



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 28, 2007 REPORT NO: 07-193

ATTENTION: Council President and City Council
Docket of December 4, 2007

SUBJECT: Revisions to Brush Management Regulations to Finalize LCPA
Certification

REFERENCES: Reports 05-174, 04-181, and 04-017

REQUESTED ACTION:

Amend the municipal code to clarify the brush management regulations and clarify the approval process for the use of goats for brush management. Adopt resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Consider whether to adopt the new policy related to calculation of development area for new coastal subdivisions with environmentally sensitive lands.

STAFF RECOMMENDATION:

Introduce and adopt the ordinance amending Municipal Code Chapter 4, Article 4 and Chapter 14, Article 2 of the Land Development Code and Local Coastal Program. Adopt the resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone. Direct staff to submit for a determination of consistency with the certification order.

SUMMARY:

In September 2005, the City Council unanimously approved amendments to the brush management regulations to improve fire safety including: a standardized 100 feet of defensible space from structures, requirements for new development adjacent to hazardous vegetation areas to incorporate fire resistive building features, and authorization for the use of goats for brush management. The City Council also adopted a Resolution (R-300799) to increase the amount of protected core habitat under the City's MSCP Subarea Plan by adding 715 acres (including 113.6 acres in the coastal zone) to the City's MHPA conservation lands, in accordance with resource agency recommendations. The revised brush management regulations became effective outside of the coastal zone in October 2005.

of defensible space. The amendment proposal also incorporates a more environmentally sensitive methodology that includes restrictions on timing of the brush management activity and requires selective thinning and pruning of vegetation.

On February 15, 2007, the Coastal Commission conditionally certified the City's LCPA application with suggested modifications, and granted the City a one-year extension (on August 9, 2007) to complete the certification process. The majority of the language added by the Coastal Commission clarifies and strengthens the City's existing code. However, some of the language drafted by Coastal Commission staff is inconsistent with the City's Land Development Code and Local Coastal Program, and was therefore modified without changing the Commission intent to protect environmentally sensitive habitat areas (ESHA). As proposed, the City would commit to a 5-year trial program and annual monitoring requirements for the use of goats for brush management in the coastal zone by Resolution (R-2008-366). The proposed ordinance also reflects a new land use policy that would prohibit brush management impacts by new coastal subdivision developments within Coastal Act protected ESHA, beyond a 25 percent development area, consistent with the Commission's certification order.

ENVIRONMENTAL IMPACT:

The final Subsequent Environmental Impact Report/Environmental Assessment and Addendum, Project No. 31245, on file in the Office of the City Clerk, has been completed and certified in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), and the National Environmental Policy Act (NEPA), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the above project.

BACKGROUND:

The City's pre-2005 brush management regulations, currently effective in the coastal zone, are inconsistent with recognized fire protection policies and standards across the state of California. In accordance with recommendations by the Fire Chief, the City Council adopted a series of fire safety improvements and associated code amendments to protect the public health and safety, including a standard 100 foot defensible space between structures and wild lands (September 2005). Since that time, City staff has been working to obtain certification from the Coastal Commission to apply the new regulations in the coastal zone for consistent application of brush management across the City. The proposed brush management amendments are especially important for public health and safety in consideration of the City's overall susceptibility to seasonal brush fires, as evidenced by the devastating Cedar (2003) and Witch Creek (2007) fires.

Code Amendment Process

On September 6, 2005, the City Council considered multiple fire safety ordinances that were prepared in response to previous direction in January 2004 following the Cedar fire (Council Resolution R-298827). The Council adopted amendments to require fire resistant building design features, which became effective citywide in October 2005 (not subject to Coastal Commission certification). As a result, new development within 300 feet of the native vegetation is required

to incorporate fire resistive design features. The Council also adopted a separate ordinance amending the City's local coastal program that included requirements for a citywide standard 100 feet of defensible space and measures for long term protection of environmental resources, which became effective outside the coastal overlay zone on October 19, 2005. Since that time, staff has been working to obtain certification of the corresponding Local Coastal Program Amendment (LCPA) for the coastal zone. In the interim, the pre-2005 brush management regulations that were certified by the Coastal Commission in 1999 are still applicable in the coastal overlay zone. The proposed amendments would result in a single set of regulations for improved consistency and application of brush management across the City.

Coastal Commission Action on Local Coastal Program Amendment (LCPA)

Processing of the brush management LCPA has been complicated by Coastal Commission attempts to incorporate new policies into the City's LCP. During the first Coastal Commission hearing on the City's Brush Management LCPA application (January 11, 2007), Commission staff suggested new permit and processing requirements that were counter productive to the goals of the brush management project. The Coastal Commission was sympathetic to concerns raised during the hearing and requested the 2005 LCPA application be withdrawn and resubmitted as a new application in order to meet state time limits and allow additional time to work out details at the staff level. Commission staff subsequently agreed to remove the onerous permit requirements and limitations on existing development that would have infringed on property rights and discouraged voluntary compliance; however, they also unintentionally included new language that created additional conflicts with City regulations. For example, Coastal Commission staff included provisions which would have required that the 100 foot brush management zones be measured not only from the structure, as is typical for fire protection, but also established a new conflicting brush management setback from environmentally sensitive habitat areas (ESHA). In consideration of the City's expressed concern, the Commissioners attempted to modify the language on the floor during the February 15, 2007 hearing, and acted to conditionally certify the City's Brush Management LCPA.

Staff received confirmation of the official certification order via a letter dated July 25, 2007 (Attachment 1), which clarified the Coastal Commission's intent to prohibit brush management impacts to ESHA associated with new subdivision development; however, their draft version of the amendment language would not accomplish the intended results explained within the certification letter. To address the conflicts and avoid unintended consequences, staff modified the organization of the LCPA language for consistency with both the Commission's certification order and the City's Land Development Code. A tracking table (Attachment 2) was prepared to describe the changes included in the proposed ordinance in comparison with the original Council approved ordinance. Additionally, comments were incorporated in the margin of Attachment 1 to indicate where the Coastal Commission suggested language would be included in the Local Coastal Program.

Following is a summary of the proposed changes:

- New policy for environmentally sensitive lands in the coastal zone, which would require that new subdivision developments locate the entire 100 feet of brush management within the 25 percent development area of a premises
- Clarifies applicability of the brush management regulations
- Clarifies the review process and requirements related to brush management for new development projects
- Clarifies limitations and requirements for brush management on public property
- Clarifies alternative compliance
- Clarifies the enforcement authorities and remedies in case of violations
- Clarifies the approval process for the use of goats for brush management
- Commits the City (by Council Resolution) to a five year trial period for the use of goats in the coastal zone with a commitment to submit annual monitoring reports to the Coastal Commission

DISCUSSION:

One of the most widely accepted and proven management actions for fire protection is to create a defensible space of 100 feet between the structure and the vegetation. Brush management is an important tool to create this defensible space to help reduce the size and intensity of the fire, and allow the Fire-Rescue Department time and space to combat the impending threat of fire. The City's 100 foot brush management requirement is consistent with the existing MOU between the fire districts and resource agencies, the 1997 MSCP agreement, the certified brush management EIR, and the 2005 Council resolution to increase the MHPA conservation lands.

The City addresses brush management through required zones measured from any structure located adjacent to native or naturalized vegetation. Zone one includes the first 35 feet adjacent to a structure, and typically consists of pavement and permanently irrigated ornamental plantings. Zone two includes the next 65 feet adjacent to zone one, and typically consists of thinned native plant material.

Currently, brush management in the coastal zone consists of a two-zone system based upon the location of the property in relationship to Interstate 805 and El Camino Real. In the coastal zone, the width of zone one currently varies from 20 feet to 40 feet west of Interstate 805 and El Camino Real, and varies from 30 feet to 45 feet east of Interstate 805 and El Camino Real. Brush management zone two currently varies from 20 feet to 30 feet west of Interstate 805 and El Camino Real, and 40 to 50 feet east of Interstate 805 and El Camino Real. The proposed amendments would result in a single set of regulations for improved consistency and application of brush management across the City and would adopt the state recognized 100 foot standard for fire protection.

The application and measurement of brush management zones to new development is accomplished through site specific permit review by the Development Services Department in consultation with the Fire-Rescue Department. Modifications may be approved where an equivalent level of fire protection can be accomplished; often by incorporation of a variety of fire resistive building features to protect the structure. In such cases, the Fire Chief would consider the topography, existing and potential fuel load, and other characteristics of the site related to fire

protection as part of the development permit review process. Brush management for new development is not permitted within public open space.

Coastal Commission

The main issues raised by Coastal Commission were related to brush management for new subdivisions, the City's program for addressing brush management violations, and the use of goats for brush management.

Coastal Commission Policy for New Subdivision Developments in the Coastal Zone

The Coastal Act contains policies for protection of ESHA from coastal development. ESHA as defined by Coastal Commission staff for the purposes of the City's LCP would include southern sand dunes, torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, oak woodlands, coastal sage scrub and coastal sage scrub communities, and any vegetative communities that support threatened or endangered species, which has been incorporated into proposed Section 142.0412(n).

The Commission staff originally recommended new brush management policies related to both existing and new development. However, as explained by the City's Fire Chief, this would have compromised the public health and safety and would not have met the state recognized standard of 100 feet of defensible space. As a compromise, the Coastal Commission is now requesting that the Council adopt a new policy that would change the way that development area is calculated for future subdivision proposals in the coastal zone. As proposed, new subdivision development in the coastal zone would be required to locate brush management zones one and two within the maximum 25 percent development area (for sites proposing development impacts to environmentally sensitive lands). Under the current code that was certified by the Coastal Commission in 1999, the development area of a premises is only required to include zone one in the development area calculation. Zone two, which is limited to thinning and pruning of vegetation in accordance with Section 142.0412, may be located outside of the 25 percent development area under the current code.

The City's adopted MSCP plan and the associated certified environmental impact report anticipated that brush management for development would occur within a 200 foot area of edge effects in the urban-wild land interface. At the time the City's required brush management widths were less than 100 feet in some areas, so as part of the September 2005 action to adopt a citywide standard 100 foot brush management width, the Council also approved the addition of 715 acres (including 113.6 acres in the coastal zone) to the City's MHPA conservation lands to account for the additional brush management area within the urban interface. Despite existing environmentally sensitive lands policies and regulations within the existing certified LCP, the Coastal Commission is requesting that a new policy be adopted for new coastal subdivision development, which may limit future lot splits and subdivisions in the coastal zone.

Staff anticipates there will be limited application of such a policy since there are only nine existing vacant, developable parcels in the coastal zone with the potential for development (with required brush management) in the communities of La Jolla (4), Peninsula (1), San Ysidro (1), and Torrey Pines (3) based on the 2006 SANDAG regional database. And for each vacant parcel with environmentally sensitive lands in the coastal zone, any future development would require

discretionary permits and environmental review and mitigation to prevent adverse impacts on environmentally sensitive lands. Nonetheless, the Coastal Commission is requiring as a condition of LCPA certification that a new policy be incorporated to limit future subdivisions in the coastal zone from locating brush management zone two within ESHA, which is reflected in proposed Section 142.0412(n).

Monitoring Programs for Brush Management and Remedies to Address Violations

Brush management activity for private property is monitored by the Fire-Rescue and Development Services Departments. The Fire-Rescue Department receives reports of potential violation and evaluates the site specific conditions to determine whether vegetation is in violation of the code and poses a potential threat. The brush weed section conducts an inspection and issues a Notice of Violation to the property owner, where necessary. The Fire Rescue Department also monitors the Proactive Weed Abatement Program which involves a no fee contract with a private company (Fire Prevention Services Inc.) that performs inspections, sends violations notices, and conducts abatement in case of non-voluntary compliance.

Brush management activity on public land is monitored by the Fire-Rescue and Park and Recreation Departments. The brush weed section of the Fire-Rescue Department conducts inspections on a complaint basis and notifies the responsible City Department in case of violations. The City Non-Profit Weed Abatement program is a yearly program to identify weed violations on City owned property and monitor the weed removal process by private contractors. The Park and Recreation Department also authorizes Right of Entry for private applicants to conduct brush management thinning and pruning on public park land in vegetation areas within 100 feet of existing development, which was clarified under Section 142.0412(c).

A code provision was added to clarify the City's existing authority to enforce any violation of the code by referencing existing Chapter 12 which includes existing enforcement authorities and general remedies. For example, the City can require restoration and mitigation at the sole cost of the responsible party as described in new Section 141.0412(o).

Goats for Brush Management

In September 2005, the City Council approved the use of goats for brush management. Goats can be used to supplement landscape crews to conduct brush management. Applicants must obtain approval from the Fire-Rescue Department and demonstrate compliance with the regulations, which require 24-hour monitoring by an experienced goat contractor and other required notices and protections. In accordance with Coastal Commission's certification order, the goat regulations have been transferred from Chapter 4 to Chapter 14. Additional language is proposed in new Section 142.0412(m) to clarify the following requirements for the use of goats: a no-fee permit, the submittal of photographs of existing site conditions and a plan describing the proposed methodology, limitations while goats are browsing, removal of droppings from the brush management area, and debarment of negligent or irresponsible contractors.

In addition to San Diego, goats are currently used by a number of cities and counties throughout the state for weed abatement and brush management including but not limited to: Laguna Beach, Sunnyvale, San Luis Obispo, Escondido (State Historic Park Site), Los Angeles, Claremont, San Francisco, Berkeley Hills, Menlo Park, Sacramento, Mill valley, Los Altos Hills, Oakland, San Mateo, Santa Cruz. The Coastal Commission expressed concern over instances where goats

were not properly managed in other jurisdictions and required as a condition of LCPA certification that goats only be authorized in the coastal zone for a 5-year trial period during which time annual monitoring reports would be submitted to the Coastal Commission. If at the end of 5 years the monitoring reports indicate that the use of goats is adversely impacting ESHA, the use of goats in the coastal zone shall be discontinued. This language has been incorporated into a resolution subject to Council approval.

FISCAL CONSIDERATIONS:

Processing of the code amendments has been funded by a combination of the general fund and the Development Services enterprise fund. Private property owners are responsible for the costs of brush management on private property; while brush management activity on public land is paid for by the general fund and coordinated by the Park and Recreation and Fire-Rescue Departments. There are approximately 1,180 acres of public land subject to brush management that requires management and participation by both administrative and field staff. For the past decade, the City has budgeted resources to cover brush management for 70 acres per year. Additional funding to the City's Brush Management Program in FY08 has enabled staff to increase the number of acres thinned from 70 acres to a goal of 210 acres. The City is currently seeking additional funding sources to offset future general fund costs as part of a long term public brush management program. The goat monitoring program required by the Coastal Commission would be in addition to existing monitoring conducted by the Fire-Rescue Department. The monitoring program would require that annual reports be prepared and submitted, which would generate additional costs without any mechanism for cost recovery.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On January 27, 2004, the City Council adopted a resolution (R-298827) directing staff to amend the Municipal Code to require a standard 100 foot defensible space between structures and native wild lands, to consider the fiscal cost of ongoing brush management on public lands, and to develop a public outreach and training program.

On August 11, 2004, the Council Committee on Natural Resources & Culture (NR&C) reviewed information on the concept of goats for brush management and approved a pilot program for the use of goats.

On September 22, 2004, NR&C received a status update on the use of goats for brush management and recommended a draft ordinance to authorize the use of goats for brush management citywide.

On September 6, 2005, the City Council introduced the brush management ordinance (adopted September 19) and certified the associated brush management EIR. The Council also adopted a separate ordinance to require fire resistive building features for new development proposed within 300 feet of native vegetation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There have been multiple public meetings and hearings on the brush management regulations. Information has been posted on the City website and also distributed in various formats including handouts, brochures, and an informational training video.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Property owners in the coastal zone are a main stakeholder in the proposed amendments since any action by the Coastal Commission to deny the amendments would leave the coastal zone with the pre-2005 regulations that are less protective of environmental resources and provide less fire safety. However, a number of stakeholders have expressed interest in the proposed brush management regulations including property owners, resource agencies, environmental groups, and brush management contractors including goat contractors. Various staff groups have been involved in drafting the proposed amendments including the Fire Department, Park and Recreation, City Planning and Community Investment, City Attorney, Risk Management, and Development Services. The Coastal Commission also has an interest in the adoption of the proposed amendments that provide protection for environmentally sensitive habitat area consistent with the Coastal Act.

ALTERNATIVES:

Staff recommendation- Adopt the ordinance amending Municipal Code Chapter 4, Article 4 and Chapter 14, Article 2 of the Land Development Code and Local Coastal Program. Adopt the resolution to provide annual monitoring reports to the Coastal Commission for a 5-year trial program to use goats for brush management in the coastal zone.

Alternative 1- Modify the ordinance and/or do not adopt the resolution to incorporate code amendment language exactly as written per the Coastal Commission recommendation in Attachment 1. Adopting the amendment language verbatim as transmitted in the Coastal Commission's certification order would give the City greater certainty regarding certification of the ordinance by the Coastal Commission, however, there are expected to be implementation challenges and unintended consequences associated with this alternative due to unclear language and applicability.

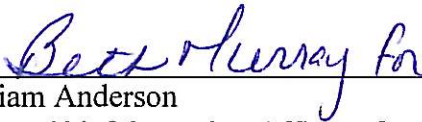
Alternative 2- Modify the ordinance to include additional changes to clarify brush management or to reject the new Coastal Commission policy related to new subdivisions with environmentally sensitive habitat areas. This type of modification would require additional hearings by the City Council and Coastal Commission, and may result in separate brush management codes for inside and outside of the coastal zone.

Alternative 3- Do not adopt the ordinance or resolution, which would result in separate brush management codes for areas inside and outside of the coastal zone. This alternative would not achieve the recommended 100 foot standard for defensible space for areas in the coastal zone.

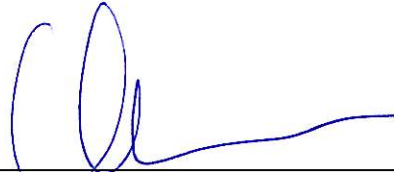
CONCLUSION:

The proposed amendments are expected to improve the ability of the Fire Department to protect life and property. Approval of the Local Coastal Program Amendments would extend an equivalent level of fire protection to the City's coastal zone areas, as recommended by the Fire Chief. Staff recommends that the ordinance and resolution be adopted by the City Council and submitted to the Coastal Commission for final certification.

Respectfully submitted,



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Kelly Broughton
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- Attachments: 1. Coastal Commission Certification order
2. Tracking Table (amendments since September 2005 Council approval)