required due to slope failures. Because of the variation in both the location and type of damage caused by these recent storms, an approach to streamline the permit process is critical to respond to the needs of those affected property owners.

The San Diego Municipal Code would require Coastal Development and Site Development Permits to perform the construction work necessary to repair and restore properties destroyed by the recent storms. While the Municipal Code does provide the City Manager with the ability to authorize emergency work to perform repairs through a streamlined process, a conservative interpretation of the code would require each property owner to obtain costly Coastal Development and Site Development Permits after the necessary repair work has been completed. It would also require the City to issue appropriate construction permits (building permits, grading permits, etc.) as well.

In order to assist property owners to keep repair costs down, staff proposes to use other exemptions in the San Diego Municipal Code to minimize permitting requirements to address storm damage. Staff believes the exemptions to Coastal and Site Development Permit requirements, as outlined below, are appropriate for the work being proposed. Projects that do not qualify, that do not fit these exemptions, or that require construction of protective structures that go beyond restoration would be subject to normal permitting requirements.

### Coastal Permit Exemption

San Diego Municipal Code Sections 126.0702 and 126.0704 (shown in italics below) contain the exemption being proposed for use for emergency storm repair work being performed in the Coastal Overlay Zone. Provided the work is to restore those damaged areas to a pre-emergency condition, that the work would not add additional protective structures (walls, shoring, etc.), and that the work would fully comply with Section 126.0704 below, staff proposes to exempt those projects from a Coastal Development Permit. All work would still need to be performed in accordance with other applicable sections of the San Diego Municipal Code including appropriate erosion control, native restoration planting, and other construction requirements.

#### *§ 126.0702 When a Coastal Development Permit Is Required*

*(a) Permits Issued by the City. A Coastal Development Permit issued by the City is required for all coastal development of a premises within the Coastal Overlay Zone described in Chapter 13, Article 2, Division 4, unless exempted by Section 126.0704, or if the proposed project site lies completely within the Coastal*

*Commission Permit Jurisdiction or the Deferred Certification Area as described in Section 126.0702(b).*

*§126.0704 Exemptions from a Coastal Development Permit*

*The following coastal development is exempt from the requirement to obtain a Coastal Development Permit.*

*(b) Repair or maintenance activities are exempt except if the repairs or maintenance involve any of the following:*

*(1) Repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves substantial alteration to the foundation of the protective work including pilings and other surface or subsurface structures; the placement, whether temporary or permanent, of riprap, artificial berms of sand or other beach materials, or any other forms of solid materials on a beach or in coastal waters, streams, wetlands, estuaries or on a shoreline protective work, unless destroyed by a natural disaster; the replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; the placement, whether temporary or permanent, of mechanized construction equipment on any sand area, coastal bluff, or within 20 feet of coastal waters or streams, except that the use of such equipment solely for routine beach and park maintenance shall not require a Coastal Development Permit.*

*(2) Any repair or maintenance to facilities or structures or any work located within a wetland, any sandy beach area, within 50 feet of a coastal bluff edge or wetland, or within 20 feet of any coastal waters or streams that include: the placement or removal, whether temporary or permanent, of riprap, rocks, sand or other beach materials or any other forms of solid materials, or the presence, whether temporary or permanent, of mechanized equipment or construction materials.*

Staff believes that restoration work due to storm damage is repair work and is a necessary maintenance activity. Using this exemption, many property owners would benefit from a simple project review process.

Site Development Permit Exemption for Environmentally Sensitive Lands

San Diego Municipal Code Section 143.0126 , shown below in italics , contains the exemption being proposed for use for emergency storm repair work being performed in areas that contain environmentally sensitive lands. Provided the work is to restore those damaged areas to a pre-emergency condition and not to add additional protective structures (walls, shoring, etc.), and that it fully complies with other development regulations, staff would view corrective work as being only a temporary impact to the resource and thus exempt.

*§143.0126 Emergency Authorization to Impact Environmentally Sensitive Lands*

*Whenever development activity within environmentally sensitive lands is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:*

*(a) If the emergency work involves only temporary impacts to environmentally sensitive lands, a Neighborhood Development Permit or Site Development Permit is not required provided the environmentally sensitive lands are restored to their natural state, in accordance with a restoration plan approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work.*

To use this exemption, staff would ask the City Council to determine that all damage as a result of these recent storms constitute an emergency under this provision of the Municipal Code. This would be consistent with the existing state of emergency declared by the State and by the City Council. Staff would then view any work to restore damaged properties that contain or that are adjacent to environmentally sensitive lands to only constitute a temporary impact to those resources. By doing this, no after-the-fact Site Development Permits will be necessary.

Simplified Construction Permit Process

In addition to the exemptions from discretionary permits identified above, staff is recommending that a simplified construction permit review process be used. Because of the nature of the damage, property owners will need to engage appropriate design professionals (geotechnical engineers, civil engineers, landscape architects, etc.) to explore the extent of the damage and prepare plans for appropriate restoration. Rather than requiring design professionals to adhere to all plan preparation and processing requirements, staff would propose that only plans necessary to show the extent of the restoration work and to allow the property owner to get suitable construction services be required. Some of the standard drawings required would be eliminated and the review process to approve the projects would be simplified. At the end of construction, the design professional would be required to certify that the restoration work has been performed in accordance with approved plans. These changes should simplify the plan preparation, review, and inspection process for these emergency projects, thereby keeping costs down and review times short.

It is recommended that reconstruction building permits and grading permits related to reconstruction due to the 2005 winter storms be the number one development review and inspection priority in the City. The Development Services Department plans to maintain service levels to other expedite priorities such as affordable housing by utilizing a combination of overtime, contract services and temporary positions.

## Waiver of Waste Disposal Fees

The waiver of waste disposal fees at Miramar Landfill will only apply to soil and debris removal for red tag and yellow tag sites within the City of San Diego's jurisdiction as a result of the 2005 winter storms. Debris includes trees, brush, ground cover, retaining walls, damaged building structures and damaged accessory building structures such as decks and patios.

Homeowners who had property damage requiring soil and debris removal may have their waste disposed of at Miramar Landfill at no cost if their address is included on the City's list of red tag and yellow tag sites maintained by Development Services Department. A copy of the list will be kept at the Miramar Landfill fee booth. Property owners of red and yellow tagged sites who have already had their storm damage soil and debris disposed of at the Miramar Landfill will be entitled to reimbursement for waste disposal fees if they furnish the City with an invoice for the associated hauling services. They may contact Environmental Services Customer Service at (858) 694-7000 for additional information on the reimbursement process.

Based on the properties that have already been identified as having sustained storm damage, the total impact of waiving these fees is projected to be \$200,000 (see Fiscal Impact for detail) if all of the waste and debris is disposed of at Miramar Landfill. Waiving waste disposal fees requires reimbursement by the General Fund or other source of \$150,000 as the Refuse Disposal and Recycling Funds are enterprise funds which have been established to provide for specific services funded directly by fees to users limited by San Diego Municipal Code section 66.0127(c)(4) and Government Code section 66016. Payment of fees by some users cannot be used to subsidize services provided to other users. To help reduce the potential fiscal impact to the General Fund, Environmental Services Department staff will be available to work directly with property owners to maximize the diversion of debris and soil and/or reuse of clean materials.

## CONCLUSION

Fee waivers and simplified permit processing will facilitate restoration of property sites and reconstruction of building structures damaged by the recent severe winter storms. In addition, a storm damage reconstruction development review and permitting team has been formed in Development Services. This team will be used to expedite and address the unique requirements of processing storm damage reconstruction development projects. This will improve the consistency and quality of the information and support being provided to these property owners.

The City Manager, therefore, recommends that the City Council approve the fee waivers and direct the City Manager to proceed with the simplified permit process outlined in this report.

ALTERNATIVE

Do not waive building permit fees for owners of buildings structure, including accessory building structures, damaged in the 2005 winter storms and do not waive waste disposal fees for property sites that sustained site or building structure damage that resulted in a “red tag” or “yellow tag” site posting.

Respectfully submitted,

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