

## CALIFORNIA COASTAL COMMISSION

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July 23, 2008

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**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
ELLEN LIRLEY, COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR  
AMENDMENT NO. 2-08 (Brush Management Regulations) for Commission  
Meeting of August 6-8, 2008**

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## EXECUTIVE SUMMARY

The subject LCP implementation plan amendment was resubmitted and filed as complete on June 13, 2008. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is August 12, 2008. This LCP amendment consists of one item only, the subject resubmittal of the City's Brush Management Regulations.

Originally, these proposed ordinance revisions came before the Coastal Commission on January 11, 2007, as City of San Diego LCP Amendment No. 3-05B. After working closely with the City for a year on a staff-to-staff level, there were still several unresolved issues between City and Commission staff. However, pursuant to LCP processing deadlines in the Coastal Act and California Code of Regulations, the item had to be heard no later than January 2007. Staff was recommending denial as submitted and approval with suggested modifications that added specific regulations applicable only in the coastal zone. The City opposed this recommendation as a whole, partly because they want one ordinance for the entire City, and urged approval of the regulations as submitted. After public hearing and Commission deliberation, the City ultimately withdrew that amendment request and immediately resubmitted a new LCP amendment application.

In February 2007, the Coastal Commission certified, with suggested modifications, the resubmitted City of San Diego Brush Management Regulations. The small amount of time between hearings was adequate to resolve several areas of disagreement, although some remained. The largest issue resolved was that of brush management for existing structures on the urban/wildland interface (i.e., adjacent to ESHA in many cases). In its certification, the Commission acknowledged that creating defensible space around existing development would often result in some impacts on Environmentally Sensitive Habitat Area (ESHA). Likewise, brush management activities associated with new infill

development would likely impact ESHA, but probably not significantly more than would already be impacted by surrounding existing development. However, the Commission was concerned that impacts on ESHA not occur in association with new subdivisions, where appropriate design and siting, and the appropriate number of lots, could avoid such impacts.

Due to various delays and time constraints, the Commission, therefore a one-year time extension for consideration of the suggested modifications. The City Council then acted on the suggested modifications on January 15, 2008. The matter was submitted to the Commission's San Diego office for Executive Director certification on January 16, 2008. However, City staff had made a number of changes to the regulations as certified by the Coastal Commission and it was determined that the City's action did not conform with the Commission's action. The materials, therefore, have been reviewed as a resubmittal of the regulations by the City.

The proposed regulations evolved over the past several years in response to extensive wildfires during drought years, and especially the San Diego County firestorms of late 2003. Severe firestorms returned in 2007, which forced the evacuation of nearly half a million people, and demonstrated again how critical it is to adopt better, stronger brush management regulations. Specific brush management requirements were added to the LCP for the first time in 1999, when the Commission certified the Land Development Code (LDC) as the City's updated Implementation Program. These new regulations were a vast improvement over the previous situation of individual property owners doing whatever seemed appropriate to them to insure the fire safety of their properties, which frequently resulted in wholesale clearance of sites. However, the devastation of the 2003 fire storms convinced the City's Fire Department that even stronger regulations than what was then in the LDC were needed to adequately safeguard the City. Thus, the City is proposing revisions to its brush management regulations in an effort to provide greater fire safety for both existing and new development throughout the City.

In the certified Landscape Regulations, brush management is currently required for all developed properties adjacent to native and naturalized vegetation. The newly proposed regulations do not modify the types of land where brush management is required, but do clarify these requirements, and modify how and where fuel modification occurs. The primary proposed change to the regulations will be to expand the total required brush management area to 100 feet in width, including 35 feet of Zone One, the area closest to habitable structures, and 65 feet of Zone Two, the area between Zone One and undisturbed lands. Current regulations require a variety of brush management zone widths (ranging between 20-35 ft. for Zone One and 20-50 ft. for Zone Two), depending on the location of the property relative to Interstate 805 and El Camino Real, the perceived level of fire hazard, and the topography and vegetative composition of the subject site and adjacent lands. The proposed changes will result in a consistent width for Zones One and Two regardless of property location or the other cited factors.

A second significant proposed change in the brush management regulations is in the method of brush management, particularly in Zone Two. Currently, the ordinance requires complete removal of half of all vegetation within brush management Zone Two;

the proposed amendment would change the fuel reduction methods for Zone Two to consist of reducing the height of half the existing vegetation over 24 inches in height to 6 inches in height, and thinning and pruning the remaining vegetation. Although the area affected will be greater due to the increased width of Zone Two, the practice of wholesale clearing of vegetation will be eliminated. All root systems are to remain undisturbed under the proposed methodology, such that the potential for soil erosion is reduced, especially where Zone Two brush management occurs on steep slopes. Other proposed modifications include, but are not limited to, fencing requirements for use of goats in brush management; discussion of appropriate vegetation and irrigation in brush management zones; timing restrictions on brush management activities to protect biological resources; and clarification of exemptions from some City permits for various brush management activities. Specifically, the proposed amendments to the certified LCP will add to, or modify, provisions in the Landscape, Environmentally Sensitive Lands, and Electrically Charged and Sharp-Pointed Fence Regulations of the certified Land Development Code (LDC).

In its review of the certified Land Development Code, the Commission recognized the MHPA as lands that have been designated and set aside for purposes of protecting the habitat value within the remaining large expanses of undisturbed area in the City's coastal overlay zone. Although some resources rising to the level of ESHA may exist outside the MHPA within the large undeveloped areas of the City, the vast majority of ESHA of significance is contained within the MHPA. Most urban canyons are not included in the MHPA preserve lands, and would not meet the Coastal Act definition of ESHA, due to their loss of function as either viable habitat or active wildlife corridors. Although these canyons may include formal open space and some sensitive biological resources as defined in the City's LDC, implementing Zone Two brush management within those isolated, urban canyons would not constitute a significant disruption of habitat values nor impact ESHA. This finding is consistent with the Commission's action approving the LDC in 1998. For this reason, most brush management activities associated with existing structures in the heavily urbanized portion of San Diego would not require a coastal development permit because they would not result in removal of major vegetation.

There is a recognized need for the City to effectively address fire safety for its residents, particularly those located along the urban/wildland interface. Implementation of an effective brush management program can avoid the need for more extensive vegetation removal in an emergency situation and the potential devastation of a wildfire. The existing regulations do not meet the current requirements of the City's Fire Chief, particularly with respect to brush management zone width. The proposed amendments would bring the brush management requirements into conformity with the Fire Chief's direction.

However, as proposed, the modifications to the Landscape, Electrically-Charged Fence and Environmentally Sensitive Lands Regulations would result in increased adverse impacts to sensitive species and public open space resources by, in many cases, expanding Zone Two brush management into areas consisting of native and naturalized vegetation and the City's Multiple Habitat Planning Area (MHPA) which is a designated

open space habitat preserve. Particularly with respect to existing habitable structures and redevelopment of existing legal lots, implementation of the proposed regulations may require fuel modification off-site and/or within environmentally sensitive habitat area (ESHA) protected by the Coastal Act.

However, based on the information presented to the Commission at its February, 2007 hearing, the impacts to ESHA resulting from proposed brush management for those structures adjacent to open space/native habitat areas were found acceptable. With respect to existing structures, a clear public safety hazard is present for existing structures adjacent to undeveloped areas of native and naturalized vegetation. Preventive brush management is one of several ways to help maintain and safeguard existing structures from the threats of wildfire and other types of disasters. In applying the proposed regulations, it is more likely the brush management will be done in a sensitive manner that minimizes adverse impacts on biological resources, and that the reduced fuel loads will reduce the threat of fire even during drought years.

Another issue addressed in 2007 was whether to allow goats to perform brush management activities in the coastal overlay zone. The City wants to allow this since it appears far less costly than hiring crews to perform brush management. As such, it is more likely that homeowners will actually do the brush management and reduce the frequency of fire threats. The City had existing regulations to govern the use of goats for this purpose, but, until this current resubmittal, those regulations were not part of the certified LCP.

Concerns have been, and continue to be, expressed by the Commission's staff ecologist, representatives of wildlife agencies (California Department of Fish and Game and U. S. Fish and Wildlife Service), and many EIR commenters over the use of goats with respect to indiscriminate browsing, the increased nutrient levels in runoff resulting from animal droppings, the increased spread of invasives, and the potential need for restoration after goats have browsed an area. Suggested modifications were certified in 2007 that allow goat grazing subject to the City's regulations for a five-year period. The use of goats will be monitored and evaluated during that period. If at the end of five years, it's determined that the use of goats is causing adverse effects to ESHA, then their use will no longer be allowed. These provisions are now part of the resubmittal.

During the February 2007 Commission review, the major remaining disagreement between Commission and City staffs was with how the proposed regulations should be applied to new development. At that time, the City maintained that adequate regulations exist in other City ordinances governing new development to address Commission staff concerns; Commission staff maintained that the brush management regulations themselves should include a prohibition on impacts to ESHA as a result of new development, particularly in association with any new subdivision of land. The Commission staff's biggest concern with respect to those proposed regulations is that existing regulations currently allow impacts on ESHA for Zone Two brush management associated with new development, and the regulations proposed at that time failed to address those impacts.

The City's certified implementing ordinances, and certified guidelines interpreting those ordinances, provide that Zone Two brush management is "impact neutral" (i.e., having neither a positive nor negative effect on biological resources). Commission staff acknowledges that these ordinances were certified by the Coastal Commission in 1999. However, since that time, experience has demonstrated that even minimal reductions in vegetative cover can have adverse impacts on habitat value and function. More recent Commission actions have identified that Zone Two brush management is a negative impact on ESHA, and represents a significant disruption of habitat values. Those recent actions have either prohibited said impacts or required mitigation in instances where out-and-out prohibition was not possible.

These growing concerns of the Coastal Commission are mirrored by the wildlife agencies, which had initially accepted the "impact neutral" language for Zone Two in the City of San Diego MSCP which was adopted in the mid-1990's. The original MSCP included a 200-foot buffer area along the urban/wildland interface to offset indirect effects from adjacent developed areas. One identified edge effect was Zone Two brush management, which, within the Coastal Overlay Zone, did not exceed twenty (20) feet in width. That width is now expanded to sixty-five (65) feet by the proposed regulations. Based on practical experience gained since the MSCP was adopted by the City and wildlife agencies, those agencies now recognize that there are indeed adverse impacts from even 20 feet of Zone Two brush management, let alone the proposed 65 feet. The agencies have thus required the City to acquire additional MHPA lands to offset the proposed increased indirect impacts. The City has addressed these concerns by passing an ordinance increasing its land acquisition goal for the MHPA by 715 acres, the calculated amount of additional area to be occupied and impacted by the expanded brush management zones required to protect existing development.

The wildlife agencies do not consider the additional acquisition goal to be mitigation for specific impacts, but as a means to offset the additional loss of habitat function in the MHPA due to the expanded widths of the brush management zones in association with existing development only. They did not believe the 715 acres (113.6 in the Coastal Overlay Zone) addressed the potential effects of new development, and, like the Coastal Commission, they found that the concept that Zone Two brush management is "impact neutral" was no longer defensible. The wildlife agencies indicated they would require mitigation at MSCP ratios for impacts resulting from new development. Commission staff recommended in 2007 that any potential ESHA impacts associated with brush management (either Zone One or Zone Two) be prohibited in association with new subdivisions, except that encroachments could occur to attain the 25% development area allowed by the City on all new project sites containing ESHA.

The City's proposed amendments to its Brush Management Regulations are very similar to the regulations adopted by the Coastal Commission in February 2007. The City originally submitted the attached ordinance for final certification through the Executive Director's certification review procedures. However, the City did not adopt the Commission's suggested modifications from its February 2007 action verbatim, or with only editorial corrections, such as spelling, grammar and punctuation. Rather, the City rearranged the ordinance in several places, removed portions of the ordinance as certified

by the Commission, and added new or different text in places. The net result of these revisions is that it has been determined that the City's changes do not allow the Commission to concur on this LCP amendment through the Executive Director certification review process.

However, the City's changes have maintained the Commission's intent, in that the regulations the Commission wanted included in the LCP are, in fact, included. Some language has been moved into places where it better fits, and some terms have been changed to be consistent with the language used in the rest of the LDC. The net result is a new ordinance that incorporates the Commission's modifications in somewhat different ways. The changes made will be discussed in detail in the subsequent findings.

Therefore, staff recommends approval of the LCP amendment as resubmitted. No suggested modifications are recommended, since impacts to ESHA are proposed to be prohibited in association with new subdivisions, except as needed to provide a 25% developable area that includes both Zone One and Zone Two brush management areas. The resubmitted ordinance also requires alternative measures, including building materials and design, be utilized to minimize the extent of vegetation removal and habitat disruption in the required 100 foot brush management zones and establishes regulations to accommodate the use of goats for brush management for a five-year trial period. Also, since ESHA is not currently a defined term in the City of San Diego certified LCP, a definition has been added for purposes of implementation of the brush management regulations.

To aid in understanding the proposed regulation language, acronyms used throughout the staff report include MHPA, which is the Multiple Habitat Planning Area; MSCP, which is the Multiple Species Conservation Program; ESL, which means Environmentally Sensitive Lands; and LDC, which stands for Land Development Code.

The appropriate resolution and motion begins on Page 8. The findings for approval of the Implementation Plan Amendment as submitted also begin on Page 8.

## **BACKGROUND**

The City's first Implementation Program (IP) was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) and a few PDOs; this replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. The City has been reviewing this plan on a quarterly basis, and has made a number of adjustments to facilitate implementation; most of these required Commission review and certification through the LCP amendment process. Additional adjustments will continue to be made in the future. The City's IP includes portions of Chapters 11 through 14 (identified as the Land Development Code or LDC) of the municipal code and associated guidelines.

**ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment No. 2-08 may be obtained from Ellen Lirley, Coastal Planner, at (619) 767-2370.

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**PART I. OVERVIEW****A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part. The earliest LUP approval occurred in May 1979, with others occurring in 1988, in concert with the implementation plan. The final segment, Mission Bay Park, was certified in November 1996.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC has been in effect within the City's coastal zone since January 1, 2000.

**B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

**C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the original amendment request, and the suggested modifications, including the City's changes, were approved by the City Council at a public hearing. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTION**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION:**     *I move that the Commission reject the Implementation Program Amendment No.2-08 for the City of San Diego's certified LCP, as submitted.*

**STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego's certified LCP as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified land use plans, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.



**PART III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO  
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

In general, the proposed LCP amendment is intended to increase the defensible space between existing/future structures and areas of native or naturalized vegetation to more effectively combat wildfires. Currently, the required brush management zones (Zones One and Two combined) range from 20 to 85 feet in width depending on the location and topography of the area; the proposed amendments would increase this total to 100 feet in all cases and make the requirement consistent citywide, as shown in the following table:

Criteria	Property	Location
	<u>Zone Widths</u> West of Interstate 805 and El Camino Real	East of Interstate 805 and El Camino Real
<del>Minimum Zone One Width (See Section 142.0412[d])</del>	20 35 ft.	30 ft.
<del>Additional Zone One Width (See Section 142.0412[e]) Required when development is adjacent to slopes greater than 4:1 gradient that are 50 feet or greater in vertical height; or adjacent to vegetation greater than 24 inches in height; or adjacent to the MHPA</del>	5 ft.	5 ft.
<del>Zone One Width Within the Coastal Overlay Zone for subdivisions containing steep hillsides with sensitive biological resources</del>	30 ft. Min	
<del>Minimum Zone Two Width (See Section 142.0412[f])</del>	20 65 ft.	40 ft.
<del>Additional Zone Two Width Required when Zone Two is on slopes greater than 4:1 gradient that are 50 feet or greater in vertical height; or the vegetation in Zone Two is greater than 48 inches in height. This additional width is not required for Zone Two located within the MHPA</del>	10 ft.	10 ft.

The specific LCP amendments proposed address existing language within the Fences, Landscape, and Environmentally Sensitive Lands (ESL) Regulations. With the exception of Table 142-04A, the proposed amendments to the Landscape Regulations all occur within Section 142.0412 of the Land Development Code (LDC). They identify the new widths for the brush management zones (35 feet for Zone One and 65 feet for Zone Two), what types of vegetation are permitted within the zones, how the zones are to be managed, and who is responsible for brush management implementation. Within that section, the term “flammable” vegetation is proposed to be replaced with the term “native or naturalized” vegetation and the term “cut and cleared” is proposed to be replaced with the term “reduced in height.”

Currently, Zone One is required to be permanently irrigated and include primarily low-growing, low-fuel, fire-resistive plants and hardscape improvements. No habitable structures or other combustible construction are permitted within Zone One, and trees must be located away from structures a minimum of ten feet measured from the drip line. These Zone One requirements are not modified in the proposed amendments. Current Zone Two fuel modification consists of cutting and clearing 50% of all vegetation over 18 inches in height to 6 inches in height. As proposed, fuel modification within Zone Two would consist of reducing 50% of all vegetation over 24 inches in height to 6 inches in height, and pruning the remaining 50% of the vegetation to reduce the fuel load and remove dead and dying plant material. Proposed changes further require that non-native vegetation be reduced and pruned before native vegetation, to help offset impacts to habitat function.

Unfortunately, due to a lack of funding and staff, the current requirements have only been enforced when complaints are received, such that complete implementation of the current regulations has not occurred, and there is thus no way to gauge their effectiveness. Based on the experiences of recent fires, however, the Fire Marshal does not consider the current regulations to be adequate, even if they are fully enforced. Thus, as proposed, the combined Zones One and Two for all properties on the urban/wildland interface and adjacent to native and naturalized vegetation would expand to a total of 100 feet. Zone One requirements would be the same as before, except that the area of Zone One would be increased from 30 feet (in the coastal overlay zone) to 35 feet city-wide. Zone Two would be increased from as little as 20 feet to 65 feet, with this width applied uniformly throughout the City.

The City and Coastal Commission recognize that, in many instances, these new regulations will require fuel modification beyond the property boundaries of the habitable structure being protected. While this may occur on other private property, it is more likely that the adjacent lands will be public open space and parklands. These adjacent properties often contain environmentally sensitive lands, and, in many cases, are within the Multiple Habitat Planning Area (MHPA). The only areas where this is expected to be a significant concern is along the outer perimeter of existing development within the City limits and potentially within the larger canyon and open space areas within the urbanized portions of the City. These are the areas that are designated as MHPA lands where the undisturbed natural vegetation would rise to the level of Environmentally Sensitive Habitat Area (ESHA) as defined in the Coastal Act. Other parts of the developed City do not contain ESHA, as areas with native vegetation are small, isolated, surrounded by existing development, and highly disturbed by human activities. With respect to protecting existing urban development, the City estimates that impacts of the proposed amendments would affect approximately 715 additional acres of MHPA lands, with approximately 113.6 acres of that acreage within the coastal overlay zone.

This total was calculated by multiplying the linear extent of the urban/wildland interface by the 65 feet of required Zone Two brush management, on the assumption that all of Zone Two would occur off-site of the properties being protected. Thus, the 113.6 coastal overlay zone acres includes the anticipated impacts associated with implementation of the

brush management regulations for existing development, future development of currently-vacant lots that represent urban infill, and the potential impacts from redevelopment of existing, improved legal lots within the established urban areas. The size of the vast majority of existing legal lots would not allow the full 100 feet of brush management area to occur within the legal lot, but the City's calculation of potential impacts assumes that the entire Zone One area will be contained within the existing legal lot. Thus, there will be approximately 113.6 acres of additional impacts to MHPA lands within the coastal overlay zone when such brush management activity occurs. This figure does not include potential impacts from development of large tracts of vacant land along the City's perimeter. Although the City maintains that all such lands are already entitled through approved subdivision maps, they have offered no substantiation for this assertion.

Separate from the proposed amendments to the Landscape and Environmentally Sensitive Lands Regulations, the City passed a resolution raising its goal of MHPA land acquisition by an additional 715 acres in an attempt to address the expected losses associated with protecting existing structures, as a response to concerns raised by the wildlife agencies (CA Department of Fish and Game and U.S. Fish and Wildlife Service). The additional acreage would be added to the MHPA over time, with specific vegetative communities replaced in proportion to that lost, and with coastal zone losses replaced in kind within the coastal zone. However, specific locations of the replacement habitat areas are not currently known.

Where existing structures and existing legal lots are concerned, because the total brush managed area would be widened, the new Landscape Regulations would increase off-site vegetation thinning and pruning in many cases, including in areas of environmentally sensitive lands and public open space that may contain vegetative communities that would rise to the level of ESHA pursuant to the Coastal Act. To protect the California gnatcatcher, the proposed amendments include a prohibition on brush management activities within coastal sage scrub, maritime succulent scrub and coastal sage chaparral habitats between March 1<sup>st</sup> and August 15<sup>th</sup> (the species' breeding season), unless such activities can be found consistent with the Multiple Species Conservation Plan (MSCP) Subarea Plan. In addition, the proposed amendments would allow case-by-case modifications to the fire regulations by the Fire Chief if the required measures are found to be inadequate in specific circumstances. The only proposed amendment to the ESL Regulations, Section 143.0110, states that brush management activities in wetlands are not exempt from discretionary permit review, including a coastal development permit.

Through earlier Council actions, the City had also approved modifications to a number of other municipal code provisions, particularly addressing the use of goats for brush management. Previously, the only proposed amendment to the LCP that addressed the use of goats was to Section 142.0360, addressing electrically charged fences. The amendment would allow use of such fences on a temporary basis in non-agricultural zones, in association with use of goats for brush management. However, a large section of brush management text that was previously only in Chapter 4 of the Municipal Code, which is not part of the certified LCP, has been added as Section 142.0412(m) in the current resubmittal.

Moreover, alternatives identified in the EIR included a greater emphasis on use of special building design and materials to reduce the need for expanded brush management zones, better enforcement of the regulations already in place, and greater public education to minimize misinterpretation of the regulations. Special design standards are in place for properties adjacent to native vegetation, such as not permitting combustible structures within Zone One, but these are considered as additional measures to the expanded brush management zones, not as a possible replacement for such. Depending on the condition of the existing habitat, however, the Fire Chief has reduced the requirements in specific cases.

### **B. APPLICABLE LAND USE PLAN POLICIES**

Within the City of San Diego Local Coastal Program, all the certified Land Use Plan segments would be affected by the proposed brush management regulations except Pacific Beach, Mission Beach, Ocean Beach, Centre City, and Barrio Logan. The communities that contain the most undeveloped property, or large private ownerships that could be subject to future subdivision, at the urban/wildland interface include the communities of the North City LCP segment, such as Mira Mesa, Carmel Valley, Pacific Highlands, and Del Mar Mesa, as well as the communities of La Jolla, Otay Mesa, and the Tia Juana River Valley. However, not all portions of these communities are within the coastal overlay zone, with the areas east of the coastal overlay zone having the most undeveloped land.

The following are examples of various certified Land Use Plan (LUP) policies addressing new development and sensitive resources that could be affected by the proposed regulations:

#### Carmel Valley Neighborhood 8 Precise Plan LCP Land Use Plan (a portion of the North City LUP)

Within the introduction to the LUP, under **KEY DEVELOPMENT FACTORS**, Page 6 of the LUP states:

Brush Management Zone 2 activities are not permitted within environmentally sensitive areas. Zone 2 areas (maximum 65 feet in width and refers to the area of native or naturalized plant material that is thinned to reduce fuel load) may extend beyond the developable area when subject to an approved site specific brush management plan acceptable to the fire department and when it avoids significant disruption of habitat values, is the minimum necessary to meet fuel load reduction requirements and complies with the brush management provisions of the City's Multiple Species Conservation Program (MSCP). However, it is desirable to preserve or restore the integrity of the relatively small pockets of natural habitat that are interspersed with disturbed or developed areas within the designated open space system for this neighborhood. Projects shall incorporate creative site and/or structural design features that would avoid Brush Management Zone 2 extending into undisturbed natural habitat areas. Measures such as replacing cleared or

thinned native vegetation with fire-resistive native vegetation that does not require fuel modification and is compatible with the existing habitat, and maintenance of at least 50% of the existing ground cover of native vegetation shall be implemented, when possible, to avoid significant disruption.

On Page 48, within the Design Element, the ninth bullet under **B. DESIGN OBJECTIVES** states:

Preserve or enhance sensitive environmental features such as riparian areas, sandstone bluffs, and significant vegetation groupings.

On Page 49, within the Design Element, the third bullet under **C. DESIGN CONCEPT** states:

Hillsides Functions;  
Provide natural open space  
As visual relief  
As biological habitat

Mira Mesa Community Plan LCP Land Use Plan (a portion of the North City LUP)

The **Sensitive Resources and Open Space System** component of the certified LUP includes many policies addressing protection of the entire Mira Mesa open space system, and additional policies specifically addressing the major canyons, including those quoted below:

On Page 31, Policy 1.a., under **Open Space Preservation**, states:

Sensitive resource areas of community-wide and regional significance shall be preserved as open space.

On Page 31, Policy 4.c., under **Resource Management**, states:

No encroachment shall be permitted into wetlands, including vernal pools. Encroachment into native grasslands, Coastal Sage Scrub, and Maritime Chaparral shall be consistent with the Resource Protection Ordinance. Purchase, creation, or enhancement of replacement habitat area shall be required at ratios determined by the Resource Protection Ordinance or State and Federal agencies, as appropriate. In areas of native vegetation that are connected to an open space system, the City shall require that as much native vegetation as possible is preserved as open space. *(The Resource Protection Ordinance [RPO] was part of the City's old municipal code; these resources are now protected under the Environmentally Sensitive Lands [ESL] regulations.)*

On Page 32, Policy 4.e., under **Resource Management**, states:

Sensitive habitat area that is degraded or disturbed by development activity or other human impacts (such as non-permitted grading, clearing or grubbing activity or four-wheel drive activity) shall be restored or enhanced with the appropriate native plant community. This is critically important when the disturbed area is adjacent to other biologically sensitive habitats. Manufactured slopes and graded areas adjacent to sensitive habitat shall be re-vegetated with the appropriate native plant community, as much as is feasible considering the City's brush management regulations.

On Page 33, Policy 4.i., under **Resource Management**, states:

Vernal Pools: The remaining vernal pool habitat in the community shall be preserved and shall be protected from vehicular or other human-caused damage, encroachment in their watershed areas, and urban runoff.

On Page 34, Proposal 1., **Open Space Preservation**, states in part:

Preserve the flood plain and adjacent slopes of the five major canyon systems that traverse the community – Los Penasquitos Canyon, Lopez Canyon, Carroll Canyon, Rattlesnake Canyon and Soledad Canyon, and the remaining vernal pool sites ... in a natural state as open space.

On Page 80, within the **Residential Land Use** component, the following site-specific development criteria applies to both the Crescent Heights and Sunset Pointe properties:

6. Brush management/fuel modification requirements shall be consistent with the following specific standards:

- a. Structures shall be located such that Zone One brush management (minimum width of 35 feet) shall be entirely within the area designated for development and outside open space and environmentally sensitive lands. The width of Zone One should be increased when possible to reduce the width of Zone Two and impacts to native vegetation.
- b. Zone Two brush management (selective clearing to maximum width of 65 feet) may be allowed in open space when subject to an approved site-specific brush management plan acceptable to the fire department that avoids significant disruption of habitat values to the maximum extent possible. However, Zone Two brush management within open space areas containing coastal sage scrub habitat, vernal pools and/or wetland buffers shall not be permitted. Measures such as replacing cleared or thinned native vegetation with fire-resistant native vegetation that does not require fuel modification and is compatible with the existing habitat, and maintenance of at least 50% of the existing ground cover of native

vegetation shall be implemented, when possible, to avoid significant disruption.

La Jolla Community Plan and LCP Land Use Plan

On Page 39, under **Natural Resources and Open Space System**, the last three **GOALS** state:

- Preserve all designated open space and habitat linkages within La Jolla such as the slopes of Mount Soledad and the sensitive ravines of Pottery Canyon.
- Protect the environmentally sensitive resources of La Jolla's open areas including its coastal bluffs, sensitive steep hillside slopes, canyons, native plant life and wildlife habitat linkages.
- Conserve the City of San Diego's Multi-Habitat Planning Area.

On Page 49, under **Natural Resources and Open Space System, POLICIES**, Item 1.a. states:

The City should ensure, to the fullest extent possible, that sensitive resources such as coastal sage scrub and mixed chaparral that are located in designated, as well as dedicated, open space areas and open space easements will not be removed or disturbed.

On Page 55, under **Natural Resources and Open Space System, PLAN RECOMMENDATIONS**, Item 1.d. states:

Implement the City of San Diego's MSCP Subarea Plan which ensures a system of viable habitat linkages between the existing open space areas to the canyons and hillsides throughout La Jolla's open space system.

On Page 64, under **Natural Resources and Open Space System, PLAN RECOMMENDATIONS**, Item 5.u. states:

For any development requiring a brush management plan, require the brush management plan used to control slope erosion to be performed on private property only, not on City-owned land, in accordance with the landscape regulations and standards.

These cited policies from the certified North City and La Jolla LCP Land Use Plans are intended as examples only. The City's other certified LCP land use plans contain similar language protecting natural resource areas from disturbance and preventing the disruption of habitat values. In general, these LUPs protect open space and native vegetation more comprehensively than do the MSCP provisions, which are restricted to certain geographic areas. The City's proposed ordinance language does not address replacement of MHPA

lands where habitat is adversely affected, nor does it require mitigation to be provided at the time that adverse impacts occur. However, the City has passed a separate resolution committing to replacement of MHPA lands adversely affected by brush management activities over time.

The proposed brush management regulations could result in significant additional impacts on public open space and MHPA lands, when addressing existing and urban infill development. In some cases, this could also be an impact on ESHA. However, the City does not intend to require discretionary permits for brush management activities associated with existing and urban infill development if done consistent with the proposed regulations, regardless of impacts, but does propose to incorporate additional lands into the MHPA over time to mitigate for increased impacts on existing lands. Encroachments into ESHA for brush management associated with new subdivisions are not permitted except as necessary to achieve a homeowner's right to develop 25% of a site.

In addition, the City proposes to allow the use of goats to perform the actual brush management. Although said use raises concerns about compliance with a number of proposed regulations, the City, in its current submittal, agrees to monitor the use of goats for a five-year trial period. None of the certified LUPs address any use of goats within the urbanized areas, although no LUPs prohibit such use. As stated above, the regulations adopted by the City to control the use of goats are now part of the LCP amendment resubmittal. Thus, as currently proposed, the brush management activities are consistent with, and adequate to carry out, the resource protection policies of the City's certified LUPs. Following are the descriptions of the specific ordinances being affected by these proposed regulations, a sampling of LUP policies, and more detailed findings comparing the current resubmittal with the prior submittal that was approved with suggested modifications.

### Landscape Regulations

a) Purpose and Intent of the Ordinance. The purpose of these regulations is to minimize the erosion of slopes and disturbed lands through revegetation; to conserve energy by the provision of shade trees over streets, sidewalks, parking areas, and other paving; to conserve water through low-water-using planting and irrigation design; to reduce the risk of fire through site design and the management of flammable vegetation; and to improve the appearance of the built environment by increasing the quality and quantity of landscaping visible from public rights-of-way, private streets, and adjacent properties, with the emphasis on landscaping as viewed from public rights-of-way.

b) Major Provisions of the Ordinance. The ordinance generally requires minimum amounts of landscaping based on various land uses. Among other things, the ordinance includes:

- A point system for private properties based on plant types and sizes
- Irrigation regulations
- Regulations for parking lot plantings



- Regulations for public right-of-way plantings
- Brush management regulations
- Water conservation regulations

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The proposed brush management regulations have the potential to affect sensitive biological resources in many communities of the City. By not requiring new development to be sited and designed to avoid brush management activities in ESHA, the prior submittals were inconsistent with many certified LUP provisions protecting said resources. The current resubmittal now requires appropriate siting and design to avoid ESHA impacts. This issue is evaluated in greater detail below.

#### Environmentally Sensitive Lands Regulations

a) Purpose and Intent of the Ordinance. The purpose of these regulations is to protect, preserve and, where damaged, restore the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development, including, but not limited to, coastal development in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to flooding in specific areas while minimizing the need for construction of flood control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

It is further intended for the Development Regulations for Environmentally Sensitive Lands and accompanying Biology, Steep Hillside, and Coastal Bluffs and Beaches Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act and the California Coastal Act. These standards will also serve to implement the Multiple Species Conservation Program by placing priority on the preservation of biological resources within the Multiple Habitat Planning Area, as identified in the City of San Diego Subarea Plan. The habitat based level of protection which will result through implementation of the Multiple Habitat Planning Area is intended to meet the mitigation obligations of the Covered Species addressed. In certain circumstances, this level of protection may satisfy mitigation obligations for other species not covered under the Multiple Species Conservation Program but determined to be sensitive pursuant to the CEQA review process. This determination will be addressed in the environmental documentation.

b) Major Provisions of the Ordinance. The ordinance generally requires the protection and preservation of environmentally sensitive lands, which include sensitive biological resources (both wetlands and upland vegetative communities), steep hillsides, coastal beaches, sensitive coastal bluffs and flood hazard areas. Among other things, the ordinance includes:

- Lists of allowed and prohibited uses in each of these types of lands
- Appropriate setbacks and siting of development
- Requirements for mitigation where impacts are allowed
- Identification of required permits for various developments
- References to brush management requirements
- References to the Land Development Manual, especially the Biology and Steep Slope Guidelines
- References to the MHPA preserve and the species covered by the MSCP.
- Provisions for deviations under specific circumstances

The Biology Guidelines address sensitive biological resources and classify vegetation communities into four tiers, with Tier III further subdivided into Parts A and B. The tiers are ranked in terms of sensitivity, based on rarity and ecological importance, with Tier I being most sensitive and Tier IV being least sensitive. Tier I (rare uplands) includes Southern Foredunes, Torrey Pines Forest, Coastal Bluff Scrub, Maritime Succulent Scrub, Maritime Chaparral, Native Grassland, and Oak Woodlands. Tier II (uncommon uplands) includes Coastal Sage Scrub (CSS) and CSS/Chaparral. Tier III A (common uplands) includes Mixed Chaparral and Chemise Chaparral, and Tier III B (also common uplands) consists of Non-native Grasslands. Finally, Tier IV (other uplands) includes Disturbed, Agriculture and Eucalyptus areas.

With respect to the MSCP covered species, these are part of an Incidental Take Authorization resulting from an agreement between the City of San Diego, the California Department of Fish and Game, and the U. S. Fish and Wildlife Service. There are a total of 85 covered species, with 46 plant species and 39 animal species. The covered plant species include 2 tree species, 3 types of grasses, and the remainder a combination of small plants and scrubs. The covered animal species include 3 mammals, 3 amphibians, 2 reptiles, 1 insect and 28 species of birds. In addition, the Biology Guidelines identify 14 narrow endemic plant species. These are not covered species in the MSCP, but are sensitive biological resources to be avoided in the MHPA and protected elsewhere.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The only amendment proposed to this ordinance is identifying that brush management in wetlands is not exempt from site or neighborhood discretionary permit review. Thus, as proposed, it is clear any brush management activities to be performed in wetlands would be subject to discretionary action at the local level. The City is not proposing any other changes to the ESL regulations or the Biology Guidelines at this time.

### Fence Regulations

a) Purpose and Intent of the Ordinance. The purpose of these regulations is to maintain adequate visibility on private property and in public rights-of-way, to maintain the openness of front and street side yards, to protect the light and air to abutting properties, and to provide adequate screening by regulating the height, location, and design of fences and retaining walls.

b) Major Provisions of the Ordinance.

- Maximum heights for fences
- Exceptions to fence regulations
- Retaining wall regulations
- Building materials and maintenance regulations
- A prohibition on electric fences outside agricultural zones

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The only modification proposed to the certified fence regulations is to accommodate temporary electric fences for the control of goats being used for brush management in non-agricultural zones. A major problem with the current brush management requirements is that the City lacks the means (staff/funding) to enforce the regulations, such that brush management often only occurs when a specific complaint is lodged. Goats are viewed by the City as a less-expensive method of reducing vegetation than the use of manual labor, and the City thus hopes that allowing the use of goats might provide a financial incentive for property owners to proactively perform fuel modification. The City has drafted regulations governing the use of goats, specifying how many can be used per acre, and requiring 24-hour supervision, use of portable electric fencing to confine the goats to one area at a time, rotation of goats throughout a site to prevent overgrazing, and other regulations. However, in order to implement the use of temporary fencing for goat activity, the fence ordinance itself also requires amending. Therefore, the Commission finds this ordinance, as it has been accepted by the City, is adequate to carry out the sensitive resource protection provisions of the certified LUPs.

The City's proposed brush management revisions will extend the width of the required brush management zones. In many cases, especially when applied to developed properties, these changes will increase brush management encroachments into adjacent environmentally sensitive lands, sensitive biological resources, public open space and parklands. Even Zone Two brush management, which calls for significantly reducing the height of roughly half the vegetation within the zone, can adversely affect the habitat function of the remaining vegetation and the area as a whole. Thus, with respect to new subdivisions, performing Zone Two brush management in environmentally sensitive lands, sensitive biological resources, public open space and parklands is inconsistent with the resource protection policies of the City's certified LUPs, and is prohibited in the resubmitted ordinance.

Regarding the relationship of the certified LUP to the MSCP, several years ago, in response to significant fragmentation of habitat and accelerated loss of species, the state legislature adopted a law to address conservation in a regional manner, instead of property by property. The objectives of the southern California Natural Communities Conservation Program (NCCP) include identification and protection of habitat in sufficient amounts and distributions to enable long-term conservation of the coastal sage community and the California gnatcatcher, as well as many other sensitive habitat types and animal species. Generally, the purpose of the HCP and NCCP processes is to preserve natural habitat by identifying and implementing an interlinked natural

communities preserve system. Through these processes, the wildlife agencies are pursuing a long-range approach to habitat management and preserve creation over the more traditional mitigation approach to habitat impacts. Although plans have been prepared for areas as small as a single lot, the Multiple Species Conservation Program (MSCP) and its subarea plans are intended to function at the citywide or regional level, instead of focusing on impacts to individual properties. For the City of San Diego, the actual preserve lands are referred to as the Multiple Habitat Preserve Area (MHPA).

Implementation of the MSCP within the City without any other restrictions would allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it has been deemed to be most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed species. Although the goals of the NCCP processes include maintenance of species viability and potential long-term recovery, impacts to habitat occupied by listed species are still allowed. This approach differs from the more restrictive Coastal Act policies regarding Environmentally Sensitive Habitat Areas (ESHA), which apply within the Coastal Zone. Those policies provide that, when a habitat must be considered environmentally sensitive (e.g., because it has become especially rare and/or provides crucial habitat for listed species), use of the habitat should not be allowed except for uses that are dependent on that resource. It should be noted that not all lands located within the MHPA would meet the Coastal Act definition of ESHA; conversely, some areas of ESHA beyond the existing urban/wildland interface may not yet be included within the MHPA.

Under MHPA regulations, any loss of MHPA lands must be mitigated by expanding the MHPA an equal or greater amount elsewhere. The mitigation area must also be of equal or better quality habitat than what is being lost. This sometimes involves creation or restoration of degraded areas, and sometimes is accomplished by the purchase of private lands within the MHPA and retiring them from development potential. The wildlife agencies (primarily U.S. Fish and Wildlife Service [Service] and California Department of Fish and Game [DFG]), in approving the City's MSCP and MHPA lands, accepted that certain edge effects would occur on the urban/wildlands interface, including the adverse effects of the existing brush management regulations. The agencies established a 200-foot buffer zone along the interface to include Zone Two brush management and other edge effects such as human and domestic pet intrusion, noise, lighting, etc. However, in recognition of adverse impacts resulting from the proposed expansion of brush management zones, the agencies have now requested the City provide additional MHPA lands to compensate for the anticipated additional resource impacts (i.e., overall loss of habitat value).

To calculate this compensation, the City has estimated the amount of new impacts associated with applying the proposed brush management regulations to existing development based on the extent of its urban/wildlands interface. The City has calculated the expected impacts by types of vegetation/habitat, and also calculated the amounts of these same impacts within the coastal zone separately. Of a total of 715 acres of additional resource impacts, 113.6 acres will be located within the coastal zone. The City adopted a resolution, separate from the proposed LCP amendments, to add an additional

715 acres to the MHPA's long-term acquisition goals. The resolution does not specify that 113.6 acres of new MHPA lands would be added to the coastal zone portion of the MHPA. However, City staff has indicated that is how the resolution would be interpreted, counting the specific amounts of the various types of coastal zone vegetation impacted, such that in-kind compensation will ultimately be provided. It is not currently known where these additional MHPA lands will be located or when they will be acquired.

Several potential issues are raised by the City's proposed LCP amendments. The City's LCP includes not only portions of the Land Development Code (LDC), but also a series of guidelines that explain the LDC ordinance requirements and offer examples of appropriate application of the ordinance. The City has not proposed revisions to these guidelines at this time, and, thus, certification of the proposed amendments to the Landscaping and Environmentally Sensitive Lands Regulations might create conflicts with language in the Biology and Steep Hillside Guidelines. In the past, these documents had referred to Zone Two brush management, which was never wider than 20 feet in the coastal zone, as being "impact neutral" (i.e., having neither a positive nor negative effect on biological resources).

As currently proposed, Zone Two is at least 65 feet and could be 100 feet or more in width, particularly when required to protect existing development, thus affecting a significantly greater area than previously. Moreover, since the Commission certified the guidelines in 1999, experience has demonstrated that even minimal reductions in vegetative cover can have adverse impacts on habitat value and function. The wildlife agencies, which had initially accepted the "impact neutral" language for Zone Two, also recognize that there are indeed adverse impacts from Zone Two, and are now requiring additional MHPA lands to compensate. However, the LDC guidelines are not before the Commission at this time, and City staff is reviewing potential amendments to them that would be brought to the Commission in the future. The Commission finds that, in the case of any conflicts between this ordinance and the old guidelines, this ordinance prevails. Moreover, the Commission anticipates that any such conflicts will be addressed by the City in updating the guidelines.

The landscaping ordinance advises that the Fire Chief can modify requirements under certain conditions, including substitution of the full width of fuel modification zones with use of certain building materials and siting alternatives. The Commission has already reviewed and approved some coastal development permits using these alternative techniques to reduce the widths of the brush management zones. The Fire Chief has also modified the method of fuel management in specific cases, requiring only the removal of dead and dying plant materials in some recent permit actions. The Commission appreciates this flexibility, since it allows more vegetative cover to remain in some circumstances, retaining a greater area of usable habitat.

The Executive Summary beginning on Page One of this report is incorporated into this set of findings by reference to provide additional clarification, although some issues addressed in that portion are further expanded upon here. For instance, the previous City of San Diego LCP Amendments Nos. 3-05B and 1-07 that were heard by the Coastal

Commission at the January and February hearings in 2007 identified issues relating to brush management for existing structures that have since been resolved. The Commission finds that, for existing structures, brush management is one form of ongoing maintenance and preservation of said structures, and is required to address a public safety concern. Southern California's history of wildfires demonstrates that, if brush is allowed to grow unchecked, it becomes a hazard not only for an individual homeowner, but for that person's neighbors and surrounding community as well.

Absent the proposed brush management regulations, the City's only option to address the threat of fire would be to require brush clearance on individual properties as abatement of a public nuisance. Such clearance typically occurs under emergency conditions (i.e., an immediate threat of fire), and is very likely to include complete removal of all plant material on a site. This method would obviously result in far greater ESHA impacts than preventive brush management conducted pursuant to the proposed regulations, which retain all rootstock and much of the existing canopy. Moreover, removing all plant material, as could happen under a nuisance abatement order, results in barren land that is more susceptible to the threat of landslides and erosion in subsequent rainy seasons.

Although the proposed LCP amendment does not in and of itself constitute the declaration of a public nuisance or an order to abate a nuisance, its application to the protection of existing development nonetheless falls within the scope of the City's authority to declare, prohibit, and abate nuisances. For example, the Government Code authorizes cities to adopt ordinances requiring the removal of "weeds" and other material that is dangerous to neighboring property or to the health or welfare of nearby residents. Gov. Code § 39502(b). "Weeds" are defined to include "sagebrush, chaparral and any other brush or weeds which attain such large growth as to become, when dry, a fire menace to adjacent improved property." Gov. Code § 39561.5. The adoption of an ordinance pursuant to Government Code section 39502 is an alternative to the formal process for declaring particular areas with dense vegetation growth to constitute a nuisance. *See* Gov. Code § 39587. The Coastal Act does not limit the power of cities to declare, prohibit, and abate nuisances. Pub. Res. Code § 30005.

In addition, with respect to the protection of existing development, the LCP amendment regulates brush management to minimize adverse environmental effects while accomplishing the City's fire safety imperatives. The City's action also provides mitigation in the form of future acquisition of MHPA lands. For these reasons, brush management activities for the protection of existing development do not require a coastal development permit when regulated and mitigated in the manner proposed by the City.

Although this one issue had been resolved, the Coastal Commission still found in February 2007, that the proposed LCP amendments could only be certified with the inclusion of several suggested modifications addressing the identified issues. In addition, some of the prior suggested modifications were proposed by City staff as clarifying measures they would like to see added to the ordinance. These were minor things, some only editorial, the City staff had not identified prior to the City Council's vote. Ultimately, the City Council adopted the intent of all the suggested modifications. Many were adopted verbatim, but City staff modified the exact language of other suggested

modifications, and, in some cases, put the language in different locations where they believed it flowed better or applied more broadly. Because of those changes, the Commission is reviewing the final language of the ordinance as a resubmittal.

The ordinance the City Council adopted in January 2008 is attached; however, it does not show the entire ordinance but only shows the areas where City staff made changes; the remainder of the Brush Management Regulations are just marked “no changes.” For clarification, the certification letter for LCPA No. 1-07 is also attached – it includes all the suggested modifications from the February 2007 hearing. The only way to justify the Commission’s acceptance of the current resubmittal as submitted by the City is to first describe what the prior Commission-adopted, suggested modifications were intended to accomplish, and then how the City’s new language/placement still satisfies that intent.

The City adopted all of the Commission’s suggested modifications to Table 142-04A. The table identifies types of development, and levels of required discretionary review, and applies to all landscaping requirements, not just those associated with brush management. The Commission added new use categories, primarily open space, to the previous listing. Then, a new development type, condo conversions, was added to the table by City staff. The Commission finds that this change has no effect on the ordinance’s consistency with, or adequacy to carry out, the certified LUPs.

The next suggested modification addressed the introduction and first three subsections of the brush management regulations portion of the landscape ordinance. Through subsection (b), these modifications served to restructure and clarify the existing language of the regulations, which, among other things, address where brush management activities are required and the plant composition of the two brush management zones. Specifically, Zone One typically contains irrigated ornamental vegetation and hardscape improvements, whereas Zone Two is typically comprised of thinned native or naturalizing species. However, the suggested modifications to subsection (c) added new criteria based on the expanded brush management zones and stipulated that Zone Two brush management is not permitted in City-owned open space for new development. Except for one word, these were adopted verbatim by the City Council. In Section (c)(2), the City removed the word “agreement,” saying it was redundant with Right-of Entry. The Commission finds that this change has no effect on the ordinance’s consistency with, or adequacy to carry out, the certified LUPs.

Suggested Modification #3 addressed subsections (h) and (i) of the brush management regulations. Subsection (h) identifies the requirements of Zone Two, and the suggested modifications address what can be planted in Zone Two areas that were previously legally graded (natives only) and how Zone Two is to be maintained. Proposed maintenance activities include regular pruning and thinning of plants and controlling weeds; the suggested modification adds “removing invasive species” to the list of maintenance activities. The Commission concurs with the City that species commonly identified as weeds would be invasive species. However, there are invasive plants that are not typically identified as weeds, such as iceplant, Pampas grass and palm trees. Absent the suggested modification, these species would not necessarily require removal from Zone Two areas.

Subsection (i) provides that the Fire Chief may modify the requirements of the brush management regulations, on a case by case basis, depending on site-specific criteria such as topography and potential fuel load. The subsection also references other parts of the municipal code that require special building standards for sites in hazardous locations, and regulate how roofing, exterior walls, glazing, eaves, and vents are to be constructed to achieve maximum fire safety. These standards are automatically applied to any new development in areas of fire hazard. However, the Fire Chief can go beyond these standards and require additional fire safety measures such as fire walls and additional fire-rated building elements if such are deemed necessary to adequately protect a habitable structure. The specific modifications drafted in this subsection were made by City staff. By including a cross-reference to Chapter 14, Article 5, Division 5 of the Municipal Code, this modification would add that division to the certified LCP. All of this suggested modification, both Sections (h) and (i), was adopted by the City Council verbatim.

Suggested Modification #4 added a new subsection (m) to the brush management regulations. As stated before, most of these regulations already existed, but outside the LCP where they could be modified without Commission approval. This subsection established the standards that must be met in order to use goats to perform brush management activities. The standards address required permitting for the use of goats, required qualifications for goat handlers, the need for handlers to carry liability insurance, and a requirement to notify adjacent property owners before goats are used. The new subsection also details the browsing requirements, including provision of electric fences to control the goats while browsing, allowing a maximum of 75 goats per acre, moving the goats around to prevent over-browsing, penning the goats overnight and removing droppings from the pens. This portion of the prior suggested modification was accepted verbatim by the City Council, except that the words “subject to approval by the Office of the City Attorney” were added by Commission staff to the portion addressing liability insurance. This language allows the City Attorney to review these contracts to determine if the minimum \$1,000,000 liability insurance is inadequate in a given situation and set the insurance requirement higher. The Commission finds that this change has no effect on the ordinance’s consistency with, or adequacy to carry out, the certified LUPs.

The suggested modification also identified that negligent goat contractors are subject to debarment. Inclusion of these provisions was proffered by City staff. However, it was later determined by the City that there was no legal ability for the City to debar contractors, since the contracts are between individual homeowners and the goat handlers, and the City is not party to the contracts. However, use of goats still requires a permit from the Fire Rescue Department. Thus Subsection (m)(7) has been changed to read “[t]he Fire Rescue Department shall not approve any permit under Section 142.0412(m) that will utilize a contractor determined by the City Manager to have negligently performed brush management services within the three prior calendar years. All facts supporting such a determination shall be provided to the applicant in writing, and shall constitute a final determination on the City’s behalf.” Moreover, although the City cannot debar a goat contractor, it has other means of oversight, pursuant to Suggested Modification #6, which will be discussed later in these findings.



There remain serious doubts over the ability of goat handlers to assure compliance with these regulations, particularly those requiring reducing plants to six inches in height, only thinning and pruning (i.e., not seriously damaging) the remaining vegetation, and reducing in height/thinning non-native vegetation before native vegetation. Currently, however, the available information supports a finding that brush management through use of goats, as regulated in the LDC, is consistent with the City's certified LUPs. In order to study the effects of goats, however, and to assess their impact on ESHA, the Commission found, in February 2007, that a monitoring program should be established to determine the nature and extent of impacts with goats browsing on sensitive habitat areas beyond what would be anticipated by use of manual crews. The monitoring program required submittal of an annual report from the City for five years, beginning with the first use of goats in the Coastal Overlay Zone, identified the type of information that must be included in each report, and provided, should adverse impacts to ESHA be documented, that the use of goats in the Coastal Overlay Zone would be discontinued. The City Council approved a separate resolution for this requirement. When the City Council adopted the resubmitted ordinance, a footnote was added to the end of the brush management regulations identifying and describing these provisions in the resolution. The Commission finds that this manner of implementing the prior suggested modification has no effect on the ordinance's consistency with, or adequacy to carry out, the certified LUPs.

Thus, as resubmitted herein, allowing goat grazing is consistent with the certified LUPs. It avoids the danger that brush management that should occur in order to protect human safety and existing structures won't occur because of the difficulty to perform necessary brush management. The time limitation and monitoring requirements allow evaluation of the effectiveness of the City's regulations while also ensuring that goat grazing will cease if those regulations are ineffective at avoiding adverse impacts to ESHA.

Prior Suggested Modification #5 added Subsection (n) to the brush management regulations, to address brush management for new development within the Coastal Overlay Zone. It is this subsection that was most changed by the City in the current resubmittal. For purposes of brush management, the subsection defined ESHA as including southern foredunes, 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. This definition included all Tier I and Tier II habitat types listed in the City's MSCP.

The subsection, as adopted by the Commission in February 2007, also prohibited any impacts on ESHA within protected open space or designated MHPA lands for new subdivisions. The term "protected open space" refers to all publicly-owned open space, whether by the City of San Diego or other public entity, as well as deed-restricted private open space. Thus, in new subdivisions, the number of new lots created should be only as many as can accommodate the entire 100 feet of brush management outside ESHA. For properties within the MHPA, this regulation is to be interpreted to mean that all brush management, both Zone One and Zone Two, must be accommodated within the allowed

25% buildable area of the site. This suggested modification was deemed necessary to protect the value of sensitive habitats, since the LCP, as currently certified, does not identify Zone Two brush management as an impact, and would thus allow it to encroach into ESHA.

The current resubmittal has moved some of this language to other subsections of the Brush Management Regulations. The City did this so that certain provisions, such as reviewing brush management as part of overall plans for new development, and the types of native species to be replanted in disturbed areas, would apply to the City as a whole, not just to the Coastal Overlay Zone. What remains in subsection (n), which continues to apply only to the Coastal Overlay Zone, is the definition of ESHA and the prohibition of impacts to ESHA for new subdivisions. The prohibition now applies to all ESHA, not just that within protected open space and the MHPA. The exception allowing impacts to ESHA to achieve a maximum development area of 25% of the site, and the provision that both Zones One and Two be accommodated within that 25%, remain. The Commission finds that these changes maintain the intent of its February 2007 action and thus have no effect on the ordinance's consistency with, or adequacy to carry out, the certified LUPs.

Finally, prior Suggested Modification #6 added new subsection (o) to the brush management regulations. This subsection identified that these regulations will be enforced pursuant to the certified Land Development Code. It also identified penalties or required restoration for any violations of the regulations, including any associated with the use of goats to perform brush management activities. This section referred to other City ordinances not included in the certified LCP. By reference, these, and any other previously non-LCP ordinances referenced in these regulations, became part of the LCP, and their future modification will require action by the Coastal Commission. This subsection was adopted verbatim by the City Council.

In conclusion, the Commission finds that the City's proposed amendments to the Landscape Ordinance, including its brush management regulations to expand the brush management zones, offer a potential for far greater impacts on ESHA, especially ESHA within protected open space and designated MHPA lands, with respect to existing and infill development than does the current LDC, which serves as the implementation plan for the certified LCP. The Commission recognizes the need to provide fire safety to the City's residents, but also recognizes that new development in hazardous areas (i.e., adjacent to wildlands) greatly exacerbates this need. In order to protect environmentally sensitive lands, sensitive biological resources, public open space and parklands to the greatest extent possible, and to maintain the integrity of the MHPA where most of these resources are located, the Commission finds it can approve the proposed brush management revisions in the current resubmittal because they now include the safeguards previously found in suggested modifications. Although some changes to those modifications have been made in the current proposal, the intent of those modifications remains, and, in some instances, has been expanded beyond the Coastal Overlay Zone to apply citywide. As submitted, the Commission therefore finds the proposed LCP amendment consistent with the various certified LUP components of the City's LCP and adequate to carry out the LUP provisions.

**PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Here, the City of San Diego prepared and certified an EIR because components of its action affect legal requirements other than the LCP and therefore fall outside the scope of Section 21080.9.

Nevertheless, the Commission is required, in a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

In this particular case, the requested LCP amendment, as submitted by the City, is consistent with CEQA, particularly with regard to biological resources. As resubmitted, the Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

22  
1/8

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 4, Division 3, of the San Diego Municipal Code is amended by amending Section 44.0307 to transfer the regulations related to use of goats for brush management to Chapter 14, Article 2, Division 4, and amending Section 142.0402, Table 142-04A, and Section 142.0412, to read as follows:


**§44.0307 Cattle, Goats and Sheep**

(a) [No change.]

(b) Section 44.0307(a) shall not apply to the following:

- (1) Dairies or dairy farms licensed during the month of July 1953.
- (2) Any goats brought in temporarily, to privately-owned non-agricultural zones for the purpose of performing brush management in accordance with the Land Development Code section 142.0412.

(c) [No change.]

EXHIBIT NO. 1
APPLICATION NO.
<b>SD LCPA 2-08</b>
Ordinance - 11 pgs
 California Coastal Commission

§142.0402 When Landscape Regulations Apply

- (a) [No change.]
- (b) [No change to first paragraph.]

Table 142-04A

Landscape Regulations Applicability

Type of Development Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 9 [No change.]				
10.	Publicly or privately owned <i>premises</i> , that are within 100 feet of a <i>structure</i> , and contain native or naturalized vegetation.		142.0403, 142.0412, and 142.0413	No permit required by this division if work is performed in accordance with applicable regulations
11.	New <i>structures</i> , additions to <i>structures</i> , or subdivisions that create <i>lots</i> where new <i>structures</i> could be located on <i>premises</i> adjacent to native or naturalized vegetation		142.0403, 142.0412, and 142.0413	Building Permit/ Process One
12.	New Trees or shrubs planted in the <i>public right-of-way</i>		62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One
13.	<i>Condominium Conversions</i>		142.0403, 142.0404, 142.0405(b)(1), 142.0409(a), 142.0412, and 142.0413	No permit required by this division

**§142.0412 Brush Management**

Brush management is required in all base zones on publicly or privately owned *premises* that are within 100 feet of a *structure* and contain native or naturalized vegetation.

- (a) Brush management activity is permitted within *environmentally sensitive lands* (except for *wetlands*) that are located within 100 feet of an existing *structure* in accordance with Section 143.0110(c)(7). Brush management in *wetlands* may be requested with a *development permit* in accordance with Section 143.0110 where the Fire Chief deems brush management necessary in accordance with Section 142.0412(i). Where brush management in *wetlands* is deemed necessary by the Fire Chief, that brush management shall not qualify for an exemption under the Environmentally Sensitive Lands Regulations, Section 143.0110(c)(7).
- (b) [No change.]
  - (1) Brush management Zone One is the area adjacent to the structure, shall be least flammable, and shall typically consist of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with gradient greater than 4:1 (4 horizontal feet to 1 vertical foot) unless the property received *tentative map* approval before November 15, 1989. However, within the Coastal Overlay Zone *coastal development* shall be subject to the *encroachment* limitations set forth in Section

143.0142(a)(4) of the Environmentally Sensitive Lands  
Regulations.

- (2) Brush management Zone Two is the area between Zone One and any area of native or naturalized vegetation and typically consists of thinned, native or naturalized non-irrigated vegetation.
- (c) The width of Zone One and Zone Two shall not exceed 100 feet and shall meet the width requirements in Table 142-04H unless modified based on existing conditions pursuant to Section 142.0412(i) and the following:
- (1) The establishment of brush management Zones One and Two for *new development* shall be addressed in a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation. Both Zone One and Zone Two shall be provided on the subject property unless a recorded easement is granted by an adjacent property owner to the owner of the subject property to establish and maintain the required brush management zone(s) on the adjacent property in perpetuity.
  - (2) Where Zone Two is located within City-owned property, a Right-of-Entry shall be executed in accordance with Section 63.0103 prior to any brush management activity. Zone Two brush management is not permitted in City-owned open space for new *development* proposals. For properties in the Coastal Overlay

Zone, additional requirements for new *subdivisions* are found in Section 142.0412 (n).

**Table 142-04H**

**Brush Management Zone Width Requirements**

Zone One Width	35 ft.
Zone Two Width	65 ft.

(d) through (g) [No changes.]

(h) Zone Two Requirements

(1) through (4) [No changes.]

(5) [No change first paragraph.]

(A) All new plant material for Zone Two shall be native, low-fuel, and fire-resistive. No non-native plant material may be planted in Zone Two either inside the MHPA or in the Coastal Overlay Zone, adjacent to areas containing *sensitive biological resources*.

(B) New plants shall be low-growing with a maximum height at maturity of 24 inches. Single specimens of fire resistive native trees and tree form shrubs may exceed this limitation if they are located to reduce the chance of transmitting fire from native or naturalized vegetation to habitable *structures* and if the vertical distance between the lowest branches of the trees and the top of adjacent plants are three times the height of the adjacent plants to reduce the spread of fire through ladder fueling.



(C) through (D) [No change.]

(6) Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing invasive species, and controlling weeds.

(7) [No change.]

(i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, the Fire Chief may modify the requirements of this Section, and where applicable with the approval of the Building Official, may require building features for fire protection in addition to those required in accordance with Chapter 14, Article 5, Division 5 (Additional Building Standards for Buildings Located Adjacent to Hazardous Areas of Native or Naturalized Vegetation) if the following conditions exist:

(1) through (3) [No changes.]

(j) – (l) [No changes.]

(m) Where specifically authorized by the Fire Chief, goats may be used for brush management in accordance with the following:

(1) In order to prevent escapes, harassment from predators or humans, or over browsing, goats shall be managed and monitored 24-hours a day by a contractor with at least two years experience in raising, handling, and controlling of goats. The goat contractor shall maintain a minimum of \$1 million of liability insurance subject to approval by the Office of the City Attorney.

- (2) At least 10 business days prior to using goats for brush management, the property owner shall apply to the Fire Rescue Department for a permit to use goats for brush management. The *applicant* shall:
- (A) Obtain and submit written permission from the owner of any property through which the goats must gain access to the area to be browsed.
  - (B) Provide written notice to the Fire Chief and all owners and residents of property located immediately adjacent to the area to be browsed. This notice shall identify Sections 44.0307 and 142.0412(m) as the authority for temporary use of goats.
  - (C) Provide photographs of the existing condition of the site, and a plan describing the methods to be employed and measures to retain existing vegetation in compliance with Section 142.0412(h).
- (3) The area to be browsed shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the Zone Two brush management areas. Signs must be posted at 25-foot intervals along the fence warning of the possibility of mild electric shock.

- (4) The timing of brush management activities shall comply with Section 142.0412(d).
- (5) While goats are browsing:
  - (A) No more than 75 goats are permitted on a single acre of the *premises*.
  - (B) Goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced.
  - (C) The goats shall remain within a secure enclosure at all times.
  - (D) Goats shall be moved into a separate holding pen at night, which shall be located the maximum distance reasonably practicable from residences.
  - (E) Droppings in the holding pen, and to the extent reasonably possible within the brush management area, shall be removed and properly disposed of daily in accordance with Section 44.0307.
  - (F) The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished.
- (6) No later than 5 business days from the date of removal of the goats, the *applicant* shall notify the Fire Chief in writing of the removal of the goats.

- (7) The Fire Rescue Department shall not approve any permit under Section 142.0412(m) that will utilize a contractor determined by the City Manager to have negligently performed brush management services within the three prior calendar years. All facts supporting such a determination shall be provided to the *applicant* in writing, and shall constitute a final determination on the City's behalf.
- (n) Within the Coastal Overlay Zone, brush management for new *subdivisions* shall not be permitted to encroach into an environmentally sensitive habitat area [ESHA], except that *encroachment* may be permitted where necessary to achieve a maximum *development* area of 25 percent including Zones One and Two. For purposes of this Section, ESHA shall include southern fordues, 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.
- (o) Violations and Remedies
  - (1) The provisions of this division shall be enforced pursuant to Chapter 12, Article 1, Division 2 (Enforcement Authorities for the Land Development Code), and Chapter 12, Article 1, Division 3 (Violations of the Land Development Code and General Remedies).

- (2) In accordance with Section 121.0312, the City Manager may order reasonable restoration of the *premises* and any adjacent affected site to its lawful condition or may require reasonable mitigation at the sole cost of the responsible person.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day after its final passage. However, this ordinance will not apply within the Coastal Zone until the California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

[Note to City Clerk: Add new Editors note at the end of Section 142.0412 to alert code users that a Resolution (R-2008-366) was passed by the Council to temporarily allow goat monitoring in the coastal overlay zone for a 5 year trial period during which annual monitoring reports would be distributed to the Coastal Commission. If at the end of 5 years, monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal zone would be discontinued. Delete Editors note at the end of Chapter 13, Article 2, Division 4 and delete Sections 132.0404, 132.0405, 132.0406, 132.0407, and 132.0408 following unconditional certification by the Coastal Commission.]

APPROVED: MICHAEL J. AGUIRRE, City Attorney

Signature on File  
By [Signature]  
Jana L. Garmo  
Deputy City Attorney

JLG:als  
12/05/07  
Or.Dept:DSD  
O-2008-60

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN - 8 2008.

ELIZABETH S. MALAND  
City Clerk

Signature on File  
By [Signature]  
Deputy City Clerk

Approved: 1-15-08  
(date)

Signature on File  
[Signature]  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

B  
12-14

RESOLUTION NUMBER R- 30327-1

DATE OF FINAL PASSAGE DEC 18 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CONSIDERING THE COASTAL COMMISSION PROPOSED AMENDMENTS TO THE CITY'S LOCAL COASTAL PROGRAM RELATED TO BRUSH MANAGEMENT ON JANUARY 11, 2007, AND FEBRUARY 15, 2007.

WHEREAS, the Coastal Commission considered proposed amendments to the City's Local Coastal Program related to brush management on January 11, 2007, and February 15, 2007. On February 15, 2007, the Coastal Commission took action to conditionally certify City of San Diego LCPA No. 1-07 as amended during the public hearing (pursuant to the Executive Director's certification letter).


WHEREAS, the City received the Coastal Commission letter of conditional certification dated July 25, 2007 (attached hereto as Exhibit A), and subsequent notice that a one year extension of time was granted on Thursday, August 8, 2007 for City of San Diego LCPA No. 1-07.

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The above recitals are true, correct, and incorporated by reference herein.
2. That the Mayor is directed to submit the final ordinance and resolution to the Coastal Commission for final certification of LCPA No. 1-07.
3. That the City staff are directed to submit an annual monitoring report to the Coastal Commission documenting the dates and locations of each instance of goat use, the number of acres managed, number of goats per acre, and analysis of success in reducing height

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-PAGE 1 OF 2-

EXHIBIT NO. 2
APPLICATION NO.
<b>SD LCPA 2-08</b>
Resolution - 2 pgs
 California Coastal Commission

and volume of vegetation for five years following the first use of goats for brush management in the coastal zone. The monitoring report shall be accompanied by photographs documenting the before and after condition of the areas managed by goats. The report shall document any instance of violation and/or required mediation during the previous year. If at the end of five years, the monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal overlay zone shall be discontinued.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

Signature on File

By

Jana L. Garmo  
Deputy City Attorney

JLG:als  
11/20/07  
Or.Dept:DSD  
R-2008-366

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 04 2007.

ELIZABETH S. MALAND  
City Clerk

Signature on File

By [Signature]  
Deputy City Clerk

Signature on File

JERRY SANDERS, Mayor

Approved: 1218.07  
(date)

Vetoed: \_\_\_\_\_  
(date)

2007 DEC 18 JERRY SANDERS, Mayor

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-PAGE 2 OF 2-

R-303274



## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



July 25, 2007

Ms. Marcela Escobar-Eck  
City of San Diego  
Development Services Department  
1222 First Avenue, MS 501  
San Diego, CA 92101-4155

Re: Certification of City of San Diego LCP Amendment No. 1-07 (Brush Management)

Dear Ms. Escobar-Eck,

On February 15, 2007, the California Coastal Commission approved the above referenced amendment to the City of San Diego Local Coastal Program (LCP). First, let me apologize for the delay in getting this acknowledgment of the Commission's action to you. The City's amendment involves new brush management regulations to be applied citywide. Primary features of the new regulations include expanding the total required brush management area to 100 feet in width, including 35 feet of Zone One, the area closest to habitable structures, and 65 feet of Zone Two, the area between Zone One and undisturbed lands; changes in the method of brush management, particularly in Zone Two, consisting of reducing the height of half the existing vegetation over 24 inches in height to 6 inches in height, and thinning and pruning the remaining vegetation instead of complete removal of half of all vegetation within Zone Two; and the adoption of regulations addressing the use of goats in brush management.

The Commission approved the LCP amendment with suggested modifications, the most significant of which prohibits impacts to environmentally sensitive habitat areas (ESHA) from brush management within protected open space and the designated multi-species habitat preserve area (MHPA) in association with new subdivisions. In working with your staff on this LCP Amendment, the Commission staff and the Commission fully appreciate both the complexity and serious concerns that the City and Fire Department have relative to fire hazard, brush management requirements and public safety. We share those concerns, but must also recognize the Coastal Act's mandate to balance those objectives with the need to preserve environmentally sensitive habitat areas, and particularly those that have been set aside in public open space and the multi-species habitat preserve.

While both the Commission and staff acknowledged the need to recognize the constraints presented with existing development along the existing urban/wildland interface and accordingly made substantial concessions related to permitting and mitigation requirements for existing development, the Commission could not support such a position when considering new development related to the subdivision of larger parcels. When new development/subdivision of land is sought within or adjacent to native vegetation protected as open space or designated MHPA, for the protection of the residents, the new development should be sited a sufficient distance from the vegetation to prevent a future fire hazard and protect the habitat value of the open space/habitat preserve. The sole exception, which the Commission supported, would be to allow some encroachment into ESHA for both the development and requisite brush management to attain the 25% development area provided for in the certified Land Development Co

EXHIBIT NO. 3
APPLICATION NO.
<b>SD LCPA 2-08</b>
Cert. Letter &
Suggested Mods.

Other suggested modifications which were adopted by the Commission require alternative measures, including fire-resistive building materials and design techniques be utilized to minimize the extent of vegetation removal and habitat disruption in the required 100 foot brush management zones; and establish regulations to accommodate the use of goats for brush management for a five-year trial period. Also, since ESHA is not currently a defined term in the City of San Diego certified LCP, a definition has been added for purposes of implementation of the brush management regulations. The attached modifications contain the specific changes adopted by the Commission.

While the Commission recognizes that the City's updated brush management regulations retain a greater extent of the adjacent plant communities, the impacts are still considered significant. Over the last couple of years, the Commission has endorsed stronger resource protection measures which no longer allow selective thinning and pruning activities within ESHA as an "impact neutral" activity in other coastal communities. As proposed, the loss of at least half of the vegetative cover and the extensive thinning of the remaining vegetation in secondary brush management zones provides limited habitat value. Nonetheless, we worked very hard with City staff to still exempt the City's revised regulations when related to protecting existing structures and when performed in accordance with the proposed new regulations. In addition, in those same cases, we also agreed to not pursue mitigation for such impacts.

However, as indicated, the Commission could not support such a position when considering new development related to the new subdivision of larger parcels, within or adjacent to protected open space or designated MHPA properties. On such properties, pursuant to the City's Land Development Code, a 25% development envelope is established and all new development/subdivision, along with its required brush management, should occur within that envelope. There is no compromise to fire protection with this approach; it just requires that the requisite brush management be accounted for in the otherwise allowable development footprint. The Commission also endorsed the use of alternative compliance measures and has repeatedly supported increased density, such as apartments, townhomes and/or smaller lot residential layouts, within the appropriate development envelope to concentrate development, preserve habitat/open space, reduce brush management requirements and establish adequate distance between future development and potential hazards.

In addition, at the hearing, there were "takings" concerns raised by both City representatives and members of the public relative to the Commission staff recommendation; however, this is a land use planning decision and the question in the review of future permit applications will not be whether or not any development is authorized but how many units can be developed on a particular site. Initially, City staff indicated there were only a few properties in the coastal zone that would even be affected by this provision. Therefore, the Commission did not find this assertion to be a credible challenge.

Relative to the allowance for the use of goats in brush management activities, Commission staff appreciates the City's incorporation of added management measures and enforcement for this work. However, given evidence of the adverse impacts of goat operations on other habitat areas, the Commission supported the need for additional monitoring and limited the goat operations to a five year trial period.

Before the amendment request can become effectively certified, the Executive Director must determine that implementation of the approved amendment will be consistent with the

Marcela Escobar-Eck

July 25, 2007

Page 3 of 14

Commission's certification order. This is necessary because the amendment was certified with suggested modifications. In order for the Executive Director to make this determination, the local government must formally acknowledge receipt of the Commission's resolution of certification, including any terms or suggested modifications; and take any formal action which is required to satisfy them, such as rezonings or other ordinance revisions. This certification must also include production of new LCP text, maps, and/or other graphics demonstrating that the amendment, as approved by the Commission and accepted by the City, will be incorporated into the City's certified Local Coastal Program immediately upon concurrence by the Commission of the Executive Director's determination.

The City Council action must normally occur within sixty days of the Commission's action, otherwise the Commission certification becomes null and void, and the previously-certified regulations remain effective in the coastal zone. In that instance, none of the amendments approved on February 15, 2007 would be valid within the coastal zone, including the use of goats for brush management. However, given the delay incurred by the City due to our delay in transmitting these suggested modifications and certification letter to you, as well as the City Council summer recess, we are asking the Commission for a one year time extension and the requested time extension is scheduled for the August 9, 2007 Commission hearing.

If you have any questions about the Commission's action or this final certification procedure, please contact our office. Thank you and the other staff members who worked on this planning effort. We realize this has been a challenging task; and, as offered at the hearing, we remain available to discuss both the substance and implementation measures for brush management that will both minimize discretionary review but also provide maximum resource protection when there are clear alternatives.

Sincerely



Signature on File

Deborah L. Eck  
District Manager

cc: Mayor Jerry Sanders  
Council President Scott Peters  
Sherilyn Sarb  
Ellen Lirley

**SUGGESTED MODIFICATIONS**

**As modified and adopted by the Coastal Commission on February 15, 2007**

Note: These revisions show changes the Commission is suggesting to the LCP as it is proposed to be amended. Text with a single underlining is text proposed by the City as part of this proposed LCP amendment; text with no underlining but that is struck out is text the City is proposing for deletion. Double underlined text is Commission suggested new language or change to City-proposed language. Double strike-out is Commission suggested deletion of City-proposed language. All Commission suggested language is also bolded.

1. §142.0402 When Landscape Regulations Apply – Table 142-04A should be modified as follows:

Table 142-04A

Landscape Regulations Applicability

Type of <i>Development</i> Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 8 [No change.]				
9.	<del>New structures; additions to structures; or subdivisions that create lots where new structures could be located on properties adjacent to any contiguous, highly flammable area of native or naturalized vegetation greater than 10 acres or contiguous area of native or naturalized vegetation greater than 50 acres. All City owned property, dedicated in perpetuity for park or recreation purposes, within 100 feet of a structure.</del>		142.0403, 142.0412, and 142.0413	Building Permit/ Process One No permit required by this division if work is performed in accordance with applicable regulations

Type of Development Proposal	Applicable Regulations	Required Permit Type/ Decision Process
10. <del>Existing structures on properties that are adjacent to any area of highly flammable native or naturalized vegetation. Undeveloped</del> <u>Publicly or privately owned premises that are within 100 feet of a structure that and contain native or naturalized vegetation or environmentally sensitive lands</u>	142.0403, 142.0412, and 142.0413	No permit required by this division <u>if work is performed in accordance with applicable regulations</u>
<u>11. New Structures, additions to structures, or subdivisions that create lots where new structures could be located on premises adjacent to native or naturalized vegetation</u>	<u>142.0403, 142.0412, and 142.0413</u>	<u>Building Permit/ Process One</u>
<del>11.</del> <u>12.</u> New Trees or shrubs planted in the public right-of-way	62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One

2. §142.0412 **Brush Management** – the introduction to this section, and subsections

(a), (b), and (c) should be modified as follows:

- (a) Brush management is required in all base zones on the following types of premises: for the types of ~~development~~ listed below when they are adjacent to any highly flammable area of native or naturalized vegetation that is greater than 10 acres as mapped by the City of San Diego, or adjacent to any area of native or naturalized vegetation that is ~~greater than 50 acres, as shown in Table 142.04A.~~ However, within the Coastal Overlay Zone, brush management is

~~required for all coastal development within the MHPA and/or adjacent to steep hillsides containing sensitive biological resources~~

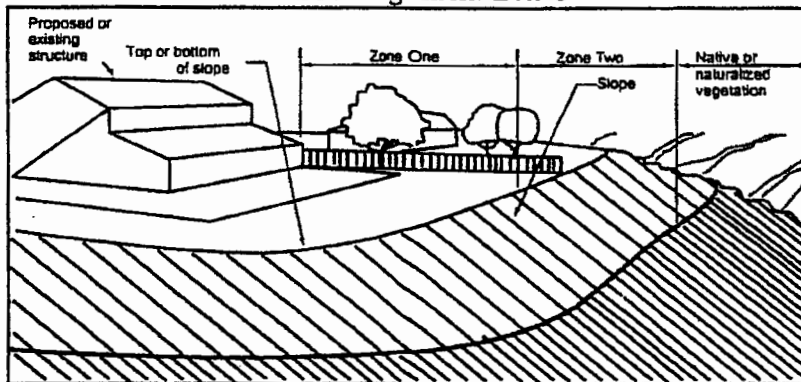
~~(1) Publicly or privately owned premises that are within 100 feet of a structure, and contain native or naturalized vegetation.~~

~~(2)(a) Brush management activity is permitted within Additions to structures Except for wetlands, environmentally sensitive lands (except for wetlands) that are located within 100 feet of an existing structure, in accordance with Section 143.0110(c)(7). Brush management in wetlands may be requested with a development permit in accordance with Section 143.0110 where unless the Fire Chief deems brush management necessary in wetlands in accordance with Section 142.0412(i). Where brush management in wetlands is deemed necessary by the Fire Chief, that brush management shall not qualify for an exemption under the Environmentally Sensitive Lands Regulations, Section 143.0110(c)(7).~~

(b) Brush Management Zones. Where brush management is required, a comprehensive program shall be implemented that reduces fire hazards around structures by providing an effective fire break between all structures and contiguous areas of flammable native or naturalized vegetation. This fire break shall consist of two distinct brush management areas called "Zone One" and "Zone Two" as shown in Diagram 142-04D.

Diagram 142-04D

Brush Management Zones



- (1) Brush management Zone One is the area adjacent to the *structure*, shall be least flammable, and ~~shall~~ typically consists of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with a gradient greater than 4:1 (4 horizontal feet to 1 vertical foot) unless the property ~~that~~ received *tentative map* approval before November 15, 1989. However, within the Coastal Overlay Zone *coastal development* shall be subject to the encroachment limitations set forth in Section 143.0142(a)(4) of the Environmentally Sensitive Lands Regulations.
- (2) Brush management Zone Two is the area between Zone One and any area of native or naturalized vegetation and ~~shall~~ typically consists of thinned, native or naturalized; ~~non-irrigated~~ vegetation.
- (c) ~~Except as provided in Sections 142.0412(f) or 142.0412(i),~~ The width of Zone One and Zone Two shall not exceed 100 feet and shall meet or exceed ~~that the~~ width requirements shown in Table 142-04H unless modified based on existing conditions pursuant to 142.0412(j) and the following: Where *development* is adjacent to slopes or vegetation that meets the criteria shown in the table, the required Zone One and Zone Two width shall be increased by the dimension shown.

- (1) Both Zone One and Zone Two shall be provided on the subject property unless a recorded easement is granted by an adjacent property owner to the owner of the subject property to establish and maintain the required brush management zone(s) on the adjacent property in perpetuity.
- (2) Where Zone Two is located within City-owned property, a Right of Entry agreement shall be executed in accordance with 63.0103 prior to conducting any brush management activity. Zone Two brush management is not permitted in City-owned open space for new development proposals. For properties in the Coastal Overlay Zone, additional requirements for new development are found in subsection (n).

3. §142.0412 Brush Management – subsections (h) and (i) should be modified as follows:

(h) Zone Two Requirements

- (1) The required Zone Two width shall be provided between Zone One and the undisturbed, native or naturalized vegetation, and shall be measured from the edge of Zone One that is farthest from the habitable *structure*, to the edge of undisturbed vegetation.
- (2) No *structures* shall be constructed in Zone Two.
- (3) Within Zone Two, 50 percent of the plants over 24 inches in height shall be reduced to a height of 6 inches. Non-native plants shall be reduced in height before native plants are reduced in height.
- (4) Within Zone Two, all plants remaining after 50 percent are reduced in height, shall be pruned to reduce fuel loading in accordance with the Landscape Standards in the Land Development Manual. Non-native plants shall be pruned before native plants are pruned.



- (5) The following standards shall be used where Zone Two is in an area previously *graded* as part of legal *development* activity and is proposed to be planted with new plant material instead of *clearing* existing native or naturalized vegetation:
- (A) All new plant material for Zone Two shall be native, ~~or naturalized~~ non-irrigated, low-fuel, and fire-resistive. No non-native plant material may be planted in Zone Two either inside the MHPA or in the Coastal Overlay Zone, adjacent to areas containing *sensitive biological resources*.
  - (B) New plants shall be low-growing with a maximum height at maturity of ~~2 feet~~ 24 inches. Single specimens of ~~fire-resistant~~ fire resistive native trees and tree form shrubs may exceed this limitation if they are located to reduce the chance of transmitting fire from native or naturalized vegetation to habitable *structures* and if the vertical distance between the lowest branches of the trees and the top of adjacent plants are three times the height of the adjacent plants to reduce the spread of fire through ladder fueling.
  - (C) All new Zone Two plantings shall be irrigated temporarily until established to the satisfaction of the City Manager. Only low-flow, low-gallonage spray heads may be used in Zone Two. Overspray and runoff from the irrigation shall not drift or flow into adjacent areas of native or naturalized vegetation. Temporary irrigation systems shall be removed upon approved establishment of the plantings. Permanent irrigation is not allowed in Zone Two.
  - (D) Where Zone Two is being revegetated as a requirement of Section 142.0411(a), revegetation shall comply with the spacing standards in the Land Development Manual. Fifty percent of the planting area shall be planted with material that does not grow taller than 24 inches. The remaining planting area may be planted with taller

material, but this material shall be maintained in accordance with the requirements for existing plant material in Zone Two.

- (6) Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing invasive species, and controlling weeds, ~~and maintaining any temporary irrigation system.~~
- (7) Except as provided in Section 142.0412(i), where the required Zone One width shown in Table 142-04H cannot be provided on *premises* with existing *structures*, the required Zone Two width shall be increased by one foot for each foot of required Zone One width that cannot be provided.
- (i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, ~~the~~ the Fire Chief may modify the requirements of this section, and where applicable, with the approval of the Building Official, may require building standards for fire protection in addition to those required in accordance with Chapter 14 Article 5 Division 5 (Additional Building Standards for Buildings Located Adjacent to Hazardous Areas of Native or Naturalized Vegetation) if the following conditions exist:
  - (1) In the written opinion of the Fire Chief, based upon a fire fuel load model report conducted by a certified fire behavior analyst, the requirements of Section 142.0412 fail to achieve the level of fire protection intended by the application of Zones One and Two; and
  - ~~(1)~~ (2) The modification to the requirements achieves an equivalent level of fire protection as provided by Section 142.0412, other regulations of the Land Development Code, and the minimum standards contained in the Land Development Manual; and
  - ~~(2)~~ (3) The modification to the requirements is not detrimental to the public health, safety, and welfare of persons residing or working in the area.

4. §142.0412 **Brush Management** – new subsection (m) should be added as follows:

(m) Where specifically authorized by the Fire Chief, goats may be used for brush management in accordance with the following:

(1) In order to prevent escapes, harassment from predators or humans, or over browsing, goats shall be managed and monitored 24-hours a day by a contractor who has at least two years experience in the raising, handling, and controlling of goats. The goat contractor shall carry a minimum of \$1 million of liability insurance.

(2) At least 10 business days prior to using goats for brush management, the property owner shall apply to the Fire Rescue Department for a permit to use goats for brush management. The application shall include:

(a) Obtain written permission from the owner of any property through which the goats must gain access to the area to be browsed by, and

(b) Provide written notice to the City of San Diego Fire Chief and all owners and residents of property located immediately adjacent to the area to be browsed. This notice shall identify Sections 44.0307 and 142.0412 (m) as the authority for temporary use of goats.

(c) Provide photographs of the existing condition of the site, and a plan describing the methods to be employed and measures to retain existing vegetation in compliance with subsection (h)

(3) The area to be browsed shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the Zone Two brush management areas. Signs must be posted at 25-foot intervals along the fence warning of the possibility of mild electric shock.

(4) The timing of brush management activities shall be consistent with Section 142.0412(d).

- (5) While goats are browsing:
- (a) No more than 75 goats are permitted on a single acre of the premises.
  - (b) Goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced.
  - (c) The goats shall remain within a secure enclosure at all times.
  - (d) Goats shall be moved into a separate holding pen at night, which shall be located the maximum distance practicable from residences.
  - (e) Droppings in the holding pen, and, to the extent possible, within the brush clearance area, shall be removed and properly disposed of daily in accordance with Section 44.0307.
  - (f) The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished.
- (6) No later than 5 business days from the date of removal of the goats, the property owner shall notify the City of San Diego Fire Chief, in writing, of the removal of the goats.
- (7) Negligent or irresponsible goat contractors shall be subject to debarment in accordance with Chapter 2, Article 2, Division 8.
- (8) For five years after the first use of goats in the Coastal Overlay Zone, monitoring of each instance of goat use shall be conducted to document the effects of using goats for brush management. The City shall submit an annual monitoring report to the Coastal Commission documenting the following:
- (a) dates and locations of each instance of goat use;
  - (b) number of acres managed and number of goats used per acre; and

CCC (m)(8) is  
proposed for  
adoption by  
Council  
resolution

(c) analysis of success in meeting the specific criteria of Section 142.0412 (h), subsections (3) and(4)

The monitoring report shall be accompanied by photographs documenting the before and after condition of the areas managed by goats. The monitoring report shall also document any instances of violation and/or required mediation during the previous year. If, at the end of five years, the monitoring reports indicate that use of goats has adversely impacted ESHA, the use of goats in the Coastal Overlay Zone shall be discontinued.

5. §142.0412 Brush Management – new subsection (n) should be added as follows:

(n) Within the Coastal Overlay Zone, new subdivisions shall not be permitted to encroach into ESHA, except for properties within the MHPA, where encroachment is allowed to attain the allowable 25% development area. The following ordinance provisions shall be in addition to those identified in Section 142.0412, subsections (a) through (m). Where any conflicts exist between the following provisions of subsection (n) and the provisions of subsections (a) through (m) or other provisions of the Land Development Code or Land Development Manual, the following provisions of subsection (n) shall be controlling.

(1) For purposes of these brush management regulations, environmentally sensitive habitat area (ESHA) within protected open space or designated MHPA shall be preserved. For purposes of these brush management regulations, ESHA shall include southern foredunes, 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. In addition, the term “protected open space” includes public lands, private lands deed restricted to protect open space, and private lands where easements have been granted to a public agency.

(2) Brush management requirements shall be reviewed as part of the development review process. Brush management shall be addressed in a site-specific brush management plan acceptable to the Fire Marshal. Impacts to ESHA within protected open space or designated MHPA shall not be permitted for Zone One or Zone Two brush management. In addition, all creative site and/or structural design features shall be incorporated into the approved subdivision design to avoid or minimize impacts to any existing undisturbed native vegetation from

CCC draft (n) conflicts with City's LCP and points made in letter: that properties may only encroach to obtain 25% development area

States only properties in MHPA may encroach into ESHA; LCP allows all properties a minimum 25% development area

All sections in 142.0412 apply; no sections should be written to result in conflicts

City LCP already protects ESL in open space and MHPA

Definition of ESHA included in subsection (n)

Site specific review is done citywide (not just coastal) clarified in subsection (c)

Statement preventing all brush management impacts to ESHA conflicts with allowance for encroachment to obtain 25% area

Use of creative design features is applicable citywide; clarified in subsection (c)(1)

City already  
requires fire  
resistive features  
in existing Ch 14,  
Art 5, Div 5

Should apply to  
all properties  
with ESL not just  
MHPA as  
written; in  
proposed  
subsection (n),  
properties may  
only encroach to  
obtain 25%  
development area

allowable brush management requirements. Measures such as replacing cleared or thinned native vegetation with fire-resistive native vegetation that does not require fuel modification and is compatible with existing habitat, and maintenance of at least 50% of the existing ground cover shall be implemented, when possible, to avoid significant disruption of existing undisturbed native vegetation. For properties within the MHPA, all brush management, Zone One and Zone Two, shall be contained within the 25% developable area of the site.

6. §142.0412 Brush Management – new subsection (o) should be added as follows:

(o) Violations and Remedies

(1) The provisions of this division shall be enforced pursuant to Chapter 12, Article 1, Division 2, Enforcement Authorities for the Land Development Code and Chapter 12 Article 1, Division 3 Violations of the Land Development Code and General Remedies.

(2) In accordance with Section 121.0312, the City Manager may order reasonable restoration of the premises and any adjacent affected site to its lawful condition or may require reasonable mitigation at the sole cost of the responsible person.