

Meeting Date: 1/29/2020 (02)

ORDINANCE NO. 10650 (N.S.)

AN ORDINANCE ENACTING CHAPTER 14 OF DIVISION 1 OF TITLE 8 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES RELATING TO PROPERTY CONDITION AGREEMENTS

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

Section 1. Chapter 14 (commencing with Section 81.1401) is added to Division 1 of Title 8 of the San Diego County Code, to read as follows:

CHAPTER 14. PROPERTY CONDITION AGREEMENTS

SEC. 81.1401. PURPOSE.

The purpose of this chapter is to establish guidelines for the applicability, approval, and recordation process of a Property Condition Agreement. A Property Condition Agreement serves as a recorded companion agreement for discretionary subdivision projects, including Tentative Parcel Maps and Tentative Maps, that do not otherwise require any other companion discretionary permits at the time of the approval. A Property Condition Agreement provides an option for the County to impose and an applicant to implement conditions after a Final Map, similar to projects with additional recorded discretionary approvals (e.g., a Major Use Permit or Site Plan) that facilitate condition implementation and completion to occur in later stages during the land development process. After recordation into the County's official record, a Property Condition Agreement functions as traceable title documentation clearly identifying all project conditions in one document, including mitigations adopted for impacts identified under the California Environmental Quality Act ("CEQA", Pub. Res. Code Section 21000 et seq.), and other applicable requirements to be completed before or after subdivision and before or after any other required project permit or approval can be granted. A Property Condition Agreement is not a means to defer mitigation; conditions with required timing prior to Final Map approval for the purposes of mitigation are ineligible for timing alteration.

SEC. 81.1402. REQUIREMENTS.

No person shall develop, construct, install, occupy, use, maintain, carry out or otherwise implement all or any part of a Tentative Parcel Map or Tentative Map for which a Property Condition Agreement has been approved and recorded in accordance with this chapter, except in full compliance with all applicable requirements and the terms of the Property Condition Agreement. This prohibition applies to the initial development of a project, as well as the on-going use or operation of a project. All persons who acquire ownership of land subject to a Property Condition Agreement, who have actual or constructive notice of the contents of the

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Property Condition Agreement, shall be subject to the terms and conditions thereof and shall fully comply with those terms and conditions. Property Condition Agreement cannot be modified once approved, without an applicable subsequent discretionary project application.

SEC. 81.1403. PROPERTY CONDITION AGREEMENT EXCEPTIONS.

A Property Condition Agreement shall not be used for the following purposes:

(a) In-lieu of a subdivision improvement agreement for the construction of subdivision improvements required pursuant to the Subdivision Map Act (Gov. Code sec. 66410 et seq.) or the Subdivision Ordinance (sec. 81.101 et seq. of this code).

(b) To extend the condition completion timing of the grant of an easement, conveyance of real property, or purchase of mitigation credits, required for the mitigation of biological impacts beyond final subdivision map approval.

(c) To extend the condition completion timing of any project condition or mitigation measure beyond a project's CEQA document or conditions of approval.

SEC. 81.1404. COUNTY PROJECTS.

This chapter shall not apply to any project for which the County is the applicant or landowner.

SEC. 81.1405. FORM AND CONTENTS OF PROPERTY CONDITION AGREEMENTS.

A Property Condition Agreement shall be in a form approved by the County Counsel and shall contain the following:

(a) A description of the Tentative Parcel Map or Tentative Map;

(b) A legal description of the real property upon which the Tentative Parcel Map or Tentative Map is proposed;

(c) A requirement that the land owner(s), authorized agent on behalf of the land owner(s), or the applicant with written consent of the land owner(s), perform one or more of the specified conditions, adopted mitigation measures specified in the project's CEQA document and conditions of approval, or other applicable requirements necessary for the development and implementation of the Tentative Parcel Map or Tentative Map (which shall be listed in the

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Property Condition Agreement);

(d) A statement that implementation of any subsequent permitting or approval actions related the Tentative Parcel Map or Tentative Map is authorized only upon condition that the project conditions or mitigation measures specified in the Property Condition Agreement are performed;

(e) A statement that the land owner(s) and each grantee, transferee and other successor in interest of the land owner(s) shall be bound by the terms of the Property Condition Agreement and shall be responsible to perform those project conditions and mitigation measures required thereby and applicable to the Tentative Parcel Map or Tentative Map for which the Property Condition Agreement has been approved;

(f) A requirement that the land owner(s) and each grantee, transferee and other successor in interest of the land owner(s) disclose the terms of the Property Condition Agreement in writing to any subsequent grantee, transferee or other successor in interest and to any trustee or beneficiary under deed of trust, mortgagee or other person who extends credit against the value of the land; and

(g) The signatures of all owners of the land described in the Property Condition Agreement (whose signatures shall be acknowledged).

SEC. 81.1406. PROCESS FOR APPROVAL OF PROPERTY CONDITION AGREEMENTS FOR TENTATIVE MAPS AND TENTATIVE PARCEL MAPS.

(a) Prior to the approval of the Tentative Parcel Map or Tentative Map, the applicant shall present to the Director the completed Property Condition Agreement, which shall include any project conditions to be completed after Final Map. The Property Condition Agreement must comply with Section 81.1405 above and fully signed by the land owner(s). Concurrently with approval of the Tentative Parcel Map or Tentative Map, the Decision Maker may approve the Property Condition Agreement and cause it to be filed with the San Diego County Recorder.

(b) The applicant shall not initiate or carry out the project, and no other County permits or approvals shall be issued in furtherance of the project, between the approval of the Property Condition Agreement and its recordation with the San Diego County Recorder.

SEC. 81.1407. PROPERTY CONDITION AGREEMENTS TO BE BINDING ON SUCCESSORS IN INTEREST.

The recording of a Property Condition Agreement shall impart constructive notice of the terms thereof. The rights and obligations specified in the Property Condition Agreement shall

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apply to the land described therein and shall benefit and be binding upon all grantees, transferees and other successors of the owner with respect to that land.

SEC. 81.1408. CANCELLATION AND RELEASE OF PROPERTY CONDITION AGREEMENTS.

(a) The owner(s) of land subject to a Property Condition Agreement, or the County for good cause shown, may file with the Director a written request to cancel the Agreement. The written request shall list and be signed by all current owners of the land and shall state that the owner(s) understand that cancellation will terminate the rights under the Agreement and release the landowner(s) from the obligations of the terms and conditions of the Agreement. The written request shall be submitted and include a Covenant Release Fee (81.211 CC) in the amount in accordance with the Department of Planning & Development Services Schedule of Discretionary Fees and Deposits.

(b) The Director may approve the request for cancellation if he or she finds that there is no continuing need for the Property Condition Agreement, for one or more of the following reasons:

(1) The Tentative Parcel Map or Tentative Map to which the Property Condition Agreement is associated has expired;

(2) The Tentative Parcel Map or Tentative Map for which it was required has been abandoned and will not be implemented; or

(3) All required mitigation of environmental impacts and/or other applicable conditions or requirements have been completed, and no ongoing mitigation is required.

(c) Upon approving cancellation, the Director shall notify the applicant. The Director shall cause a notice to be filed with the San Diego County Recorder on all properties that are part of the Tentative Parcel Map or Tentative Map, stating that the Property Condition Agreement has been cancelled and the land owner(s) are released from the terms and conditions thereof.

SEC. 81.1409. ENFORCEMENT REMEDIES.

(a) Failure to comply with any condition of a Property Condition Agreement shall constitute a violation of this code.

(b) The County may specifically enforce the terms of a Property Condition Agreement in a court of appropriate jurisdiction and may obtain injunctive relief against any person failing to comply with any term of a Property Condition Agreement of which such person has actual or constructive notice.

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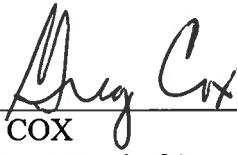
(c) As part of a civil action filed by the County to enforce provisions of this Code, a court may assess a maximum civil penalty of \$2,500 per violation for each day during which any violation of any provision of this Code is committed, continued, permitted or maintained by such person(s). As part of a civil action, a court may also enjoin a person from violating any provision of this Code and assess a maximum civil penalty of \$6,000 for each day any person intentionally violates the injunction.

(d) In addition to all other legal remedies, criminal or civil, which are available to the County to address any condition of a Property Condition Agreement, the County may use the Administrative Remedies found at Division 8 of Title 1 of the County Code.

Approved as to form and legality:

By: Randall Sjoblom, Senior Deputy County Counsel

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 29th day of January, 2020.



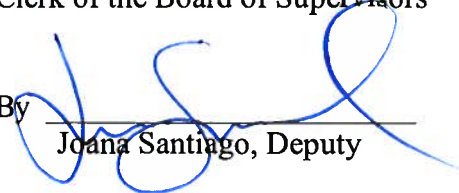
GREG COX
Chairman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Fletcher, Desmond
ABSENT: Gaspar

ATTEST my hand and the seal of the Board of Supervisors this 29th day of January, 2020.

ANDREW POTTER
Clerk of the Board of Supervisors

By 

Joana Santiago, Deputy



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