

ORDINANCE SECTIONS 68.511 THROUGH 68.520 OF THE SAN DIEGO COUNTY CODE  
OF REGULATORY ORDINANCES RELATING TO DIVERSION OF CONSTRUCTION  
AND DEMOLITION MATERIALS FROM LANDFILL DISPOSAL

**SEC. 68.511. PURPOSE.**

The purpose of this article is to establish the Construction and Demolition Debris (C&D) Diversion Program in the unincorporated area of the County. This program is intended to increase diversion of C&D from landfills, conserve landfill capacity, extend the useful life of local landfills, support construction and demolition project compliance with waste diversion requirements of the State green building standards, and avoid potential consequences to the County if it fails to comply with State waste diversion requirements.

**SEC. 68.512. DEFINITIONS.**

For the purposes of this article, the following definitions shall apply:

- (a) "Addition" means an extension or increase in floor area of an existing building or structure.
- (b) "Alteration" means any construction or renovation to an existing structure, other than repair, for the purpose of maintenance or addition, including tenant improvements.
- (c) "Applicant" means a person who applies to the County for a permit for an applicable project.
- (d) "Applicable project" means an excavation, grading, construction, or demolition project pursuant to the applicable project definition provided in section 68.513.
- (e) "Approved C&D collector" means a collector that has been approved to provide C&D collection services to approved C&D collection sites in accordance with a Non-Exclusive Franchise Agreement (NEFA). In the event no C&D collectors are approved through a valid NEFA, an "Approved C&D collector" means any collector that provides C&D collection services and agrees to (a) deliver C&D to approved C&D processing facilities; and, (ii) maintain records and submits reports pursuant to sections 68.514(c)(2)(v) and 68.519(f).
- (f) "Approved C&D processing facility" means a facility that receives C&D for processing or for transfer to a processing facility for mixed C&D recycling and that has been approved or certified by: (is) the County; (ii) a city in the County using a method approved by the County; or, (iii) a third party using a method approved by the County. If the County does not define a process for County approval of C&D processing facilities, or if the County has not developed a list of approved C&D processing facilities, approved C&D collector or Debris Management Plan (DMP) permittee may select a C&D processing facility provided the facility allows such party to comply with requirements of this chapter.
- (g) "C&D" means construction and demolition debris.
- (h) "C&D recycling facility" means a facility that receives only C&D that has been source separated for reuse or recycling prior to receipt at the facility, provided such facility receives each type of C&D material separately and reuses or recycles the materials and does not

dispose of the materials.

- (i) "Chipping and grinding operation" shall be defined in accordance with California Code of Regulations, Title 14, Section 17852(a)(10).
- (j) "Construction" means the act of building, making, erecting, remodeling, repairing, renovating, or improving a "structure," as that term is defined in the California Building Code and includes any project for which the County requires a building permit.
- (k) "Construction and demolition debris" means nonhazardous waste, building material, inert material, soil, packaging, green material, rubble, and other discarded materials resulting from excavation, grading, construction, or demolition.
- (l) "Conversion rate" means a rate in the standardized conversion rate table approved by the DPW Director pursuant to this article for use in estimating the volume or weight of materials identified in a DMP or Debris Management Report (DMR).
- (m) "Debris management plan" (DMP) means a plan prepared by an applicant before commencement of the project documenting types and estimated quantities of C&D for an applicable project and the planned method for diverting the C&D from an applicable project as required by section 68.514.
- (n) "Debris management report" (DMR) means a report prepared by a DMP permittee after conclusion of the project evidencing the types and quantities of C&D diverted or disposed and diversion method(s) for an applicable project as required by section 68.514.
- (o) "Demolition" means the act of removing, razing, or tearing down a structure or any portion of a structure.
- (p) "DMP compliance official" means County staff responsible for implementing any element of this article.
- (q) "DMP permittee" means a person who is required to divert C&D from an applicable project under this article and who has an approved DMP, or, in the case of a Class 3 applicable project, means a person who is required to divert C&D from an applicable project under this article and who is self-certifying compliance.
- (r) "Diversion/Divert" means activities that reduce or eliminate discarded materials from disposal in a landfill, including, reuse, salvage, recycling, and composting.
- (s) "Diversion requirement(s)" means the requirement(s) in section 68.516 to divert a minimum percentage of C&D generated by an applicable project.
- (t) "DPW" means the Department of Public Works.
- (u) "Excavation" means any act by which soil, sand, gravel, or rock is cut into, dug, quarried, uncovered, removed, displaced, or relocated and shall include the conditions resulting therefrom; and, for the purposes of this Article, is performed for applicable projects as defined by 68.513(a)(1), 68.513(a)(2), or 68.513(a)(3).
- (v) "Fill" means deposits of soil, sand, gravel, rock, or other materials placed by a person or contractor; and, for the purposes of this Article, is performed for new construction, additions, and alteration projects that are applicable projects pursuant to section 68.513(a)(1),

68.513(a)(2), or 68.513(a)(3).

- (w) "Grading" means excavation or filling of material or combination thereof; and, for the purposes of this Article, includes clearing, which is defined as removal or destruction of natural vegetation by any means, including brushing and grubbing.
- (x) "Green material" means any material related to land development such as yard trimmings, trees, brush, and construction and demolition wood waste. Green material does not include food material, bio-solids, wood containing lead-based paint or wood preservatives, mixed construction debris, or mixed demolition debris.
- (y) "Green material processing operation" means a facility or center that processes green material through composting, chipping, or grinding operations, in-vessel digestion operation or facility, or other facility, operation, or use identified by the State as an acceptable form of organic material landfill disposal reduction and when green material is not subsequently sent to landfill for disposal.
- (z) "Inert materials" mean soil, concrete, asphalt, rock, brick, and other non-liquid solid waste, provided that such material does not contain hazardous waste or soluble pollutants at concentrations in excess of water-quality objectives established by a regional water board pursuant to Division 7 (commencing with Section 13000) of the California Water Code and does contain not more than 1% putrescible materials by volume calculated on a monthly basis and the putrescible wastes shall not constitute a nuisance, as determined by the County enforcement agency.
- (aa) Multi-phase project means a tract home project, master plan project, or other multi-building project that is built in multiple phases.
- (bb) "Project" means any excavation, grading, construction, or demolition project that requires a grading, building, or demolition permit or any similar permit. For the purposes of this definition, each phase of a multi-phase project, as determined by a DMP compliance official, shall be deemed a single project.
- (cc) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconfiguring materials that would otherwise become solid waste and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include gasification, pyrolysis, transformation as defined by State Public Resources Code Section 40201, or other processes that use solid waste for conversion to energy.
- (dd) "Reuse" means further or repeated use of C&D either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material.
- (ee) "Salvage" means removal of an object or material that can be reused again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material.
- (ff) "Universal waste" shall be identified as provided in California Code of Regulations, Title 22, Division 4.5, Chapter 11.

## **SEC. 68.513. DEFINITION OF APPLICABLE PROJECTS.**

- (a) Applicable projects include the following types of projects when such projects are required to obtain grading permits (excluding agricultural grading permits), building permits, or demolition permits:
  - (1) All new construction projects;
  - (2) Non-residential building additions and building alteration projects;
  - (3) Residential additions and alterations that increase a building's footprint, volume, or size;
  - (4) Demolition projects associated with new construction, additions, and alterations covered by subsections (a)(1), (a)(2), and (a)(3) above;
  - (5) Non-residential excavation and grading projects associated with new construction, additions, and alterations projects covered by subsections (a)(1) and (a)(2) above; and,
  - (6) Residential excavation and grading projects associated with new construction, additions, and alterations projects covered subsections (a)(1) and (a)(3) above that require major grading permits as defined by section 87.208 of this Code.
  
- (b) For the purposes of defining the County's C&D diversion compliance requirements and performance guarantee requirements, Applicable projects are categorized as Class 1, 2, or 3 projects. All project classes must comply with applicable diversion requirements specified in section 68.516. Subject to conditions in subsections (c) through (h) below, applicable project classes are defined as follows:
  - (1) Class 1 Projects – For demolition projects, Class 1 projects are applicable projects in which the square footage of the demolition work is greater than 5,000 square feet. For construction, addition, and alteration projects, Class 1 projects are applicable projects in which the square footage of the new construction, addition, and alteration work is greater than 5,000 square feet. For excavation and grading projects, Class 1 projects are applicable projects with major grading permits as defined section 87.208 of this code.
  
  - (2) Class 2 Projects – For demolition projects, Class 2 projects are applicable projects in which the square footage of the demolition work is equal to or greater than 1,000 square feet and equal to or less than 5,000 square feet. For construction, addition, and building alteration projects, Class 2 projects are applicable projects in which the square footage of the construction addition and building alteration work is equal to or greater than 1,000 square feet and equal to or less than 5,000 square feet.
  
  - (3) Class 3 Projects – Class 3 projects are all applicable projects that do not fit into the Class 1 or 2 project categories.
  
- (c) For the purpose of classifying projects under subsection (b) above, the square footage of a project is the sum of the square footage for each floor of all building(s) and structure(s) in the project with the exception of multi-phase projects described in subsection (d) below.
  
- (d) For the purpose of classifying the project type for each phase of a multi-phase project under subsection (b) above, the square footage shall be the sum of the square footage for all phases of the multi-phase project.

- (e) All excavation, grading, construction, and demolition projects conducted by the County shall be subject to the requirements of this article if the project meets the applicable project definitions established by this article even if a permit is not issued for the project. For applicable County projects, the County or the County's contractor shall comply with the applicable project requirements of this article.
- (f) All applicable projects shall comply with the requirements of this article including diversion requirements in section 68.516.
- (g) The following project types are exempt from the requirements of this article:
  - (1) Projects exempt from compliance with diversion requirements under the Green Building Standards Code, California Code of Regulations, Title 24, Part 11 ("Algren Code") and the 2016 California Building Code, Part 2, Volume 1, Section 105.2, as they may be amended periodically, shall be exempt from the requirements of this Article.
  - (2) Emergency demolition projects, if the projects are required to protect public health or safety.
  - (3) Residential projects that qualify for diversion infeasibility exemptions pursuant to section 68.517.
  - (4) Residential and non-residential excavated soil and land clearing projects that are not defined as applicable projects in section 68.513(a).

## **SEC. 68.514. REQUIREMENTS FOR DEBRIS MANAGEMENT PLAN AND REPORT.**

- (a) General requirements.
  - (1) Class 1 projects shall demonstrate to the County compliance with the diversion requirements stated in section 68.516 using the enhanced compliance method described in section 68.514(b).
  - (2) Class 2 projects are required to self-certify compliance in the same manner as Class 3 projects until December 31, 2020. Commencing January 1, 2021, Class 2 projects shall demonstrate to the County compliance with the diversion requirements stated in section 68.516 using the enhanced compliance method described in section 68.514(b) or the approved collector compliance method described in section 68.514(c).
  - (3) Class 3 projects are required by the County to self-certify their compliance with the diversion requirements stated in section 68.516 through the following steps: (is) acknowledging and documenting C&D diversion requirements stated in section 68.516 on project documents and/or drawings; (ii) diverting C&D through the

methods specified in section 68.516; and (iii) maintaining documentation at the project site of the types and quantities of materials diverted and disposed and diversion methods used as required by section 68.518 to demonstrate compliance to the County with the diversion requirements stated in section 68.516.

(b) Enhanced compliance method.

- (1) The enhanced compliance method allows Class 1 and Class 2 applicants and DMP permittees to plan and demonstrate compliance with the diversion requirements using one or more of the allowable diversion methods specified in section 68.516(h).
- (2) The enhanced compliance method involves the following steps:
  - i. Applicant submits a DMP to the County for review by the DMP compliance official pursuant to this section 68.514(b) prior to the beginning of any excavation, grading, construction, or demolition activities at the applicable project site with a separate DMP provided for planned excavation and grading under the project's grading permit(s), planned demolition under project's demolition permit(s), and planned construction under the project's building permit(s);
  - ii. Applicant submits a performance guarantee with the DMP pursuant to section 68.515;
  - iii. DMP compliance official reviews the DMP and approves it if the DMP compliance official determines all of the following conditions have been met: DMP is complete; planned C&D material types, quantities, and diversion methods are reasonable; and planned C&D quantities and diversion methods meet the diversion requirements;
  - iv. DMP compliance official reviews the performance guarantee submitted for compliance with the performance guarantee requirements and accepts the guarantee or notifies applicant of deficiencies;
  - v. DMP permittee diverts C&D during the excavation, grading, construction, or demolition activities to comply with the diversion requirements using allowable diversion methods specified in section 68.516(h);
  - vi. DMP permittee maintains documentation pursuant to section 68.518;
  - vii. DMP permittee submits a DMR documenting diversion of C&D performed pursuant to section 68.514(f), no later than 180 days after the County issues a passed final inspection notice (or a certificate of occupancy). Separate DMRs are required no later than 180 days after final inspection notice (or certification of occupancy) following completion of excavation and grading under project's grading permit(s), completion of demolition work under project's demolition permit(s), and completion of construction under project's building permit(s). For multi-phase projects, the DMP permittee submits one DMR for each phase of the multi-phase project no later than 180 days after the County issues a passed final inspection notice (or a certificate of occupancy) for the final permit of each phase. If there are multiple grading, excavation, or building permits in

a single phase, the date of the final inspection notice (or certificate of occupancy) on the final grading, excavation, or building permit will be used as the start date for the 180-day reporting period for all permits in that phase;

- viii. DMP compliance official reviews the DMR and determines the DMP permittee's level of compliance with the diversion requirements; and,
- ix. County remits some or all of the DMP permittee's performance guarantee, if warranted, in accordance with section 68.515.

(c) Approved collector compliance method.

(1) The approved collector compliance method allows class 2 applicants and DMP permittees to plan and demonstrate compliance with the diversion requirements using: (a) an approved C&D collector; (ii) on-site reuse of C&D; and/or, (iii) salvage of C&D for off-site reuse. Other diversion methods specified in section 68.516(h) are not allowable under the approved collector compliance method.

(2) The approved collector compliance method involves the following steps:

- i. Applicant submits a DMP to the County for review by the DMP compliance official pursuant to this section 68.514(c) prior to the beginning of any excavation, grading, construction or demolition activities at the applicable project site with a separate DMP provided for planned excavation and grading under the project's grading permit(s), planned demolition under project's demolition permit(s), and planned construction under the project's building permit(s); and, such DMP shall include a signed contract between the applicant and an approved C&D collector;
- ii. DMP compliance official reviews the DMP and approves it if the DMP is complete, and if estimated reuse and salvage material quantities and plans, if any, are reasonable;
- iii. DMP permittee diverts C&D during the excavation, grading, construction, or demolition activities to comply with the diversion requirements through collection of C&D by the approved C&D collector, on-site reuse of C&D, or salvage of C&D for off-site reuse;
- iv. DMP permittee maintains records of C&D reused on-site or salvaged for off-site reuse and reports quantities to the approved C&D collector pursuant to section 68.518;
- v. The approved C&D collector that collected C&D from the approved project submits a report to a DMP compliance official documenting C&D diversion for the applicable project pursuant to requirements of the NEFA, no later than 180 days after the County issues a passed final inspection notice (or a certificate of occupancy). Separate reports are required no later than 180 days after final inspection notice (or certification of occupancy) following completion of excavation and grading under project's grading permit(s), completion of demolition work under project's demolition permit(s), and completion of construction under project's building permit(s). For multi-phase

projects, the approved C&D collector submits one DMR for each phase of the multi-phase project no later than 180 days after the County issues a passed final inspection notice (or a certificate of occupancy) for the final permit of each the phase. If there are multiple grading, excavation, or building permits in a single phase, the date of the final inspection notice (or certificate of occupancy) on the final grading, excavation, or building permit will be used as the start date for the 180-day reporting period for all permits in that the phase;

- vi. DMP compliance official reviews the approved C&D collector's diversion report and determines the DMP permittee's compliance with the diversion requirements; and,
  - vii. If diversion requirements are not achieved, County may: (it) investigate the approved C&D collector's compliance with the NEFA diversion requirements and pursue remedies under the NEFA (or in the event no C&D collectors are approved through a valid NEFA, investigate the approved C&D collector's and the DMP permittee's records and diversion performance and take enforcement actions against DMP permittee under section 68.519), (ii) in the case of reporting by DMP permittee of material reuse and salvage, investigate the DMP permittee's diversion records and reporting of reuse and salvage, if any, and, (iii) take enforcement actions against DMP permittee under section 68.519.
- (3) A DMP permittee that uses the approved collector compliance method may change to the enhanced compliance method described in section 68.514(b) at any time during the project, provided the DMP permittee submits a revised DMP, submits the appropriate performance guarantee pursuant to section 68.515, and complies with all other requirements of the enhanced compliance method.
- (d) Notwithstanding any other provision of this code, no grading, demolition, or building permit shall be issued for any Class 1 or 2 projects unless a DMP compliance official has approved the DMP. Approval shall not be required, however, when emergency demolition is required to protect public health or safety.
- (e) The DMP shall include the following information:
- (1) The type of project;
  - (2) The total square footage of the project;
  - (3) The estimated weight of C&D, by material type, that the project is expected to generate;
  - (4) The estimated maximum weight of C&D that can feasibly be diverted via reuse, salvage, or recycling;
  - (5) The estimated weight of C&D that is planned to be disposed of in a landfill;
  - (6) The name and address of any person, approved C&D collector, and/or approved C&D facility or facilities the applicant proposes to use to collect, process, or receive C&D generated by the project;



- (7) For the approved collector compliance method, a signed contract between the applicant and the approved C&D collector; and,
  - (8) For non-residential addition and alteration projects defined in section 68.516(e), acknowledgement by applicants to properly dispose of universal waste; estimation of the type and amount of universal waste to be generated by the project; and, identification of facilities to be used to dispose of universal waste.
- (f) The DMR shall include the following information:
- (1) General project information including type of project, permit number, project name, location, contact information, and other information specified by the County;
  - (2) The total square footage of the project;
  - (3) Itemized list of C&D material generated by the project, the actual tonnage of each material reused, salvaged, recycled, and/or disposed or estimated tonnage if volumetric conversions were made based on actual volumes;
  - (4) Diversion calculations; and,
  - (5) Documentation demonstrating diversion and disposal including:
    - i. Weight tickets or receipts from approved C&D processing facilities, approved C&D recycling facilities to verify recycling of C&D debris;
    - ii. Report from approved C&D collector documenting amount of C&D collected, processed, and recycled and the diversion level; and,
    - iii. Evidence of reuse and salvage pursuant to section 68.518.
- (g) The County shall prepare a list of approved C&D processing facilities and C&D recycling facilities that accept C&D in the unincorporated and incorporated areas of the County. The County shall make the lists available to any person upon request.
- (h) The County reserves the right to establish a C&D program administration fee for applicable projects to cover costs associated with the receipt, processing, and review of DMPs and DMRs, and verification of applicable project compliance with the requirements of this article.
- (i) The DPW Director shall prepare a conversion rate table(s) that shall be used by an applicant or DMR permittee to calculate the weight of C&D based on volumes of C&D when the weight of the material is unavailable.

#### **SEC. 68.515. PERFORMANCE GUARANTEE.**

- (a) Applicants for all Class 1 projects and applicants for Class 2 projects that use the enhanced compliance method shall submit to the County a performance guarantee in the amount specified in subsection (c) as a condition of a demolition or building permit with the exception that County projects are not required to submit a performance guarantee.
- (b) Applicants for Class 2 projects using the approved collector compliance method and applicants for all Class 3 projects are not required to submit performance guarantees.

Applicants for grading projects are not required to submit performance guarantees under this article.

- (c) The amount of a performance guarantee required shall be determined by the following schedule:

<b>Performance Guarantee Values</b>	
Per-Unit Amount	\$0.40 per square foot
Minimum Amount	\$400
Maximum Amount	\$40,000 (100,000 square feet or more)

- (d) Performance guarantee amounts in the above table may be reviewed and adjusted periodically by the County Board of Supervisors.
- (e) Square footage used to calculate the performance guarantee for an applicable project shall be determined in accordance with section 68.513(c).
- (f) A performance guarantee may be in the form of a cash deposit.
- (g) Cash deposits for a performance guarantee shall be deposited by the County in an interest-bearing account. The County shall return the performance guarantee plus interest to the DMP permittee upon the County's determination of full compliance with the diversion requirements, or shall return a prorated portion of the performance guarantee with interest less an administrative fee to the DMP permittee based on the degree of compliance with the diversion requirement. The interest amount shall be determined in accordance with the California Government Code section 53079(b).
- (h) Any forfeited performance guarantee, including interest on a cash deposit, shall be used by the County to recover the County's administrative costs related to processing the DMPs and DMRs. Any remaining funds shall be used by the County for programs to develop or improve C&D collection, processing, reuse, salvage, and recycling.
- (i) If a DMP compliance official determines the DMP permittee fully complied with the diversion requirements, the DMP compliance official shall issue a notice of compliance and release the DMP permittee's performance guarantee refund (described below) within 30 days of final approved DMR submittal. If additional documentation is requested by the DMP compliance official, the DMP permittee shall have 90 days to submit proper documentation. If requested documentation is not submitted by DMP permittee within 90 days of request, DMP permittee will be ineligible to request performance guarantee refund. The performance guarantee refund shall equal the amount of the performance guarantee plus interest (where interest is described in subsection (g) above).
- (j) If the DMP compliance official determines the DMP permittee has not demonstrated full compliance with the diversion requirements (based on review of the DMR for the enhanced compliance method or based on review of the approved C&D collector's project report for the approved collector compliance method or through other investigation or means), the DMP compliance official shall calculate the percent of the DMP permittee's compliance rate based on receipts and other proof of diversion. The DMP compliance official shall issue a notice of

partial compliance or notice of forfeiture to the DMP permittee reflecting the level of compliance and prorated amount of the performance guarantee refund (described in subsection (a) above) and/or 100% forfeiture in the event of complete non-compliance. The DMP compliance official shall serve the DMP permittee, pursuant to section 11.112 of this code, with a notice of partial compliance or a notice of forfeiture. The DMP permittee shall have 15 days from the date a notice of partial compliance or forfeiture is served to file an appeal under section 68.520.

- (k) If a grading, demolition, and/or building permit is cancelled, abandoned, or expired for an applicable project that submitted a performance guarantee pursuant to this section 68.515, County shall refund to the DMP permittee the sum of the performance guarantee and interest (where the interest amount is described in subsection (g) above).

### **SEC. 68.516. DIVERSION REQUIREMENTS.**

- (a) A DMP permittee shall achieve diversion of C&D for the applicable project through one or more of the diversion methods identified in section 68.516(h) such that the diversion equals:
  - (1) 65% diversion of C&D generated by the construction and demolition projects, which shall include, at a minimum, 90% diversion of inert material generated by an applicable project; and,
  - (2) 100% diversion of excavated soils, trees, stumps, rocks, and associated vegetation and soils from the following types of applicable projects: (i) non-residential excavation and grading projects; and, (ii) residential projects that require major grading permits as defined section 87.208 of this code.
- (b) When evaluating compliance with the 65% diversion requirement for a project, the tonnage of materials diverted, including inert materials, will be included in the calculations.
- (c) Excavated soil and land-clearing debris that is contaminated by disease or pests are not required to be reused on- or off-site, provided that: (I) the County Agricultural Commissioner has made a determination of disease or pest contamination and permittee follows commissioner's direction for recycling or disposal of the material, (ii) the materials are generated in a known pest and/or disease quarantine zone identified by the California Department of Food and Agriculture, or (iii) the materials are otherwise not required to be reused under the CAL Green Code.
- (d) For an applicable project that is one phase of a multi-phase project, excavated soil and land-clearing debris may be stockpiled on-site until a storage site is developed, provided the stockpiling is performed in accordance with a temporary stockpiling permit and materials are recycled or reused prior to the final inspection of the final permit in the phase.
- (e) For non-residential additions of 1,000 square feet or greater and for non-residential alterations with a permit value equal to or greater than \$200,000, DMP permittee must provide verification acceptable to the DPW Director that universal waste was properly disposed at a facility that accepts universal waste and that the universal waste was diverted from landfill as required by Green Building Standards Code, California Code of Regulations, Title 24, Part 11 ("Algren Code") and the 2016 California Building Code, Part 2, Volume 1, Section 5.408.2.

- (f) For non-residential projects, the DMP Permittee shall be responsible for ensuring that any tenants and/or subcontractors performing the excavation, grading, demolition and/or construction activities comply with the terms of the DMP permit and this Article.
- (g) The diversion requirements for C&D may be increased from 65% to 75% upon 30 days' advance notice from the DPW Director if an approved C&D processing facility within the County has achieved 75% diversion for at least 9 consecutive months.
- (h) Diversion of C&D may be achieved through one or more of the following allowable methods, provided that DMP permittee selects method(s) that will result in achievement of the diversion requirements of this article:
  - (1) Reuse on-site or salvage for off-site reuse through donation or sale of materials;
  - (2) Use of an approved C&D collector to deliver C&D to an approved C&D processing facility or C&D recycling facility, which results in a diversion rate reported by the facility;
  - (3) Delivery of C&D to an approved C&D processing facility or C&D recycling facility, which results in diversion rate reported by the facility;
  - (4) Delivery of green material to a green material processing facility or chipping and grinding facility for recycling;
  - (5) Other donation, salvage, or reuse of materials acceptable to DPW Director;
  - (6) Deconstruction and salvage or reuse of materials;
  - (7) Delivery of source separated C&D such as dirt, concrete, wood waste, cardboard, or other recyclable C&D delivered to a C&D recycling facility for recycling, processing, and diversion;
  - (8) Alternate waste reduction methods developed by working with County if diversion or recycling facilities capable of compliance do not exist; or,
  - (9) Other methods approved by the DPW Director.
- (i) DMP permittees shall arrange for an approved C&D collector to collect and transport all C&D generated at the applicable project site to an approved C&D processing facility or C&D recycling facility, or, if applicable, shall self-haul materials or rely on others to haul materials subject to conditions specified in section 68.531 of this chapter.
- (j) If State law specify higher or more stringent diversion requirements for some or all types of C&D, State regulations shall supersede diversion requirements presented in this section 68.516.

**SEC. 68.517. DIVERSION INFEASIBILITY EXEMPTIONS.**

- (a) For residential projects, if it is infeasible for an applicant for an applicable project to comply with all requirements of section 68.516, the applicant may apply for a diversion infeasibility exemption. For the purposes of this section 68.517, "infeasible" means: (it) that there are no recycling, salvage approved C&D processing facilities, or C&D recycling facilities within a 50-mile radius of the project area or of any location from which the applicant regularly

operates its business or stores its excavation, grading, construction, and/or demolition equipment; or, (ii) onsite reuse options are not available for all or part of the project's C&D. The applicant shall apply for the infeasibility exemption using an exemption form provided by the County and shall submit the exemption form at that same time the applicant submits the DMP required by section 68.514.

- (b) If a DMP compliance official grants the applicant's request for an infeasibility exemption, the official shall determine an adjusted diversion requirement that specifies the percentage of C&D the applicant is required to recycle, reuse, or salvage. In reaching this determination, the DMP compliance official may consult with any State or local official and the applicant. The DMP compliance official shall issue a determination in writing and serve it under section 11.112 of this code.
- (c) Within 15 days from the date the DMP compliance official serves the notice, the applicant shall submit a revised DMP or file an appeal under section 68.520.

#### **SEC. 68.518. DOCUMENTATION OF DIVERSION ACTIVITIES.**

- (a) For all applicable projects, the DMP permittee shall maintain a daily log of all C&D that leaves the site and all receipts from each approved C&D processing facility, C&D recycling facility, approved C&D collector, other vendor, green material processing operation, or disposal or transfer station facility that accepted C&D from the DMP permittee. Additional documentation requirements are specified in subsections (b) and (c) below.
- (b) The daily log shall identify the project location, and each log entry shall contain the date a load was transported off the site, the type of C&D, the weight of the material or its approximate tonnage or estimated volume, the name of the party transporting the materials, the name of the receiving facility, and whether the material was disposed of in a landfill, salvaged for future use off-site, or recycled. Each log entry shall correspond with a receipt issued by the party that transported the material off-site or by facility that accepted the C&D if the materials were hauled by the DMP permittee, provided that such receipts are compiled within 90 days of the date of the log entry. The daily log shall include separate entries for each occurrence of materials reused on-site as specified in section 68.515(e). The log and all receipts shall be maintained at the project site and made available to any County inspector or DMP compliance official responsible to ensure compliance with this article. The DMP permittee's failure to have the receipts from the receiving facility that accepted the C&D or failure to have the daily log containing all the information required by this subsection available for inspection constitutes grounds for suspension of the project's grading, demolition, or building permit.
- (c) DMP permittee shall make the approved DMP available at the project site and, upon County request, shall make the DMP available to the DMP compliance official for inspection.
- (d) In addition to the requirements under subsections (a) and (b) above, the DMP permittee shall comply with all of the following:
  - (1) If a receipt from an approved C&D processing facility, C&D recycling center, or other facility required by subsection (a) does not contain a statement of the weight

of the C&D, the DMP permittee shall provide a printout or other verifiable statement of the weight of the C&D, produced by a weighing device with a current registration certificate from the County Sealer, or DMP permittee shall obtain a receipt for delivery of the C&D that identifies the date and time of delivery, the type of material delivered, the volume of material or truck size and, if applicable the vehicle number delivering material. DMP permittee shall estimate the tonnage of material based on the volumetric capacity of the vehicle and conversion rate table approved by the DPW Director.

- (2) If it is impracticable to weigh reused or salvaged C&D or other C&D, the DMP permittee shall estimate the volume of C&D (based on the capacity of the container or vehicle transporting the material or based on measurements of the dimension of the materials) and shall submit a statement of its volume along with the calculation of the weight of the C&D, using the DPW Director's conversion rate table referenced in section 68.514(I).
  - (3) If C&D was reused on-site, self-hauled off-site for salvage, or collected by a third party for salvage, the DMP permittee shall provide a receipt or other proof of diversion including photos or any additional information relevant to determining compliance with the DMP. If County finds that evidence provided is insufficient, County may request additional evidence or may disallow the accounting of the materials as reuse or salvage.
  - (4) An authorized representative of the DMP permittee shall sign the DMR under penalty of perjury verifying that the information submitted to the County follows subsections (1) through (3).
- (e) Approved C&D collectors are required to record and report to the County the tons of C&D transported from applicable projects to approved C&D facilities, C&D recycling facilities, and disposal facilities, documenting tonnage by applicable project permit number, in accordance with NEFA reporting requirements DMP permittee may request a tonnage and diversion report on its applicable project from the approved C&D collector.

#### **SEC. 68.519. COUNTY'S RIGHT TO MONITOR, INSPECT, AND ENFORCE.**

- (a) As an additional condition of approval of a DMP under section 68.514, a DMP permittee shall consent to allowing the County the right to inspect the applicable project site during normal business hours without notice. Upon request, the DMP permittee shall make available to the inspector or DMP compliance official the receipts and daily log of C&D required by section 68.518.
- (b) If a DMP permittee or any of the DMP permittee's agents or employees refuse to allow a County inspector to inspect the site or the DMP permittee's daily log and receipts, the County shall have the right to suspend the DMP permittee's grading, demolition, or building permit. The County shall also have the right to obtain an inspection warrant under Code of Civil Procedure sections 1822.50 et seq. The County shall also have the right to suspend the permit:

- (1) if the DMP permittee fails to maintain or have available the daily log or receipts required by this article, (2) if the DMP permittee violates any other provision of this article, or (3) if the DMP permittee commits any other act which would be grounds for suspension of a grading, demolition, or building permit.
- (c) If the County decides to suspend a grading, demolition, or building permit under this section 68.519, the County shall issue a notice of suspension and serve the DMP permittee under section 11.112 of this Code. The suspension shall be effective 15 days from the date the County serves the notice of suspension, unless the DMP permittee appeals the notice of suspension under section 68.520, which stays the effective date of the suspension until the appeal is decided. If the County determines that any excavation, grading, construction, or demolition site is unsafe or that the DMP permittee has knowingly failed to comply with section 68.516, the County may suspend the permit immediately and advise the DMP permittee in the notice of suspension that the permit is suspended immediately and state the reasons for the immediate suspension. A notice of immediate suspension is also appealable under section 68.520, but an appeal does not stay the immediate suspension of the permit.
  - (d) It shall be unlawful for any DMP permittee to continue to operate under a DMP in violation of subsection (c) above.
  - (e) It shall also be unlawful for an applicant or a DMP permittee to knowingly provide false information to the County under this article.

### **SEC. 68.520. APPEALS.**

An applicant or DMP permittee may make appeals to the DPW Director for the following circumstances: (a) denial of an infeasibility exemption under section 68.517, (b) forfeiture of performance guarantee under section 68.515, or (c) suspension of the DMP permittee's grading, demolition, or building permit under section 68.519. No other appeal shall be allowed under this article. A notice of appeal shall be submitted by applicant or DMP permittee in writing and filed with or mailed to the DPW Director within 15 days from the date the County served any appealable notice. The postmark on any mailed notice of appeal shall be deemed to be the date appellant filed a notice of appeal by mail. The DPW Director shall appoint an independent hearing officer to hear the appeal under procedures established by the DPW Director. The decision of the hearing officer shall be final.

(Added by Ord. No. 9840 (N.S.), effective 4-20-07; amended by Ord. No. 10036 (N.S.), effective 2-26-10 ; Amended by Ord. No. 10657 (N.S.), effective 3/13/2020)

Section 3. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in The Daily Transcript, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY

By COUNTY COUNSEL

BY: Emily Helms, County Counsel