



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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Fifth District

DATE: September 25, 2024 and October 9, 2024

03

TO: Board of Supervisors

SUBJECT

ADOPT AN ORDINANCE TO AMEND PORTIONS OF THE SAN DIEGO COUNTY FLOOD DAMAGE PREVENTION ORDINANCE, COUNTY CODE § 811.101, ET SEQ. AND RELATED CEQA FINDING (9/25/2024 – FIRST READING ORDINANCE; 10/9/2024 – ADOPT ORDINANCE) (DISTRICTS: ALL)

OVERVIEW

The County of San Diego (County) is committed to reducing flood risk to the community and is responsible for reviewing private development and County capital improvement projects for compliance with flood control objectives. The County provides floodplain maps and free sand and sandbags to the public to help them understand flood risks and protect their structures. The County also maintains stormwater drainage facilities and the County's ALERT Flood Warning Network. During and after a flooding event, the County conducts analyses to quantify the magnitude and extent of the storm's impacts and supports emergency response and recovery actions.

The County also participates in the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP), the requirements of which are outlined in the Code of Federal Regulations (CFR). To qualify for flood insurance, structures built within the boundaries of Special Flood Hazard Areas, also known as floodplains and floodways, as shown on FEMA's Flood Insurance Rate Maps, must meet minimum standards established under the NFIP that make structures more resilient from flooding and increase public safety. The County informs property owners of these requirements and offers guidance on elevating their structures above the flood risk, which will lower their flood insurance premiums. The County also participates in FEMA's Community Rating System (CRS) program, a voluntary incentive program for communities that have the authority to adopt and enforce floodplain management regulations for their jurisdictions, to earn credit for tasks and activities that are beyond minimum NFIP standards. Just over 1,500 communities in the U.S. participate in the CRS program. If standards are met, this translates to reduced flood insurance premiums for property owners. The County publicizes these premium reducing activities on social media and through direct mailers to people who live and work in mapped floodplains, as well as to real estate and land development industry members.

The County Board of Supervisors (Board) adopted the Flood Damage Prevention Ordinance (Ordinance) in 1988 to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in the unincorporated area of the county. The Ordinance includes

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methods and provisions for restricting or prohibiting uses that are dangerous to health, safety, or property due to flooding. It also controls the alteration of natural floodplains and stream channels, which help contain floodwaters. These methods and provisions apply to new development and redevelopment within the floodplain.

The recommended changes to the County's Ordinance include the following:

1. Revisions requested by FEMA for consistency with the Code of Federal Regulations (CFR);
2. Optional revisions recommended by FEMA to maximize County credits to the CRS program pertaining to non-residential construction flood proofing requirements; and
3. An optional amendment to the local floodplain map revision process requirements (pertaining to FEMA's Conditional Letter of Map Revision or "CLOMR") that staff is recommending to mirror the CFR requirements for consistency.

Because FEMA's requested changes (1) and recommended changes (2) came as part of an unscheduled review in August of 2021 of the County's Ordinance, FEMA concurred with implementing changes at the next planned Ordinance update. Regarding the optional amendment that staff are recommending (3), FEMA separately rescinded guidance for determining when CLOMRs for public and private land development projects are required. This revealed an area where the County's Ordinance is inadvertently more stringent than the Federal requirements under certain conditions, affecting a relatively small number of projects. The more stringent Ordinance language is not a regulatory requirement that would offer more protection to structures or the environment. Similarly, this more restrictive requirement does not provide any advantage for NFIP policy discounts in the CRS program.

The Department of Public Works has engaged extensively with our stakeholders and partners, including the Environmental Coalition, the Bay Council, the Building Industry Association, labor union stakeholders, floodplain management and legal professionals, the San Diego Association of Governments, the County's Land Development Technical Working Group, and the Flood Control District Advisory Commission, to gather feedback on the proposed optional amendment to the local floodplain map revision process (related to the CLOMR) to mirror the federal requirements. These stakeholders are all either neutral or in support of the recommended revisions; none expressed concerns or opposition to the staff's recommendation.

Today's request is for the Board to adopt an ordinance amending the County Flood Damage Prevention Ordinance to reflect FEMA's current standards for participation in the NFIP, to ensure continued successful participation in the CRS program, and to align the local floodplain map revision CLOMR requirements with the CFR.

The proposed action requires two steps. On September 25, 2024, it is requested that the Board approve introduction of the Ordinance per the recommendations below. If the Board takes action on the recommendations, then on October 9, 2024, the Board may adopt the Ordinance.

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RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Find that the proposed action is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) of the State CEQA Guidelines because administrative revisions to the Flood Damage Prevention Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment.
2. Approve introduction (first reading), read the title, and waive further readings of the following Ordinance:

ORDINANCE TO AMEND PORTIONS OF THE SAN DIEGO COUNTY FLOOD DAMAGE PREVENTION ORDINANCE TO MEET NATIONAL FLOOD INSURANCE PROGRAM AND OTHER OBJECTIVES.

If, on September 25, 2024, the Board takes action as recommended, then, on October 9, 2024:

1. Submit the ordinance for consideration and adopt the ordinance (second reading).
ORDINANCE TO AMEND PORTIONS OF THE SAN DIEGO COUNTY FLOOD DAMAGE PREVENTION ORDINANCE TO MEET NATIONAL FLOOD INSURANCE PROGRAM AND OTHER OBJECTIVES.

EQUITY IMPACT STATEMENT

The proposed ordinance changes will promote the public safety and general welfare of people and structures within special flood hazard areas in the unincorporated county. If adopted, the Ordinance would apply equally across all unincorporated areas of San Diego county. The proposed Ordinance would allow the County of San Diego (County) to support public safety by keeping the County in good standing in the Federal Emergency Management Agency's National Flood Insurance Program and keeping policy holders eligible for premium discounts. These discounts make flood insurance more affordable for all policy holders, including those in historically underserved communities.

SUSTAINABILITY IMPACT STATEMENT

The proposed amendments to the ordinance keep the County of San Diego (County) in the National Flood Insurance Program and provide resilience to people who live and work in unincorporated areas. The proposed amendments to the Ordinance have health, well-being and economic sustainability benefits. These amendments will contribute to the County sustainability goal of protecting the health and well-being of everyone in the region by reducing flood risk and reducing costs for flood insurance.

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FISCAL IMPACT

There is no fiscal impact associated with these recommendations. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

The County of San Diego's Flood Damage Prevention Ordinance provides flood protection requirements for private and public development projects to provide clarity to developers while balancing the needs of the community. In addition, the update will allow for continued participation in the National Flood Insurance Program and the Community Rating System, resulting in reduced flood insurance rates for property owners.

ADVISORY BOARD STATEMENT

The Department of Public Works' Flood Control staff presented this item to the Flood Control District Advisory Commission (Commission) on February 3, April 7, June 9, September 15, and November 3, 2022; February 9 and November 2, 2023; and April 11, 2024. On September 15, 2022, staff had an extensive working meeting with the Commission to come to a consensus and finalize the recommended ordinance revisions.

BACKGROUND

The County of San Diego (County) participates in the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP). The NFIP regulations require that new buildings and substantial improvements to existing buildings be protected from the "base flood," also known as the "100-year flood," which is defined as the level of flood that has a 1% chance of occurring in any given year. The NFIP encourages communities to address other concerns as well, such as protecting natural floodplain functions, health and safety, and critical facilities, such as hospitals, police stations, or fire stations. In exchange for making flood insurance and disaster assistance available to property owners within a jurisdiction, local governments must adopt and enforce the NFIP's floodplain management standards within the boundaries of a floodplain as shown on the FEMA Flood Insurance Rate Maps (FIRMs).

Additionally, the County participates in FEMA's voluntary incentive Community Rating System (CRS) program, which currently enables eligible property owners to receive annual flood insurance at a 20% reduced rate. Participation in the CRS program requires the County to go above and beyond the minimum NFIP standards by performing additional tasks and activities, which include providing public education and outreach, including social media messaging for flood preparedness and mitigation; maintaining records for permits issued within the floodplain; and preserving open space. The more activities that a community undertakes leads to a better standing in the program, or "class", and greater percent reduction in flood insurance premiums for residents and businesses. Just over 1,500 communities in the U.S. participate in the CRS program, including the Southern California communities listed in the table below. In addition to showing the communities participating in the program, the table shows the year the communities enrolled in the program, their current "class" level in the program, and the corresponding percent discount in flood insurance premiums. Communities enter the program at class 9, which provides a 5% reduction in flood insurance premiums, and can advance to class 1 which provides a 45%

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reduction. The proposed changes are important to allow the County to continue to advance in their CRS class.

Community	CRS Entry Date	CRS Class	% Discount
KERN COUNTY	10/1/1991	9	5%
LOS ANGELES COUNTY	10/1/1991	6	20%
CITY OF OCEANSIDE	10/1/1991	8	10%
ORANGE COUNTY	10/1/1991	5	25%
CITY OF POWAY	5/1/2008	8	10%
RIVERSIDE COUNTY	10/1/2010	6	20%
SAN DIEGO COUNTY	5/1/2008	6	20%
CITY OF SAN DIEGO	10/1/2023	7	15%
SANTA BARBARA COUNTY	10/1/1991	6	20%
VENTURA COUNTY	10/1/2011	5	25%

The recommended changes to the County’s Ordinance include the following:

1. Revisions requested by FEMA for consistency with the Code of Federal Regulations (CFR);
2. Optional revisions recommended by FEMA to maximize County credits to the CRS program pertaining to non-residential construction flood proofing requirements; and
3. An optional amendment to the local floodplain map revision process requirements (pertaining to FEMA’s Conditional Letter of Map Revision or “CLOMR”) that staff is recommending to mirror the CFR requirements for consistency.

1. Revisions Requested by FEMA for Consistency with the CFR.

FEMA regularly conducts compliance reviews of a community’s floodplain management program. These reviews are typically conducted annually but can be performed less often for communities that are more experienced in the NFIP program. The County’s last few audits have been conducted on a five-year interval. FEMA performed its most recent technical review of the County’s (unincorporated areas only) floodplain management regulations on August 25, 2021 and identified necessary revisions to meet NFIP minimum standards for the next update to the County’s Ordinance. These changes are generally non-substantive but requested by FEMA for consistency with the CFR. They include revised definitions, added dates of Flood Insurance Studies, documentation of the County’s record keeping of floodplain management documents, and clarification of the licensed professionals allowed to perform design for certain flood protection features for development. In response to FEMA’s request, the County’s Building Code has been amended and adopted in a separate Board action on January 25, 2023 (8) to clarify the design

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and/or location of electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities for flood safety.

Proposed Ordinance amendments include:

- A. Updates to definitions to align with Section 59.1 of Title 44 of the CFR (as shown in Attachments A and B).
- B. Addition of date that the County originally adopted the FIRMs and the Flood Insurance Study that served as their basis.
- C. Reference to the County requirement for permits for all proposed construction or other development, including placement of manufactured homes, for the purpose of identifying proposed development in flood-prone areas.
- D. Codification of the Floodplain Administrator's practice to maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations.
- E. Clarification of existing language in the Ordinance that for construction on alluvial fan floodplains, which are formed when a fast-moving mountain stream empties out on a relatively flat plain (like in Borrego), that the lowest floor of a structure cannot be below the highest adjacent grade unless for a commercial facility that is floodproofed.
- F. Clarification that only a registered professional engineer or architect may certify that the design and methods of construction meet flood protection requirements for floodproofing a commercial structure.

2. Optional Revisions to Maximize County's Credits in CRS Program

The County may exceed minimum NFIP standards by performing additional activities to receive flood insurance policy discounts for residents and businesses through FEMA's CRS program. FEMA recommended the following three proposed revisions, that would also codify the County's existing practices:

- A. Requirement that flood-proofing or elevation of non-residential structures be to a height of one foot above the base flood elevation;
- B. Requirement that structural components are capable of withstanding flooding; and
- C. Requirement that designs are developed or reviewed by a registered engineer or architect.

These clarifying amendments will help ensure consistency between County regulations and CFR requirements, and maximize reductions to flood insurance premiums for property owners in the unincorporated area of the County.

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3. Optional Amendment to Local Floodplain Map Revision Process to Mirror CFR CLOMR Requirements

Some elements of the County's local Ordinance are intentionally more stringent than FEMA requirements and result in flood insurance policy discounts through FEMA's CRS program. The proposed amendments discussed in this section, however, pertain to an administrative requirement for floodplain map revisions in the County's Ordinance that is unintentionally more restrictive than the federal requirement. Additionally, it does not provide any advantage for NFIP policy discounts in the CRS program, nor provide additional flood protection to structures, people or the environment. Specifically, this is the requirement that determines which projects must obtain a FEMA-approved CLOMR before grading can be allowed.

The first step in FEMA's floodplain map revision process is for the applicant to prepare and submit a CLOMR application to the County for review. The CLOMR application is the applicant's plan for proposed improvements, such as grading or building a structure, on a property located within a FEMA mapped floodplain. Once the County's comments on the CLOMR are addressed, the applicant submits it to FEMA for review. Once FEMA reviews and concurs, they will issue an official determination stating that after the applicant completes work in the floodplain FEMA will revise the floodplain map. At this point, the County can then issue the grading permit. The FEMA floodplain map can only be updated once the applicant submits a Letter of Map Revision (or LOMR) to the County and FEMA, as proof that the work in the floodplain was completed in accordance with the approved CLOMR.

Communities, including states or local jurisdictions that have authority to adopt and enforce floodplain management regulations are allowed to incorporate requirements that are more stringent than FEMA's. On July 22, 2009 (8), the County updated the Ordinance to include, among other items, a new one-foot freeboard requirement for new development and substantial improvement of existing structures located in a floodplain. Freeboard functions as a factor of safety and, for purposes of floodplain management, is usually expressed in feet above a flood level. Applying freeboard compensates for many unknown factors that might cause flood heights to be greater than calculated, such as waves. This freeboard requirement is intentionally more stringent than Federal requirements, providing greater flood protection to the community and helping to enable NFIP policy discounts. However, also included in the same Board of Supervisors (Board) action was updated CLOMR requirement language that unintentionally made the County's map revision rules more stringent than Federal requirements. Unlike the freeboard requirement, the more stringent CLOMR requirement did not provide any advantage for NFIP policy discounts or greater flood protection to the community.

This difference between the local Ordinance and the CFR pertains specifically to projects that are proposed to be built in the floodplain. The CFR requires CLOMRs for projects that are proposed to be built in the mapped floodplain where no floodway has been determined, taking into account the cumulative impacts of existing and future development, which would cause an increase in the base flood elevation greater than one foot at any point. By contrast, the County's Ordinance requires a CLOMR for projects that propose any changes to the floodplain, in terms of the base

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flood elevation, base flood depth or floodplain boundary. At the time that the Board approved the changed CLOMR language, FEMA published their floodplain maps in a paper format. For very small projects whose impacts to the floodplain would not be visible on a paper map, FEMA would not require CLOMRs, although local communities would still review proposed project impacts. Because FEMA would not process CLOMRs for these projects, this difference between local and Federal requirements was not readily apparent. Later, when FEMA converted their paper floodplain maps to a digital format, which can easily account for changes of any size, FEMA subsequently rescinded its thresholds for very small projects. FEMA advised the County in June 2021 of this, and this difference between Federal regulations and the local Ordinance became evident. Since the more stringent Ordinance language is not a regulatory requirement that would offer more protection to structures or the environment or provide any advantage for NFIP policy discounts in the CRS program, staff recommends changing the local Ordinance language to mirror the CFR's CLOMR language. If this change is adopted, the County will still review applicants' drainage submittals for these smaller projects before issuing grading permits. However, FEMA approval would not be required, which would save projects time and money.

The County's requirements for proposed projects located in floodways are identical to the Federal requirements. Similarly, the County's requirement that all projects located in and altering floodplains and floodways must obtain a Letter of Map Revisions (LOMR) from FEMA after grading completion is also identical to the Federal requirement. As a result, no Ordinance amendment for these situations is needed.

Outreach and discussions with stakeholders, including the San Diego County Flood Control District Advisory Commission (Commission) led to consideration of several options to address the disparity between local and Federal CLOMR requirements, including a status quo option (no change). The Commission's recommendation is to amend the Ordinance to mirror the CFR CLOMR language. Department of Public Works Flood Control staff met with stakeholders shown in Table 1 below, who all agreed or were neutral on this approach. Therefore, the staff recommendation is to change the Ordinance to mirror the CFR CLOMR language.

Stakeholder	Meeting Dates
Flood Control District Advisory Commission	2/3/2022, 4/7/2022, 6/9/2022, 9/15/2022, 11/3/2022, 2/9/2023, 11/2/2023, 4/11/2024
Land Development Technical Working Group	3/17/2022, 11/17/2022, 11/16/23
Environmental Coalition	3/18/2022, 10/14/2022, 1/19/2024
Building Industry Association Stormwater Task Force	4/28/2022, 1/26/2023, 2/23/2023, 1/25/2024
Bay Council	10/26/2022, 10/27/2023
Labor Unions	11/29/2022, 5/28/2024

Table 1: Stakeholder Outreach

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ENVIRONMENTAL STATEMENT

Section 15060(c)(2) of the California Environmental Quality Act (CEQA) Guidelines provides that a project is not subject to CEQA review if the “activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.” The proposed action includes approval of revisions to the existing Flood Damage Prevention Ordinance for the purpose of compliance with the National Flood Insurance Program, consistency with the Code of Federal Regulations, and maximizing County credits in FEMA’s Community Rating System. As such, the proposed activity will not result in any direct or reasonably foreseeable indirect physical change to the environment, and accordingly, is exempt from CEQA review pursuant to Section 15060(c)(2) of the CEQA Guidelines.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

The County’s Strategic Initiatives of Sustainability and Community included in the 2024-2029 Strategic Plan seek to unify the County’s efforts in environmental preservation, safety and community preparedness, quality of life, and economic development. The action requested today will support the County’s goals of maintaining high standards of quality of life by promoting flood safety in the unincorporated area, which will also assist economic development. Updating the County’s Flood Damage Prevention Ordinance enables the County to implement higher standards of safety for flood protection that decrease the potential of damage from disasters.

Respectfully submitted,



AMY HARBERT
Interim Deputy Chief Administrative Officer

ATTACHMENT(S)

Attachment A – Ordinance Amending County Code Title 8, Division 11 (Strikeout Copy)
Attachment B – Ordinance Amending County Code Title 8, Division 11 (Clean Copy)