

Agenda Item Staff Report

To: Honorable Mayor and Members of City Council
For the Meeting of December 10, 2024

From: Brad McKinney, City Manager

Prepared by: Luis Torrico, Director of Community Development

Subject: Discussion and Consideration of Ordinance 1319 to Approve Municipal Code Text Amendment 20-05, an Amendment of Chapter 18.518 Specific Plan 11 of the San Dimas Municipal Code, to Amend Grading Limits Within Planning Area I and Make Various Clean-up Text Amendments, and Adoption of the Associated Mitigated Negative Declaration

SUMMARY

Municipal Code Text Amendment 20-05 is a City Council initiated request to amend Chapter 18.518 Specific Plan 11 of the San Dimas Municipal Code with respect to grading limits within Planning Area I and various clean-up items.

On January 19, 2023, the Planning Commission voted 3-0-2, with Commissioners Davis and Ross recusing themselves, to adopt Resolution PC-1657 recommending approval of Municipal Code Text Amendment to the City Council, and denied Resolution PC-1658, which recommended denial of the Mitigated Negative Declaration, with a recommendation that the City Council direct Staff to seek a peer review of the biological analysis to validate the report and the proposed mitigation measures that appear to be onerous requirements on the residents.

At the March 14, 2023, meeting the City Council considered the proposed amendment and raised concerns with the mitigation measures, and directed Staff to seek a peer review of the UltraSystems prepared biological analysis and proposed mitigation measures.

At the November 21, 2024, meeting the Planning Commission considered the amendment and voted 4-0-1, with Commissioner Davis recusing, to recommend the City Council adopt the Mitigated Negative Declaration and approve the Municipal Code Text Amendment.

RECOMMENDATION

Staff and Planning Commission recommend the City Council:

- Adopt Resolution 2024-89 to adopt the revised Draft Mitigated Negative Declaration (MND); and
- Introduce Ordinance 1319 approving Municipal Code Text Amendment 20-05, a request to amend Chapter 18.518 Specific Plan 11 of the San Dimas Municipal Code, to amend grading limits within Planning Area I and make various clean-up text amendments.

FISCAL IMPACT

There is no fiscal impact for the recommended action; however, the City's expenses associated with consultant's fees associated with preparation and review of the environmental documents is \$140,513.

BACKGROUND

In 1983, the City Council adopted Ordinance 786, creating Specific Plan 11 (SP-11), Areas I - IV. Since the time of adoption, the area has been developed with 250 single-family residences. As originally adopted in the San Dimas Municipal Code, no grading is to be performed within SP-11, Planning Area I, except as required for retaining-type building foundations and the driveway, with no visible signs of grading allowed beyond the structure's main walls (SDMC 18.518.170(B)(1)). In 1987, the Development Plan Review Board (DPRB) adopted a policy of allowing a maximum of two hundred cubic yards of grading, cut and fill, in excess of the grading necessary for the residence and driveway (**See Attachment 6**). Approval of the two hundred cubic yards was determined by the DPRB on a case-by-case basis. To allow for greater flexibility for owners, the grading associated with the construction of a pool and a five-foot perimeter deck was not counted towards the two hundred cubic yard grading limit. The DPRB, therefore, began approving grading for pools, decks and other features in SP-11 Planning Area I which was directly prohibited by the San Dimas Municipal Code.

On May 12, 2020, during a regular City Council meeting, the Council requested that Staff prepare a presentation on the history and applicability of the grading limits set forth in San Dimas Municipal Code Section 18.518.170 (SP-11, Planning Area I grading limits) for City Council to discuss and consider a Municipal Code Text Amendment (MCTA) to amend these limits.

On July 14, 2020, the City Council heard a presentation from Staff regarding the history of the grading requirements within Chapter 18.518 Specific Plan 11: Planning Area 1 (SP-11, Area I). At that meeting, the City Council initiated the MCTA for SP-11, Area I and directed Staff to provide the City Council with options relating to grading standards within this zone.

On September 22, 2020, the City Council held a Study Session to hear a presentation from Staff regarding the various options regarding the grading standards within SP-11: Planning Area 1 and to provide direction to Staff regarding the MCTA. Due to the length of the meeting the City Council continued the item to October 13, 2020. At that meeting, the City Council continued the MCTA indefinitely due to COVID-19 gathering restrictions and to allow for in-person comments to be heard at a Public Meeting.

On March 9, 2021, the City Council provided Staff with direction regarding the MCTA, directing Staff to work towards codifying the previous DPRB policy, but with the grading allowance increased from 200 cubic yards to 1,000 cubic yards.

On June 3, 2021, the item was heard during a public hearing at a regular Planning Commission meeting. Due to concerns about the use of a CEQA categorical exemption, the item was continued to a later date to allow for a thorough review of the environmental determination.

On October 7, 2021, the item was brought back to the Planning Commission after a draft Mitigated Negative Declaration (MND) was prepared by City Staff. The Planning Commission heard from Staff and the public during a regular meeting and voted 3-0-2, with Commissioners Davis and Ross recusing themselves, to recommend approval of the MCTA and the MND to the City Council.

Following the October 7, 2021, Planning Commission meeting, the item was scheduled for the October 26, 2021, City Council meeting. Prior to the meeting, potential issues with the City prepared MND were raised in a letter prepared by the Via Verde Ridge Homeowners Association's (HOA) legal counsel. After consultation between Staff and the City's legal counsel, the decision was made to pull the item from the City Council calendar and have an environmental consultant prepare a new MND to study the environmental issues raised by the HOA's legal counsel.

On January 11, 2022, the City Council was presented a resolution, as a part of the Consent Calendar, to allow for an agreement with UltraSystems, an environmental consultant, to prepare a new MND for the project that would address the issues that were raised by the HOA's legal counsel. The item was pulled from the Consent Calendar for additional discussion. After discussion, the City Council voted 3-2 with Councilmembers Bertone and Ebner voting no to authorize the City Manager to execute an agreement with UltraSystems to prepare an Initial Study/ MND for the MCTA.

On January 19, 2023, the Planning Commission heard the item and considered the draft MND prepared by UltraSystems (**See Attachment 5**). The Planning Commission heard from Staff, representatives from UltraSystems and the public during the regular meeting. During the meeting, the public raised concerns with the various biological mitigation measures required by the MND, as it would require several surveys which could add delays and increased costs to projects requiring any grading beyond what is currently allowed per the Code. After further discussion, and having raised the same concerns with the mitigation measures, the Commission voted 3-0-2, with Commissioners Davis and Ross recusing themselves, to adopt Resolution PC-1657 recommending approval of Municipal Code Text Amendment to the City Council, and denied Resolution PC-1658 recommending denial of the MND to the City Council, with a recommendation that City Council direct Staff to seek a peer review of the biological analysis to validate the report and the proposed mitigation measures and if possible, to reduce the onerous mitigation measure requirements on the residents.

On February 28, 2023, the City Council held a public hearing and voted 5-0 to table the meeting to March 14, 2023 (**See Attachment 4**). At the March 14, 2023, meeting the council made a motion to direct Staff to seek a peer review of the UltraSystems prepared biological analysis and proposed mitigation measures and to approve a budget amendment not to exceed \$50,000 to hire a consultant to complete the peer review.

Therefore, the City hired Psomas to perform a peer review of the MND. After reviewing the prepared biologic analysis section of the MND and performing field studies, Psomas rewrote the biologic analysis section of the MND and the mitigation monitoring and reporting program and were able to reduce the number of required surveys for any additional grading. Additional details

on the revised MND and Mitigation Measures are discussed later in the report.

On November 21, 2024, the Planning Commission considered the amendment and the revised MND (**See Attachment 3**). During the public hearing, three (3) residents spoke on the amendments; one (1) resident spoke in support of the amendment and stated that the revised mitigation measures/surveys were more reasonable, one (1) resident spoke in favor of the amendment but did not agree with the surveys and would prefer that lots be exempt from the surveys, and one (1) resident spoke against the MND/surveys as majority of lots are constantly cleared and do not support any vegetation or wildlife. The City's consultant also spoke to clarify the survey requirements and stated that if the area of the proposed grading has been previously cleared, the survey will not have to be completed (additional information regarding the surveys is provided later in the report under the Environmental Review section). After further discussing the amendment, the Commission voted 4-0-1, with Commissioner Davis recusing himself, to recommend to the City Council adoption of the revised MND and approval of the Municipal Code Text Amendment.

DISCUSSION/ANALYSIS

Per the direction provided by the City Council at the March 9, 2021, meeting, Staff has developed code text (**See Attachment 2**) to codify the previous grading policy, while increasing the grading limit to one thousand (1,000) cubic yards and providing standards for the grading, landscaping and any retaining walls that the additional grading would require. Along with these changes, Staff has completed a comprehensive clean-up of Chapter 18.518 Specific Plan 11, removing sections which dealt with the initial development of the area and codifying previous policies regarding Conditional Uses within the specific plan.

The proposed MCTA would allow for up to one thousand (1,000) cubic yards of grading, cut and fill, beyond that grading necessary for the primary residence, driveway and garage for properties located within SP-11 Planning Area 1 (36 residential lots, up to 36,000 CY grading). Per the previous DPRB policy, a swimming pool and five (5) feet of decking surrounding the pool were exempted from the additional grading calculations but would still be subject to the mitigation measures in the revised MND. The proposed MCTA would also include development standards for grading, landscaping and any retaining walls that the additional grading would require. Additional clean-up items are proposed by removing sections which dealt with the initial development of the area and codifying previous policies regarding Conditional Uses within the specific plan.

Due to the potential large quantity of available grading (774,000 CY) allowed for the existing residential homes to expand their 1st floor building area, the proposed MCTA to allow for up to 36,000 CY of grading beyond the grading necessary for the primary residence, driveway and garage would be small by comparison.

To preserve the original intent of SP-11, minimize the visual impacts of potential grading and retaining walls, codify existing policies/practices and eliminate defunct sections of the code, the following code text amendment includes:

1. Requirements that any proposed grading and retaining walls follow the existing topographic contours present onsite. The proposed grading cuts and/or retaining walls should not cut directly across contour lines.
2. A limitation of retaining walls to a maximum exposed height of twelve (12) feet per wall and a maximum combined exposed height of twenty-four (24) feet. This language is

consistent with existing retaining wall height limit standards used in other hillside areas within the City.

3. A requirement that if more than one retaining wall is constructed directly adjacent to one another, the two walls must be separated by half (1/2) the height of the taller of the two adjacent walls.
4. Requirements to use gravity type retaining walls, unless onsite conditions prohibit their use.
5. Wall materials must be either slump stone or split-face stone with a tan or earth tone color.
6. Landscape and irrigation standards which require the planting of trees at the base of the lowest retaining wall and drought tolerant shrubs at the base of every wall. Installation of permanent irrigation shall be required to ensure that the required landscaping survives and is healthy enough to provide screening.

At the request of Council, Staff also analyzed an exemption to allow unlimited grading for any grading, cut and fill, used to create a natural appearing slope that would be used in place of retaining walls. Per the City Engineer, the maximum slope that can be created without the use of retaining walls is a 2:1 slope, or a slope that falls one (1) vertical foot for every two (2) feet of horizontal distance. Due to this slope requirement, most properties in Planning Area I would be unable to create a 2:1 slope without significant amounts of grading, grading which would be far in excess of the proposed one thousand (1,000) cubic yard allowance. Due to the potential amount of grading which could be required, Staff has found it infeasible to achieve a natural appearing slope that could be used in place of retaining walls on most parcels. Staff has therefore not included language in the proposed code text amendment which would allow for an exemption to the grading limits in order to create a natural-looking slope.

Staff believes that the above proposed amendments will assist in minimizing the potential impact of grading and retaining walls on the hillside vistas while allowing for up to one thousand (1,000) cubic yards of additional grading within SP-11, Planning Area 1.

For clarification, the proposed grading limits and associated mitigation measures found within the MND do not affect the construction of a new residence or addition, the garage and required driveways. These actions, which are allowed under the current Code were analyzed through an Environmental Impact Report that was prepared and certified when SP 11 was originally developed; thus, they would not trigger any of the requirements or studies proposed by the new MND. In addition, per State law, accessory dwelling units must be allowed and are also exempt from the requirements or studies proposed by the new MND. The proposed mitigation measures would only be required for any additional grading beyond that required for the residence, accessory dwelling unit, garage and driveway, such as, but not limited to, a pool, a flat pad for a backyard or a cabana/pool house type structure.

On July 23, 1987, the DPRB adopted a policy allowing accessory structures (i.e. cabanas, decks, spas and pools, etc.) within SP-11, Planning Area 1 to be reviewed by Staff rather than requiring DPRB review and approval. These are being reclassified as accessory uses and would be reviewed at Staff level rather than requiring a Conditional Use Permit that is reviewed and approved by the DPRB.

SP-11 has been fully subdivided, and a majority of parcels have been developed, therefore the sections of the code pertaining to the creation of the various tracts, the infrastructure needed to support them and the various aspects that accompany new development are no longer relevant. Furthermore, Public Works has existing development standards for all proposed infrastructure

which would be required to be complied with in the event of any proposed future development. Therefore, Staff is proposing to delete these sections of the Specific Plan.

ALTERNATIVES

There are no alternatives proposed for this request.

ENVIRONMENTAL REVIEW

The MCTA is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an Initial Study was prepared to determine possible environmental impacts. Based on the Initial study, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of insignificance, an MND was prepared pursuant to CEQA Guidelines. Furthermore, to ensure that the mitigation measures are implemented, a Mitigation Monitoring and Reporting Program was prepared for the project pursuant to CEQA Guidelines Section 15097, which specifies responsible departments/parties, monitoring frequency, timing and method of verification and possible sanctions for non-compliance with mitigation measures.

As noted above, the City originally prepared an MND that was circulated for the required 20-day period and was recommended for City Council approval by the Planning Commission at the regularly scheduled Planning Commission meeting of October 7, 2021. The item was then scheduled for a public hearing before the City Council at their regular meeting on October 26, 2021. Prior to that meeting, potential issues with the City prepared MND were raised in a letter prepared by the Via Verde Ridge Homeowners Association's legal counsel. After consultation between Staff and the City's legal counsel, the decision was made to pull the item from the City Council calendar and have a private environmental consultant prepare a new Initial Study and MND to study the environmental issues raised by the HOA's legal counsel. The new Initial Study and MND was prepared by UltraSystems Environmental and was circulated for public review/comment from December 22, 2022, through 5:00 PM on January 18, 2023.

At the Planning Commission meeting of January 19, 2023, the Planning Commission denied Resolution PC-1658, which would have recommended approval of the UltraSystems prepared MND to the City Council, recommending that the City Council direct Staff to seek a peer review of the biologic analysis section of the MND with the goal of reducing the required mitigation measures, specifically the number of required surveys. The City Council, at their March 14, 2023, meeting, agreed with this and directed Staff to hire a consultant to prepare a peer review of the MND.

The City hired Psomas to perform a peer review of the MND. After reviewing the prepared biologic analysis section of the MND and performing field studies, Psomas rewrote the biologic analysis section of the MND and the mitigation monitoring and reporting program, and were able to reduce the number of required surveys for any additional grading. Under the previous MND, a total of 17 biological mitigation measures were required, 11 of which were surveys. Per Psomas updated MND (**See Attachment 1**), a total of 13 mitigation measures are required, seven (7) of which are surveys. Of the 36 parcels located within SP-11, only four (4) parcels would be subject to all seven (7) surveys. It's also important to note that just because the survey is listed in the table for the parcel doesn't mean that a full survey is required. If a survey is listed as a requirement, the property owner will have to hire a biologist to come out and review the area of the proposed grading. There will be instances where the area to be improved will already have been cleared, either for maintenance purposes or for brush fire purposes, and the biologist may determine that

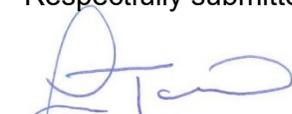
the survey is not needed. Majority of the parcels in Area I have vegetation at the bottom of the slopes but not necessarily adjacent to the residence which is where grading will typically occur. However, since CEQA requires that the entire parcel be analyzed for potential environmental impacts, majority of parcels have the survey requirement as a mitigation measure in the MND due vegetation being located somewhere on their parcel. In cases where the proposed grading area has already been cleared, the biologist will make the determination that the survey will not be needed, thus meeting the requirement under the MND.

In addition to reducing the number of surveys, the updated MND does not require that a qualified project biologist be present to monitor construction activities for the duration of the project, which the previous MND did. The reduction of the number of required surveys and the fact that a biologist will not have to be hired to be present to monitor construction activities for the duration of the project will avoid delays and will keep costs low for homeowners seeking to do grading improvements in their backyards. It's important to note that the revised MND was completed in compliance with CEQA and does still include mitigation measures which will reduce environmental impacts of the MCTA to a less than significant level.

The revised MND was recirculated for public review to allow the public and outside agencies to review and comment on the document. It was recirculated from June 21, 2024, through July 21, 2024. During the recirculation period, Staff received four (4) comments. Three (3) comments came from residents; one (1) supported the revised MND, one (1) supported the amendment but did not agree with required surveys, and one (1) resident expressed concerns with the required surveys and recommended that the pools and previously disturbed areas be exempt from the MND. The fourth comment came from the California Department of Fish and Wildlife (CDFW), which recommended revisions to certain mitigation measures. Some of CDFW's comments were incorporated into the MND; however, other recommendations such as adding unnecessary surveys or giving CDFW authority over some of the surveys where it's not required, were not incorporated. Responses to the comments are provided in the revised MND, which is attached as Exhibit A to Resolution 2024-89 (**See Attachment 1**).

In order for the City Council to approve MCTA 20-05, the City Council must also adopt the revised MND. Therefore, Staff and the Planning Commission recommend that the City Council adopt the revised MND and approve MCTA 20-05.

Respectfully submitted,



Luis Torrico
Director of Community Development

Attachments:

1. Resolution 2024-89 (MND)
2. Ordinance 1319 (MCTA 20-0005)
3. November 21, 2024 Planning Commission Staff Report & Draft Minutes
4. March 14, 2023, City Council Staff Report & Minutes
5. January 19, 2023, Planning Commission Staff Report, Resolution PC-1658 & Minutes
6. DPRB 200 Cubic Yards Additional Grading Policy