

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-20899 (NEW SERIES)

DATE OF FINAL PASSAGE FEBRUARY 9, 2018

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 5, BY AMENDING SECTION 126.0505; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 1, BY AMENDING SECTIONS 143.0101, 143.0110, 143.0111, 143.0141, 143.0150, AND 143.0152, RELATING TO THE ADOPTION OF THE VERNAL POOL HABITAT CONSERVATION PLAN.

§113.0103 Definitions

Abutting property through Visibility area [No change in text.]

VPHCP means the City of San Diego Vernal Pool Habitat Conservation Plan.

Wall, retaining through Yard [No change in text.]

§126.0505 Findings for Site Development Permit Approval

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0505(a) and the supplemental *findings* in Section 126.0505(b) through (en) that are applicable to the proposed *development* as specified in this section.

(a) [No change in text.]

(b) Supplemental Findings--Environmentally Sensitive Lands

A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0505(a):

(1) through (3) [No change in text.]

(4) The proposed *development* will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan and Vernal Pool Habitat Conservation Plan (VPHCP);

(5) through (6) [No change in text.]

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

§143.0101 Purpose of Environmentally Sensitive Lands Regulations

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~~ Multi-Habitat Planning Area (*MHPA*), as identified in the City of San Diego *MSCP Subarea Plan* ~~Subarea Plan~~ and *VPHCP*. The habitat based level of protection which will result through implementation of the ~~Multiple Habitat Planning Area~~ *MHPA* 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 *MSCP Subarea Plan* but determined to be sensitive pursuant to the CEQA review process. This determination will be addressed in the environmental documentation.

§143.0110 When Environmentally Sensitive Lands Regulations Apply

This Division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

- (a) [No change in text.]
- (b) Table 143-01A identifies the appropriate development regulations, the required decision process, and the permitted uses applicable to various types of *development* proposals that propose to encroach into *environmentally sensitive lands* or that do not qualify for an exemption pursuant to Section 143.0110(c).
 - (1) through (5) [No change in text.]

Table 143-01 A

Applicability of Environmentally Sensitive Lands Regulations

<p><i>Environmentally Sensitive Lands Potentially Impacted by Project</i></p>

Type of Development Proposal	Wetlands, listed species habitat ⁽¹⁾	Other Sensitive Biological Resources other than Wetlands and listed species habitat ⁽⁶⁾	Steep Hillides ⁽⁶⁾	Sensitive Coastal Bluffs and Coastal Beaches	Floodplains
1. <i>Single dwelling units on individual lots equal to or less than 15,000 square feet⁽²⁾ through 9. Any capital improvement program project that deviates from the Environmentally Sensitive Lands Regulations</i> [No change in text.]	[No change in text.]				

Legend to Table 143-01A

[No change in text.]

Footnotes for Table 143-01A

¹ 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, except for vernal pool species covered under the VPHCP.

² through ⁶ [No change in text.]

(c) [No change in text.]

§143.0111 Limited Exceptions from Environmentally Sensitive Lands Regulations

The following *development* activities require a Neighborhood Development Permit or Site Development Permit in accordance with Table 143-01A, but the applicable development regulations are modified as indicated:

- (a) through (c) [No change in text.]
- (d) Outside the Coastal Overlay Zone, City linear utility projects are exempt from the development area regulations of the OR-1-2 zone in Section 131.0250(b) and the development area regulations for *steep hillsides* in Section 143.0142(a) and for *sensitive biological resources* in Section 143.0141 ~~(d)~~(a)(5).
- (e) through (h) [No change in text.]
- (i) Public linear trail and public maintenance access projects are exempt from the development area regulations of the OR-1-2 zone in Section 131.0250(b) and the development area regulations for *steep hillsides* in Section 143.0142(a) and for *sensitive biological resources* in Section 143.0141 ~~(d)~~(a)(5).

§143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes *encroachment* into *sensitive biological resources* ~~or~~ that does not qualify for an exemption pursuant to Section 143.0110(e) requires a development permit in accordance with Section 143.0110, unless exempted pursuant to Section 143.0110(c) and is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

- (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) [No change in text.]
 - (B) Dedication of a covenant of easement in favor of the City of San Diego, the California Department of Fish and Game Wildlife and the U.S. Fish and Wildlife Service for either:
 - (i) an 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~~ 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) [No change in text.]
- (2) [No change in text.]
- (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~~ Section 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and ~~Game~~ Wildlife 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* and *VPHCP*.
- (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~~ Section 131.0250(b), unless exempted from the development area regulations pursuant to ~~section~~ Section 143.0111.
 - (B) Any change of an agricultural use to a non-agricultural use is subject to the development area regulations of ~~section~~ 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.
 - (C) *Development of a premises containing wetlands is subject to Section 143.0141(b). Any development with impacts to wetlands, including vernal pools and road pools with listed fairy shrimp, is required to process a deviation in accordance with Section 143.0150(d).*
- (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~~ Section 131.0250(a).
 - (B) ~~*Eneroachment into sensitive biological resources is not limited, except as set forth in section 143.0141 (a)(6)(A) and*~~ *Development of a premises containing wetlands is subject to Section 143.0141(b).*

- (C) Outside the Coastal Overlay Zone, impacts to vernal pools and road pools with listed fairy shrimp are not subject to Section 143.0150(d) if mitigated in accordance with the Biology Guidelines in the Land Development Manual and VPHCP.
- (7) Narrow Endemic Species
[No change in text.]
- (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 Wildlife 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 Wildlife 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 Wildlife recommendations into the *development* proposal prior to the first public hearing.
- (4) [No change in text.]
- (5) Impacts to *wetlands*, shall be avoided, except where permitted in accordance with Section 143.0141(b)(6). 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.
- (6) Outside the Coastal Overlay Zone, *encroachment* into a vernal pool is allowed outside of the MHPA where the *development* is consistent with the Biology Guidelines of the Land Development Manual and VPHCP. Such *development* does not require a deviation to the wetland regulations.

§143.0150 Deviations from Environmentally Sensitive Lands Regulations

Plans submitted in accordance with this section shall, to the maximum extent feasible, comply with the regulations of this division. If a proposed *development* does not comply with all applicable development regulations of this division and a deviation is requested as indicated in Table 143-01A, the ~~Planning Commission~~ decision maker may approve, conditionally approve, or deny the proposed Site Development Permit in accordance with ~~Process Four~~, subject to the following:

- (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 in Section 143.0141(b) shall~~

not be granted unless the *development* is located outside of the Coastal Overlay Zone and 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) through (3) [No change in text.]

§143.0152 Covenants of Easements Pursuant to Environmentally Sensitive Lands Regulations

As authorized by California Government Code Section 65871, the owner of any *premises* affected by issuance of a permit under this division as described in Section 143.0140(a), shall execute a covenant of easement unless the owner dedicates the remainder portion of the property in fee to the City. The covenant of easement shall be recorded against title to the affected *premises* and executed in favor of the City.

(a) The owner shall draft the covenant of easement as follows:

(1) through (3) [No change in text.]

(4) To ensure enforceability of the covenant of easement by the City, or jointly and severally by the City, the U.S. Fish and Wildlife Service, and the California Department of Fish and ~~Game~~ Wildlife in those instances when the covenant of easement affects *premises* containing *sensitive biological resources* or other lands that have been accepted as mitigation.

(b) A Process Four hearing shall be held to consider a formal, written request directed to the City by any person requesting the release of a covenant of easement recorded pursuant to this division. A release of any covenant of easement recorded pursuant to this division shall be recorded by the City only when it is determined by the decision maker that restriction of the property is no longer necessary to achieve the land use goals of the City. In any instance where the covenant of easement concerns *sensitive biological resources*, a determination by the decision maker to release the covenant may be made only with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and ~~Game~~ Wildlife.

(c) [No change in text.]

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