

AN ORDINANCE ENACTING CHAPTER 8 OF DIVISION 6 OF TITLE 8  
OF THE SAN DIEGO COUNTY CODE RELATING TO  
SITE IMPLEMENTATION AGREEMENTS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Chapter 8 (commencing with Section 86.801) is added to Division 6 of Title 8 of the San Diego County Code, to read as follows.

**CHAPTER 8. SITE IMPLEMENTATION AGREEMENTS**

**SEC. 86.801.      PURPOSE.**

The purpose of these regulations is to establish a process for proposed development that because of its location, size, or some other characteristic, may be conditioned to ensure that the development does not adversely affect applicable land use plans and that environmental regulations are met. A Site Implementation Agreement, with the written consent of the property owner, would ensure the implementation of conditions associated with development projects including but not limited to subdivisions, mitigation that has been adopted for impacts identified under the California Environmental Quality Act (“CEQA”; Pub. Res. Code sec. 21000 et seq.), on-going project conditions, and other applicable requirements which would best be satisfied after a subdivision map has been recorded.

**SEC. 86.802.      DEFINITIONS.**

As used in this chapter, the following terms shall have the following meanings:

(a) “CEQA document” means a notice of exemption, negative declaration, mitigated negative declaration, environmental impact report, or review of a previously approved or certified CEQA document pursuant to CEQA or the State CEQA Guidelines.

(b) “Decision maker” means the Director of Planning & Development Services, the Planning Commission, and the Board of Supervisors, whichever has jurisdiction over an application listed in Section 86.802(e).

(c) “Director” means the Director of Planning & Development Services.

(d) “Site Implementation Agreement” shall mean an agreement entered into between the property owner(s) and the County pursuant to this chapter which

allows implementation of a development project on the condition that the owner of the land or applicant on which the development project is proposed performs one or more measures identified in the Site Implementation Agreement as necessary to satisfy on-going conditions of the project, implement adopted mitigation for potential environmental impacts of the project or satisfy post subdivision map recordation requirements.

(e) “Development Project” shall mean a project to develop land in a way which requires any of the following permits or approvals:

- Boundary Adjustment
- Conditional Certificate of Compliance
- General Plan Amendment
- Grading Permit
- Habitat Loss Permit
- Tentative Map
- Tentative Parcel Map
- Vacation of Public Service Easement
- Zoning Reclassification

(f) “On-going condition” shall mean a condition of a development project which runs in perpetuity with the entitled land.

### **SEC. 86.803. REQUIREMENTS.**

No person shall develop, construct, install, occupy, use, maintain, carry out or otherwise implement all or any part of a Development Project for which a Site Implementation Agreement has been approved and recorded in accordance with this chapter, except in full compliance with all applicable requirements and the terms of the Site Implementation Agreement. This prohibition applies to the initial development of a project, as well as the on-going use or operation of a project. All persons who acquire ownership of land which is subject to a Site Implementation Agreement, who have actual or constructive notice of the contents of the Site Implementation Agreement, shall be subject to the terms and conditions thereof and shall fully comply with those terms and conditions.

### **SEC. 86.804. SUBDIVISION IMPROVEMENTS.**

A Site Implementation Agreement shall not be used to ensure the construction of subdivision improvements required pursuant to the Subdivision Map Act (Gov. Code sec. 66410 et seq.) or the Subdivision Ordinance (sec. 81.101 et seq. of this code).

**SEC. 86.805. APPLICABILITY.**

Upon request of the applicant or property owner, the Director may use a Site Implementation Agreement, in lieu of another County permit or enforcement mechanism, to ensure the satisfaction of project conditions and ongoing mitigation measures. Prior to using a Site Implementation Agreement in lieu of another County permit or enforcement mechanism, the Director must find that enforcement and monitoring of the project's conditions and mitigation requirements is adequately ensured in the Site Implementation Agreement as it provides an equivalent or more effective means of enforcement.

**SEC. 86.806. COUNTY PROJECTS.**

This chapter shall not apply to any project for which the County is the applicant or landowner.

**SEC. 86.807. FORM AND CONTENTS OF SITE IMPLEMENTATION AGREEMENTS.**

A Site Implementation Agreement shall be in a form approved by the County Counsel and shall contain the following:

- (a) A description of the Development Project;
- (b) A legal description of the real property upon which the Development Project is proposed;
- (c) A requirement that the land owner, or authorized agent on behalf of the land owner, perform one or more of the specified conditions, adopted mitigation measures specified in the project's CEQA document, or other applicable requirements necessary for the development and implementation of the Development Project (which shall be listed in the Site Implementation Agreement), except that the Director may omit particular mitigation measures, conditions or other requirements if he or she finds that enforcement thereof is adequately ensured via another mechanism, such as conditions of another County land use permit or approval, an easement, an agreement, an ordinance requirement, or other mechanism which provides an equivalent or more effective means of enforcement and/or monitoring;
- (d) A statement that implementation of the Development Project is authorized only upon condition that the project conditions or mitigation measures specified in the Site Implementation Agreement are performed;

(e) A statement that the land owner(s) and each grantee, transferee and other successor in interest of the land owner(s) shall be bound by the terms of the Site Implementation Agreement and shall be responsible to perform those project conditions and mitigation measures required thereby and applicable to the Development Project for which the Site Implementation Agreement has been approved;

(f) A requirement that the land owners and each grantee, transferee and other successor in interest of the land owners disclose the terms of the Site Implementation Agreement in writing to any subsequent grantee, transferee or other successor in interest and to any trustee or beneficiary under deed of trust, mortgagee or other person who extends credit against the value of the land; and

(g) The signatures of all owners of the land described in the Site Implementation Agreement (whose signatures shall be acknowledged).

**SEC. 86.808. PROCESS FOR APPROVAL OF SITE IMPLEMENTATION AGREEMENTS FOR PROJECTS OTHER THAN SUBDIVISIONS.**

(a) Prior to presenting an application listed in Section 86.802(e), other than a Conditional Certificate of Compliance, Boundary Adjustment, Tentative Map or Tentative Parcel Map, to the decision maker for approval, the Director shall determine whether there are any mitigation measures identified in the draft CEQA document or other applicable requirements necessary for the development and implementation of the Development Project for that application, for which the approval of the application does not provide an adequate enforcement mechanism through approval conditions or other means. With the written consent of the property owner, such mitigation measures may be included in a Site Implementation Agreement signed by the land owner(s) prior to presentation of the application to the decision maker, unless the applicant contests the imposition of one or more mitigation measures. If the application is approved, the form of Site Implementation Agreement signed by the landowner(s) shall be immediately approved and recorded by the Director.

(b) If the applicant chooses to enter into a Site Implementation Agreement and contests the imposition of one or more conditions or mitigation measures, the application may be presented to the decision maker without a signed Site Implementation Agreement. In that event, or in the event that in the process of the decision maker's consideration of the application, any conditions or mitigation measures are added, modified or deleted, a form of Site Implementation Agreement shall be prepared following the approval of the application, which shall include applicable mitigation measures required by the decision maker. Approval

of the Section 86.802(e) application shall not become effective until the Site Implementation Agreement in conformance with Section 86.807 has been signed by the land owner(s).

(c) Upon approving the Site Implementation Agreement, the Director shall cause it to be filed with the San Diego County Recorder on all properties that are part of the Development Project. The applicant shall not initiate or carry out the project, and no building or other permits or approvals shall be issued in furtherance of the project, until the Site Implementation Agreement has been signed by the land owner(s) and the Director and recorded.

**SEC. 86.809. PROCESS FOR APPROVAL OF SITE IMPLEMENTATION AGREEMENTS FOR BOUNDARY ADJUSTMENTS, CERTIFICATES OF COMPLIANCE, TENTATIVE MAPS AND TENTATIVE PARCEL MAPS.**

(a) Prior to presenting an application for a Boundary Adjustment, Conditional Certificate of Compliance, Tentative Map or Tentative Parcel Map to the decision maker for approval, the Director shall determine whether the draft CEQA document for that application states that one or more mitigation measures, or other applicable requirements necessary for implementation of the Development Project, are required (other than subdivision improvements referenced in Section 86.804 above) which cannot be completed prior to approval of the corresponding Boundary Adjustment, Conditional Certificate of Compliance, Final Map or Parcel Map, and shall identify those to the decision maker. The decision maker's approval of the application shall include a condition requiring that a Site Implementation Agreement be obtained prior to approval of a Boundary Adjustment, Final Certificate of Compliance, Final Map or Parcel Map, which shall include all mitigation measures included in the final CEQA document which the decision maker determines cannot be completed prior to the Boundary Adjustment, Final Certificate of Compliance, Final Map or Parcel Map.

(b) Prior to the approval of the Boundary Adjustment, Final Certificate of Compliance, Final Map or Parcel Map, the applicant shall present to the Director the completed form of Site Implementation Agreement, which includes all mitigation measures required to be included under paragraph (a), complies with Section 86.807 above and is signed by the landowner(s). Immediately upon approval of the Boundary Adjustment, Final Certificate of Compliance, Final Map or Parcel Map, the Director shall approve the Site Implementation Agreement and cause it to be filed with the San Diego County Recorder.

(c) Upon approving the Site Implementation Agreement, the Director shall cause it to be filed with the San Diego County Recorder on all properties that are part of the development project. The applicant shall not initiate or carry out the project, and no building or other permits or approvals shall be issued in furtherance of the project, until the Site Implementation Agreement has been signed by the land owner(s) and the Director and recorded.

**SEC. 86.810. SITE IMPLEMENTATION AGREEMENTS TO BE BINDING ON SUCCESSORS IN INTEREST.**

The recording of a Site Implementation Agreement shall impart constructive notice of the terms thereof. The rights and obligations specified in the Site Implementation Agreement shall apply to the land described therein and shall benefit and be binding upon all grantees, transferees and other successors of the owner with respect to that land.

**SEC. 86.811. JUDICIAL REMEDIES.**

(a) Failure to comply with any condition of a Site Implementation Agreement shall constitute a violation of this code.

(b) The County may specifically enforce the terms of a Site Implementation Agreement in a court of appropriate jurisdiction, and may obtain injunctive relief against any person failing to comply with any term of a Site Implementation Agreement of which such person has actual or constructive notice.

(c) As part of a civil action filed by the County to enforce provisions of this Code, a court may assess a maximum civil penalty of \$2500 per violation for each day during which any violation of any provision of this Code is committed, continued, permitted or maintained by such person(s). As part of a civil action, a court may also enjoin a person from violating any provision of this Code and assess a maximum civil penalty of \$6000 for each day any person intentionally violates the injunction.

**SEC. 86.812. MODIFICATION OF SITE IMPLEMENTATION AGREEMENTS.**

(a) An owner of land subject to a Site Implementation Agreement may file with the Director an application to modify the Agreement. The application shall specify the precise terms of the Site Implementation Agreement which the applicant desires to modify. The Director may also initiate the modification of a Site Implementation Agreement for good cause shown.

(b) The Director shall first determine whether the desired modification requires a revision or modification to any approval listed in subsection 86.802(e), and if it does, the Director shall return the application and advise the applicant that the application cannot be processed until the subsection 86.802(e) approval has been revised or modified.

(c) If the Director determines that no revision or modification to any approval listed in subsection 86.802(e) is required, he or she may approve the application, deny the application, or approve the application with further modification(s) as agreed to by the landowner, except that if the proposed modification affects other conditions and requirements of the approval listed in subsection 86.802(e), then that other decision maker shall have jurisdiction over the modification. If multiple decision makers granted the approval listed in subsection 86.802(e), then the amendment to the Site Implementation Agreement shall be under the jurisdiction of the highest of those multiple decision makers.

(d) A modified Site Implementation Agreement shall comply with the requirements of section 86.807. After its approval by the County, the Director shall cause the signed modified Site Implementation Agreement to be filed for record with the San Diego County Recorder on all properties that are part of the development project.

**SEC. 86.813. CANCELLATION AND RELEASE OF SITE IMPLEMENTATION AGREEMENTS.**

(a) An owner of land subject to a Site Implementation Agreement may file with the Director an application to cancel the Agreement. The application shall be signed by all current owners of the land, and shall state that the owners understand that cancellation will terminate the rights under the Agreement and release the property owners from the obligations of the terms and conditions of the Agreement.

(b) The Director may approve the application for cancellation if he or she finds that there is no continuing need for the Site Implementation Agreement, for one or more of the following reasons:

(1) The Development Project for which it was required has been abandoned and will not be implemented;

(2) All required mitigation of environmental impacts and/or other applicable conditions or requirements has been completely performed and no ongoing mitigation is required; or

(3) Changes in circumstances have occurred which render the requirements for environmental mitigation or other applicable requirements unnecessary.

(c) Upon approving cancellation, the Director shall notify the applicant. The Director shall cause a notice to be filed with the San Diego County Recorder on all properties that are part of the development project, stating that the Site Implementation Agreement has been cancelled and the property owners are released from the terms and conditions thereof.

Section 2. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the \_\_\_\_\_ a newspaper of general circulation published in the County of San Diego.