

EL PASO  **COUNTY**
COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Board of County Commissioners
Stan VanderWerf, Chair**

**FROM: Nina Ruiz, Planning Manager
Jeff Rice, P.E., Engineer III
Craig Dossey, Executive Director**

**RE: LDC-21-002 Land Development Code Amendment -
Early Grading Amendment to Chapter 6 of the El Paso County Land
Development Code (2021) pertaining to Pre-Subdivision Site Grading**

Commissioner District: All

Planning Commission Hearing Date	8/5/2021
Board of County Commissioners Hearing Date	8/10/2021

EXECUTIVE SUMMARY

A request by the El Paso County Planning and Community Development Department to amend Chapter 6 of the El Paso County Land Development Code (2021) pertaining to Pre-Subdivision Site Grading.

The proposed amendments include:

- Replacing the term “Pre-Development Site Grading” with “Pre-Subdivision Site Grading” throughout.
- Adding subsection “B. Pre-Subdivision Site Grading Requirements” to Section 6.2.6.
- Amending Section 6.2.6 to allow Pre-Subdivision Site Grading to be approved administratively in all instances except when the installation of wet utilities is also proposed.
- Amending Section 6.2.6 to require Board of County Commissioners approval of Pre-Subdivision Site Grading when the proposed grading includes installation of wet utilities.
- Amending Section 6.2.6 to specify the report requirements.
- Amending Section 6.2.6 to specify the acceptable forms of surety.

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the BoCC as well as minor amendments to the Pre-Subdivision Site Grading Acknowledgement and Right of Access Form.

A. PLANNING COMMISSION SUMMARY – PC information not available at time of required posting.

Request Heard:
Recommendation:
Waiver Recommendation:
Vote:
Vote Rationale:
Summary of Hearing:
Legal Notice:

B. APPLICABLE RESOLUTIONS:

Approval Page 7
Disapproval Page 8

C. REQUEST

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2021) to include:

- Replacing the term “Pre-Development Site Grading” with “Pre-Subdivision Site Grading” throughout.
- Adding subsection “B. Pre-Subdivision Site Grading Requirements” to Section 6.2.6.
- Amending Section 6.2.6 to allow Pre-Subdivision Site Grading to be approved administratively in all instances except when the installation of wet utilities is also proposed.
- Amending Section 6.2.6 to require Board of County Commissioners approval of Pre-Subdivision Site Grading when the proposed grading includes installation of wet utilities.
- Amending Section 6.2.6 to specify the report requirements.
- Amending Section 6.2.6 to specify the acceptable forms of surety.

Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the BoCC as well as minor amendments to the Pre-Subdivision Site Grading Acknowledgement and Right of Access Form.

D. BACKGROUND

The El Paso County Land Development Code is routinely amended to respond to current land use trends, recurring issues, changes in legislation, and errors/oversights. The Planning and Community Development Department staff

maintains a running list of necessary and recommended revisions to the Code as issues arise.

El Paso County continues to experience unprecedented growth and is anticipated to reach a population of one million by the year 2050 (an increase of 256,000 from 2019) (page 10 of Your El Paso Master Plan (2021)). Due to the great demand for additional housing, land developers typically seek to begin preparing the land for development prior to receiving approval of the associated development application from the Board of County Commissioners. The developers perform early grading activities at their own risk and with the understanding that any investment in terms of time or money on their part does not obligate the County to approve the proposed development. Currently, these requests are scheduled on the Board of County Commissioners agenda as a consent item and continue to be approved without issue.

In order to facilitate a more efficient review and approval process, the proposed amendments would grant the PCD Director the authority to approve Pre-Subdivision Site Grading. It is important to note, however, that the installation of wet utilities would still require Board of County Commissioners approval due to the investment of funds and time associated this type of activity being significantly higher for the respective developer compared to the investment associated with just grading and revegetation the site. In addition, requests by developers to design and install wet utilities also results in involvement by the associated utility provider(s), which is a much more involved process than pre-development site grading and revegetation.

The proposed revisions were sent to 57 outside agencies as well as the Housing and Building Association of Colorado Springs (HBA) for review and comment. There are no outstanding comments from the outside agencies and the HBA has provided comments endorsing the proposed revisions.

E. RECOMMENDED AMENDMENTS

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2021) to include:

- Replacing the term “Pre-Development Site Grading” with “Pre-Subdivision Site Grading” throughout.
- Adding subsection “B. Pre-Subdivision Site Grading Requirements” to Section 6.2.6.
- Amending Section 6.2.6 to allow Pre-Subdivision Site Grading to be approved administratively in all instances except when the installation of wet utilities is also proposed.
- Amending Section 6.2.6 to require Board of County Commissioners approval of Pre-Subdivision Site Grading when the proposed grading includes installation of wet utilities.
- Amending Section 6.2.6 to specify the report requirements.

- Amending Section 6.2.6 to specify the acceptable forms of surety.

Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the BoCC as well as minor amendments to the Pre-Subdivision Site Grading Acknowledgement and Right of Access Form.

F. APPROVAL CRITERIA

The statutory role of the Planning Commission and Board of County Commissioners is identified below:

30-28-116. Regulations may be amended.

From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

G. PUBLIC COMMENT AND NOTICE

A summary of the proposed Code amendments and the date of the Board of County Commissioners hearing will be published in The Fountain Valley News pursuant to Colorado Revised Statute 30-28-116. A copy of this publication will be included in the backup materials for the Board of County Commissioners hearing. All the stakeholders were noticed by EDARP of the hearing date.

H. ATTACHMENTS

Proposed Amendments to the Land Development Code (2021) (redline version)
Proposed Amendments to the Land Development Code (2021) (clean version)
Pre-Subdivision Site Grading Acknowledgement and Right of Access Form
All Comments Received
Letter of Support from the Housing and Building Association of Colorado Springs
Board of County Commissioners' Resolution

6.2.6. Pre-Development Subdivision Site Grading

- (A) **Pre-Development Subdivision Site Grading Allowed.** Pre-development subdivision site grading may occur only after issuance of a construction permit by the ECM Administrator in accordance with this Section and the requirements of the ECM. ~~(B) — Pre-Development Site Grading Requirements. A construction permit for pre-development site grading will only be issued if the following requirements are met, in addition to those required in the ECM: Approval and issuance of the construction permit and ESQCP for pre-subdivision site grading does not guarantee or create a right, or right of expectation that the BoCC will approve the preliminary plan or final plat for the subject property. Approval of pre-subdivision site grading does not guarantee that additional grading will not be required based on final grading plans and construction drawing approvals.~~
- (B) **Pre-Subdivision Site Grading Requirements.** A construction permit for pre-subdivision site grading will only be issued if the following requirements are met, in addition to the requirements in the ECM:
- (1) **BoCC Approved PCD Director and ECM Administrator Approval Required.** ~~Issuance. The BoCC shall approve the preliminary plan for the subject property and authorize the ECM Administrator to issue of a construction permit for pre-development subdivision site grading, which requires prior approval by the PCD Director and ECM Administrator of the pre-subdivision site grading plan. Approval of the pre-subdivision site grading plan shall include authorization for the ECM Administrator to accept the construction sureties required by the ECM. Any request for approval of pre-subdivision site grading which includes the installation of wet utilities shall require prior approval by the BoCC.~~ Issuance. The BoCC shall approve the preliminary plan for the subject property and authorize the ECM Administrator to issue a construction permit for pre-development subdivision site grading, which requires prior approval by the PCD Director and ECM Administrator of the pre-subdivision site grading plan. Approval of the pre-subdivision site grading plan shall include authorization for the ECM Administrator to accept the construction sureties required by the ECM. Any request for approval of pre-subdivision site grading which includes the installation of wet utilities shall require prior approval by the BoCC.
 - (2) **Grading to Conform to this Code and ECM.** Pre-development subdivision site grading shall conform to the grading and erosion and sediment control requirements of this Code and the ECM, except as specifically modified by this Section.
 - (3) **ESQCP Required Prior to Issuance of a Construction Permit.** ~~The An ESQCP approved by the ECM Administrator shall issue an ESQCP in accordance with the requirements of the ECM must be obtained prior to the issuance of a construction permit for pre-development subdivision site grading. A construction permit for pre-development subdivision site grading shall meet all requirements of the ECM for issuance of an ESQCP.~~ An ESQCP approved by the ECM Administrator shall be issued in accordance with the requirements of the ECM must be obtained prior to the issuance of a construction permit for pre-development subdivision site grading. A construction permit for pre-development subdivision site grading shall meet all requirements of the ECM for issuance of an ESQCP.
 - (4) **Where Required Drainage Structures Required.** ~~Detailed engineering information meeting the requirements of the ECM will be required when drainage structures or Report and Construction Drawings. If stormwater facilities are required to be constructed as part of the pre-development subdivision site grading. All information required in, submission to and approval by the ECM Administrator of a) a drainage report meeting the ECM standards for a final drainage report for these and b) stormwater facilities shall be provided to the ECM Administrator and approved construction documents must occur before the issuance of a construction permit will be authorized. In addition, construction documents for all drainage facilities or structures to be constructed as part of the proposal for pre-development site grading shall be provided for review and approval can be issued. The construction permit application documents shall demonstrate to the satisfaction of the ECM Administrator that no adverse impact will occur to any offsite property or drainageway, including property downstream of the activity.~~ Detailed engineering information meeting the requirements of the ECM will be required when drainage structures or Report and Construction Drawings. If stormwater facilities are required to be constructed as part of the pre-development subdivision site grading. All information required in, submission to and approval by the ECM Administrator of a) a drainage report meeting the ECM standards for a final drainage report for these and b) stormwater facilities shall be provided to the ECM Administrator and approved construction documents must occur before the issuance of a construction permit will be authorized. In addition, construction documents for all drainage facilities or structures to be constructed as part of the proposal for pre-development site grading shall be provided for review and approval can be issued. The construction permit application documents shall demonstrate to the satisfaction of the ECM Administrator that no adverse impact will occur to any offsite property or drainageway, including property downstream of the activity.
 - (5) **Acknowledgement Form Required.** A Pre-Development Subdivision Site Grading Acknowledgment and Right of Access Form shall be completed and submitted with the construction permit application. ~~Approval and issuance of the construction permit and ESQCP for pre-development site grading does not guarantee or create a right, or right of expectation that the BoCC will approve the final plat for the subject property. The Pre-Development Site Grading~~

AcknowledgmentThe Form acknowledges that the owner signatory will proceed to perform grading under the construction permit and ESQCP at ~~signatory's sole risk-~~

- ~~(6)~~ their own risk. The construction permit shall be personal to the property owner and shall not run with the land. Any change in property ownership prior to stabilization of the site requires the new owner to execute their own Pre-Subdivision Site Grading Acknowledgement and Right of Access Form, obtain a separate construction permit and ESQCP, receive approval of an updated Financial Assurance Estimate and provide the associated surety.
- (6) Surety Required. Construction and stormwater ~~Financial Assurance~~surety for the benefit of the BoCC for the cost of the erosion control measures and noxious weed management plan requirements shall be provided in conformance with this Code and the ECM. Surety for pre-subdivision site grading shall be in the form of cash, Certified or Cashier's Check, or letter of credit, unless another form is approved by the ECM Administrator.
- (7) **Compliance with State and Federal Requirements.** The applicant is responsible to obtain the necessary permits and comply with all other applicable federal, State, or local rules and regulations that may be required prior to commencing pre-~~development~~subdivision site grading, including, but not limited to, Section 404 permits, floodplain development permits, dust permits, permits under the federal Clean Water Act, and Section 7 or Section 10 permits under the Endangered Species Act from the U.S. Fish & Wildlife Service.
- (8) **Financial Assurance**Surety Combined with Subdivision Construction Financial Assurance.Surety. The construction and stormwater ~~Financial Assurance~~surety for pre-~~development~~subdivision site grading may be consolidated with the construction ~~Financial Assurance~~surety for the common subdivision and public improvements when a final plat is approved by the BoCC. or administratively and upon issuance of an updated construction permit.
- (9) **Release of** ~~Financial Assurance.~~Surety. Construction and stormwater ~~Financial Assurance~~surety shall be released in full or in part in accordance with procedures set forth in the ECM.

6.2.6. Pre-Subdivision Site Grading

- (A) **Pre-Subdivision Site Grading Allowed.** Pre-subdivision site grading can only occur after issuance of a construction permit by the ECM Administrator in accordance with this Section and the requirements of the ECM. Approval and issuance of the construction permit and ESQCP for pre-subdivision site grading does not guarantee or create a right, or right of expectation that the BoCC will approve the preliminary plan or final plat for the subject property. Approval of pre-subdivision site grading does not guarantee that additional grading will not be required based on final grading plans and construction drawing approvals.
- (B) **Pre-Subdivision Site Grading Requirements.** A construction permit for pre-subdivision site grading will only be issued if the following requirements are met, in addition to the requirements in the ECM:
- (1) **PCD Director and ECM Administrator Approval Required.** Issuance of a construction permit for pre-subdivision site grading requires prior approval by the PCD Director and ECM Administrator of the pre-subdivision site grading plan. Approval of the pre-subdivision site grading plan shall include authorization for the ECM Administrator to accept the construction surety required by the ECM. Any request for approval of pre-subdivision site grading which includes the installation of wet utilities shall require prior approval by the BoCC.
 - (2) **Grading to Conform to this Code and ECM.** Pre-subdivision site grading shall conform to the grading and erosion and sediment control requirements of this Code and the ECM, except as specifically modified by this Section.
 - (3) **ESQCP Required Prior to Issuance of a Construction Permit.** An ESQCP approved by the ECM Administrator in accordance with the ECM must be obtained prior to the issuance of a construction permit for pre-subdivision site grading. A construction permit for pre-subdivision site grading shall meet all requirements of the ECM.
 - (4) **Required Drainage Report and Construction Drawings.** If stormwater facilities are required to be constructed as part of the pre-subdivision site grading, submission to and approval by the ECM Administrator of a) a drainage report meeting the ECM standards for a final drainage report and b) stormwater facilities construction documents must occur before a construction permit can be issued. The construction documents shall demonstrate to the satisfaction of the ECM Administrator that no adverse impact will occur to any offsite property or drainageway, including property downstream of the activity.
 - (5) **Acknowledgement Form Required.** A Pre-Subdivision Site Grading Acknowledgment and Right of Access Form shall be completed and submitted with the construction permit application. The Form acknowledges that the owner signatory will proceed to perform grading under the construction permit and ESQCP at their own risk. The construction permit shall be personal to the property owner and shall not run with the land. Any change in property ownership prior to stabilization of the site requires the new owner to execute their own Pre-Subdivision Site Grading Acknowledgement and Right of Access Form, obtain a separate construction permit and ESQCP, receive approval of an updated Financial Assurance Estimate and provide the associated surety.
 - (6) **Surety Required.** Construction and stormwater surety for the benefit of the BoCC for the cost of the erosion control measures and noxious weed management plan requirements shall be provided in conformance with this Code and the ECM. Surety for pre-subdivision site grading shall be in the form of cash, Certified or Cashier's Check, or letter of credit, unless another form is approved by the ECM Administrator.
 - (7) **Compliance with State and Federal Requirements.** The applicant is responsible to obtain the necessary permits and comply with all other applicable federal, State, or local rules and

regulations that may be required prior to commencing pre-subdivision site grading, including, but not limited to, Section 404 permits, floodplain development permits, dust permits, permits under the federal Clean Water Act, and Section 7 or Section 10 permits under the Endangered Species Act from the U.S. Fish & Wildlife Service.

- (8) **Surety Combined with Subdivision Construction Surety.** The construction and stormwater surety for pre-subdivision site grading may be consolidated with the construction surety for the common subdivision and public improvements when a final plat is approved by the BoCC or administratively and upon issuance of an updated construction permit.
- (9) **Release of Surety.** Construction and stormwater surety shall be released in full or in part in accordance with procedures set forth in the ECM.

work in order to correct said deficiencies pursuant to ECM Section I.6.1.H.

4. Applicant shall indemnify, defend, and forever hold harmless the Board of County Commissioners of El Paso County, their officers, employees, agents, contractors, and subcontractors, from any and all claim, demand, action, cause of action, loss, damage, injury, property damage, personal injury, death, liability, duty, obligation, costs and expenses (including attorney fees) arising out of or related to such entry on the Property. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to the Board of County Commissioners pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
5. In accordance with ECM Sections 5.3.15 and I.4.1C, Applicant is obligated to provide surety sufficient to make reasonable provision for completion of the grading, erosion control and final stabilization measures, in the amount set forth on Exhibit B attached hereto. Surety shall be in the form of cash, Certified or Cashier's Check, or letter of credit.
6. Applicant is responsible for providing any renewals of surety to ensure that there is never a lapse in security coverage. Applicant shall procure renewal/extension/replacement surety at least fifteen (15) days prior to the expiration of the surety then in effect. Failure to procure renewal/extension/replacement surety within this time limit shall allow the County to execute on the surety.
7. All of the grading, erosion control and final stabilization measures to be completed as identified on Exhibit B shall be constructed in compliance with the following:
 - a. All laws, resolutions and regulations of the United States, State of Colorado, El Paso County and its various agencies, affected special districts and/or servicing authorities.
 - b. Such other designs, drawings, maps, specifications, sketches and other matter submitted to and approved by any of the above-stated governmental entities.
8. All grading, erosion control, and final stabilization measures shall be completed by the Applicant within 12 (twelve) months from the date of notice to proceed in the Construction Permit. If Applicant determines that the completion date needs to be extended, Applicant shall submit a written request for a change in the completion date to the ECM Administrator at least 90 days in advance of the required completion date. The request shall include the reasons for the requested change in completion date, the proposed new completion date, and prove surety is in place to cover the extension time requested. The completion date for the Construction Permit may be extended at the discretion of the ECM Administrator. Failure to meet the original or extended completion date, as applicable, shall allow the County to execute on the surety.

RESOLUTION NO. 21-

**EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS, STATE OF
COLORADO**

APPROVAL OF AMENDMENT TO THE LAND DEVELOPMENT CODE (LDC-21-002) – EARLY GRADING AMENDMENT TO CHAPTER 6 OF THE EL PASO COUNTY LAND DEVELOPMENT CODE (2021) PERTAINING TO PRE-SUBDIVISION SITE GRADING

WHEREAS, the Planning and Community Development Department of El Paso County requests approval of Amendment to Chapter 6 of the Land Development Code pertaining to Pre-Subdivision Site Grading

WHEREAS, a public hearing was held by the El Paso County Planning Commission on August 5, 2021, upon which date the Planning Commission did by formal resolution recommend approval of the proposed amendments, and

WHEREAS, a public hearing was held by this Board on August 10, 2021; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. The proposed amendment(s) to the El Paso County Land Development Code Choose an item. properly submitted for consideration by the Planning Commission.
2. Proper publication and public notice were provided as required by law for the hearing before the Planning Commission.
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons were heard at that hearing.
4. All data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and were received into evidence and found to meet the intent of the Introductory Provisions of the Land Development Code.

5. For the above-stated and other reasons, the proposed Amendment(s) are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED the El Paso County Board of County Commissioners hereby approves the amendment to Chapter 6 of the El Paso County Land Development Code, including other conforming amendments throughout the Code, as represented on the attached Exhibit "A" by underlining (additions) and strike-through (deletions):

AND BE IT FURTHER RESOLVED that the Executive Director of Planning and Community Development is hereby authorized and directed to develop procedures for the provision of public notice of and opportunity to submit comments on applications for administrative plat approval and for the appeal of administrative plat approval or denial to the Board of County Commissioners.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 10th day of August 2021 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
Chair

By: _____
County Clerk & Recorder

EXHIBIT A

See attached.