

**Chapter 12: Development Permits****Article 5: Site Development Permit Procedures****§126.0504 Findings for Site Development Permit Approval**

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b) through (o) that are applicable to the proposed *development* as specified in this section.

(a) [No change.]

(b) Supplemental Findings--Environmentally Sensitive Lands

A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) The site is physically suitable for the design and siting of the proposed *development* and the *development* will result in minimum disturbance to *environmentally sensitive lands*;
- (2) The proposed *development* will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, *flood* hazards, or fire hazards;
- (3) The proposed *development* will be sited and designed to prevent adverse impacts on any adjacent *environmentally sensitive lands*;
- (4) The proposed *development* will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan and Vernal Pool Habitat Conservation Plan (VPHCP);
- (5) The proposed *development* will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and
- (6) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed *development*.

(c) through (o) [No change.]

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## Chapter 14: General Regulations

### Article 3: Supplemental Development Regulations

#### §143.0101 Purpose of Environmentally Sensitive Lands Regulations

The purpose of these regulations is to protect, preserve and, where damaged restore, the *environmentally sensitive lands* of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that *development*, including, but not limited to *coastal development* in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of *development*, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to *flooding* in specific areas while minimizing the need for construction of *flood* control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

It is further intended for the Development Regulations for Environmentally Sensitive Lands and accompanying Biology, Steep Hillside, and Coastal Bluffs and Beaches Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act and the California Coastal Act. These standards will also serve to implement the Multiple Species Conservation Program (MSCP) and Vernal Pool Habitat Conservation Plan (VPHCP) by placing priority on the preservation of biological resources within the Multiple Habitat Multi-Habitat Planning Area (MHPA), as identified in the City of San Diego MSCP Subarea Plan and VPHCP. The habitat based level of protection which will result through implementation of the Multiple Habitat Planning Area MHPA is intended to meet the mitigation obligations of the Covered Species addressed. In certain circumstances, this level of protection may satisfy mitigation obligations for other species not covered under the Multiple Species Conservation Program MSCP Subarea Plan but determined to be sensitive pursuant to the CEQA review process. This determination will be addressed in the environmental documentation.

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

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

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

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

**Table 143-01A**  
**Applicability of Environmentally Sensitive Lands Regulations**

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

6. Any development that proposes deviations from any portion of the <i>Environmentally Sensitive Lands Regulations</i> , except <i>capital improvement program projects</i>	R	143.0141(a),(b), 143.0150	143.0141, 143.0150	143.0142, 143.0150 <sup>(4)</sup>	143.0143, 143.0144, 143.0150	143.0145, 143.0146 143.0150
	P	SDP/Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)-	--	--	143.0130(a), (b)	143.0130(c)
7. Development other than <i>single dwelling units</i> on individual lots, that proposes alternative compliance for <i>development area in steep hillsides</i> .	R	--	--	143.0142 except (a), 143.0151	--	--
	P	--	--	SDP/ Process Four	--	--
	U	--	--	--	--	--
8. Any <i>capital improvement program project</i> determined to be in compliance with the <i>Environmentally Sensitive Lands Regulations</i> without deviation	R	143.0141(a), (b)	143.0141	143.0142	143.0143, 143.0144	143.0145, 143.0146
	P	SDP/ Process CIP-Two	SDP/ Process CIP-Two	SDP/Process CIP-Two	SDP/Process CIP-Two	SDP/Process CIP-Two
	U	143.0130(d), (e)	--	--	143.0130(a), (b)	143.0130(c)
9 Any <i>capital improvement program project</i> that deviates from the <i>Environmentally Sensitive Lands Regulations</i>	R	143.0141(a), (b), 143.0150	143.0141, 143.0150	143.0142, 143.0150 <sup>(4)</sup>	143.0143, 143.0144, 143.0150	143.0145, 143.0146, 143.0150
	P	SDP/ Process CIP-Five	SDP/ Process CIP-Five	SDP/ Process CIP-Five	SDP/Process CIP-Five	SDP/Process CIP-Five
	U	143.0130(d),(e)	--	--	143.0130(a),(b)	143.0130(c)

<b>Legend to Table 143-01A</b>	
R	Development regulation sections (in addition to Section 143.0140) applicable to the <i>environmentally sensitive lands</i> present.
P	Type of Permit/Decision process required. Neighborhood Development Permit (NDP) Site Development Permit (SDP)
U	Regulations that identify permitted uses when they are different than the applicable zone due to the <i>environmentally sensitive lands</i> present.

Footnotes to Table 143-01A

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

<sup>2</sup> through <sup>5</sup> [No change.]

- (c) A Neighborhood Development Permit or Site Development Permit is not required for the following *development* activity:

- (1) through (9) [No change.]

**§143.0111 Limited Exceptions from Environmentally Sensitive Lands Regulations**

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

- (a) through (c) [No change.]

- (d) Outside the Coastal Overlay Zone, City linear utility projects are exempt from the development area regulations of the OR-1-2 zone in Section 131.0250(b) and the development area regulations for *steep hillsides* in Section 143.0142(a) and for *sensitive biological resources* in Section 143.0141 (d)(a)(5).

- (e) through (h) [No change.]

- (i) Public linear trail and public maintenance access projects are exempt from the development area regulations of the OR-1-2 zone in Section 131.0250(b) and the development area regulations for *steep hillsides* in Section 143.0142(a) and for *sensitive biological resources* in Section 143.0141 (d)(a)(5).

through **§143.0140** [No change.]

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

*Development* that proposes *encroachment* into *sensitive biological resources* or that does not qualify for an exemption pursuant to Section 143.0110(e) requires a development permit in accordance with Table 143-01A, unless exempted pursuant to Section 143.0110(c); and is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

- (a) General Regulations for *Sensitive Biological Resources*

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- (1) All *development* occurring in *sensitive biological resources* is subject to a site-specific impact analysis conducted by a qualified Biologist, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to *sensitive biological resources* and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact:
- (A) [No change.]
  - (B) Dedication of a covenant of easement in favor of the City of San Diego, the California Department of Fish and **Game Wildlife** and the U.S. Fish and Wildlife Service for either:
    - (i) **an An** off-site location with long-term viability and biological values equal to or greater than the impacted site, and with limited right of entry for habitat management, as necessary; or
    - (ii) **on-site On-site** creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary. The location of the easement must have long-term viability and biological values equal to or greater than the impacted site.
  - (C) [No change.]
- (2) [No change.]
- (3) *Sensitive biological resources* that are outside of the allowable development area on a *premises*, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in **section Section** 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and **Game Wildlife** are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.
- (4) Inside and adjacent to the *MHPA*, all *development* proposals shall be consistent with the *MSCP Subarea Plan* **and VPHCP**.
- (5) Projects Located Inside the *MHPA*

- (A) *Development* is permitted only in accordance with the regulations set forth in the OR-1-2 zone, pursuant to ~~section~~ Section 131.0250(b), unless exempted from the ~~development~~ development area regulations pursuant to ~~section~~ Section 143.0111.
- (B) Any change of an agricultural use to a non-agricultural use is subject to the development area regulations of ~~section~~ Section 143.0141(a)(5)(A). Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable ~~development~~ development area.
- (C) *Development of a premises containing wetlands is subject to Section 143.0141(b). Any development with impacts to wetlands, including vernal pools and road pools with listed fairy shrimp, is required to process a deviation in accordance with Section 143.0150(d).*
- (6) Projects Located Outside of the *MHPA*
- (A) *Development* of lands that are designated as open space in the applicable *land use plan* and zoned OR-1-1 is permitted only if necessary to achieve the allowable development area, in accordance with ~~section~~ Section 131.0250(a).
- (B) *Eneroachment into sensitive biological resources is not limited, except as set forth in section 143.0141 (a)(6)(A) and Development of a premises containing wetlands is subject to Section 143.0141(b).*
- (C) *Outside the Coastal Overlay Zone, impacts to vernal pools and road pools with listed fairy shrimp are not subject to Section 143.0150(d) if mitigated in accordance with the Biology Guidelines and VPHCP.*
- (7) Narrow Endemic Species  
[No change.]
- (b) Wetland Regulations
- (1) State and federal law regulates adverse impacts to *wetlands* and listed species habitat. The *applicant* shall confer, when applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game Wildlife before any public hearing for the *development* proposal.



- (2) The applicant shall solicit input from U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and **Game Wildlife** on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat.
- (3) The applicant shall, to the maximum extent feasible, incorporate U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and **Game Wildlife** recommendations into the *development* proposal prior to the first public hearing.
- (4) [No change.]
- (5) Impacts to *wetlands* shall be avoided, **except where permitted in accordance with Section 143.0141(b)(6)**. A *wetland buffer* shall be maintained around all *wetlands* as appropriate to protect the functions and values of the *wetlands*. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in this section.
- (6) Outside the Coastal Overlay Zone, encroachment into a vernal pool is allowed outside of the MHPA where the development is consistent with the Biology Guidelines and VPHCP. Such development is not considered a deviation to the wetland regulations.**

§143.0142 through §143.0146 [No change.]

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

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

- (a) through (c) [No change.]
- (d) Deviations to the wetland regulations **of this Division for development located outside of the Coastal Overlay Zone in Section 143.0141(b)** shall not be granted unless the *development* **is located outside of the Coastal Overlay Zone and** qualifies to be processed as one of the three options set forth in the following regulations and in accordance with the Biology Guidelines in the Land Development Manual:
- (1) Essential Public Projects Option



- (A) A deviation may only be requested for an Essential Public Project where no feasible alternative exists that would avoid impacts to wetlands.
- (B) For the purpose of this section, Essential Public Projects shall include:
  - (i) Any public project identified in an adopted *land use plan* or implementing document and identified on the Essential Public Projects List adopted by Resolution No. R-307377 as Appendix III to the Biology Guidelines; or
  - (ii) Linear infrastructure, including but not limited to major roads and *land use plan* circulation element roads and facilities including bike lanes, water and sewer pipelines including appurtenances, and stormwater conveyance systems including appurtenances; or
  - (iii) Maintenance of existing public infrastructure; or
  - (iv) State and federally mandated projects.

(2) Economic Viability Option

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

(3) Biologically Superior Option

- (A) A deviation may be requested to achieve a superior biological result which would provide long term biological benefit and a net increase in quality and viability (functions and value), relative to existing conditions or the project originally proposed by the applicant, and long term biological benefit.
- (B) Wetland resources that would be impacted by the project shall be demonstrated to be of low biological quality.

**§143.0151** [No change.]

**§143.0152 Covenants of Easements Pursuant to Environmentally Sensitive Lands Regulations**

As authorized by California Government Code **Section section** 65871, the owner of any *premises* affected by issuance of a permit under this division as described in

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Section 143.0140(a), shall execute a covenant of easement unless the owner dedicates the remainder portion of the property in fee to the City. The covenant of easement shall be recorded against title to the affected *premises* and executed in favor of the City.

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

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

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

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

(c) [No change.]

**§143.0155** through **§143.0160** [No change.]