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ORDINANCE NUMBER O- 20161 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 07 2012

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 143.0110, 143.0115, 143.0140, BY AMENDING AND RENUMBERING SECTION 143.0141(a) TO SECTION 143.0141(b)(1)-(4), BY AMENDING AND RENUMBERING SECTION 143.0141(b) TO SECTION 143.0141(b)(5), BY RENUMBERING SECTION 143.0141(c) TO SECTION 143.0141(a)(7), AND RETITLING THAT SECTION, BY AMENDING AND RENUMBERING SECTION 143.0141(d) TO SECTION 143.0141(a)(5)(A), BY AMENDING AND RENUMBERING SECTION 143.0141(e) TO SECTION 143.0141(a)(4), BY AMENDING AND RENUMBERING 143.0141(f) TO SECTION 143.0141(a)(5)(B), BY AMENDING AND RENUMBERING SECTION 143.0141(g) TO SECTION 143.0141(a)(6)(A), BY AMENDING AND RENUMBERING SECTION 143.0141(h) TO SECTION 143.0141(a)(6)(B), BY AMENDING AND RENUMBERING SECTION 143.0141(i) TO SECTION 143.0141(a)(1), BY AMENDING AND RENUMBERING SECTION 143.0141(i)(1) TO SECTION 143.0141(a)(1)(B)(i), BY AMENDING AND RENUMBERING SECTION 143.0141(i)(2) TO SECTION 143.0141(a)(1)(B)(ii), BY AMENDING AND RENUMBERING SECTION 143.0141(i)(3) TO SECTION 143.0141(a)(1)(C), BY AMENDING AND RENUMBERING SECTION 143.0141(j) TO SECTION 143.0141(a)(2), BY RENUMBERING SECTION 143.0141(k) TO SECTION 143.0141(a)(3), AND BY AMENDING SECTION 143.0150, ALL RELATING TO DEVIATIONS FROM THE REQUIREMENTS OF THE LAND DEVELOPMENT CODE REGARDING WETLANDS.

WHEREAS, the Environmentally Sensitive Land Regulations (ESL) housed in the Land Development Code (LDC) were adopted to assure that development occurs in a manner that protects the overall quality of the resources consistent with sound resource conservation principles and the rights of private property owners; and

WHEREAS, impacts to wetlands, a sensitive biological resource, are allowed under the LDC only if an applicant obtains a Site Development Permit and the decision maker can make the required findings; and

WHEREAS, the existing language in the LDC provides only limited guidance to City staff, the applicant and the decision maker regarding the evaluation of impacts to these resources, and under what circumstances it is reasonable to consider and to recommend approval of a deviation to the current regulations; and

WHEREAS, City staff has worked with individuals, community groups, and relevant wildlife agencies to produce more comprehensive guidance for evaluating proposed deviations to wetland regulations; NOW, THEREFORE,

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

Section 1. That Chapter 14, Article 3, Division 1 of the San Diego Municipal Code is amended by amending and renumbering sections 143.0110, 143.0115, 143.0140, 143.0141 and 143.0150, to read as follows:

**§143.0110 When Environmentally Sensitive Lands Regulations Apply**

[No change in text.]

(a) [No change in text.]

(b) [No change in text.]

(1) through (5)[No change in text.]

**Table 143-01A**

**Applicability of Environmentally Sensitive Lands Regulations**

*Environmentally Sensitive Lands Potentially Impacted by Project*

Type of Development Proposal		Wetlands, listed species habitat <sup>(1)</sup>	Other Sensitive Biological Resources other than Wetlands and listed species habitat	Steep Hillides	Sensitive Coastal Bluffs and Coastal Beaches	Floodplains
1. Single dwelling units on individual lots	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145 143.0146

<i>Environmentally Sensitive Lands Potentially Impacted by Project</i>						
Type of Development Proposal	Wetlands, listed species habitat <sup>(1)</sup>	Other Sensitive Biological Resources other than Wetlands and listed species habitat	Steep Hillsides	Sensitive Coastal Bluffs and Coastal Beaches	Floodplains	
equal to or less than 15,000 square feet <sup>(2)</sup>			except (a) <sup>(5)</sup>			
	P	NDP/ Process Two	NDP/ Process Two	NDP/ Process Two	SDP/ Process Three	NDP/ Process Two
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
2. Single dwelling units on lots or multiple lots totaling more than 15,000 square feet	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145
	P	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
3. Multiple dwelling unit and non-residential development and public works projects	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145 143.0146
	P	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
4. Any subdivision of a premises	R	143.0141(a),(b)	143.0141	143.0142 <sup>(3)</sup>	143.0143, 143.0144	143.0145 143.0146
	P	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
5. Project-specific land use plans	R	143.0141(a),(b), 143.0115	143.0141, 143.0115	143.0142, 143.0115	143.0143, 143.0144, 143.0115	143.0115, 143.0145 143.0146
	P	SDP/Process Four/Five	SDP/ Process Four/Five	SDP/Process Four/Five	SDP/ Process Four/Five	SDP/Process Four/Five
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
6. Any development that proposes deviations from any portion of the Environmentally Sensitive Lands Regulations	R	143.0141(a),(b), 143.0150	143.0141, 143.0150	143.0142, 143.0150 <sup>(4)</sup>	143.0143, 143.0144, 143.0150	143.0145, 143.0146 143.0150
	P	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)-	--	--	143.0130(a), (b)	143.0130(c)
7. Development other than single dwelling units on individual lots, that proposes alternative compliance for development area in steep hillsides.	R	--	--	143.0142 except (a), 143.0151	--	--
	P	--	--	SDP/ Process Four	--	--
	U	--	--	--	--	--

## Legend to Table 143-01A

R	Development regulation sections (in addition to Section 143.0140) applicable to the <i>environmentally sensitive lands</i> present.
P	Type of Permit/Decision process required. Neighborhood Development Permit (NDP) Site Development Permit (SDP)

Legend to Table 143-01A	
U	Regulations that identify permitted uses when they are different than the applicable zone due to the <i>environmentally sensitive lands</i> present.

Footnotes to Table 143-01A

<sup>1</sup> State and federal laws and regulations regulate adverse impacts to *wetlands* and listed species habitat. The City does not have incidental take authorization for listed species within federal jurisdictional waters.

2 through 5 [No change in text.]

(c) [No change in text.]

(1) through (8) [No change in text.]

**§143.0115 Procedures and Regulations for Project-Specific Land Use Plans**

(a) through (c) [No change in text.]

**EDITORS NOTE: The Land Development Manual includes:**

[No change in text.]

See RR-292248 for the Coastal Bluffs and Beaches Guidelines of the Land Development Code; RR- 307377 for the Biology Guidelines of the Land Development Code; RR-292250 for the Historical Resources Guidelines of the Land Development Code; RR-292251 for the Submittal Requirements for Deviations within the Coastal Overlay Zone of the Land Development Code.

**§143.0140 General Development Regulations for all Environmentally Sensitive Lands**

[No change in text.]

(a) through (d) [No change in text.]

**EDITORS NOTE: The Land Development Manual includes:**

[No change in text.]

See RR-292248 for the Coastal Bluffs and Beaches Guidelines of the Land Development Code; RR- 307377 for the Biology Guidelines of the Land Development Code; RR-292250 for the Historical Resources Guidelines of the Land Development Code; RR-292251 for the Submittal Requirements for Deviations within the Coastal Overlay Zone of the Land Development Code.

**§143.0141 Development Regulations for Sensitive Biological Resources**

[No change in text.]

(a) General Regulations for *Sensitive Biological Resources*

(1) All *development* occurring in *sensitive biological resources* is subject to a site-specific impact analysis conducted by a qualified Biologist, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to *sensitive biological resources* and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact:

(A) Dedication in fee title to the City of San Diego; or

(B) Dedication of a covenant of easement in favor of the City of San Diego, the California Department of Fish and Game and the U.S. Fish and Wildlife Service for either:

(i) an off-site location with long-term viability and biological values equal to or greater than the impacted site, and with limited right of entry for habitat management, as necessary; or

(ii) on-site creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary. The location of the easement must have long-term viability and

biological values equal to or greater than the impacted site.

- (C) If the area of impact is small, monetary payment of compensation into a fund may be accepted in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.
- (2) *Grading* during wildlife breeding seasons shall be consistent with the requirements of the *MSCP Subarea Plan*.
- (3) *Sensitive biological resources* that are outside of the allowable development area on a *premises*, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in section 143.0152. The U.S. Fish and Wildlife Service and the California Department of

Fish and Game are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.

- (4) Inside and adjacent to the *MHPA*, all *development* proposals shall be consistent with the *MSCP Subarea Plan*.
- (5) Projects Located Inside the *MHPA*
  - (A) *Development* is permitted only in accordance with the regulations set forth in the OR-1-2 zone, pursuant to section 131.0250(b), unless exempted from the development area regulations pursuant to section 143.0111.
  - (B) Any change of an agricultural use to a non-agricultural use is subject to the development area regulations of section 143.0141(a)(5)(A). Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable development area.
- (6) Projects Located Outside of the *MHPA*
  - (A) *Development* of lands that are designated as open space in the applicable *land use plan* and zoned OR-1-1 is permitted only if necessary to achieve the allowable development area, in accordance with section 131.0250(a).
  - (B) *Encroachment* into *sensitive biological resources* is not limited, except as set forth in section 143.0141 (a)(6)(A) and 143.0141(b).

(7) Narrow Endemic Species

Inside the *MHPA*, *development* shall avoid impacts to narrow endemic species. Outside the *MHPA*, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplanted. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

(b) Wetland Regulations

- (1) State and federal law regulates adverse impacts to *wetlands* and listed species habitat. The *applicant* shall confer, when applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the *development* proposal.
- (2) The applicant shall solicit input from U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat.
- (3) The applicant shall, to the maximum extent feasible, incorporate U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game recommendations into the *development* proposal prior to the first public hearing.



- (4) *Construction permits* shall not be issued for any project that impacts *wetlands* or listed species habitat until all necessary federal and state permits have been obtained.
- (5) Impacts to *wetlands*, shall be avoided. A *wetland buffer* shall be maintained around all *wetlands* as appropriate to protect the functions and values of the *wetlands*. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in this section.

**EDITORS NOTE: The Land Development Manual includes:**

[No change in text.]

See RR-292248 for the Coastal Bluffs and Beaches Guidelines of the Land Development Code; RR- 307377 for the Biology Guidelines of the Land Development Code; RR-292250 for the Historical Resources Guidelines of the Land Development Code; RR-292251 for the Submittal Requirements for Deviations within the Coastal Overlay Zone of the Land Development Code.

**§143.0150 Deviations from Environmentally Sensitive Lands Regulations**

[No change in text.]

(a) through (c) [No change in text.]

(d) Deviations to the wetland regulations of this Division for *development* located outside of the Coastal Overlay Zone shall not be granted unless the *development* qualifies to be processed as one of the three options set forth in the following regulations and in accordance with the Biology Guidelines in the Land Development Manual:

(1) Essential Public Projects Option

(A) A deviation may only be requested for an Essential Public Project where no feasible alternative exists that would avoid impacts to wetlands.

(B) For the purpose of this section, Essential Public Projects shall include:

(i) Any public project identified in an adopted *land use plan* or implementing document and identified on the Essential Public Projects List adopted by Resolution No. <sup>R-</sup>307377 as Appendix III to the Biology Guidelines; or

(ii) Linear infrastructure, including but not limited to major roads and *land use plan* circulation element roads and facilities including bike lanes, water and sewer pipelines including appurtenances, and stormwater conveyance systems including appurtenances; or

(iii) Maintenance of existing public infrastructure; or

(iv) State and federally mandated projects.

(2) Economic Viability Option

A deviation may be requested to preserve economically viable use of a property that would otherwise be deprived by a strict application of the regulations. Such a deviation shall be the minimum necessary to achieve economically viable use of the

property and shall avoid wetland resources to the maximum extent practicable.

(3) Biologically Superior Option

(A) A deviation may be requested to achieve a superior biological result which would provide long term biological benefit and a net increase in quality and viability (functions and value), relative to existing conditions or the project originally proposed by the applicant, and long term biological benefit.

(B) Wetland resources that would be impacted by the project shall be demonstrated to be of low biological quality.


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

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Section 4. Permits shall not be issued for development that is inconsistent with this ordinance unless applications for the permits were deemed complete prior to the effective date of this ordinance.

Section 5. The City Clerk is instructed to insert the appropriate Resolution Number, once known, in the blank spaces provided in San Diego Municipal Code section 143.0150(d)(1)(B)(i), and in the Editor's Notes portions of sections 143.0115, 143.0140, and 143.0141.

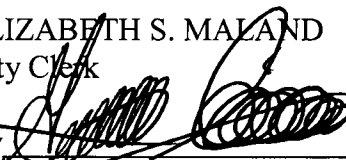
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Heidi K. Vonblum  
Deputy City Attorney

HKV:hm  
02/27/2012  
Or.Dept:DSD-Planning  
Document No. 326674

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 24 2012.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 5-7-12  
(date)

  
JERRY SANDERS, Mayor

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

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JERRY SANDERS, Mayor

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