

**COMMUNITY PLANNERS COMMITTEE  
RESOLUTION NO. 05-2002**

WHEREAS, members of the Community Planners Committee (CPC) and the public have expressed concern that the new Land Development Code (LDC) provides less protection for canyons, steep hillsides, and designated open space and fewer disincentives to violate the code than prior regulations.

WHEREAS, the Community Planners Committee of the City of San Diego held a public meetings on January 22, 2002 and April 23, 2002 and discussed the issue of grading in canyons, on steep hillsides, and in open space and established the following facts:

1. During the initial stage of the community planning process in the late 1960s, the citizens of San Diego and the City Council recognized that the urban canyons and steep hillsides were part of the urban fabric and were worthy of preservation even though in some cases they may not be environmentally pristine. In the early 1970s the City sought to preserve canyons and steep hillsides designated as open space in adopted community plans. The preservation efforts included acquisition, rezonings, and the adoption and application of the Land Conservation (LC) Overlay Zone. The LC Overlay Zone was subsequently replaced by the Hillside Review (HR) Overlay Zone. The now rescinded HR Overlay Zone required that proposed development be in conformance with the Open Space Element of the General Plan and the Open Space and Sensitive Land Element of the community plan. The current Land Development Code does not provide protection for areas designated as open space in an adopted community plan. Contrary to assumptions of staff, not all designated open space is protected by the Environmentally Sensitive Lands regulations addressing "steep hillsides" or "sensitive biological resources."

2. The current Land Development Code offers some protection to steep hillsides, but by definition limits the protection to only those "lands that have a slope with a natural (emphasis added) gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural (emphasis added) gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet." Many of our urban canyons that are designated as open space have experienced disturbance over the years, particularly along the rim. The Land Development Code as adopted provides no protection for these areas. The prior HR Overlay regulations clearly allowed the inclusion of lands that did not have a gradient of 25 percent. More specifically, the HR Overlay Zone allowed land within 300 feet adjacent to the natural slopes, either above or below, to be included in the HR Overlay Zone.

In conjunction with the adoption of the current Land Development Code, §62.0405 (Site

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Restoration) was rescinded. This section required the restoration of grading work undertaken without a permit prior to any further development on the site. This section, if reinstated and enforced, could be a major disincentive to illegal grading.

NOW, THEREFORE BE IT RESOLVED BY THE CPC, that the following amendments to the Land Development Code should be adopted to protect open space designated in adopted community plans.

A.Revise §126.0502 as follows to require a Site Development Permit for designated open space.

**§ 126.0502 When a Site Development Permit Is Required**

- (e) A Site Development Permit decided in accordance with Process Five is required for the following types of development.

ADD:

3.In any area designated as open space in an adopted community plan, any grading if a Grading Permit is required pursuant to §129.0602 or development if a Building Permit is required pursuant to § 129.0202 and is not exempt from a Building Permit pursuant to § 129.0203.

A.Revise §126.0504 as follows to provide supplemental findings for open space.

**§ 126.0504 Findings for Site Development Permit Approval**

- (b) Supplemental Findings—Environmentally Sensitive Lands

ADD:

4.The proposed development is in conformance with the Open Space Element of the General Plan and the Open Space and Sensitive Land Element of the community plan.

A.Revise Chapter 13, Article 2, Division 6 as follows to provide an Overlay Zone for all Environmentally Sensitive Lands including designated open space.

**§ 132.0601 Purpose of the Sensitive Coastal Environmentally Sensitive Lands (ESL) Overlay Zone**

The purpose of the ~~Sensitive Coastal~~ ESL Overlay Zone is to help protect and enhance the quality of sensitive biological resources, steep hillsides, sensitive coastal bluffs, coastal beaches, 100-year floodplains, and wetlands areas designated as open space in an adopted community plan.

**§ 132.0602 Where the ~~Sensitive Coastal~~ ESL Zone Applies**

a. This overlay zone applies to all sensitive biological resources, steep hillsides, sensitive coastal bluffs, coastal beaches, 100-year floodplains and wetlands areas designated as open space in an adopted community plan located within the boundaries designated on Map 713 \_\_\_, filed in the office of the City Clerk as document No. 00-17062 \_\_-\_\_\_. These areas are shown generally on Diagram 132-06A \_\_-\_\_.

b. ~~Where any portion of a parcel is located within the Sensitive Coastal Overlay Zone, this division shall apply to all portions of the parcel that are in the Coastal Overlay Zone as described in Chapter 13, Article 2, Division 4. This division shall not apply to any property or portion thereof that is removed from the Coastal Overlay Zone through proper legislative authority.~~

(~~e~~) Table 132-06A shows the sections that contain the supplemental regulations and the type of permit required by this division, if any, for specific types of *development* proposals in this overlay zone.

**Table 132-06A  
ESL Overlay Zone Applicability**

<b>Type of <i>Development</i> Proposal</b>	<b>Supplemental Development Regulations</b>	<b>Required Permit Type/ Decision Process</b>
Any development on property wholly or partially within this overlay zone.	See the environmentally sensitive lands regulations in section 143.0110	See Section 143.0110

**§ 132.0603**     **Application of the ESL Overlay Zone to Steep Hillides**

The ESL Overlay Zone shall be applied to property having slopes with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet. If it is determined that land located adjacent to the slopes, either above or below, must be included in the ESL Overlay Zone in order to promote the purpose of protecting and enhancing designated open space, such rim or bottom land may be included in ESL Overlay Zone provided that such area is within 300 feet of the nearest point of the slope to which the ESL Overlay applies.

A.Add to §142.0103 as follows to require a Site Development Permit for grading in a designated open space area.

**§ 142.0103**     **When a Permit Is Required for Grading**

ADD:

(c)     A Site Development Permit is required for any grading (including clearing or grubbing) within any area designated as open space in an adopted community plan.

NOW, THEREFORE BE IT ALSO RESOLVED BY THE CPC, that the following amendments to the Land Development Code should be adopted to provide adequate disincentives to violate the Code in areas subject to ESL and designated open space.

E.Revise §121.0312 as follows to require the restoration of grading undertaken without a permit within any area designated as open space in an adopted community plan.

**§ 121.0312**     **Restoration and Mitigation as a Remedy**

a.In addition to other enforcement remedies provided for in Municipal Code Chapter 1, the City Manager may order the reasonable restoration of a structure, premises, and any adjacent and affected site to its lawful condition or may require reasonable mitigation. These requirements may be attached as conditions to applicable permits or enforcement actions and orders as appropriate.

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b. The City Manager shall order the restoration of grading undertaken without a permit within any area designated as open space in an adopted community plan. The restoration shall be conducted in accordance with §142.0150. No further permits for the subject property shall be processed until the restoration has been completed.

(bc) Any restoration or mitigation imposed by the City Manager or Building Official shall be at the sole cost of the responsible person.

(cd) Mitigation may be appropriate where the City Manager determines that restoration of the premises or adjacent site to its pre-existing condition is not feasible or that irreparable damage has been done to the premises, ~~an environmentally sensitive land~~, or a historical structure.

(de) Mitigation may include the purchase or exchange of like-kind real property or structures of a similar or greater quality and value.

(ef) The City Manager or Building Official may require a combination of restoration and mitigation of the structure or premises if warranted by the circumstances.

(fg) The City Manager or Building Official may promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.

- 7) Add the following section to require restoration of grading undertaken in any area designated as open space in an adopted community plan without a permit prior to any further development on the site.

**§ 142.0150 Site Restoration**

Restoration of grading undertaken without a permit within any area designated as open space in an adopted community plan is required and shall occur prior to any further development on the site. Restoration requires:

a. Submittal to and acceptance by the Permit Issuing Authority of a restoration plan which may include necessary monitoring by the City or a City designated party, both at the cost

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of the violator:

b. Obtaining a grading permit and receiving inspection approval from the Permit Issuing Authority; and

(c) Compliance with any other reasonable requirements of the Permit.

**(Note: Proposed §142.0150 is similar to §62.0405 that was rescinded when the Land Development Code was adopted by Ordinance Number O-18451 on December 9, 1997.)**

NOW, THEREFORE BE IT ALSO RESOLVED BY THE CPC, that CPC requests that the Council Committee on Land Use and Housing (LU&H) approves the proposed revisions and refers the proposed revisions to the Planning Commission and City Council for inclusion in the next Quarterly Update to the Land Development Code.

This resolution was passed and adopted by the Community Planners Committee by the following vote on April 23, 2002:

Yeas: 17

Nays: 6

Abstentions: 1

David A. Potter, AICP  
Chair