



Final Engineering Flexibility Proposed Ordinance Amendments

OVERVIEW OF ORDINANCE SECTIONS TO BE UPDATED

- Zoning Ordinance
 - Section 7609 Minor Deviation of Plan
- Subdivision Ordinance
 - Sec. 81.501 Maps to Conform to Requirements
 - SEC. 81.801. Parcel Maps to Conform to Requirements
- Grading Ordinance
 - Section 87.204 Approval of Grading Plans or Improvement Plans – Plan Changes
 - Section 87.207 Grading Plans or Improvement Plans for Projects with Previous Discretionary Land Use Approval.

A Full Copy of the Zoning Ordinance can be found at:

<https://www.sandiegocounty.gov/content/sdc/pds/zoning.html>

A Full Copy of the Grading Ordinance can be found at:

https://www.sandiegocounty.gov/content/dam/sdc/dpw/LAND_DEVELOPMENT_DIVISION/landpdf/gradingordinance.pdf

A Full Copy of the Subdivision Ordinance can be found at:

<https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/docs/SubdivisionOrdinance.pdf>

ZONING ORDINANCE

7609 MINOR DEVIATION FROM PLAN.

A Minor Deviation to an Administrative Permit, Variance, Site Plan Permit or Use Permit may be authorized in accordance with the following provisions:

- a. Intent. This section provides for situations where it is necessary to deviate from an approved permit decision and associated approved plans in a minor way which is in substantial conformance with the purpose and intent of the related Administrative Permit, Variance, Site Plan Permit or Use Permit and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This section provides for flexibility in the implementation of an Administrative Permit, Variance, Site Plan Permit or Use Permit by permitting a Minor Deviation to be administratively granted by the Director. It is not the intent of this section to allow a deviation from the plan which would violate the intent and purpose of the related Administrative Permit, Variance, Site Plan Permit or Use Permit or any of its conditions, or to allow any action or use for which an Administrative Permit, Variance, Site Plan Permit or Use Permit would otherwise be required by The Zoning Ordinance and which is not specifically allowed by the approved decision.
- b. Jurisdiction. The Director may authorize a Minor Deviation from a plan referred to in an Administrative Permit, Variance, Site Plan Permit or Use Permit granted by the Board of Supervisors, the Planning Commission, or the Director.
- c. Required Findings. A Minor Deviation from an approved permit shall be authorized only after finding that:
 1. The requested deviation does not constitute a substantial change in the Administrative Permit, Variance, Site Plan Permit, or Use Permit, as allowed pursuant to the permit decision;
 2. The requested deviation will not adversely affect adjacent property or property owners; and
 3. A Summary table and complete description of all proposed changes has been added to the project file, prepared and signed by the property owner(s), indicating the total cumulative percent change of an area, size, height or other deviation from the original permit approval. Any subsequent deviation shall include a revised summary and calculation pursuant to this subsection.
- d. Limitations. A deviation from an approved permit, or deviations having a cumulative effect, may be allowed in accordance with the following limitations:
 1. A cumulative increase or decrease from the original approved plan of up to 10 percent of the following:
 - i. The gross area of any yard, open space, working area, parking area or other area regulated by the permit, provided that no decrease may be permitted in any required yard for which an exception pursuant to Section 4813 or a Variance is required;
 - ii. the size of any building or structure or of the total land area covered by any building or structure;
 - iii. the height of any building or structure or of any part thereof, or of the depth or area of an excavation, slope or working area;

- iv. In the cases of Use Permits and Site Plan permits, the number of buildings or structures shown on the original approved plan provided the total land area covered by all buildings and structures does not increase or decrease more than 10 percent; or
- v. A sign or sign program subject to a Community Design Review, Historic Landmark, Historic District or Design Review special area regulations designator may be approved upon due consideration of the recommendation of the applicable Design Review Board, Historic Site Board, Historic District Review Board, or Community or Subregional Planning Group. However, a change of copy, colors or print type, without a change to the overall size of the sign is not subject Design Review Board of Community or Subregional Planning Group Review.
- vi. In calculating the cumulative increase or decrease from the original approved plan, project change(s) required to comply with changes in State or Federal regulatory requirements shall be provided an additional 10 percent change allowance if all of the following are met:
 - i. A determination shall be made 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).
 - ii. A determination shall be made 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.
 - iii. A determination shall be made 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.
- 2. A change to the size and the type of windows, openings, or doors, the colors or materials on the elevations or roof of a structure, or similar changes may be allowed provided the approved architectural style is maintained. However, architectural or design elements specified in the permit conditions of approval will require a modification of the permit to authorize a change, pursuant to Section 7072, 7126, 7169 or 7378, as applicable.
- e. Application Form, Filing and Fee. An application requesting a minor deviation from a plan shall be made on the form prescribed by the Director, shall be signed by the property owner(s) or their agent(s) as required by Section 7017, shall be filed with the authority having jurisdiction as provided by paragraph “b” of this section, and shall be accompanied by the fee referenced in Section 7602.

- f. Hearing Not Required. Any action of the Director pursuant to this section may be taken without notice or public hearing.
- g. Decision is Final. Any decision by the Director pursuant to this section shall be final; provided, however, that the denial by the Director of a request for a minor deviation from a plan shall not prevent the applicant from applying for a new Administrative Permit, Variance, Site Plan Permit, or Use Permit or modification thereof pursuant to the Zoning Ordinance.

SUBDIVISION ORDINANCE

SEC. 81.501. MAPS TO CONFORM TO REQUIREMENTS.

In addition to conforming to the requirements of the SMA and this division, a final map shall comply with all requirements and conditions of the approved or conditionally approved tentative map. Whenever a final map is filed, the Director shall make a determination as to whether the final map is in substantial conformance with the approved tentative map and resolution of approval.

In determining whether the final map is in substantial conformance with the approved tentative map and resolution of approval, 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).
- (b) It shall be determined that 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.

The Director shall prepare written findings identifying the requirements or conditions that were not met or performed if the final map is disapproved.

SEC. 81.801. PARCEL MAPS TO CONFORM TO REQUIREMENTS.

In addition to conforming to the requirements of the SMA and this division a parcel map shall comply with all requirements and conditions of the approved or conditionally approved tentative parcel map.

In determining whether the parcel map complies with the approved tentative parcel map, 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).
- (b) It shall be determined that 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.

GRADING ORDINANCE

SEC. 87.203. ISSUANCE OF GRADING PERMIT.

- (a) Upon application signed by the owner of the property, the County Official shall issue a grading permit where the County Official determines that:
- 1) The proposed grading substantially complies with grading plans or improvement plans approved pursuant to Section 87.204 through 87.208;
In determining whether the proposed grading substantially complies with grading plans or improvement plans approved pursuant to Section 87.204 through 87.208, project change(s) required to comply with changes in State or Federal regulatory requirements shall not be required to be considered in 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).
 - (b) It shall be determined that 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.
- (b) Notwithstanding paragraph (a), where the approval of plans occurred prior to May 9, 2003, the application for a grading permit shall be evaluated based upon the criteria applicable under Sections 87.204 through 87.208; and where federal or state wildlife protection agencies identify newly discovered concerns with impacts to resources that were not known at the time of grading plan or improvement plan approval, the County Official may defer issuance of a grading permit until those agencies' requirements have been complied with.
- (c) The 24 month period referenced in paragraph (a)(3) may be renewed by the County Official one time for an additional 24 months, if he or she determines that no significant changes in the work are proposed, environmental review documentation has been appropriately updated and, in the case of major grading, none of the criteria requiring denial under Section 87.211 exist. Notwithstanding the foregoing, the 24 month period shall not be renewed in violation cases, where the application has been filed to correct work done in violation of this Division (including work done without obtaining a grading permit).
- (d) Once issued, the grading permit shall authorize only the work shown on the approved grading plans, which shall be deemed to be incorporated into the grading permit, for a period of 36 months following the date of permit issuance, after which time the permit shall expire and be of no further force or effect. All work authorized by the grading permit, including the matters required by

Sections 87.425 (Completion of Work -- Final Reports) and 87.426 (Notification of Completion), shall be completed within 36 months.

- (e) On the effective date of this subsection, a grading permit issued on or after August 21, 2007 and before August 21, 2009 that was issued for 24 months shall automatically be extended for an additional 12 months to make the expiration date 36 months from the original issue date.
- (f) When requested by a permittee, the County Official shall grant a one time extension, up to an additional 12 months for a permit in subsection (d) or subsection (e) if the County Official determines that:
 - 1) No significant changes in the work are proposed;
 - 2) For a permit issued before August 21, 2009 the permittee has provided a statement that due to economic reasons, the permittee has not been able to complete at least 30 percent of the total volume of earthwork. For a permit issued after August 21, 2009, substantial progress has been made towards completing the approved grading, in that at least 30 percent of the total volume of earthwork has been completed; and
 - 3) The estimates of the costs of the work for purposes of Section 87.304 have been updated to current costs at the time of extension.
- (g) Upon application by the owner, the County Official shall approve a modification to a grading permit, provided that:
 - 1) A grading plan or improvement plan change has been approved for the modification pursuant to Section 87.204(c);
 - 2) The proposed grading, as modified, substantially complies with grading plans or improvement plans approved pursuant to Section 87.204 through 87.208;
 - 3) The grading permit application was filed not more than 24 months following the approval of grading plans or improvement plans, or within the duration of a renewal of that period pursuant to paragraph (c);
 - 4) The grading permit modification fee specified in Chapter 3 of this Division has been paid; and
 - 5) Appropriate amendments have been entered into, if required by the County Official, for the Agreement relating to a Right of Entry for Inspection and Indemnification pursuant to Section 87.215, and the Agreement and Cash Deposit if required by Section 87.304.

A modification to a grading permit shall have no effect on the period of time within which grading shall be completed.

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;
 - (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, 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 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).

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

- (a) The County Official may approve grading plans or improvement plans for a project for which a discretionary land use approval has previously been granted, where he or she determines that:
- 1) The work substantially conforms to that shown on preliminary grading plans which were reviewed as part of an approved and unexpired tentative map, tentative parcel map, use permit or other land development application.

In determining whether the proposed grading substantially complies with grading plans or improvement plans approved pursuant to Section 87.204 through 87.208, project change(s) required to comply with changes in State or Federal regulatory requirements shall not be required to be considered in 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).
- (b) It shall be determined that 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.

- 2) An analysis is conducted pursuant to Section 15162 of Title 14 of the California Code of Regulations, to determine whether the effects of such grading were analyzed in the environmental review of such approved land development application, and whether further environmental documentation is necessary;
 - 3) The grading complies with Title 6, Division 7, Chapter 8 of this code.
 - 4) Sections 87.212 and 87.213, regarding specified sensitive areas, have been complied with;
 - 5) 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;
 - 6) The grading or improvement plans identify any environmental mitigation measures or other conditions which were required by the previous approval to be completed prior to issuance of a grading permit, and makes these conditions which must be fulfilled prior to issuance of a grading permit;
 - 7) All conditions of the previous approval which were required to be completed prior to approval of grading plans or improvement plans have been fulfilled;
 - 8) Dust control measures will be employed, sufficient to comply with Section 87.428; and The grading complies with the design standards stated in Chapter 4 of this Division.
- (b) The application shall be 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 67.803 of this Code), and all watercourses located on site.