

Attachment X

**AN ORDINANCE AMENDING THE GRADING,
CLEARING AND WATERCOURSES ORDINANCE,
TITLE 8, DIVISION 7, OF THE SAN DIEGO
COUNTY CODE TO CONSOLIDATE THE
REGULATIONS RELATED TO AGRICULTURAL
CLEARING AND GRADING
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ORDINANCE NO. _____ (NEW SERIES)

AN ORDINANCE AMENDING THE GRADING, CLEARING AND WATERCOURSES ORDINANCE, TITLE 8,
DIVISION 7, OF THE SAN DIEGO COUNTY CODE TO CONSOLIDATE THE REGULATIONS RELATED TO
AGRICULTURAL CLEARING AND GRADING
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The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors intends by this ordinance to reorganize and edit the Grading, Clearing and Watercourses Ordinance to consolidate the regulations related to Agricultural Grading and Clearing into a single chapter while maintaining existing requirements, clarifying language, and adding missing definitions.

Section 2. Section 87.111 of the County of San Diego Grading Ordinance is hereby repealed:

SEC. 87.111.—~~AGRICULTURAL GRADING PERMIT OR CLEARING PERMIT.~~

~~—(a) For a period of five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.203) from and after the date of issuance of either an agricultural grading permit pursuant to Section 87.205 or an agricultural clearing permit pursuant to Section 87.506, no County decision maker shall grant or approve any authorization for land development on the land for which grading or clearing is authorized by the permit, to the permittee who made the certification required by Section 87.205(c)(12) or any other person who has actual or constructive notice of that certification, unless the authorization would be for a project or activity which is either: (1) one for which an exemption is provided at Sections 87.202 or 87.502; or (2) in furtherance of the agricultural operation specified in the property owner's certification. This prohibition does not prohibit the issuance of a building permit for construction of one single family dwelling on an existing legal lot, or the issuance of a minor grading permit pursuant to Section 87.206 of this Division, if it is found that the circumstances of the case are such that providing the single family dwelling would be in furtherance of the specified agricultural operation.~~

~~—(b) Where a certification of agricultural operation has been signed pursuant to Section 87.205 for an agricultural grading permit, or pursuant to Section 87.506 for an agricultural clearing permit, if the property owner fails either to establish the stated agricultural operation within one year, or to retain the land in agriculture for five years (ten years if the land is located within the MSCP Subarea) from the date the agricultural grading permit or agricultural clearing permit is issued, the agricultural grading permit or agricultural clearing permit shall immediately expire and the property owner shall restore the land to its condition prior to grading or clearing. The property owner shall obtain the appropriate grading or clearing permit as required by this Division for such restoration work. Such restoration work, which may include excavation, filling, construction or installation of erosion protection or other protective facilities, planting and landscaping, shall be completed to the satisfaction of the County Official. All provisions of Section 87.110(c), including the County Official's authority to require security and to establish time deadlines, shall apply.~~

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Section 3. Section 87.202 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.202. EXEMPTIONS FROM PERMIT REQUIREMENTS.

The following are exempt from the requirements to obtain a grading permit (but not from other requirements of this Division including, but not limited to, the maximum slope, required setbacks, erosion prevention and planting requirements), provided they do not occur in or affect a watercourse or are within one of the exemptions under Section 87.604 of this Division:

(a) An excavation or fill which:

(1) is less than eight feet in vertical height (measured from the toe of the slope to the top of the slope); and

(2) does not result in the movement of more than 200 cubic yards of material on any one site.

(b) An excavation below finished grade for basements and footings of a building, retaining wall, swimming pool, septic tank, leaching system, or other structure authorized by a valid building permit. This paragraph shall not exempt from the permit requirements any fill made with the material from such excavation having an unsupported height greater than eight feet after the completion of such structure.

(c) Refuse disposal areas or sanitary fills operated and conducted in accordance with a use permit issued pursuant to the Zoning Ordinance or a permit issued pursuant to Article 2, Chapter 5, Division 8, Title 6, of this Code or as a lawful non-conforming use and where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support of, or unduly increase the stresses in or pressures upon, any adjacent or contiguous property.

~~(d) Tilling or cultivating land exclusively for agricultural production, subject to the following:~~

~~(1) The following limitations must be met:~~

~~(aa) no soils shall be exported from the area tilled or cultivated;~~

~~(bb) the tilling or cultivating will not block or divert any natural drainage way;~~

~~(cc) the tilling or cultivating will not affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property; and~~

~~(dd) the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years.~~

~~(2) This exemption does not allow:~~

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~~— (aa) the establishment of new agricultural operations on, or the expansion of existing agricultural operations onto, any area which has not been in agricultural production for at least one of the preceding five years;~~

~~— (bb) conversion of agricultural land to nonagricultural use or activities that reduce habitat and wildlife to facilitate conversion to non-agricultural use;~~

~~— (cc) conversion of land previously used solely for grazing or beekeeping, to other types of agricultural operations which involve a greater intensity of land disturbance, such as planted crops. Planting crops on land previously used for grazing is a prohibited conversion, unless the grazing conducted for the period specified in paragraph (1)(dd) above included such crop planting.~~

~~(e)~~(d) Grading incidental to the construction or installation of facilities by a public agency or utility not subject to regulation by this Division.

~~(f)~~(e) Grading to the limited extent authorized in advance in writing by the County Official to perform repairs so as to prevent immediately threatened injury to persons or property which has arisen as a result of an emergency. The County Official may require that a grading permit subsequently be obtained to reflect the work performed, and may require the submittal of information, documentation, reports and other matter as required by the applicable provisions of this Division for such permit.

~~(g)~~(f) Grading or reclamation work pursuant to a use permit or reclamation plan approved pursuant to Chapter 7 of this Division for a borrow pit, quarry or other surface mining operation, unless the operation is not required to obtain a reclamation plan because it will complete the removal of material to be used exclusively for fill at another approved site or sites within one year. Operations required to secure a grading permit must do so for the excavation site as well as the fill sites.

~~(h)~~(g) Routine road maintenance activities, such as smoothing, texturing, and filling of small rills and potholes, provided they do not involve land form changes and are conducted entirely within the existing disturbed footprint of an existing road.

~~(i)~~(h) Temporary stockpiling of earth authorized by a valid and unexpired permit issued pursuant to Section 87.218 of this Chapter.

Section 4. Section 87.203 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.203. ISSUANCE OF GRADING PERMIT.

In determining whether the proposed grading substantially complies with grading plans or improvement plans approved pursuant to Section 87.204 through 87.208 and 87.904, project change(s) required to comply with changes in State or Federal regulatory requirements shall be provided a 10 percent change allowance in addition to the substantial conformance determination if all of the following are met:

(a) It shall be determined that the project change(s) do not result in a new or substantially increased significant impact in accordance with the California Environmental Quality Act (CEQA).

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(b) It shall be determined that the project change(s) do not result in the creation of a situation that would be detrimental to the health, safety, or welfare of the public.

(c) It shall be determined that the project change(s) do not result in the elimination of project features required to meet other County of San Diego code requirements, including, but not limited to, the following:

(1) Elimination of a trail that provides a connection through the project that is needed for regional connectivity.

(2) Reduction in the overall amount of parkland approved with the original project.

(3) Elimination of roads that are needed for emergency access, travel time, or to handle the traffic generated by the project.

(4) Reduction of area needed for required water supply well or onsite wastewater treatment system and reserve area.

Section 5. Section 87.204 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.204. APPROVAL OF GRADING PLANS OR IMPROVEMENT PLANS – PLAN CHANGES.

(a) All persons who desire to obtain a grading permit must first obtain the County Official's approval of grading plans or improvement plans for such work. An application for grading plan or improvement plan approval, signed by the owner of the property to be graded, shall be filed with the County Official. All applications shall be reviewed for compliance with the California Environmental Quality Act (Pub. Res. Code Sec. 21000 et seq.) prior to approval.

(b) The application shall contain all information, documentation and other matters necessary to enable the County Official to make the determinations required by the California Environmental Quality Act, and the appropriate one of the following Sections of this Division, depending upon the type of grading involved:

(1) Agricultural grading: Section ~~87.205~~87.904;

(2) Minor grading: Section 87.206;

(3) Previously-approved project grading: Section 87.207;

(4) Major grading: Section 87.208.

(c) Where an owner desires to make modifications to the work shown on approved grading plans or improvement plans (whether before or after a grading permit has been issued), prior to the completion of the grading, the owner may submit an application for a plan change. The County Official shall determine whether the application shall be processed pursuant to Section ~~87.205~~87.904, Section 87.206, Section 87.207 or 87.208, based upon the total grading operation as represented in the original grading plans or improvement plans, as modified by the proposed plan change. The County Official may

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approve the application if he or she determines that the total grading operation as modified by the plan change remains in compliance with this Division; provided that, if the plan change is not in substantial conformance with the approved plans, then prior to approving the plan change, the County Official shall provide the appropriate community sponsor or planning group with an opportunity to review and comment on the proposed plan change. The application shall be accompanied by all information, documentation and other matter which the County Official determines to be necessary to enable him or her to make the determinations required by this paragraph. The approval of the plan change shall have no effect on the time within which a grading permit must be obtained under Section 87.203(c).

Section 6. Section 87.205 of the County of San Diego Grading Ordinance is hereby repealed:

SEC. 87.205. AGRICULTURAL GRADING.

~~—(a) The County Official shall appoint an Agricultural Permit Coordinator to facilitate the filing and processing of applications for agricultural grading plans, improvement plans and grading permits.~~

~~—(b) The County Official shall prepare, circulate for public review, disseminate and maintain guidance documents which shall identify, explain and clarify standards for approval of grading plans, improvement plans and grading permits for agricultural grading. The guidance documents may include criteria which can be used to assure that proposed grading avoids adverse impacts to neighboring properties or the environment. The guidance documents may also address matters related to compliance with such plans and permits. The County Official may take these guidance documents into consideration when determining whether applications for grading plans or improvement plans for agricultural grading should be approved. The guidance documents shall not confer rights on applicants, nor constrain the discretion of the County Official relative to acting on such applications or enforcing such permits.~~

~~—(c) An application for grading plans or improvement plans for agricultural grading may be approved if the County Official makes all of the following determinations:~~

~~—(1) The graded area is to be used exclusively for agricultural production;~~

~~—(2) There will be no more than 200 cubic yards of soil imported or exported from the site;~~

~~—(3) The graded area does not include or affect a watercourse (a watercourse may be onsite, but not in the graded area or affected by the proposed grading);~~

~~—(4) The grading will not result in cut slopes steeper than one and one-half horizontal to one vertical, or in an exposed fill slope steeper than two horizontal to one vertical, exclusive of benches and rounding;~~

~~—(5) Sections 87.212 and 87.213, regarding specified sensitive areas, have been complied with;~~

~~—(6) If the grading will involve waters, rivers, streams or lakes, as referenced in Section 87.214, the applicant has submitted documentation of compliance with the requirements of that Section;~~

~~—(7) The application is accompanied by plans showing a vicinity sketch, property lines, location of all structures in the area to be graded (including those on land of others if within fifteen feet), contours~~

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showing the topography of the existing ground, elevations, dimensions, location, extent and slopes of all proposed grading, the location, extent and square footage of the total area to be cleared of vegetation, all areas proposed to be subjected to any "Land Disturbance Activity" (as that term is defined in Section ~~67.802~~ of this Code), all watercourses located on site and a map of the drainage area tributary to the site, all at a scale that allows analysis and review of what is proposed and is not smaller than 200 feet = 1 inch;

—(8) The grading conforms to the setbacks stated in paragraphs (a) and (b) of Section ~~87.412~~;

—(9) The application and accompanying plans demonstrate compliance with Title 6, Division 7, Chapter 8 of this code;

—(10) The plans include dust control measures sufficient to comply with Section ~~87.428~~;

—(11) The graded area is not to be used as a site for a building other than a greenhouse or agricultural shade structure; and

—(12) The property owner has signed a statement under penalty of perjury (which must be reaffirmed prior to grading permit issuance) certifying the following:

—(aa) His or her intention to grade for a specified agricultural operation, to continue or establish the agricultural operation within one year and to retain the land in agriculture (including changing crops and fallowing for the specified agricultural operation) for at least five years (ten years if the land is located within the "MSCP Subarea" as defined in Section ~~87.803~~) from the date the permit is issued;

—(bb) His or her agreement to take no actions to change from the specified agricultural operation to a different type of land use for the period of time stated at paragraph (aa); and

—(cc) His or her acknowledgement that the County will deny any application for any non-agricultural land development, as specified in Section ~~87.111~~, for a period of five years (ten years if the land is located within the "MSCP Subarea" as defined in Section ~~87.803~~) following the date the grading permit is issued.

(Added by Ord. No. 9547 (N.S.), effective 5-9-03; amended by Ord. No. 9634 (N.S.), effective 4-23-04; amended by Ord. No. 9926 (N.S.), effective 4-11-08)

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Section 7. Section 87.207 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.207. GRADING PLANS OR IMPROVEMENT PLANS FOR PROJECTS WITH PREVIOUS DISCRETIONARY LAND USE APPROVAL.

In determining whether the proposed grading substantially complies with grading plans or improvement plans approved pursuant to Section 87.204 through 87.208, and 87.904 project change(s) required to comply with changes in State or Federal regulatory requirements shall be provided a 10 percent change allowance in addition to the substantial conformance determination if all of the following are met:

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(a) It shall be determined that the project change(s) do not result in a new or substantially increased significant impact in accordance with the California Environmental Quality Act (CEQA).

(b) It shall be determined that the project change(s) do not result in the creation of a situation that would be detrimental to the health, safety, or welfare of the public.

(c) It shall be determined that the project change(s) do not result in the elimination of project features required to meet other County of San Diego code requirements, including, but not limited to, the following:

(1) Elimination of a trail that provides a connection through the project that is needed for regional connectivity.

(2) Reduction in the overall amount of parkland approved with the original project.

(3) Elimination of roads that are needed for emergency access, travel time, or to handle the traffic generated by the project.

(4) Reduction of area needed for required water supply well or onsite wastewater treatment system and reserve area.

Section 8. Section 87.208 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.208. GRADING PLANS OR IMPROVEMENT PLANS FOR MAJOR GRADING.

(a) Grading not covered by Sections ~~87.205~~87.904, 87.206 or 87.207 shall be known as "Major Grading." The County Official may approve grading plans or improvement plans for major grading, if he or she determines that:

(1) The proposed grading conforms to all requirements of this Division;

(2) Denial is not required by Section 87.211;

(3) Sections 87.212, 87.213 and 87.214, regarding specified sensitive areas, have been complied with;

(4) The proposed grading complies with Title 6, Division 7, Chapter 8 of this code; and

(5) If the area to be graded includes a watercourse, the proposed grading conforms to Chapter 6 of this Division.

(b) Grading plans or improvement plans for major grading shall be approved and signed by a registered civil engineer. The plans shall show or be accompanied by the following:

(1) A vicinity sketch or other data adequately indicating the site location;

(2) Property lines of the site on which the work is to be performed;

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(3) Location of any buildings or structures on the site where the work is to be performed, and the location of any building or structure on land of adjacent property owners which is within the fifteen feet of the site;

(4) Topographical contour lines adequate to show the topography of the existing ground;

(5) Elevations, dimensions, location, extent, and slopes of all proposed grading, shown by contours or other means;

(6) The quantity of excavation and fill involved, estimated starting and completion dates and the estimated cost;

(7) All drainage devices, walls, cribbing, dams, stormwater protection best management practice devices or other protective devices to be constructed in connection with, or as part of, the proposed work, including all temporary construction erosion and sediment control devices, all watercourses located on the site, a map showing the drainage area of land tributary to the site, the estimated runoff of the area served by any drains, and calculations of the carrying capacity of such drains;

(8) The following shall be required for grading which will require the use of groundwater and for grading to be done during a time when the San Diego County Water Authority declares that a drought is in effect:

(aa) Information demonstrating to the satisfaction of the County Official the source (imported potable water, reclaimed water or groundwater) and amount of water available to be used in grading operations, including a statement from the applicable public agency or other party supplying the water specifying the dates when temporary service shall commence and when temporary service shall cease. The applicant shall specify the timing and duration of water needed to complete each phase of the project;

(bb) A short-term plan for erosion control and for slope stabilization where necessary which, in the opinion of the County Official, can be accomplished with the amount of water demonstrated to be available to the project; and

(cc) Except for grading on projects for which the Director of Planning and Development Services has approved a landscape plan, a long-term plan for erosion control and for slope stabilization where necessary to the satisfaction of the County Official;

(9) A statement of the purpose for which the proposed grading is to be done;

(10) Information demonstrating to the satisfaction of the County Official that the applicant is satisfying Chapter 8 (commencing with Section 67.801) of Division 7 of Title 6 of this Code;

(11) The names and addresses of all owners of property located within 300 feet of the exterior boundaries of the property to be graded, taken from the latest equalized assessment roll or such other records of the County Assessor or Tax Collector as contain more recent information;

(12) Dust control measures sufficient to comply with Section 87.428;

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(13) The location, extent and square footage of the total area to be cleared of vegetation;

(14) All areas proposed to be subjected to any "Land Disturbance Activity" (as that term is defined in Section 67.802 of this Code); and

(15) Such other information or data as may be required by the County Official.

(c) Prior to approving the grading plans or improvement plans, the County Official shall provide notice to each of the persons identified in the application as being owners of property located within 300 feet of the exterior boundaries of the property to be graded. Said notice shall be sent via United States mail and shall inform the addressee of the following:

(1) The receipt of the application and the official number or name of the application;

(2) A basic description of the location of the property upon which grading is proposed and the nature of the grading operation;

(3) The manner in which more information concerning the application may be obtained;

(4) That the County Official will consider any comments concerning the application which the addressee desires to submit, provided that they are submitted in writing and received no later than a date stated in the notice, which date shall be no sooner than 15 days after the notice was sent. The County Official shall consider any such comments received by the stated date prior to making a decision whether to approve the application.

Section 9. Section 87.301 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.301. FEES AND DEPOSITS FOR PLAN CHECKING, APPLICATION REVIEW, AND GRADING INSPECTION.

At the time of filing the following applications, the following fees or deposits shall be paid to the County Official:

(a) Grading Plans or Improvement Plans for Major Grading (Section 87.208): The actual costs to the County of examining and approving Grading Plans or Improvement Plans, or plan changes, including review under the California Environmental Quality Act, the review of any required reports, compliance with project conditions, and the preparation of all necessary documents, shall be paid by the applicant. At the time of submitting a grading or improvement plan to the County Official for examination and approval, the subdivider shall deposit with the County Official, a sum sufficient to cover actual costs as prescribed by the Board of Supervisors.

(b) Grading Plans or Improvement Plans for Agricultural Grading (Section ~~87.205~~ 87.904), Minor Grading Under Department of Public Works Review (Section 87.206(c)) or Grading for a Project With a Previous Discretionary Land Use Approval (Section 87.207):

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(1) Intake Screening. The actual costs to the County of application intake screening for project impacts for agricultural grading, minor grading under review by the Department of Public Works, or grading associated with a project with a previous discretionary approval, including the review of any plans or reports, comparing project to public information, and the preparation of all necessary documents, shall be paid by the applicant. At the time of submitting a grading or improvement plan for examination and approval, the applicant shall deposit with the County Official, a sum sufficient to cover actual costs as prescribed by the Board of Supervisors.

(2) Plan Review. The actual costs to the County of examining and approving Grading Plans or Improvement Plans, or plan changes, including review under the California Environmental Quality Act, for grading referenced in paragraph (1), including the review of any plans or reports and the preparation of all necessary documents, shall be paid by the applicant. At the time of submitting a grading or improvement plan, or application for plan change, for examination and approval, the applicant shall deposit with the County Official, a sum sufficient to cover actual costs as prescribed by the Board of Supervisors.

(c) Grading Plans or Improvement Plans for Minor Grading Under Department of Planning and Development Services (Section 87.206(b)). For grading plan or improvement plan review, or plan change review, for a grading permit to be issued for projects subject to Section 87.206(b), the applicant shall pay to the County Official a fee in an amount as prescribed by the Board of Supervisors in Section 362.1 of the San Diego County Administrative Code.

(d) Grading Permits:

(1) For each grading permit or permit modification issued for projects subject to Section 87.206(b) (Minor grading under review by the Department of Planning and Development Services), the applicant shall pay to the County Official a fee in an amount as prescribed by the Board of Supervisors in Section 362.1 of the San Diego County Administrative Code.

(2) For all grading permits not covered under paragraph (1) above, all costs associated with grading permit application processing and permit issuance are included in the cost of checking grading plans or improvement plans. There is no separate fee or deposit for issuance of the grading permit.

(e) Structural Review. Where the plans or specifications provide for the construction of drainage structures or facilities (other than standard terrace drains and similar facilities), including retaining walls and sprinkler irrigation systems, or when such plans include proposals for granting drainage and appurtenant easements to the San Diego County Flood Control District, the applicant shall deposit amounts estimated by the County Official appropriate to pay for the County's actual cost of checking the plans and specifications, preparing the documents for the drainage and appurtenant easements, and inspecting the construction.

(f) Clearing Permits. For all clearing permits applied for pursuant to Chapter 5 of this Division, the applicant shall pay to the County Official both: (1) an "Environmental Action CEQA Processing" fee or deposit, in the amount specified in Section 362.1 of the San Diego County Administrative Code; and (2) a clearing permit review fee in the amount specified in Section 362.1 of the San Diego County Administrative Code.

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(g) Deposit Refund or Increase. Where a deposit has been made, if the County's actual cost is less than the amount deposited, the excess shall be refunded. If any deposit is insufficient to pay all the County's actual costs, the permittee, upon demand of the County Official, shall deposit an additional amount deemed sufficient by the County Official to complete the work. If the permittee fails or refuses to pay such additional amount, the County Official may cease further work relating to the application, refuse approval of the plans or issuance of a grading permit until the amount is paid in full, or, if a permit is already issued, consider the grading incomplete and pursue proceedings to revoke the grading permit in accordance with Section 87.216.

Section 10. Section 87.504 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.504. CLEARING PERMIT PROCEDURE AND REQUIREMENTS.

The following procedures and requirements shall apply to an application for a clearing permit:

(a) The application shall be submitted to the County Official, accompanied by fees and deposits as specified in Section 87.301(f). The application shall be processed as an application for an Administrative Permit pursuant to the Administrative Permit Procedure, Section 7050 and following of the Zoning Ordinance, except as otherwise provided herein. The application (except for an application for agricultural clearing, which is governed by Section ~~87.506~~87.903) shall include or be accompanied by plans which show or include the following:

- (1) a vicinity sketch;
- (2) property lines;
- (3) contour lines showing the topography of the existing ground, with a maximum contour interval of five feet;
- (4) the location, extent and square footage of the total area to be cleared;
- (5) the location, nature and extent of all vegetation growing on the area to be cleared and the area within 100 feet;
- (6) dust control measures sufficient to comply with Section 87.428;
- (7) information and documentation sufficient to enable the County Official to make the determinations required by the California Environmental Quality Act (CEQA);
- (8) a signed statement by the owner as to the proposed use of the area to be cleared;
- (9) all watercourses located on the site; and
- (10) such other information as the County Official may require.

(b) The application (except for an application for agricultural clearing, which is governed by Section ~~87.506~~87.903) may be approved if the County Official determines that:

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(1) the proposed clearing is exempt from environmental review under the terms of CEQA, or the proposed clearing would not have a significant effect on the environment, or all significant effects have been mitigated; if the County Official determines that the proposed clearing would have one or more significant effects which are not mitigated, he or she shall deny the permit;

(2) the proposed clearing conforms to all requirements of this Division and other applicable County ordinances; and

(3) none of the grounds for denial of a permit specified at Section 87.211, paragraphs (a), (c), (d), (e) or (f) exists (reading said provisions as if they applied to clearing rather than grading).

(c) The provisions of the Administrative Permit Procedure regarding appeals shall apply, except that an application which has been denied on the basis that the proposed clearing would have one or more significant effects which are not mitigated, is subject to appeal only directly to the Board of Supervisors. If the Board of Supervisors determines that the proposed clearing would have one or more significant effects which are not mitigated, it shall deny the appeal unless it makes a statement of overriding considerations pursuant to CEQA. The time periods specified in the Administrative Permit Procedure shall commence to run from the date that environmental documentation prepared to comply with CEQA has been completed.

(d) All clearing authorized by an approved clearing permit shall be completed within 12 months of the date of approval. The County Official may grant one extension of said period, for up to an additional 12 months, if he or she determines that no significant changes in the work are proposed, and substantial progress has been made towards completion.

Section 11. Section 87.506 of the County of San Diego Grading Ordinance is hereby repealed:

SEC. 87.506. AGRICULTURAL CLEARING

~~—(a) The Agricultural Permit Coordinator appointed pursuant to Section 87.205 of this Division shall also facilitate applications for agricultural clearing permits. The County Official's guidance documents prepared pursuant to that Section shall also provide guidance concerning approval and implementation of agricultural clearing permits.~~

~~—(b) An application for an agricultural clearing permit shall comply with Section 87.504, except that the application contents and the standards for issuance of the permit shall be the same as those specified Section 87.205 of this Division, applying the requirements of that Section as if the term "clearing" were used instead of "grading."~~

~~—(c) For a period of five years (ten years if the land is located within the MSCP Subarea) from and after the date of issuance of the agricultural clearing permit, no County decisionmaker shall grant or approve any permit or other authorization for land development on the land for which clearing is authorized, to the permittee who made the certification required by Section 87.205(c)(12) or any other person who has actual or constructive notice of that certification, unless the permit or authorization would be for a project or activity either: (a) for which an exemption is provided in Section 87.502; or (b) which is in furtherance of the agricultural operation specified by the permittee in said certification.~~

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Section 12. Section 87.803 of the County of San Diego Grading Ordinance is hereby amended to read as follows:

SEC. 87.803. DEFINITIONS.

Whenever the following words are used in this Division they shall have the following meanings:

(1) "AGRICULTURAL GRADING" is grading which meets the requirements of Section 87.904 and Section 87.803(22), and is not exempt under Section 87.202(d).

~~(1)~~(2) "AGRICULTURAL OPERATIONS" or "AGRICULTURAL PRODUCTION" shall mean routine and ongoing commercial operations associated with a farm, grove, dairy, or other agricultural business, and shall include:

(a) The cultivation and tillage of the soil; crop rotation; fallowing for agricultural purposes; the production, cultivation, growing, replanting and harvesting of any agricultural commodity including viticulture, vermiculture, apiculture, or horticulture;

(b) The raising of livestock, fur bearing animals, fish, or poultry, and dairying;

(c) Any practices performed by a farmer on a farm as incident to or in conjunction with those farming or grove operations, including the preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market; and

(d) Ordinary pasture maintenance and renovation and dry land farming operations consistent with rangeland management and soil disturbance activities.

All such activities must be consistent with the economics of commercial agricultural operations and other similar agricultural activities. The final determination of a qualifying use shall be made by the County Official.

~~(2)~~(3) "BEDROCK" is the solid undisturbed rock in place either at the ground surface or beneath surficial deposits of gravel, sand or soil.

~~(3)~~(4) "CERTIFY" or "CERTIFICATION" shall refer to a signed written statement that the specific inspections and tests where required have been performed and that such tests comply with the applicable requirements of this Division.

~~(4)~~(5) "CIVIL ENGINEER" is an engineer duly registered by the State of California to practice in the field of civil engineering.

~~(5)~~(6) "CLEARING" shall mean the removal or destruction of natural vegetation by any means, including brushing and grubbing.

~~(6)~~(7) "COMPACTION" shall mean densification of a soil or rock fill by mechanical or other acceptable procedures.

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~~(7)~~(8) "COUNTY OFFICIAL" shall generally mean the Director of Public Works or his or her authorized representative, except that it shall mean the Director of Planning and Development Services or his or her authorized representative when used in any of the following contexts:

- (a) minor grading pursuant to Section 87.206 (b);
- (b) clearing pursuant to Chapter 5 and Section 87.903 of Chapter 9 of this Division;
- (c) surface mining pursuant to Chapter 7 of this Division; or

(d) exercise of enforcement authority given to the Director of Planning and Development Services under Section 87.102.

~~(8)~~(9) "COUNTY STORMWATER STANDARDS MANUAL" shall mean the manual adopted by Ordinance No. 9426 (N.S.) as Appendix A to the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance (San Diego County Code Section 67.801 and following).

~~(9)~~(10) "CUT" shall have the same meaning as "excavation."

~~(10)~~(11) "EMBANKMENT" shall have the same meaning as "fill."

~~(11)~~(12) "ENGINEERING GEOLOGIST" is a geologist duly registered by the State of California and certified in "Engineering Geology" by the State.

~~(12)~~(13) "ENGINEERING GEOLOGY" is the application of geological data and principles to engineering problems dealing with naturally occurring rock and soil for the purpose of assuring that geological factors are recognized and adequately interpreted in engineering practice.

~~(13)~~(14) "EROSION" shall mean the process by which the ground surface is worn away by the action of water or wind.

~~(14)~~(15) "EXCAVATION" shall mean any act by which soil, sand, gravel or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and shall include the conditions resulting therefrom.

~~(15)~~(16) "EXPANSIVE SOIL" is any soil which swells more than 3 percent when prepared and tested in accordance with the test prescribed by Chapter 6 or other equivalent test approved by the County Official.

~~(16)~~(17) "FILL" shall mean deposits of soil, sand, gravel, rock or other materials placed by man.

~~(17)~~(18) "FINISH GRADE" is the final grade or elevation of the ground surface conforming to the proposed design.

~~(18)~~(19) "FLOOD PLAIN" means a land area in and adjoining a river, stream, watercourse, ocean, bay or lake, which is likely to be flooded.

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~~(19)~~(20) "FLOOD PLAIN FRINGE" means all that land lying within the 100-year flood plain that is not within a floodway, where a floodway has been defined.

~~(20)~~(21) "FLOODWAY" means the channel of a river or other watercourse and the adjacent land areas required to carry and discharge a flood. The selection of the floodway shall be based on the principle that the area chosen for the floodway must be designed to carry the waters of the 100-year flood, without increasing the water surface elevation of that flood more than one foot at any point. "100-YEAR FLOOD" means a flood estimated to occur on an average of once in 100 years (one percent probability of occurrence each year) which is determined from an analysis of historical flood and rainfall records and computed in accordance with the San Diego County Flood Control District Design and Procedure Manual approved by the Board of Supervisors on May 19, 1970, and filed with the Clerk of the Board of Supervisors as Document Number 427201 and as amended by the Board of Supervisors on July 8, 1975, and filed with the Clerk of the Board of Supervisors as Document Number 506917.

~~(21)~~(22) "GRADING" is any excavating or filling or combination thereof and shall include the land in its excavated or filled condition. In calculating the quantities of grading, soil to be removed and replaced for purposes of conditioning and compaction shall not be included.

~~"AGRICULTURAL GRADING" is grading which meets the requirements of Section 87.20587.904 and is not exempt under Section 87.202(d). "MINOR GRADING" is grading which meets the requirements of Section 87.206. "PREVIOUSLY APPROVED PROJECT GRADING" is grading which meets the requirements of Section 87.207. "MAJOR GRADING" is grading which is governed by Section 87.208. In calculating the quantities of grading, soil to be removed and replaced for purposes of conditioning and compaction shall not be included.~~

~~(22)~~(23) "GRADING PLANS" are plans for proposed grading work, which contain the matters required by Section 87.204 through 87.208 and 87.904 of this Division.

~~(24)~~ "GRAZING" means the use of cattle, sheep or other livestock for the purposes of clearing vegetation.

~~(25)~~ "GRUBBING" means the removal of trees and/or stumps at the root.

~~(23)~~(26) "IMPROVEMENT PLANS" are plans for road or drainage improvements which are presented to the County for approval, which also show grading work associated with such road or drainage improvements. "Improvement plans" include plans which accompany a subdivision improvement agreement and other agreements entered into with the County which require the construction of improvements.

~~(24)~~(27) "LANDSCAPE ARCHITECT" shall mean a landscape architect registered by the State of California.

~~(28)~~ "MAJOR GRADING" is grading which is governed by Section 87.208 and meets Section 87.803(22).

~~(29)~~ "MINOR GRADING" is grading which meets the requirements of Section 87.206 and Section 87.803(22).

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~~(25)~~(30) "MSCP Subarea" shall mean that area shown as the "County of San Diego MSCP Subarea" on the map referenced in Section 86.502 of this Code.

~~(26)~~(31) "MAJOR SLOPE" shall mean any constructed slope which is greater than fifteen feet in vertical height measured from toe of slope to brow of slope as illustrated in San Diego County Design Standard DS-10 and DS-11 on file with the San Diego County Engineer.

~~(27)~~(32) "MINOR SLOPE" shall mean any constructed slope which is not a major slope.

~~(28)~~(33) "NATURAL GROUND SURFACE" shall mean the ground surface in its original state before any grading, excavation or filling.

~~(29)~~(34) "OWNER" shall mean any person who is the owner of, has a possessory interest in, has possession or control of, or occupies, real property. The County of San Diego is not a "person" (See Section 12.115 of this Code) and shall not be considered an "OWNER" of real property for purposes of this Division, even if it is the holder of an open space easement, drainage easement, flowage easement, development restriction easement or other interest less than fee title, and regardless of whether it exercises or enforces its rights under such easement or interest.

~~(30)~~(35) "PERMITTEE" shall mean any person to whom a permit is issued pursuant to this division.

~~(31)~~(36) "PERSON" shall have the meaning assigned in Section 12.115 of this Code.

(37) "PREVIOUSLY APPROVED PROJECT GRADING" is grading which meets the requirements of Section 87.207.

~~(32)~~(38) "SITE" is any lot or parcel of land or combination of contiguous lots or parcels of land where grading is performed or permitted.

~~(33)~~(39) "SLOPE" shall mean the inclined exposed surface of a fill, excavation or natural terrain.

~~(34)~~(40) "SOIL" is all earth material of whatever origin that overlies bedrock and may include the decomposed zone of bedrock which can be excavated readily by mechanical equipment.

~~(35)~~(41) "SOIL ENGINEER" shall mean a person who meets the qualifications stated in Section 6736.1 of the Professional Engineers Act (Business and Professions Code Section 6700 and following).

~~(36)~~(42) "STRUCTURAL ROCK FILLS" shall mean fills constructed predominantly of rock materials for the purpose of supporting structures.

(43) "TILLING" means to prepare (land) for the raising of crops by digging, stirring, overturning, plowing, or harrowing.

(44) "TRENCHING" means to dig out a deep furrow or ditch for a trench, commonly for pipeline or irrigation piping.

~~(37)~~(45) "VERTICAL HEIGHT" shall be the measurement from the toe of the slope to a point projected horizontally from the top of the slope.

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~~(38)~~(46) "WATERCOURSE" means any surface water body (including any arroyo, canal, channel, conduit, creek, culvert, ditch, drain, gully, ravine, reservoir, river, stream, wash, waterway or wetland), in which waters from a tributary drainage area of 100 acres or larger flow in a definite direction or course, either continuously or intermittently, and any area adjacent thereto which is subject to inundation from a 100-year flood.

Cross reference(s)--Definitions, § 12.101 et seq.

Section 13. Chapter 9 of the County of San Diego Grading Ordinance is hereby added to read as follows:

Chapter 9. AGRICULTURAL GRADING AND CLEARING.

Section 14. Chapter 9, Section 87.901, of the County of San Diego Grading Ordinance is hereby added to read as follows:

SEC. 87.901. PURPOSE.

The purpose of this chapter is to establish minimum requirements for agricultural clearing and grading (as those terms are defined in Section 87.803 of this Code).

Section 15. Chapter 9, Section 87.902, of the County of San Diego Grading Ordinance is hereby added to read as follows:

SEC. 87.902. AGRICULTURAL GRADING PERMIT OR CLEARING PERMIT.

(a) For a period of five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.203) from and after the date of issuance of either an agricultural grading permit pursuant to Section 87.904 or an agricultural clearing permit pursuant to Section 87.903, no County decision maker shall grant or approve any authorization for land development on the land for which grading or clearing is authorized by the permit, to the permittee who made the certification required by Section 87.904(c)(12) or any other person who has actual or constructive notice of that certification, unless the authorization would be for a project or activity which is either: (1) one for which an exemption is provided at Sections 87.202 or 87.502; or (2) in furtherance of the agricultural operation specified in the property owner's certification. This prohibition does not prohibit the issuance of a building permit for construction of one single family dwelling on an existing legal lot, or the issuance of a minor grading permit pursuant to Section 87.206 of this Division, if it is found that the circumstances of the case are such that providing the single family dwelling would be in furtherance of the specified agricultural operation.

(b) Where a certification of agricultural operation has been signed pursuant to Section 87.904 for an agricultural grading permit, or pursuant to Section 87.903 for an agricultural clearing permit, if the property owner fails either to establish the stated agricultural operation within one year, or to retain the land in agriculture for five years (ten years if the land is located within the MSCP Subarea) from the date the agricultural grading permit or agricultural clearing permit is issued, the agricultural grading permit or agricultural clearing permit shall immediately expire and the property owner shall restore the land to its condition prior to grading or clearing. The property owner shall obtain the appropriate grading or

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clearing permit as required by this Division for such restoration work. Such restoration work, which may include excavation, filling, construction or installation of erosion protection or other protective facilities, planting and landscaping, shall be completed to the satisfaction of the County Official. All provisions of Section 87.110(c), including the County Official's authority to require security and to establish time deadlines, shall apply.

Section 16. Chapter 9, Section 87.903, of the County of San Diego Grading Ordinance is hereby added to read as follows:

SEC. 87.903. AGRICULTURAL CLEARING.

(a) The County Official pursuant to Section 87.904 of this Division shall also facilitate applications for agricultural clearing permits. The County Official's guidance documents prepared pursuant to that Section shall also provide guidance concerning approval and implementation of agricultural clearing permits.

(b) An application for an agricultural clearing permit shall comply with Section 87.504, except that the application contents and the standards for issuance of the permit shall be the same as those specified Section 87.904 of this Division, applying the requirements of that Section as if the term "clearing" were used instead of "grading."

Section 17. Chapter 9, Section 87.904, of the County of San Diego Grading Ordinance is hereby added to read as follows:

SEC. 87.904. AGRICULTURAL GRADING

(a) The County Official shall facilitate the filing and processing of applications for agricultural grading plans, improvement plans and grading permits.

(b) The County Official shall prepare, circulate for public review, disseminate and maintain guidance documents which shall identify, explain and clarify standards for approval of grading plans, improvement plans and grading permits for agricultural grading. The guidance documents may include criteria which can be used to assure that proposed grading avoids adverse impacts to neighboring properties or the environment. The guidance documents may also address matters related to compliance with such plans and permits. The County Official may take these guidance documents into consideration when determining whether applications for grading plans or improvement plans for agricultural grading should be approved. The guidance documents shall not confer rights on applicants, nor constrain the discretion of the County Official relative to acting on such applications or enforcing such permits.

(c) An application for grading plans or improvement plans for agricultural grading may be approved per Section 87.204 and the County Official makes all of the following determinations:

(1) The graded area is to be used exclusively for agricultural production;

(2) There will be no more than 200 cubic yards of soil imported or exported from the site;

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(3) The graded area does not include or affect a watercourse (a watercourse may be onsite, but not in the graded area or affected by the proposed grading);

(4) The grading will not result in cut slopes steeper than one and one-half horizontal to one vertical, or in an exposed fill slope steeper than two horizontal to one vertical, exclusive of benches and rounding;

(5) Sections 87.212 and 87.213, regarding specified sensitive areas, have been complied with;

(6) If the grading will involve waters, rivers, streams or lakes, as referenced in Section 87.214, the applicant has submitted documentation of compliance with the requirements of that Section;

(7) The application is accompanied by plans showing a vicinity sketch, property lines, location of all structures in the area to be graded (including those on land of others if within fifteen feet), contours showing the topography of the existing ground, elevations, dimensions, location, extent and slopes of all proposed grading, the location, extent and square footage of the total area to be cleared of vegetation, all areas proposed to be subjected to any "Land Disturbance Activity" (as that term is defined in Section 67.802 of this Code), all watercourses located on site and a map of the drainage area tributary to the site, all at a scale that allows analysis and review of what is proposed and is not smaller than 200 feet = 1 inch;

(8) The grading conforms to the setbacks stated in paragraphs (a) and (b) of Section 87.412;

(9) The application and accompanying plans demonstrate compliance with Title 6, Division 7, Chapter 8 of this code;

(10) The plans include dust control measures sufficient to comply with Section 87.428;

(11) The graded area is not to be used as a site for a building other than a greenhouse or agricultural shade structure; and

(12) The property owner has signed a statement under penalty of perjury (which must be reaffirmed prior to grading permit issuance) certifying the following:

(aa) His or her intention to grade for a specified agricultural operation, to continue or establish the agricultural operation within one year and to retain the land in agriculture (including changing crops and fallowing for the specified agricultural operation) for at least five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.803) from the date the permit is issued;

(bb) His or her agreement to take no actions to change from the specified agricultural operation to a different type of land use for the period of time stated at paragraph (aa); and

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(cc) His or her acknowledgement that the County will deny any application for any non-agricultural land development, as specified in Section 87.902, for a period of five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.803) following the date the grading permit is issued.

Section 18. Chapter 9, Section 87.905, of the County of San Diego Grading Ordinance is hereby added to read as follows:

Sec. 87.905. EXEMPTIONS FROM PERMIT REQUIREMENT.

The following are exempt from the requirements to obtain an agricultural grading permit (but not from other requirements of this Division including, but not limited to, the maximum slope, required setbacks, erosion prevention and planting requirements), provided they do not occur in or affect a watercourse or are within one of the exemptions under Section 87.604 of this Division:

(a) Tilling or cultivating land exclusively for agricultural production, subject to the following:

(1) The following limitations must be met:

(aa) no soils shall be exported from the area tilled or cultivated;

(bb) the tilling or cultivating will not block or divert any natural drainage way;

(cc) the tilling or cultivating will not affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property; and

(dd) the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years.

(2) This exemption does not allow:

(aa) the establishment of new agricultural operations on, or the expansion of existing agricultural operations onto, any area which has not been in agricultural production for at least one of the preceding five years;

(bb) conversion of agricultural land to nonagricultural use or activities that reduce habitat and wildlife to facilitate conversion to non-agricultural use;

(cc) conversion of land previously used solely for grazing or beekeeping, to other types of agricultural operations which involve a greater intensity of land disturbance, such as planted crops. Planting crops on land previously used for grazing is a prohibited conversion, unless the grazing conducted for the period specified in paragraph (1)(dd) above included such crop planting.

Section 19. This ordinance shall take affect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published, with the names of the members of this Board voting for and against the same, once in a local newspaper of general circulation published in the County of San Diego, State of California.

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PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this ____th day of ____, 2022.

Approved as to form and legality

By: _____, Senior Deputy County Counsel

DRAFT