

Rancho Bernardo Community Planning Board

12463 Rancho Bernardo Road #523, San Diego, CA 92128

www.rbplanningboard.com

July 17, 2025

Honorable Councilmember von Wilpert, District 5
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

RE: Action Needed on our 2024 Request for Land Development Code Corrections Related to Environmentally Sensitive Lands

Dear Councilmember von Wilpert:

In July 2024, the Rancho Bernardo Community Planning Board (Planning Board), along with the Community Planners Committee and other community planning groups, submitted requests for corrections to the Land Development Code (LDC). Specifically, we requested that the Planning Department correct the LDC to restore Process CIP/Public Project-Five for CIP & Other Public Projects that deviate from the Environmentally Sensitive Lands (ESL) Regulations. Corrections to Sections 112.0604 and 143.110, and Table 143-01A were requested. This request was made after an extensive review of numerous changes made over several years by the Planning Department to the LDC related to CIP projects. It appears that changes were made in an effort to eliminate the need for public review for projects that impact ESL. This is contrary to the intent of the ESL regulations. A complete history of LDC changes related to ESL is attached.

We have waited a full year for action by the Planning Department, and to date we have heard nothing. It is unknown how many CIP projects have been initiated since that time that should have required public notice, along with CEQA review. We are requesting your assistance in obtaining an update on when this issue will be corrected. Our extensive review of the Code amendments made between 2013 and 2021 provide no support for staff's elimination of the Process CIP/Public Project-Five for CIP/Other Public Projects when a project deviates from the ESL Regulations.

Thank you in advance for your assistance with this issue.

Sincerely,

Robin Kaufman

Robin Kaufman, Chair
Rancho Bernardo Community Planning Board

Attachment: History of LDC Change Related to ESL

Attachment

History of Revisions to the Environmentally Sensitive Lands Regulations

The first comprehensive discussion of the Environmentally Sensitive Lands (ESL) Regulations were added to the Municipal Code (Code) on 12/9/1997 by Ordinance 18451. A review of all changes made to the Code since that time indicates that although the purpose and intent of the ESL Regulations remain fairly constant, the implementation process, specifically with respect to Capital Improvement Program Projects (CIP)/Public Projects, has changed significantly. Major issues include:

- A decision-making process for CIP and Public Projects that is out of compliance with the original intent of conserving ESL;
- Lack of a defined CEQA process for CIP and Public Projects that deviate from the ESL regulations; and
- Minimal opportunity for public involvement when there is a deviation from ESL regulations.

The primary focus of this overview is to present the changes made to the Land Development Code since 1997 that affect how the CEQA and public involvement processes for CIP and Public Projects are implemented, particularly when a project deviates from the ESL regulations.

Below is the purpose statement from the 4-2024 version of the Code (emphasis added).

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 by placing priority on the preservation of biological resources within the 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 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 MSCP Subarea Plan but determined to be sensitive pursuant to the CEQA review process. This determination will be addressed in the environmental documentation.

Changes to the Land Development Code Related to ESL Regulations

1997 (O-18451): Section 143.0101, which introduced the purpose of the ESL Regulations and when they apply, was added to Chapter 14 of the Land Development Code in 1997. The purpose of the ESL Regulations is **“to protect, preserve and, when damaged restore, the ESL of San Diego and the viability of the species supported by those lands.”** Additionally, the regulations are intended “to assure that development 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 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.”

In 1997, Table 143-01A (Applicability of ESL Regulations) was added to identify the appropriate development regulations, the required decision process, and the permitted uses applicable to various types of development proposals that propose to encroach into ESL or that do not qualify for an exemption pursuant to Section 143.0110 (c). In 1999, Table 143-01A, Item 6, stated that when a development proposes deviations from any portion of the ESL regulations, a Site Development Permit must be processed in accordance with Process Four. At that time, there were no types of development proposals specific to CIP and Public Projects.

1999 (O-18691): In 1999, Section 143.0101 was revised to include references to the Coastal Overlay Zone and the Coastal Act.

2002 (O-19051): In 2002, the definition of ESL was added to Section 113.0103; a requirement for supplemental findings was added to Section 126.0504 when approving a Site Development Permit for impacts to ESL where a deviation is requested the Special Flood Hazard Area regulations, and Section 143.0110 was amended to include coastal beaches (including V zones) and Special Flood Hazard Areas (except V zones), and revisions were made to address limited exceptions and deviations for ESL regulations related to special flood hazard areas and floodways.

2005 (O-19444): Section 143.0111 added public linear trail and public maintenance access projects as exempt from the development area regulations of the OR-1-2 Zone in Section 131.0250(b) and development area regulations for steep hillsides in Section 143.0142(a), and for sensitive biological resources in Section 143.0141(d). Section 143.0126 was amended to address emergency work where only temporary impacts to ESL would occur.

2006 (O-19467): Table 143-01A continued to indicate that under Item 6, any development that proposed deviations from any portion of the ESL regulations was required to process a Site Development Permit in accordance with Process Four.

2006 (O-19468): Section 143.0101 (Purpose of ESL Regulations) was updated slightly to incorporate references related to the coastal development in the Coastal Overlay Zone.

2012 (O-20161): The 2012 update amended and renumbered Sections 143.0110, 143.0115, 143.0140, 143.0141, and 143.0150 of Chapter 14, Article 3, Division 1 of the Code.

143.0110 (When ESL Regulations Apply) – The following footnote was added to Table 143-01A: 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.

143.0150 Deviations from ESL Regulations – No change to (a) – (c), added (d) which addresses deviations to the wetland regulations located outside of the Coastal Overlay Zone, stating that deviations will not be granted unless the development qualifies to be processed as one of three options (Essential Public Project Option, Economic Viability Option, or Biologically Superior Option).

2013 (O-20293): 143.0110 (When ESL Regulations Apply) was revised to eliminate the need for a Site Development Permit for a development activity outside of the Coastal Zone that includes ESL but would not encroach into ESL during or after construction, would not expand brush management Zone One into ESL, would comply with MHPA adjacency guidelines, would maintain required setbacks, maintain the designated separation from ESL.

2013 (O-20309): This revision established a new decision process for streamlining CIP projects that require a Coastal Development Permit or Site Development Permit.

Prior to the approval of O-20309, the decision process in place for SDP for most CIP projects was Process Three, however, projects related to historical resources and that deviate from environmentally sensitive lands regulations were subject to Process Four. The ordinance created a new decision process for CIP projects, Process CIP-Two and Process CIP-Five (112.0103), which were proposed to streamline the decision-making process while maintaining existing environmental review process and providing continued opportunity for public input.

Under 112.0501 (Overview of Decision Process), the new processes designated the City Council as the final decision maker on all CIP projects that require an SDP or a CDP. Process CIP-Two (112.0602) is similar to the existing Process Two, except appeals are heard by the City Council instead of the Planning Commission, and the Process CIP-Five (112.0604) is heard by the City Council without requiring a recommendation from the Planning Commission. Other changes were made in 112.0103, 112.0301, 112.0306, 112.0308, and 112.0401 that related to process and hearings.

Chapter 11, Article 2, Division 6 – Capital Improvement Program Projects (Added)

112.0601 Overview of the Decision Process - Applications for CIP projects requiring a Site Development Permit in accordance with ESL Regulations and Historical Resources Regulations or a City-issued Coastal Development Permit shall be acted upon in accordance with one of the two decision processes established in this division and depicted in Diagram 112-06A. . . (Process CIP-Two and Process CIP-Five).

112.0602 Process CIP-Two - An application for a Site Development Permit for a capital improvement program project determined to be in compliance with the ESL Regulations and Historic Resources Regulations without deviation. . . shall be acted upon in accordance with Process CIP-Two. . . A public hearing will not be held. . .

112.0604 Process CIP-Five - An application for a Site Development Permit for a capital improvement program project that deviates from the ESL Regulations or Historic Resources Regulations, or a City-issued Coastal Development Permit in the appealable area of the Coastal Overlay Zone, shall be acted upon in accordance with Process CIP-Five. . .

126.0104 Decision Process for a Development Permit

A decision on an application for a development Permit shall be made in accordance with . . . Chapter 12, Article 6, Divisions 1 – 8 for each type of development permit.

126.0502 When a Site Development Permit is Required

(f) A Site Development Permit in accordance with Process CIP-Two is required for the following types of development.

(1) CIP projects on a premises containing ESL where the development is determined to be in compliance with the ESL regulations without deviation.

(2) CIP projects on a premises containing historical resources where the development is determined to be in compliance with the Historical Resources Regulations without deviation, unless exempt under Section 143.0220.

(g) A Site Development Permit in accordance with Process CIP-Five is required for the following types of development.

(1) CIP projects on a premises containing ESL that deviate from the ESL regulations.

(2) CIP projects on a premises containing historical resources that deviate from the Historical Resources Regulations, unless exempt under Section 143.0220.

Also added, 126.0503, which addresses the decision processes for SDPs Process CIP-Two and CIP-Five.

143.0110 When Environmentally Sensitive Lands Regulations Apply

Table 143-01A states:

Type of Development Proposal: 8 – Any CIP project determined to be in compliance with ESL Regulations without deviation is SDP/CIP-Process Two.

Type of Development Proposal 9 - Any CIP project that deviates from ESL Regulations is SDP/CIP-Process Five.

Similarly, Table 143-02A (Applicability of Historical Resources Regulations states:

Type of Development Proposal: 6 - CIP projects that comply with the regulations of this division without deviation is SDP/CIP-Process Two,

Type of Development Proposal: 7 - CIP projects that deviate from any of the regulations in this division is SDP/CIP-Process Five.

2018 (O-20899) Changes related to Vernal Pool Habitat

143.0101 Purpose of ESL Regulations - Rephrased reference to MHPA and added a reference to the Vernal Pool Habitat Conservation Plan (VPHCP).

143.0110 When ESL Regulations Apply - Table 143-01A Footnote 1: The City does not have incidental take authorization for listed species within the federal jurisdictional waters, except for vernal pool species covered under the VPHCP.

2020 (O-21164) 12th Update (Phase Two), Approved 1/07/2020

It was as part of this update that substantial changes were made to the Land Development Code regarding the processing of CIP and public projects that deviate from the Environmentally Sensitive Lands Regulations. It appears that initially, the intent was to add Public Projects to the Process CIP-Two and Process CIP-Five development process, based on the following proposed language revision for 112.0602 Process CIP/Public Project-Two.

An application for a Site Development Permit for a *capital improvement program project or a public project* determined to be in compliance with the Environmentally Sensitive Lands Regulations and Historic Resources Regulations without deviation, or a City-issued Coastal Development Permit in the non-appealable area of the Coastal Overlay Zone ~~for a capital improvement program project~~, shall be acted upon in accordance with Process CIP/Public Project-Two.

And staff's recommended revisions to the Code for §112.0604 Process CIP/Public Project-Five, provided to the City Council in their decision packets, included the following text:

An application for a Site Development Permit for a *capital improvement program project or a public project* that deviates from the Environmentally Sensitive Land Regulations or Historic Resources Regulations, or a City-issued Coastal Development Permit in the *appealable area* of the Coastal Overlay Zone, shall be acted upon in accordance with Process CIP/Public Project-Five. An application for a Process CIP/Public Project-Five decision may be approved, conditionally approved, or denied by the City Council. A Process CIP/Public Project-Five decision shall be made in the following manner.

However, in Table 143-01, the decision process for both Item 8 "Any capital improvement program project or public project determined to be in compliance with the Environmentally Sensitive Lands Regulations without deviation" and Item 9 "Any capital improvement program project or public project that deviates from the Environmentally Sensitive Lands Regulations" was identified as SDP/Process CIP/Project Two.

Section §126.0502 **When a Site Development Permit is Required** staff recommended deleting 126.0502 (a)(1) which stated:

~~City public works projects, except for capital improvement program projects, on a premises containing environmentally sensitive lands, as described in Section 143.0110.~~

Section §126.0502 (f) A Site Development Permit in accordance with Process CIP/ Public Project-Two is required for the following types of development.

(f) A Site Development permit in accordance with Process CIP/Public Project-Two is required for the following types of development.

(1) Capital improvement program projects or public projects on a premises containing environmentally sensitive lands or that deviate from the Environmentally Sensitive Lands Regulations pursuant to Section 143.0110, Table 142-01A. ~~where the development is determined to be in compliance with the Environmentally Sensitive Lands Regulations without a deviation.~~

(g) A Site Development Permit in accordance with Process CIP/Public Project-Five is required for ~~the following types of development.~~

(1) ~~Capital improvement program projects on a premises containing environmentally sensitive lands that deviate from the Environmentally Sensitive Lands Regulations.~~

~~(2) Capital improvement program projects or public projects on a premises containing historical resources that deviate from the Historical Resources Regulations, unless exempt under Section 143.0220.~~

Eliminating the public process for CIP and public projects that deviate from the Environmentally Sensitive Lands Regulations was not addressed in any detail in the staff report either to the Planning Commission or the City Council. As a result, this significant change was not obvious to the public without reviewing all the cross-out/underlining in the documents provided in the decision-making packets. Such a significant change in the decision making process should have be highlighted in the staff report and the City Attorney's Office should have reviewed this change for consistency with the California Environmental Quality Act.

2022 (O-21416) 2021 Update, Approved 1/27/2022

As part of the 2021 Update, staff proposed no substantive change to §112.0602 Process CIP/Public Project-Two, but proposed revisions to §112.0604 Process CIP/Public Project-Five that deleted mention of deviations from the Environmentally Sensitive Land Regulations. The change in language to the Code for §112.0604 as presented to the City Council in the strikeout version stated:

“An application for a Site Development Permit for a capital improvement program project or a public project that deviates from the ~~Environmentally Sensitive Land Regulations or~~ Historical Resources Regulations, or a City-issued Coastal Development Permit in the appealable area of the Coastal Overlay Zone, shall be acted upon in accordance with Process CIP/Public Project-Five.”

With this change, the Land Development Code provides no process for capital improvement program project or a public project that deviate from the Environmentally Sensitive Land Regulations, therefore, no such projects should be allowed to be processed until the Code is amended to provide a process that is consistent with the Environmentally Sensitive Land Regulations and CEQA.

2023 (O-21618) 2021 Update, Approved 2/28/2023

Notable that City-issued Coastal Development Permits in the appealable area of the Coastal Overlay Zone require discretionary approval in accordance with Process Three. The following Code changes were made in 2023 to revise the decision making process for these types of permits:

112.0601 Overview of Decision Process

Added Text - Applications for capital improvement program projects requiring a City-issued Coastal Development Permit in the appealable area of the Coastal Overlay Zone shall be made in accordance with Process Three, as set forth in Sections 112.0505 and 112.0506 and depicted on Diagram 112-06A.

112.0604 Process CIP/Public Project - Five An application for a Site Development Permit for a capital improvement program project or a public project that deviates from the Historical Resources Regulations or a City-issued Coastal Development Permit in the appealable area of the Coastal Overlay Zone, shall be acted upon in accordance with Process CIP/Public Project-Five.

126.0707 Decision Process for a Coastal Development Permit

- (b) A decision on an application for a City-issued Coastal Development Permit in the appealable area of the Coastal Overlay Zone shall be made in accordance with Process Three, except that a decision on a capital improvement program project or public project in the appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(c) and as set forth in Sections 112.0505 and 112.0506, except a decision on a companion unit an Accessory Dwelling Unit shall be made in accordance with Section 126.0707(a). The decision may be appealed to the Planning Commission in accordance with Section 112.0506.
- (c) The decision may be appealed to the Planning Commission in accordance with Section 112.0506. (c) A decision on an application for a City-issued Coastal Development Permit for a capital improvement program project or public project shall be made as follows:
 - (1) [No change in text.]
 - (2) In the appealable area of the Coastal Overlay Zone, the decision shall be made in accordance with ~~Process CIP/Public Project-Five~~ a Process Three as set forth in with Sections 112.0505 and 112.0506.

The proposed revision to Item 9 in Table 143-01A change the process for CIP and public projects that deviate from the ESL regulations from SDP/Process CIP/Public Project-Five to SDP/Process CIP/Public Project-Two, eliminating the public hearing process and creating an inconsistency with statements in 112.0604.

Further, this change to Land Development Code is contrary to the statement included in the CEQA Guidelines Section 15162 Consistency Evaluation Matrix which is part of the Planning Department's December 2, 2019 Memorandum (Attachment 7) provided to the City Council (refer to the screenshot provided as Exhibit A on the following page for details). Item No. 15 in the Matrix (located on page 11 of Attachment 7) states that for Capital Improvement Projects (CIP) and Public Projects, "Discretionary process from a 5 to a 2 (**does not apply to deviations from historical, ESL, or archeological resources regulations**).

Excerpts from the December 2, 2019 memorandum are provided as Exhibit A, below. This is clearly in conflict with the changes to the Code which specifically eliminates the public process for deviations from the ESL regulations.

Despite the statement in the CEQA Evaluation Matrix that requires consideration of impacts to environmental sensitive lands, on February 1, 2021, City Council approved O-21289, which included no discussion of how the Code should address deviations from ESL regulations. Table 143-01A and all other appropriate sections of the LDC should be revised to require adherence to Process CIP/Public Project-Five for those projects that deviate from the ESL regulations.

Excerpts of Current Code Language as it Relates to CIP/Public Projects (4-2024)

This version of the Code available on line continues to state:

112.0602 - Process CIP/Public Project-Two - An application for a Site Development Permit for a capital improvement program project or a public project determined to be in compliance with the Environmentally Sensitive Lands Regulations, Historical Resources Regulations without deviation, or a City-issued Coastal Development Permit in the non-appealable area of the Coastal Overlay Zone shall be acted upon in accordance with Process CIP/Public Project-Two. An application for a Process CIP/Public Project-Two decision may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request, in accordance with Section 112.0603. A Process CIP/Public Project-Two decision shall be made in the following manner.

§112.0604 Process CIP/Public Project-Five - An application for a Site Development Permit for a capital improvement program project or a public project that deviates from the Historical Resources Regulations shall be acted upon in accordance with Process CIP/Public Project-Five. An application for a Process CIP/Public Project-Five decision may be approved, conditionally approved, or denied by the City Council. A Process CIP/Public Project-Five decision shall be made in the following manner.



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: December 2, 2019

TO: Renee Mezo, Development Project Manager III, Planning Department

FROM: Rebecca Malone, AICP, Senior Planner, Planning Department

SUBJECT: 12th Update to the Land Development Code (Phase Two) - 15162 Evaluation

The CEQA and Environmental Policy Section of the Planning Department has completed a California Environmental Quality Act (CEQA) Section 15162 consistency evaluation in compliance with Public Resources Code Section 21166 for the proposed amendments related to the 12th Update to the Land Development Code (LDC) and Local Coastal Program in the San Diego Municipal Code. As described in more detail in the attached 15162 evaluation matrix (Attachment 1), the proposed 39 amendments include proposed changes to the San Diego Municipal Code: Chapter 1, Article 1; Chapter 2, Article 2; Chapter 3, Article 4; Chapter 4, Articles 2 and 3; Chapter 5, Articles 2 and 8; Chapter 9, Article 8; Chapter 11, Articles 2 and 3; Chapter 12, Articles 1, 3, 6, and 8; Chapter 13, Articles 1 and 2; Chapter 14, Articles 1 through 3; and Chapter 15, Articles 1, 2, 3, 5, 6, and 7.