



Prohibited Pre-Development for Cannabis Activities Guidance Document

Pre-Development Activities Prohibited

Development activities undertaken for cannabis activities may only occur after issuance of an approved land use permit and any required construction permits. Development activities which occur without required county permits, or out of compliance with County Code, constitute prohibited pre-development activities and may result in enforcement actions and processing delays and/or permit escalation for pending or future land use and building permit applications. Prohibited pre-development activities may include, but are not limited to, illegal grading and the illegal alteration or construction of buildings, structures or utilities.

Grading Permits Required for Cannabis Activities

Grading land for a cannabis activity may only occur after required County permits have been issued. Grading for cannabis activities will require a formal County grading permit unless the grading does not otherwise require a permit under County Code. For example, cumulative movement of 50 cubic yards of soil or less on a site will not generally require a grading permit. However, changes in site condition, even if a grading permit is not required, may still impact processing of, and environmental determinations for, land use permit applications for cannabis activities.

Grading for cannabis activities does not qualify for agricultural exempt or agricultural grading permits under County Code sections 22.52.070.B.11 or 22.52.070C.2 because **cannabis activities do not constitute crop production and grazing** under County Code pursuant to Section 22.40.020.

Legal Agriculture Exempt or Agricultural Grading: Grading for **ongoing** crop production or grazing is exempt from permits but is limited to preparing land for crops, repair or restoration of existing fields, removal of vegetation or associated drainage improvements on land that has been previously cultivated within the previous ten years or covered under qualifying conservation plan. Grading for **new** crop production and grazing is permissible under an Agricultural grading, if grading performed to prepare new land for crop production and grazing purposes only and an Agricultural Grading Form is submitted to the County prior to any work. *Note:* while Agriculture exempt or Agricultural grading activities in compliance with County Code may not constitute a violation of County Code, operators must still comply with any requirements of other public agencies, like Department of Fish and Game or Regional Water Quality Control Board; in addition, those activities may also impact the processing of, and environmental determinations for, County discretionary land use permit applications proposed to occur within the recently graded areas.

Illegal Grading: Grading in preparation for a cannabis activity without required County grading permit if more than 50 cubic yards of soil being moved and grading does not otherwise satisfy Agriculture Exempt or Agricultural Grading permitting requirements.

Consequences of Engaging in Prohibited Pre-Development Activities

Engaging in prohibited pre-development may result in administrative, civil and/or criminal enforcement actions against the offending parties and contractors, imposition of administrative, civil and/or criminal penalties and

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finances against the offending parties and contractors, delays in land use permit application processing or approval, escalation from minor use permit to conditional use permit review due to violations, land use permit denial, denial of future County permits on site for up to five years after the violation, installations of interim measures to stabilize site and/or restoration of the site.

Engaging in prohibited pre-development work may also impact environmental review process and may result in further studies being required, including potential forensic studies, and/or increased mitigation measures being required, including removal or alteration to any prohibited pre-development work, prior to land use permit approval.

Authority:

19.02.050 - Drainage and grading regulations.

All construction activities that may affect the velocity, direction or volume of natural drainage occurring on or in the vicinity of the construction site, or that involves site preparation, vegetation removal, earth moving, excavation, filling, or other grading activities shall comply with all applicable provisions of the Land Use Ordinance (Title 22) or where applicable, the Coastal Zone Land Use Ordinance (Title 23) and the provisions of this code.

19.12.030 - Permits required.

Except as specified in Titles 22 (Land Use Ordinance) and 23 (Coastal Zone Land Use Ordinance) of the County Code, no person shall do any grading without first having obtained a grading permit from the building official.

22.01.050 - Applicability of the Land Use Ordinance.

A. Proposed uses. The provisions of this Title apply to all lots, buildings, structures and uses of land or bodies of water to be created, established, constructed, altered or replaced after the adoption of this Title unless specifically exempted by this Section. It shall be unlawful and a violation of this code for any person to establish, construct, alter, replace, operate or maintain any building, structure, use of land or body of water, contrary to or without satisfying all applicable provisions of this Title.

22.01.060 - Land Use Permits Required.

No person shall establish, construct, alter or replace any use of land, structure or building without first obtaining all permits required by Article 2 (Allowable Land Uses and Permit Requirements) or other applicable section of this Title.

22.01.070 - Compliance with Standards Required.

A. Land uses, buildings and parcels. No use of land, buildings, or division of land shall be established and no application for a use of land, buildings, or land division in compliance with Title 21 of this code shall be approved unless the proposed land use, building, or parcels satisfy all applicable requirements of this code.

C. Application where violation exists. No application for land use permit, construction permit or land division shall be approved where an existing land use, building or parcel is being maintained in violation of any applicable provision of the Subdivision Map Act, this code or any condition of approval of a land use permit, except where the application incorporates measures proposed by the applicant to correct the violation, and correction will occur before establishment of the new proposed use, or recordation of

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a final or parcel map in the case of a land division or the permit is necessary to maintain the health and/or safety of the occupants.

22.01.080 - Penalty for Violation.

It is unlawful for any person to erect, construct, enlarge, alter, repair, move, use, occupy or maintain any building, structure, equipment, or portion thereof in the county of San Luis Obispo or cause the same to be done contrary to or in violation of any provision of this Title or any provisions of the codes, rules or regulations adopted in this Title. No person shall violate any of the provisions, or fail to comply with any of the requirements of this Title. The penalties for violation of the provisions of this Title are in Chapter 22.74 (Enforcement).

22.40.020 - Applicability.

[. . .] Additionally, cannabis cultivation has never been considered "crop production and grazing" (a land use type) as that term is defined in the San Luis Obispo County General Plan or Titles 22 and 23, and is therefore not exempt from land use permitting requirements.

Except as provided in Section 22.40.030 of this Chapter, cannabis activities shall not be allowed in the unincorporated areas of San Luis Obispo County without first securing all permits, licenses, or other entitlements required by County ordinance and State law and regulation.

22.40.040 - Requirements for All Cannabis Activities.

C. Previous violations. Any cultivation site where there have been verified violations of a County ordinance or other laws relating to cannabis within the last twenty-four (24) months shall require a Conditional Use Permit approval.

22.52.060 - Grading.

A. Grading. For the purposes of this Chapter, "grading" is defined as all new earthwork that involves one or more of the following activities: excavations, cuts, fills, dams, reservoirs, levees, impoundments, diking, dredging, borrow pits, stockpiling, compaction of fill, or removal of vegetation. Cultivation activities, including disking, harrowing, raking or chiseling, planting, plowing, seeding, or other tilling are not considered grading and are not regulated under this ordinance. A grading permit is required in any of the following cases, unless the project qualifies for an exemption or constitutes agricultural grading as set forth in Section 22.52.070, or unless the project goes through the alternative review process as set forth in Section 22.52.080:

1. 50 cubic yards. The amount of material, measured cumulatively (adding together all proposed earthwork) for any of the above mentioned activities exceeds 50 cubic yards.

2. Work in a watercourse. The amount of material, measured cumulatively (adding together all proposed earthwork) for any of the above mentioned operations exceeds 20 cubic yards and involves altering or obstructing a drainage way or watercourse.

3. Removal of vegetation. Projects which would involve more than one acre of vegetation removal on a site.

Vegetation removal is calculated based on the total area of a site which will lack soil cover (i.e. "bare soil") at any given time. Areas subject to previous vegetation removal are not included in this calculation where permanent revegetation has already achieved a minimum of 70 percent coverage.

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Note: The grading thresholds specified in Subsections A.1 and A.2 above are to be measured cumulatively for each project. A project may not be broken down into smaller components with the intention of avoiding a grading permit. Activities progressing towards a common endeavor are considered a single project.

B. Additional permitting requirements. Grading may require a land use permit or variance under the following circumstances:

1. Site disturbance. For projects subject to Chapter 22.08, grading may require land use permit approval based upon the amount of site disturbance. The land use permit thresholds are established in Section 22.08.030 (Table 2-3).

2. Slopes. Grading shall be limited to slopes of less than 30 percent, except where:

a. Variance. The applicant has obtained Variance approval pursuant to Section 22.62.070; or

b. Agricultural use. The grading is exclusively for one or more of the following agricultural uses:

(1) An exempt agricultural accessory structure as specified in Section 22.06.040E.1;

(2) Crop production or grazing;

(3) Any agricultural roads used exclusively for the purposes set forth in Subsections B.2.b.(1) and B.2.b.(2).

While this Subsection exempts the above uses from the 30 percent slope limitation, this Subsection shall not be construed to exempt any uses from the requirement of obtaining a grading permit or complying with exemption or alternative review procedures pursuant to Section 22.52.050.

22.52.070 - Exemptions from Grading Permits.

Note: While the activities under this section are exempted from a grading permit for the purposes of this County's ordinance, the owner and/or applicant should understand that permits may be required by other regulatory agencies, including, but not limited to, the California Department of Fish and Game, Regional Water Quality Control Board, Army Corps of Engineers, U.S. Fish and Wildlife Service, or the California Department of Forestry (Cal Fire). Additionally, grading projects involving work within a state or County right-of-way may require encroachment permit approval.

B. Exempt grading. The following grading does not require a grading permit. Exempt grading activities must employ appropriate sedimentation and erosion control measures:

11. Ongoing crop production and grazing. Grading for the ongoing production of food and fiber, the growing of plants, and the management of rangeland shall be exempt when all of the following are true:

a. For grading activities related to crop production, the proposed grading is limited to preparing a field for a crops, repair or restoration of existing fields, removal of vegetation, and associated drainage improvements on land that has been previously cultivated within the previous ten years or covered under a conservation plan prepared as part of the Conservation Reserve Program. Previously cultivated land shall include any land where the following practices have occurred: disking, harrowing, raking or chiseling, planting, plowing, seeding, or other tilling. Activities covered under this exemption are not limited to these cultivation practices.

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- b. For grading activities related to range management for livestock production, the grading is limited to the following activities: vegetation management, such as reseeding, removal, or vegetation modification; or livestock watering systems and associated drainage improvements other than ponds or reservoirs. To qualify for this exemption, these activities shall take place only on land where grazing has occurred within the previous ten years or on lands covered under a conservation plan prepared as part of the Conservation Reserve Program.
- c. All site work shall be balanced. No importation or exportation of fill material from/to off-site parcels shall occur. These fill materials include topsoil and sand. The importation or exportation of soil fertility amendments to enhance crop production or rangeland fertility is permissible under this exemption. Soil fertility amendments include materials described in the California Food and Agricultural Code Sections 14511 et seq. (excluding Section 14552(e)). Any land application of treated sewage sludge (i.e. biosolids) as a soil fertility amendment shall be subject to local ordinances. Importation of sand and gravel may occur only when used for drainage improvements.
- d. All site work complies with the standards identified in Subsection C.1.
- e. The grading does not involve construction of or modification to dams, ponds, reservoirs, or roads; however, farm roads located entirely within or on the edge of existing fields may be modified or re-oriented under this exemption.

C. Agricultural Grading. This Subsection applies to all grading that does not satisfy the description for exempt grading in Subsection B. In order for agricultural grading to be exempt from a grading permit, as set forth in this Subsection, an Agriculture Grading Form shall be completed and submitted to the County prior to commencement of any grading activities, for verification that exemption criteria are met. An applicant's signature on the form indicates participation in an educational, waiver, or certification program approved by the Planning Director in consultation with the Resource Conservation District (RCD) and Natural Resources Conservation Service (NRCS), and acknowledgment of required compliance with the standards in Subsections A and C.

2. Allowed agricultural grading.

- a. New crop production and grazing.** Grading to prepare new land for crop production or grazing purposes, including drainage improvements and vegetation removal, on slopes with a natural gradient less than thirty percent. Importation and exportation of commercial soil amendments as specified in Subsection B.11.c is permissible under this exemption.

22.52.090 - Review, Approval and Permits.

A. Timing and restrictions of approval. Grading permits are subject to the following timing requirements and restrictions:

- 1. A grading permit shall not be approved before:
 - b. Approval of a land use permit, land division, or General Plan amendment, if such approvals are required for completion of any project located on the same site; all required appeal periods shall have expired.

C. Special Circumstances.

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3. Unpermitted (as-built) grading. If grading operations are commenced before first securing a proper grading permit, no permit will be issued until all illegal grading has been stopped, except to restore the site to its original condition or to correct hazardous conditions to the satisfaction of the Director. Once the site is deemed safe, the owner shall obtain proper permits to rectify the code enforcement violation within a reasonable time as determined by code enforcement. If activities were exempt under Section 22.52.070, but failed to adhere to specified requirements for exemption, such as erosion and sedimentation control practices, these activities shall be considered unpermitted grading. Unpermitted grading is also subject to the following:

- a. All unpermitted grading, which is not exempt under Section 22.52.070, shall require a grading permit. Grading which is listed as exempt under Section 22.52.070, but results in erosion and sedimentation control failures, shall also require a grading permit.
- b. Unpermitted grading shall be ineligible for the alternative review program established in Section 22.52.080, unless the Director determines that site-specific conditions and characteristics warrant use of the alternative review program.
- c. Grading and drainage plans shall be prepared by a registered civil engineer. All plans shall be signed and stamped by the engineer of record. Plans must include a detailed written scope, description of the intended use of the grading area, and all required grading plan contents as specified in Section 22.52.100.
- d. A registered civil engineer or geotechnical engineer shall certify that the work performed meets the California Building Code and this Chapter. In the event that the work performed does not meet these grading standards, then the grading plans must show remedial work to correct deficiencies.
- e. The Director may require approval and implementation of an erosion and sedimentation control plan in the interim if weather or site conditions warrant such action.
- f. If the engineer of record identifies a potentially hazardous condition as a result of the unpermitted site work, the engineer may recommend pursuing immediate remedial action subject to Subsection C.1
- g. In the event that no grading permit or land use permit can be issued for such operations, the site shall be restored to an acceptable condition as determined by the Director.

4. Denial and site restoration. If the Director requires restoration of a site, restoration plans, prepared by a certified sediment and erosion control specialist or by other qualified professionals at the discretion of the Director, shall be submitted for review and approval prior to any restoration. The permit holder shall pay a restoration permit fee, in addition to any applicable penalties, which shall be equal to the grading permit fee for both the unpermitted quantity and restoring quantities of grading material. Restoration shall be made in conformity with the approved plans.

22.52.190 - Enforcement.

A. Stop Work Order.

1. Whenever any grading, construction or earthwork is being done contrary to the provisions of any approval or of any rule, regulation, law or ordinance, or whenever approval was based upon purposeful misinformation or misrepresentation, or whenever the public health, safety or welfare is endangered, or any work is not in compliance with the plans or permits approved for

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the project, the Director shall issue a written notice or stop work order on the portion of the work affected. Such notice or order to stop work shall be served upon the property owner and any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Director to proceed with the work in writing. The notice or order shall state the reason for the notice and no work shall be done on that portion until the matter has been corrected and approval obtained from the Director. The order may specify actions necessary to restore the site or provide temporary measures for erosion and sedimentation control until the stop work order has been removed.

2. It shall be unlawful for any person to commence or continue any work regulated under the provisions of this Chapter in violation of, or contrary to any stop work notice or stop work order issued in compliance with this Section, except in conformity to the terms of such order or notice of order, or until relief from such order is obtained from the Director or, upon appeal, from the Board of Supervisors.

C. Violations and penalties.

1. Any person, firm, contractor, or corporation whether as principal, agent, employee or otherwise who shall commence, construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any provision of this Chapter is subject to civil and/or criminal action. The Board of Supervisors hereby declares that any grading done contrary to the provisions of this code is unlawful and a public nuisance, subject to abatement as set forth in Section 22.74.150. The offense may be filed as either an infraction or a misdemeanor at the discretion of the San Luis Obispo County District Attorney.
2. In addition to any penalties prescribed, the Director shall submit a written report to the appropriate state licensing or professional registration board or society in cases where contractors or professional consultants violate the provisions of this code.
3. If filed as an infraction and upon conviction thereof, the crime shall be punishable by a fine not to exceed one hundred dollars (\$100) for a first violation; a fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance thereafter; and a fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance thereafter.
4. If filed as a misdemeanor, and upon conviction thereof, the punishment shall be a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.
5. Any person violating any of the provisions of this chapter shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.
6. Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of this Title.
7. Grading without a permit, or using inadequate or improper grading techniques, can have potentially greater environmental effects. These effects include sedimentation and erosion impacts and excessive native vegetation and wildlife impacts. To address this, the applicant shall include additional "cumulative impact" measures above those required for specific on-site remedial work. These measures shall be proportional in size to the areas disturbed and may include:
 - a. contribution to an off-site revegetation banking program;

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- b. contribution towards a Resource Conservation District water quality enhancement or other restoration project;
- c. reestablishment of nearby degraded habitat;
- d. removal of surrounding undesirable weedy plants within a sensitive habitat;
- e. permanent protection of a proportional amount of comparable land;
- f. funding outreach and public education or professional education programs;
- g. providing partial funding to assist the erosion control and outreach programs of local Resource Conservation Districts; and/or
- h. other measures as determined appropriate by the Director.

D. Injunctions, civil remedies, penalties, and costs.

1. Any person, firm, contractor, or corporation whether as principal, agent, employee or otherwise who shall commence, construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or causes the same to be done, contrary to or in violation of any provision of this Chapter shall be subject to injunction against such activity and shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day that the violation continues to exist.
2. When the Director determines that any person has engaged or, is engaged, in any act(s) which constitute a violation of provision(s) of this Chapter, or order issued, the District Attorney or the County Counsel may make application to the Superior Court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing that such person has engaged in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted by a Superior Court having jurisdiction over the cause.
3. Any person, firm, or corporation whether as principal, agent, employee or otherwise who shall commence, construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or causes the same to be done, contrary to or in violation of any provision of this Chapter shall be liable for and obliged to pay to the County of San Luis Obispo for all costs incurred by the County in investigating and obtaining abatement or compliance, or which are attributable to or associated with any enforcement or abatement action, whether such action is administrative, injunctive or legal; and for all damages suffered by the County, its agents, officers or employees as a result of such violation or efforts to enforce or abate the violation. (See Section 22.74.080, Recovery of Costs.)
4. Until all costs, fees and penalties assessed under this Chapter are paid in full, no final approval, Certificates of Completion, Certificates of Compliance, Certificates of Occupancy, land use permits or subdivision maps shall be issued or approved by the Planning and Building Department, Public Works Department, other County agencies, or the Board of Supervisors.
5. In determining the amount of civil penalty to impose, the Court shall consider all relevant circumstances, including but not limited to, the extent of the harm caused by the conduct constituting the violation; the nature and persistence of such conduct; the length of time over which the conduct occurred; the assets, liabilities and net worth of the persons responsible, whether corporate or individual; any corrective action taken by the persons responsible; and the cooperation or lack of cooperation in efforts toward abatement or correction.

F. Denial of subsequent permits. Violation of any of the provisions of this Chapter shall be grounds for denying for five years all applications for building permits, grading permits, land use permits, tentative

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subdivision maps, general plan amendments, and other land development applications proposed for the site on which the violation occurred. The five-year period shall commence from the date of discovery of the violation. The Board of Supervisors may waive or reduce the penalty imposed by this subsection, for good cause. Any such waiver, if granted, shall in no way relieve the owner or applicant for any such subsequent land development application, of their duty to include the effects of the grading or clearing in any environmental analysis performed for the subsequent application, and to restore or rehabilitate the site, provide substitute or compensating resources, or perform other appropriate measures to mitigate the adverse effects of the illegal grading or clearing.