

MONTEREY COUNTY PLANNING COMMISSION

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| Meeting: July 8, 2009 Time: 1:30 PM | Agenda Item No. 7 |
| Project Description: Provide direction for fire fuel management and consider draft Monterey County Community Wildfire Protection Plan (MCCWPP). | |
| Project Location: Unincorporated County | APN: Countywide |
| Planning File Number: PD090290 | Name: County of Monterey |
| Plan Area: Coastal and Inland | Flagged and staked: N/A |
| Zoning Designation: : Multiple | |
| CEQA Action: TBD | |
| Department: RMA - Planning Department | |

RECOMMENDATION:

Staff recommends that the Planning Commission consider alternatives to addressing fire fuel management.

DISCUSSION:

On June 16, 2009, the Board directed the Planning Commission to consider a request by a group called The Monterey County Wildfire Working Group (MC2WG) who is actively developing local Community Wildfire Protection Plans (CWPP). A copy of the Board report and attachments is included for the Commission's reference. Board direction included a statement that any actions related to adding the CWPP into GPU5 not result recirculation of the DEIR.

MC2WG has requested that the County include policy language in the draft 2007 General Plan (GPU5) directed at facilitating the ability of residents to manage vegetation around their homes, and specifically a statement that the order of priority for application of all policies be protection of life, property and the environment, in that order. Staff finds that Goal (Chapter) S-4 of the 2007 General Plan (Safety Element policies S-4.31 and S-4.32) supports the concept of fuel modification for new development, but the group is seeking more specific language relative to recent work on the CWPP and to address fuel modification for existing development. While the MCCWPP would apply county-wide, the General Plan is limited to the inland areas only.

There are multiple options for addressing fire fuel management:

- 1) Include GP policy regarding the MCCWPP. Including policy allowing removal of vegetation without discretionary review would impact the DEIR prepared for GPU5; however, recognizing the need/desire to develop a program (e.g. CWPP) could be accomplished where the CWPP process would be subject to its own CEQA review.
- 2) Direct staff to initiate an amendment to the LCP. Because GPU5 is not intended to apply in the coastal zone, the issue of wildfire protection in the coastal zone would require an amendment to the Local Coastal Plan (LCP).
- 3) Consider a permit/process that will allow fuel modification around existing homes. Allow the GPU5 to address development from this point forward and create a process/program to address existing development:

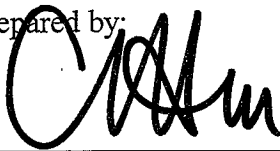
- a. *Blanket Permit.* Process a County-initiated blanket permit similar to a Coastal permit created that was established in consultation with the Coastal Commission staff to allow removal of dead tan oaks in the Big Sur area. This permit required monitoring of individual projects.
- b. *Expedited Process.* Establish a program/process where fuel modification plans can be handled administratively, but with limited discretion to address potential biological resource issues.

Staff requests Commission direction if, or to what level, the CWPP should be included in GPU5. If the Commission wants to include policy language, staff would need to return with proposed language and what that could mean relative to CEQA review. Staff recommends at a minimum that the Commission provide direction to develop a program focused on addressing existing development.

OTHER AGENCY INVOLVEMENT:

Fire Agencies working with the CWPP have been contacted regarding this report.

Prepared by:



Carl P. Holm, AICP
Assistant Director
RMA- Planning Department
Date: June 28, 2009

cc: Board of Supervisors; County Counsel; Environmental Health Division; Public Works; Monterey County Water Resources Agency; Parks Department; California Coastal Commission; Mike Novo; Carl Holm; Project File (PD090290)

Attachments:
Exhibit A BOS Report 6/16/09 (with attachments)

MONTEREY COUNTY BOARD OF SUPERVISORS

| | |
|---|-------------------|
| MEETING: June 16, 2009 1:30 p.m. | AGENDA NO: |
| SUBJECT: Direct staff to work with the Planning Commission on addressing wildfire protections and the draft Monterey County Community Wildfire Protection Plan (MCCWPP) in the 2007 General Plan Update. (PD090290/Community Wildfire Protection Plan, County-wide) | |
| DEPARTMENT: RMA – Planning Department | |

RECOMMENDATION:

It is recommended that the Board of Supervisors direct staff to work with the Planning Commission on addressing wildfire protections and the draft Monterey County Community Wildfire Protection Plan (MCCWPP) in the 2007 General Plan Update (GPU5).

DISCUSSION:

A group has been working on a Community Wildfire Protection Plan for the County of Monterey (MCCWPP). This group has requested that the Board include policy language in the 2007 General Plan (GPU5) directed at facilitating the ability for residents to manage vegetation around their homes. Staff finds that the draft GPU5 supports the concept of fuel modification, but the group is seeking more specific language relative to recent work on the MCCWPP. Goal (Chapter) S-4 of the 2007 General Plan includes policies to minimize the risks from fire that was developed with the input from local fire agencies.

The Board has indicated that no outside requests beyond the DEIR are to be made to GPU5 at this point. Therefore, to move this request forward, staff recommends that the Board provide direction for staff to work with the Planning Commission on any potential policy modifications. A recommendation by the Commission will be forwarded to the Board for consideration when the entire General Plan and final EIR comes to the Board.

The MCCWPP group drafted a resolution (**Exhibit B**) and request that the Board consider adopting this document including a statement that the order of priority for application of all policies be protection of life, property and the environment, in that order. This MCCWPP recommends that Monterey County include policies in the General Plan that (1) promote and enable fuel reduction where it is needed to protect existing structures, including those defensible space measures legally required under PRC 4291; (2) ensure that evacuation routes are passable during wildfire; and (3) develop guidelines to, reduce vegetation in overgrown areas for adequate fuel reduction around structures and along roads.

While staff may agree with the fire protection goals of the resolution, Monterey County's General Plan must be internally consistent and balanced. Therefore, we would need to assess what policy statements like this would mean for other policies in the draft General Plan and/or if the proposed changes would result in the need for recirculation of the draft EIR. Balanced does not necessarily mean equality between life and vegetation, but that we also need to assess what state or federal laws/agencies may be affected (PRC 4291/CalFire, ESA/USFWS, CESA/DFG, Coastal Act/CCC,

etc.) and address these impacts through CEQA and/or the LCP process. Therefore, staff would not recommend adopting a resolution with specific policy language at this time.

FINANCING:

This work would be performed as part of the approved General Plan project. Funding for staff time associated with this project is included in the FY08-09 Final Budget for the Planning Department. No additional funding would be required as a result of this direction.

OTHER AGENCY INVOLVEMENT:

Fire Agencies working with the MCCWPP have been contacted regarding this report.

Prepared by:

Approved by:

Carl P. Holm, AICP
Assistant Director
RMA- Planning Department

Mike Novo, AICP
Director
RMA- Planning Department

Date: June 7, 2009

cc: Board of Supervisors; County Counsel; Environmental Health Division; Public Works; Monterey County Water Resources Agency; Parks Department; California Coastal Commission; Mike Novo; Carl Holm; Project File

Attachments: Exhibit "A" Board Order
Exhibit "B" Draft Resolution from CWPP

etc.) and address these impacts through CEQA and/or the LCP process. Therefore, staff would not recommend adopting a resolution with specific policy language at this time.

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This work would be performed as part of the approved General Plan project. Funding for staff time associated with this project is included in the FY08-09 Final Budget for the Planning Department. No additional funding would be required as a result of this direction.

OTHER AGENCY INVOLVEMENT:

Fire Agencies working with the MCCWPP have been contacted regarding this report.

Prepared by:

Approved by:

Carl P. Holm, AICP
Assistant Director
RMA- Planning Department

Mike Novo, AICP
Director
RMA- Planning Department

Date: June 7, 2009

cc: Board of Supervisors; County Counsel; Environmental Health Division; Public Works; Monterey County Water Resources Agency; Parks Department; California Coastal Commission; Mike Novo; Carl Holm; Project File

Attachments: Exhibit "A" Board Order
Exhibit "B" Draft Resolution from CWPP

EXHIBIT A

RECEIVED BY

SEP 16 2005

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FISH AND WILDLIFE SERVICE OF
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
THE CALIFORNIA DEPARTMENT OF FORESTRY,
THE SAN DIEGO COUNTY FIRE CHIEF'S ASSOCIATION AND
THE FIRE DISTRICT'S ASSOCIATION OF SAN DIEGO COUNTY

BOARD OF FORESTRY
AND FIRE PROTECTION

A. INTRODUCTION

Many species of plants and wildlife in the County of San Diego have been listed and continue to be listed as threatened or endangered by the Secretary of the Interior pursuant to the federal Endangered Species Act and by the California Fish and Game Commission pursuant to the California Endangered Species Act. Additionally, many listed and species that may be listed in the future are protected in certain areas by agreements among jurisdictions and the wildlife agencies, pursuant to the state of California's Natural Communities Conservation Planning (NCCP) program. In light of these listings, officials of the California Department of Forestry, and the members of the San Diego County Fire Chief's Association and the Fire Districts Association of San Diego County have expressed concerns regarding their ability to continue to require the abatement of flammable vegetation within their respective jurisdictions in order to protect life, property and the environment from the threat of fire.

B. AUTHORITIES

This Memorandum of Understanding is hereby made and entered into by and between the California Department of Forestry, hereinafter referred to as "CDF"; the San Diego County Fire Chief's Association, hereinafter referred to as the "Fire Chiefs"; the Fire District Association of San Diego County, hereinafter referred to as the "Districts"; the Fish and Wildlife Service of the United States Department of the Interior, hereinafter referred to as the "Service"; and the California Department of Fish and Game, hereinafter referred to as "Department" under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 et. seq.) the Fish and Game Code Section 702 and the California Endangered Species Act, as amended (Fish and Game Code Section 2050, et. seq.).

C. PURPOSE

The purpose of this Memorandum of Understanding is to establish guidelines by which the CDF, Fire Chiefs and the Districts can continue to protect lives and property from the threat of fire by requiring the abatement of flammable vegetation pursuant to State Law, County and District ordinances and Cities' municipal codes and to establish a cooperative mechanism whereby the Service and Department may assess, minimize, and help account for potential adverse impacts to sensitive species and habitats resulting from vegetation abatement activities.

D. RECITALS

1. Fire Districts are responsible for assuring compliance with applicable provisions of their ordinances, the California Health and Safety Code and the California Public Resources Code sections 4290 & 4291 regarding the abatement of flammable vegetation.
2. Fire Departments of the Cities are responsible for assuring compliance with the Government Code and applicable provisions of their municipal codes regarding the abatement of flammable vegetation.
3. CDF is responsible for assuring compliance with applicable provisions of the California Public Resources Code sections 4290 & 4291 regarding the abatement of flammable vegetation.
4. The Service is responsible for enforcing the federal Endangered Species Act of 1973.
5. The Department is responsible for enforcing the California Endangered Species Act, and the Native Plant Protection Act. The Service and Department together administer the state NCCP program (NCCP Act of 1991.)
6. Areas immediately surrounding improvements to real property, whether such areas are undeveloped wildlands or are altered in some way, do not generally constitute core natural habitat areas, nor do they typically support sensitive species, by virtue of their proximity to human activities.
7. Uncontrolled wildfires pose a serious threat to human lives and property, but are generally part of the natural disturbance cycle of adjacent wildlands. The propensity of wildlands to carry fire to human developments usually necessitate the provision of fuel breaks in order to reduce or eliminate the likelihood of damage to property.
8. Properly maintained fuel modification zones and fire breaks will reduce the incidence of non-Natural fires spreading from developed areas to natural land and lower the potential impacts of unseasonable and frequent wildfires to listed species and their habitats.”

NOW THEREFORE, the parties hereto mutually agree as follows:

Section I. General Terms and Conditions:

This MOU authorizes the take of species listed as threatened or endangered, or candidate species (under Chapter 1.5 of Division 3 of the Fish and Game Code) for management purposes necessitated by or incidental to those certain fire protection measures described herein.

The management purposes for which this MOU is issued are:

- I. Mandatory fire protection measures in accordance with Section 4290 of the Public Resources Code, specifically:

(a) Measures necessary to implement minimum fire safety standards related to defensible space which are applicable to state responsibility are lands under the authority of CDF.

(b) Measures necessary to implement minimum safety standards related to fuel breaks and greenbelts.

(c) Other measures required by Section 4290 as determined by the Director of CDF.

2. Mandatory fire protection measures in accordance with Section 4291 of the Public Resource Code, specifically:

(a) The maintenance around and adjacent to any building or structure in, upon, or adjoining any mountainous area or forest-covered lands, brush-covered lands, or grass-covered lands, or any land which is covered with flammable material, of a fire break made by removing and clearing away, for a distance of not less than 30 feet on each side of such building or structure or to the property line, whichever is nearer, all flammable vegetation or combustible growth.

(b) The maintenance around and adjacent to any building or structure such as is described in (a) above, additional fire protection or fire break made by removing all brush, flammable vegetation, or combustible growth which is located from 30 feet to 100 feet from such a building or structure or to the property line, whichever is nearer, as may be required by the Director of Forestry and Fire Prevention upon a finding that, because of extra hazardous conditions, a firebreak of only 30 feet around such building or structure is not sufficient to provide reasonable fire safety, and including the maintenance of grass and other vegetation more than 30 feet from such building or structure and less than 18 inches in height where necessary to stabilize the soil and prevent erosion.

3. Mandatory fire protection measures in accordance with Section 4296.5 of Public Resource Code, specifically, upon order of the Director of Forestry and Fire Protection or the agency having primary responsibility for the fire protection of the area, the destruction, removal, or modification so as not to be flammable, of any vegetation or other flammable material on any railroad right-of-way on forest-covered, brush-covered, or grass-covered land.

4. Any measures as deemed necessary by the Fire Chief and in accordance with the Guideline section of this MOU.

Section II. GUIDELINE

The following guidelines may be implemented by individuals or entities owning or leasing property within the jurisdiction of the County and the Cities as well as by CDF, Fire Districts, and the Cities:

- a. **Improved Property.** Property owners, their lessees, CDF, fire districts, and cities shall be permitted to clear all flammable vegetation within a one hundred (100) foot radius of all structures¹ using methods, such as mowing and trimming that leave the plant root structure intact to stabilize the soil. Clearing is not limited to these methods and discing, which exposes bare mineral soil, may be used if deemed necessary by the local fire chief. Where the distance from the structure to the property line of the parcel on which the structure is located is less than the distance required to be cleared, the adjacent owner, lessee, CDF, fire districts, or cities shall be permitted to establish the required fuel break. The removal of flammable vegetation does not apply to single specimens of trees, ornamental shrubbery, or similar plants which are used as ground cover, if the Chief of the local fire department determines that they do not form a means of rapidly transmitting fire from the native growth to any structures.
- b. **Unimproved Property.** Property owners, their lessees, fire districts and cities shall be permitted to establish fuel breaks on unimproved property if such a fire break is deemed necessary based on written findings by the Chief of the local fire department to protect improved property, or public safety and welfare. The Chief of the local fire department shall deem such a fuel break necessary only if the subject property is located within an unusually high fuel loading area or within a high or very high hazard area as determined by California Department of Forestry Fire Severity Mapping. These findings shall be provided to the Department and Service upon their adoption by the Chief of the Fire Department at least ten (10) days prior to the issuance of abatement orders. If the Department of Service fail to respond within the ten-day period, the party may complete the abatement and not be in violation of this MOU. Clearing may be done using methods, such as mowing and trimming that leave the plant root structure intact to stabilize the soil. Clearing is not limited to these methods and discing, which exposes bare mineral soil, may be used if deemed necessary by the local fire chief.
- c. **Areas previously cleared.** Areas that have been consistently cleared of vegetation over the last three years may continue to be cleared even though they are outside of the limits established in Sections a. and b. above.

¹For the purposes of this MOU, the term "structure" does not include fences or similar barriers enclosing or separating areas of land.

- d. Roadway clearance. Property owners, their lessees, fire districts, the County of San Diego, Cal Trans and cities shall be permitted to clear up to 30' along each side of established regularly traveled roadways. The required width will be at the discretion of the fire chief.
- e. Prior or Future Agreements. The terms and guidelines in this MOU may be superseded by any other specific agreement entered into with the Service or the Department governing the removal of vegetation. This MOU shall not preclude revision of the flammable vegetation abatement guidelines contained herein when future regional and local conservation plans are adopted by the local jurisdictions.
- f. Federal Lands. Land owned or controlled by Federal Multiple Use Land Management Agencies, will be handled on a "case by case" basis, with the federal agency that controls the subject lands to determine what clearing is appropriate.
- g. Property owners, their lessees, fire districts, and cities shall continue to avoid vegetation removal in recognizable riparian (stream side) zones and vernal pool depressions, as these areas are naturally somewhat resistant to fire and are subject to separate federal and state regulations. If such removal is deemed necessary by the local fire chief, the Department and Service must be notified in writing and consulted at least ten (10) days prior to anticipated vegetation abatement. If the Department and Service fail to respond within the ten-day period, the party may complete the abatement and not be in violation of this MOU.

Section III NOTIFICATION OF LANDOWNERS

Fire agencies that require abatement of flammable vegetation clearance shall develop guidelines for this clearance. These guidelines shall be made available to the public, either through direct mail or a public notices, stating that the guidelines are available and the location where they can be obtained. The guidelines must include directions as to the minimum and maximum limits for vegetation clearing and acceptable clearing methods. Additionally, the following statement shall be included in the guidelines:

Landowners who have received notice from the California Department of Fish and Game or U.S. Fish and Wildlife Service of the occurrence of rare, threatened, or endangered species on their property in areas subject to fuel break clearance must notify both agencies in writing at least 10 days prior to vegetation clearing. The agencies will have up to 10 days following such notification to (1) determine whether the proposed clearing complies with State and/or Federal endangered species requirements and (2) to suggest voluntary, alternative abatement measures if feasible and warranted. Failure of the agencies to respond within 10 days will allow the landowner to proceed with abatement

activities without further delay. Failure by landowners to provide adequate notification as described above may render landowners liable under State and Federal law.

Section IV. **BIOLOGICAL SURVEYS**

Property owners, their lessees, CDF, fire districts and cities shall not be required to perform biological surveys as a condition precedent to performance of the fire protection activities established by the guidelines set forth in Section 1.

Section V. PROJECT OFFICERS

a. Project Officer for the CDF is:

Ken. Miller, Ranger in Charge
California Department of Forestry
2249 Jamacha Rd.
El Cajon, California 92019

b. Project Officer for the Fire Chiefs is:

Erwin L. Willis, Fire Chief
Rancho Santa Fe Fire Protection District
P.O. Box 410
Rancho Santa Fe, CA 92067

c. Project Officer for the Districts is:

Ralph Steinhoff
North County Fire Protection District
315 East Ivy Street
Fallbrook, CA 92028

d. Project Officer for Service is:

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service, Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

e. Project Officer for the Department is:

Jacqueline Schafer, Director
Department of Fish and Game
1416 9th Street
Sacramento, California 95814

Section VI. SPECIAL TERMS AND CONDITIONS

The CDF, fire districts, cities, the Service and the Department shall comply with the Reasonable and Prudent Measures and the Terms and Conditions identified in Biological Opinion issued by the Service for this action. Take of listed species that is deliberate and results from an act outside the scope of the Project as defined in Section I is not authorized.

It is understood by the parties that the Service authorizes incidental take of the following federally listed threatened and endangered species: arroyo toad (*Bufo microscaphys californicus*), coastal California gnatcatcher (*Polioptila californica*), and Stephen's Kangaroo Rat (*Dipodomys stephensi*), which may be impacted by the fire protection activities established by the guidelines set forth in Section I. Furthermore, it is understood by the parties that the Department authorizes the take of species listed as threatened species or endangered species, or candidate species (under Chapter 1.5 of Division 3 of the Fish and Game Code) which may be impacted by the fire protection activities established by the guidelines set forth in Section I.

Any person who becomes aware of the take of an individual of a candidate or listed species as a result of that person's engaging in the permitted activity shall report the take to the Department as soon as practicable and shall make available the remains of any animal or plant taken to the Department of fish and Game upon demand.

Section VII. FINDINGS

1. Department Findings:

Pursuant to fish and Game Code Section 2081, the Department finds that implementation of the fire control, abatement, and protection measures contemplated by this MOU is not likely to result in jeopardy to the continued existence of the identified State listed or candidate species, if the terms and conditions of the MOU are fully implemented and adhered to. The Department finds, further, that by preventing or limiting the spread of fire to the identified species' habitat, this MOU will serve to protect the identified species from further degradation.

Section VIII. AMENDMENTS

Amendments to this MOU may be proposed by any of the parties and shall become effective upon being reduced to a written instrument executed by all of the parties. It is anticipated and understood by the parties that this MOU, specifically the arroyo toad (*Bufo microscaphys californicus*), coastal California gnatcatcher (*Polioptila californica*), and Stephen's Kangaroo Rat (*Dipodomys stephensi*), may be amended to include additional species that in the future are listed as threatened or endangered by the Secretary of the Interior or the California Fish and Game Commission. In addition, it is understood that this MOU may be amended to include additional parties.

Section IX. TERM OF AGREEMENT

This MOU shall become effective upon the date it is executed by the parties (execution date) and shall remain in effect for an initial period of one (1) year. Thereafter, this MOU shall be automatically extended from year to year on the aforementioned execution date unless the Service or the Department objects to the extension, in writing, within thirty (30) days prior to the expiration of this MOU. Any written objection must state the reason for the objection to the extension of this MOU. In the event a written objection is provided, the parties shall work cooperatively to resolve any problems so that the MOU may be extended.

IN WITNESS WHEREOF, each party hereto has caused this MOU to be executed by an authorized official on the day and year set forth opposite his or her signature.

U.S. FISH AND WILDLIFE SERVICE

By: Gail C. Kobetich

Date: 2-26-97

Title: Gail Kobetich, Field Supervisor

SERVICE CONTRACT SUFFICIENCY REVIEW

By: _____

Date: _____

Title: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Jacqueline Schafer

Date: 2/26/97

Title: Jacqueline Schafer, Director

CALIFORNIA DEPARTMENT OF FORESTRY, SAN DIEGO RANGER UNIT

BY: Ken Miller

Date: 2-26-97

Title: Ken Miller, Ranger in Charge

SAN DIEGO COUNTY FIRE CHIEF'S ASSOCIATION

By: Erwin L. Willis

Date: 2-26-97

Title: Erwin L. Willis, President

FIRE DISTRICT'S ASSOCIATION OF SAN DIEGO COUNTY

By: Wayne Strange

Date: 2/26/97

Title: Wayne Strange, President