

Ordinance No. 9329(N.S.)

AN ORDINANCE AMENDING THE GRADING ORDINANCE  
AND THE GRADING AND CLEARING ORDINANCE,  
RELATING TO AGRICULTURAL GRADING  
AND OTHER EXEMPTIONS

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

Section 1. Purpose and Intent. Existing ordinances of the County of San Diego which regulate clearing and grading of land contain exemptions for agricultural operations and other projects. The Board of Supervisors finds that clearing or grading operations conducted under these exemptions contribute to destruction of sensitive habitat and other biological, archaeological and other environmental resources, damage from stormwater runoff, and pollutants entering stormwater conveyance systems. The Board therefore determines that it is necessary to limit the scope of these exemptions, and make further corresponding amendments to said ordinances.

Section 2. Grading Ordinance Revisions. The Grading Ordinance (Section 87.101 and following of the San Diego County Code) is hereby amended as follows:

a. Section 87.104 is hereby amended, to delete the following definition:

(30) "AGRICULTURAL GRADING" shall mean any grading that is done exclusively for growing plants and animals.

b. Section 87.201 is amended, to read as follows:

**SEC. 87.201. PERMIT REQUIRED -- EXCEPTIONS.**

No person shall do any grading without first having obtained a grading permit from the Director of Public Works, except for the following:

(a) An excavation which is less than five feet (5') in vertical depth at its deepest point measured from the natural ground

surface and which does not result in the movement of more than 200 cubic yards of material on any one site.

- (b) A fill which (1) is less than five feet (5') in vertical depth at its deepest point measured from the natural ground surface, (2) is placed on a surface having a slope not steeper than five horizontal to one vertical, (3) does not exceed 200 cubic yards of material on any one site, and (4) does not change the existing drainage pattern for an off-site area either above or below the grading site.
- (c) An excavation below finished grade for basements and footings of a building, retaining wall, swimming pool, septic tank, and 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 five feet (5') after the completion of such structure.
- (d) Refuse disposal areas or sanitary fills operated and conducted in accordance with a special 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 or unduly increase the stresses in or pressures upon any adjacent or contiguous property.
- (e) Grading upon property under the control of the United States of America, State of California, or the County of San Diego, when done by such government or agency, or when done by their contractor if the work is to be administered and inspected by an engineer employed by such government or agency.
- (f) Tilling or cultivating land exclusively for purposes of growing agricultural plants or animals, provided that:
  - (1) all excavated material shall be placed on the same site;
  - (2) the tilling or cultivating will not block or divert any natural drainage way;

- (3) 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
- (4) the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years.

This exemption does not allow 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.

- (g) Grading incidental to the construction or installation of undergrounding pipelines, conduits or similar underground facilities by public utility corporations, municipal corporations or special districts or their contractors.
- (h) Grading incidental to the construction or installation of drainage or flood control works pursuant to a Watercourse Permit issued by the Department of Public Works.
- (i) Grading or reclamation work pursuant to a special use permit or reclamation plan for a borrow pit, quarry or other surface mining operation approved by the Planning Commission or Board of Supervisors; provided, however, that a borrow pit which is to complete within one year from commencement, the removal of material to be used exclusively for fill at another approved site or sites shall be required to secure a grading permit for the excavation site as well as the fill sites.

c. Section 87.206 is hereby amended, to read as follows:

**SEC. 87.206. PLAN CHECKING FEE.**

At the time of filing an application for a grading permit, a plan checking fee or deposit shall be paid to the County in accordance with this section.

- (a) For a grading permit applied for pursuant to Section 87.210, a plan checking fee shall be submitted to the Director of Planning and Land Use based on the volume of excavation or fill, whichever is greater, and shall be an amount as prescribed by the Board of Supervisors.

(b) PLAN CHECKING DEPOSIT FOR GRADING PLANS OF 3,000 CY OR LESS

For a grading plan showing 3,000 cubic yards or less and the proposed work either (1) will necessitate the construction of any extensive drainage structures or facilities or (2) will interfere in any way with an existing drainage course, or (3) falls within the provisions of Section 87.210(c), or (4) the proposed grading will cross one or more lot lines, a deposit shall be placed with the Director, Department of Public Works following the same procedure as set forth in paragraph (c) below. The amount of said deposit shall be determined by resolution no less than annually by the Board of Supervisors.

(c) PLAN CHECKING DEPOSIT FOR GRADING PLANS GREATER THAN 3,000

CY For a grading plan greater than 3,000 cubic yards, a deposit shall be placed with the Director, Department of Public Works to pay for the actual cost to the County in checking the plan. Before submitting grading plans for examination, the permittee shall deposit with the Director, Department of Public Works a sum estimated by the Director, Department of Public Works to be sufficient to cover such actual costs. If the actual cost of checking a grading plan is less than the amount deposited, the Director, Department of Public Works shall refund to the permittee any amount remaining in said deposit in accordance with Section 87.213. If the deposit is insufficient to pay all the actual costs of checking, the permittee, upon demand of the Director, Department of Public Works shall pay to him an amount deemed sufficient by the Director, Department of Public Works to complete the work in process. If the permittee fails or refuses to pay such amount upon demand, the Director, Department of Public Works may refuse issuance of a grading permit until the amount is paid in full, or, if a permit is already issued, the grading shall be considered incomplete and the grading permit may be revoked in accordance with the procedures set forth in Section 87.212.

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 Districts there shall be paid to the Director of

Public Works the actual cost of checking the plans and specifications and of preparing the documents for the drainage and appurtenant easements. At the time such plans and specifications are submitted, the applicant shall deposit with the Director of Public Works a sum estimated by the Director of Public Works to be sufficient to cover such actual costs. If such actual costs are less than the amount deposited, the Director of Public Works shall refund to the applicant any amount remaining in said deposit in accordance with Section 87.213. If any deposit is insufficient to pay the actual costs of checking the plans or preparing the documents, the applicant, upon demand of the Director of Public Works, shall pay to him an amount deemed sufficient by the Director of Public Works to complete the work in process.

- (d) If an Environmental Impact Report is deemed necessary prior to the issuance of a permit, the applicant shall deposit with the Director of Public Works a sum estimated by the Director of Public Works to be sufficient to cover the such actual costs as are incurred in the preparation and/or review of the Environmental Impact Report. If the actual cost of preparing and/or reviewing the Environmental Impact Report is less than the amount deposited, the Director of Public Works shall refund to the permittee any amount remaining in said deposit in accordance with Section 87.213. If any deposit is insufficient to pay all the actual costs of checking, the permittee, upon demand of the Director of Public Works shall pay to him an amount deemed sufficient by the Director of Public Works to complete the work in process. If the permittee fails or refuses to pay such amount upon demand, the Director of Public Works may refuse issuance of a grading permit until the amount is paid in full, or, if a permit is already issued, the grading shall be considered incomplete and the grading permit may be revoked in accordance with the procedures set forth in Section 87.212.

d. Section 87.207 is hereby amended, to read as follows:

**SEC. 87.207. GRADING PERMIT INSPECTION FEES.**

- (a) Prior to the issuance of a grading permit obtained pursuant to Section 87.210, an inspection fee shall be submitted to the Director of Planning and Land Use for each grading permit based on the volume of the excavation or fill,

whichever is greater, and shall be in an amount as prescribed by the Board of Supervisors.

- (b) Prior to the issuance of a grading permit obtained pursuant to approval of plans submitted under the criteria of Section 87.206(b) a deposit shall be placed with the Director of Public Works to pay for the actual cost of inspection. The amount deposited shall be the sum estimated by the Director of Public Works to be sufficient to cover such actual costs. If the actual cost of inspection is less than the amount deposited, the Director of Public Works shall refund to the permittee any amount remaining in said deposit in accordance with Section 87.213. If the deposit is insufficient to pay the actual costs of inspection, the permittee, upon demand of the Director of Public Works, shall pay an additional amount deemed sufficient by the Director of Public Works to complete the work in process. If the permittee fails or refuses to pay such amount upon demand, the Director of Public Works may refuse issuance of a grading permit until the amount is paid in full, or, if a permit is already issued, the grading shall be considered incomplete and the grading permit may be revoked in accordance with the procedures set forth in Section 87.212.
  
- (c) Prior to the issuance of a grading permit obtained pursuant to approval of plans submitted under the criteria of Section 87.206(c) there shall be paid to the County for each grading permit an administration and inspection deposit in accordance with this section. Before obtaining the grading permit, the permittee shall deposit with the Director of Public Works a sum estimated by the Director of Public Works to be sufficient to cover actual costs in the administration and inspection of work performed. This deposit shall also be used to defray the expense of non-compliance with the conditions of the plans and/or specifications or any conditions of the permit. If the actual cost of administration and inspection is less than the amount deposited, the Director of Public Works shall refund to the permittee any amount remaining in said deposit in accordance with Section 87.213. If any deposit is insufficient to pay all actual costs of administration and inspection, the permittee shall, upon demand of the Director of Public Works, pay to him an amount deemed sufficient by the Director of Public Works to complete the work in process. An additional deposit may be required for the authorization of additional work on a valid grading permit. If a permittee fails or refuses to pay any amount

in a required deposit, the grading will be considered incomplete until the amount is paid in full and the grading permit may be revoked in accordance with the procedures set forth in Section 87.212.

- (d) Where the grading permit provides for the construction of retaining walls and sprinkler irrigation systems, drainage structures or facilities (other than standard terrace drains and similar facilities) there shall be paid to the Director of Public Works the actual cost of inspecting such construction. Before the grading permit is issued, the applicant shall deposit with the Director of Public Works a sum estimated by the Director of Public Works to be sufficient to cover such actual costs. If the actual cost of inspection is less than the amount deposited, the Director of Public Works shall refund to the applicant any amount remaining in said deposit. If any deposit is insufficient to pay all of the actual cost of inspection, the applicant, upon demand of the Director of Public Works, shall pay to him an amount deemed sufficient by the Director of Public Works to complete the work in process.
- (e) The fee for grading permit authorizing additional work to that authorized by a valid permit shall be the difference between the fee paid for the original permit and the fee required for the entire grading project.

e. Section 87.208 is hereby amended, to read as follows:

**SEC. 87.208. SECURITY REQUIRED.**

- (a) No grading permit shall be issued for grading involving the movement of more than 3,000 cubic yards of soil, other than for grading solely for growing plants or animals and upon which no structures will be placed, unless the applicant shall first post a security with the County of San Diego comprised of a cash deposit or a combination cash deposit and a corporate surety bond of a surety authorized to do business in the State of California, instrument of credit or other security pledging the performance and agreeing such funds are trust funds for the purposes of satisfying the cost of correcting any deficiency or any hazard or injury created by the work. An irrevocable standby letter of credit issued by a financial institution subject to regulation by the State or Federal government may be posted in lieu of the surety bond, instrument of credit or other security.

The total security shall be in the form approved by the County Counsel. The total amount of the security shall be equal to thirty percent (30%) of the estimated cost of the grading work authorized by the permit, plus an additional sum equal to 100% of the estimated cost of the construction of retaining walls and sprinkler irrigation systems, landscaping, and drainage structures or facilities (including standard terrace drains, slope planting and similar facilities) authorized by the permit. The estimated cost of the work is determined by the County Official after reviewing the civil engineer's estimates. If the County Official determines that possible deficiencies or the hazard or danger created by the work does not justify the full amount of the security, he may waive all or part of the amount to the extent that there is no hazard or danger. Where the work includes drainage structures, the applicant may elect to estimate the cost thereof separately from the cost of all other work, and to provide separate security therefor (which may also be used for purposes of improvement security required by the Subdivision Ordinance).

The cash deposit shall be equal to 10% of the total security required for projects where the total security required is \$75,000 or less, plus an additional 5% of the total security required when the security is over \$75,000. In no instance shall the cash deposit be less than One Thousand Dollars (\$1,000) or more than Ten Thousand Dollars (\$10,000). This cash deposit shall be used to satisfy the cost of correcting any deficiency, hazard, or injury created by the work in violation of the terms and conditions of the grading permit or in violation of the provisions of this code or any other applicable law or ordinance. Use of the cash deposit or a portion thereof shall in no way limit or release the obligation of the surety to satisfy the cost of correcting any deficiency, hazard, or injury created by the work. If the amount of the cash deposit is insufficient to satisfy the said cost in full, the surety shall be liable to satisfy the remainder of the said cost in excess of the cash deposit to the extent that said remainder does not exceed the full penalty amount of the bond. In addition, if suit is brought upon the bond by the County and judgment is recovered, the surety shall pay all cost incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.



- (b) Every bond and instrument of credit shall include and every cash deposit and letter of credit shall be made on the conditions that the permittee shall:
- (1) Comply with all the provisions of this code, applicable laws and ordinances.
  - (2) Comply with all of the terms and conditions of the grading permit to the satisfaction of the County Official.
  - (3) Complete all of the work contemplated under the grading permit within the time limit specified in the grading permit, or if no time limit is so specified, the time limit specified in this division. The County Official may, for sufficient cause, extend the time specified in the permit, but no such extension shall release the Owner or the surety on the bond or person issuing the instrument of credit.
- (c) Each bond shall remain in effect until the completion of the work to the satisfaction of the County Official.
- (d) In the event of failure to complete the work or failure to comply with all of the conditions and terms of the grading permit, the County Official may order such work as in his opinion is necessary to correct any deficiencies or eliminate any dangerous condition and leave the site in a safe condition or may order the work authorized by the permit to be completed to a safe and stable condition to his satisfaction. The permittee and the surety executing such bond or person issuing the instrument of credit, letter of credit or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County in causing any and all such work to be done. In the case of a cash deposit, any unused portion thereof shall be refunded to the permittee.
- (e) Permits for less than 3,000 cubic yards of soil that require structures, retaining walls or drainage facilities shall have security posted in conformance with Sec. 87.208(a) if so directed by the County Official.
- (f) The grading permit may provide for the partial release of the bond or other security as provided in this section upon

the partial acceptance of the work in accordance with Section 87.426.

f. Section 87.209 is repealed.

Section 3. Grading and Clearing Ordinance Revisions. Ordinance No. 7415, as amended by Ordinances Nos. 7460, and 8847, is further amended as follows:

a. The Title of said ordinance is amended to read,

AN ORDINANCE IMPOSING REGULATIONS  
ON GRADING AND CLEARING

b. Section 1 is amended to read as follows:

Section 1. The Board of Supervisors finds that:

(a) Uncontrolled grading and clearing (including brushing and grubbing) is of particular concern in San Diego County because of the very large number of threatened and endangered species and habitats, areas of high aesthetic concern, and the high erodibility of local soils.

(b) Clearing and illegal grading have been used to destroy environmental resources prior to application for a land development permit, during the permit process, after project approval but prior to the application of protecting open space easements, and after dedication of open space.

(c) Grading violations, when reported, result in relatively minimal fines and, because of the difficulty in obtaining convictions, are not a serious deterrent to illegal grading. A fine often will not prevent a violation of this ordinance because a fine may be considered simply as an additional development cost. Therefore, a penalty, other than a fine, is necessary to induce continued and consistent compliance with the ordinance and to prevent violations of the ordinance.

(d) Clearing for legitimate reasons (geotechnical exploration and access for percolation tests and wells, and clearing for fire protection) is frequently done well in excess of the minimum necessary to accomplish the purpose.

(e) The Board of Supervisors determines that the regulations set forth in this ordinance will provide the necessary protection of the County's environmental resources.

c. Section 2 is amended to read as follows:

Section 2. Notwithstanding any provision contained in The County Code of Regulatory Ordinances, The Zoning Ordinance or the County General Plan to the contrary, the following regulations are herewith adopted:

(a) For the purposes of this Ordinance the following definitions apply:

(1) "Grading" refers to any excavation or filling or combination thereof and shall include the land in its excavated or filled condition.

(2) "Clearing" refers to the removal of natural vegetation by any means, including brushing and grubbing.

(3) "Floodplain" refers to any 100-year floodplain delineated on maps used by the Department of Public Works, Division of Flood Control, or any other area subject to inundation in a 100-year flood.

(4) "Administrative permit" refers to an administrative permit issued by the Director, Department of Planning and Land Use.

(5) "Biological Mitigation Ordinance" shall mean that Ordinance adopted by the Board of Supervisors to implement the Multiple Species Conservation Plan for the County of San Diego.

(6) "Multiple Species Conservation Plan" shall mean the comprehensive habitat conservation planning program which addresses multiple species habitat needs and the preservation of native vegetation for an approximate 900-square mile area in southwestern San Diego County, California, adopted by the Board of Supervisors on October 22, 1997.

(b) Unless exempt from the provisions of this Ordinance or granted a waiver from the administrative permit requirement, all grading and clearing shall be done only after issuance of one of the following; as may be applicable:

(1) a grading permit by the Department of Public Works pursuant to Title 8, Division 7 of the County Code of Regulatory Ordinances,

(2) a grading permit by the Department of Planning and Land Use pursuant to Section 87.210 of the County Code of Regulatory Ordinances, or

(3) an administrative permit by the Department of Planning and Land Use pursuant to this Ordinance.

(c) All grading and clearing shall conform to the conditions of the authorizing permit, the waiver, or the exemption.

(d) Clearing of vegetation done in preparation for land development shall not be undertaken until both of the following have occurred:

(1) all discretionary approvals for the land development have been issued; and

(2) the appropriate permit listed in subsection (2)(b) of this Ordinance has been issued.

(e) Any grading or clearing which is done in violation of subsections (2)(b), (2)(c) or (2)(d) of this Ordinance shall be a misdemeanor punishable by a one thousand dollar (\$1000) fine. Each day or any portion of a day that any person violates or continues to violate this Ordinance constitutes a separate offense and may be charged and punished separately without awaiting conviction on any prior offense. The penalties imposed by this subsection are in addition to penalties imposed under the County Code of Regulatory Ordinances and the Zoning Ordinance.

(f) Any grading or clearing which according to a field inspection of the property was done in violation of subsections (2)(b), (2)(c) or (2)(d) of this Ordinance shall be grounds for denying for five years all applications for grading permits, administrative permits, site plans, use permits, major and minor subdivisions, rezones, specific plans, specific plan amendments, and general plan amendments proposed for the property on which the violation occurred. The five-year period shall commence from the date of the violation, if documented, or from the date of discovery of the violation.

(g) Administrative permit required. Clearing activities, and Grading activities which are not subject to subsection (2)(b)(1) or (2)(b)(2), shall require the issuance of an administrative permit.

(h) Procedure for administrative permit required by subsection (g). The following procedure shall be followed to process an administrative permit required by subsection (g):

(1) Applicant submits application to the Department of Planning and Land Use on form prescribed by that Department.

(2) Department of Planning and Land Use reviews application for potential adverse environmental impacts.

(3) Where appropriate, staff of the Department of Planning and Land Use suggests to applicant changes which would make proposed activity acceptable.

(4) The Director of Planning and Land Use shall determine whether to issue, conditionally issue, or deny the administrative permit. The Director shall not issue or conditionally issue the administrative permit unless he or she first finds that the clearing authorized by the permit will comply with all requirements of Chapter 8 (commencing with Section 67.801) of Division 7 of Title 6 of the San Diego County Code.

(i) Fee. A fee of fifty dollars (\$50) shall be charged for processing an administrative permit required by this Ordinance.

(j) The following activities are exempt from the provisions of this Ordinance, if they occur on land located outside the boundaries of the Multiple Species Conservation Program Subarea Plan, as shown on the map attached as Attachment A to the Biological Mitigation Ordinance (Ordinance No. 8845 (N.S.):

(1) Clearing of up to a maximum of five acres, on a parcel zoned for single family residential use and improved with a single family residence. The amount of land cleared under this exemption shall not exceed a total of five acres, regardless of the number of occasions on which clearing is performed.

(2) Routine landscaping, maintenance, and the removal of dead or diseased trees or shrubs.

(3) Clearing for fire protection purposes within 100 feet of a dwelling unit. Any additional clearing for fire prevention, control or suppression purposes is exempt when authorized or required, in writing, by a fire prevention or suppression agency.

(4) Limited clearing as necessary for the purpose of surveying, geotechnical exploration and access for percolation tests and wells. This exemption does not include clearing for building pads or leach fields.

(5) Clearing, and minor grading which does not require a grading permit, either of which are incidental to the repair, alteration or construction of a single-family dwelling and accessory buildings and structures pursuant to an approved building permit.

(6) Clearing, and minor grading which does not require a grading permit, either of which conform to the location, extent and purpose authorized, explicitly or implicitly, by an approved plot plan pursuant to a discretionary land use permit or a discretionary development permit.

(7) Clearing incidental to grading activities which are exempt from a grading permit requirement pursuant to County Code of Regulatory Ordinances Sections 87.201 (c), (d), (e), (g), (h), and (i).

(8) Tilling or cultivating land exclusively for purposes of growing agricultural plants or animals, provided that the tilling or cultivating will not block or divert any natural drainage way, and the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years. This exemption does not allow 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.

(k) Clearing of land located within the boundaries of the Multiple Species Conservation Program Subarea Plan, as shown on the map attached as Exhibit A to the Biological Mitigation Ordinance (Ordinance No. 8845 (N.S.)), shall be exempt from the

provisions of this Ordinance if the proposed clearing is exempt from the Biological Mitigation Ordinance pursuant to its terms.

Section 4. Effective Date & Publication. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of May, 2001.

