

SANTA BARBARA COUNTY – GRADING CODE

Where the Dozer Meets the Dirt Poorly Defined and Unevenly Enforced

SUMMARY

In accordance with Penal Code Section 925, the 2015-2016 Santa Barbara County Grand Jury (Jury) investigated the process by which grading permits in Santa Barbara County are required, granted, or denied. Additionally, the Jury examined whether the inspection process and final results are consistent with the original permits issued.

The Jury found that the Santa Barbara County Grading Code, Chapter 14 and the post approval procedures set forth in Chapter 35 include exemptions and practices that are ambiguous and subject to interpretation by the local Field Grading Inspectors. These discretionary interpretations have led to different standards being applied to similarly situated parcels. Permit revisions complicate the issue and lack the clarity necessary for due process. The Jury recommends that the Code and permitting process be modified to eliminate the ambiguities for the benefit of both the inspectors and landowners.

BACKGROUND

There are problems in the Santa Barbara County Grading Code, Chapter 14 (Code) which arise from a lack of clarity in defining exemptions, a poor definition of what constitutes 50 cubic yards of earth moved, inconsistent slope definition, and vagueness when permits are extended or revised. For example, the Jury learned that one exemption to the requirement for obtaining a permit is “movement of less than 50 cubic yards of earth”. The Code does not state whether the 50 cubic yard threshold is by day, month, year, project duration, or over the life of the parcel. Nor does the Code address the issue of compacted or uncompacted earth (compacted earth has up to 30% less volume than uncompacted earth).

Inconsistencies also exist when the scope or conditions of a grading permit are exceeded while the work is being performed. If the additional volume of earth moved is less than fifty cubic yards above the permitted amount, the project may be exempt from the entire permit, revision, and review process. If the additional volume of earth moved exceeds fifty cubic yards above the permitted amount, then grading inspectors have wide discretion. They could:

- 1) issue a violation
- 2) allow the owner to submit an “as built” plan reflecting what was actually done
- 3) require a revised plan, or
- 4) take no action

The project impact on the landowner can be substantial, depending upon the grading inspector’s interpretation of the Code. The financial impact could range from nothing, to submitting an updated plan, to doubled fees for permitting and possibly fines of \$100 per day.

METHODOLOGY

The Jury interviewed County Planning and Development Department (P&D) staff as well as private land planners. In addition, the Jury studied the Code and hypothesized several situations which were used as test cases for evaluating the effect of differing interpretations of the Code. A subset of the Code, Appendix A, is provided for reader convenience. It highlights all references in the Code to “50 cubic yards”. It should be noted that none of the references include either a time frame or a definition of what constitutes 50 cubic yards of earth.

OBSERVATIONS AND ANALYSIS

In order to fully understand the potential negative impact of the Code’s ambiguities and the inconsistent practices of the County P&D, it is necessary to understand the *entire* process of obtaining a construction and/or grading permit. It is also necessary to understand the intent of the Board of Supervisors (BOS) when enacting the Code.

The Jury reviewed the following items:

- Mandated Permitting Process Considerations
- Ambiguities Related to “Slope”
- Work Which Exceeds the Permitted Scope
- Observed Grading Where No Permit Exists

Mandated Permitting Process Considerations

A. Individual Community Plans

Community Plans are developed by committees within local jurisdictions in the unincorporated areas of Santa Barbara County. These plans are approved by the BOS. There are eight community plans representing various jurisdictions, all are somewhat different. All new construction taking place within a Community Plan’s jurisdiction must adhere to the specific policies.

When an applicant first applies for a Land Use Permit (LUP), the application will be assigned to a land planner who will review the application and ensure that all applicable ordinances are satisfied. The land planner must be familiar with the policies of all community plans affecting their area. These include differing Hillside and Watershed Protection Policies in each of the eight Community Area Plans and One Specific Plan (Mission Canyon). Some examples are contained in Table 1.

Table 1. Hillside and Watershed Protection Policies in Selected Community Plans

Goleta Valley Community Plan	“Ground disturbances and development on slopes of 20% or greater should be avoided”
Eastern Goleta Valley Community Plan	“Ground disturbances and development on slopes of 20% or greater should be avoided” “No development shall be allowed on slopes of 30% or greater”
Montecito Community Plan	“Development on Portions of the site that exceed 30% slopes which are located outside constrain areas should be limited to single family lots of five or more acres in size”
Santa Ynez Community Plan	“Hillside grading over 30% on residential and commercial land should be severely restricted”

B. Santa Barbara County Fire Department ‘Driveway’ Standards

In addition to the requirements set forth in A. above, the applicant must also comply with the Santa Barbara County Fire Department Driveway Standards for new construction which states:

- “Gradients up to 20% may be allowed with extenuating circumstances. Any gradient approved above 15% in slope must consist of a concrete structural section designed by a civil engineer. At no time shall any Fire Department access exceed 20%”.

C. California Environmental Quality Act (CEQA)

The applicant must also comply with CEQA. There are many exceptions and exemptions, but each application is reviewed for overall impact. Among other things, some applications may require an Environmental Impact Report (EIR), or a Negative Declaration with Mitigation by the property owner. The process is summarized on this link: http://longrange.sbcountyplanning.org/about_landuse.php

D. Notice and Appeals

Per the Land Use Development Code (LUDC), all permit applications require that notice be given to all neighboring parcels and property owners. They have a right to:

- review proposed development plans, and if they object then;
- appeal to the Planning Commission (PC) followed by;
- appeal to the Board of Supervisors

Once the P&D application process is completed, the applicant must then apply for a building permit from the Santa Barbara County Department of Building and Safety (B&S). At the B&S, the grading portion of the plan is then forwarded to either the North or South County Grading Inspector. Guided by the Code, which states “The Board of Supervisors expressly finds that the regulations, conditions and provisions of this chapter constitute minimum standards and procedures necessary to protect and preserve life, limb, health, property and public welfare...” the grading inspector reviews the building permit application. After the inspector verifies that the project meets all Code criteria, the B&S issues a grading permit. The fees for this permit are proportional to the volume of earth moved. The permit is usually valid for one year but extensions may be granted.

Ambiguities Related to ‘Slope’

The Code is confusing when defining the term “% slope”. This terminology is used in several ordinances and regulations. The % slope is the change in altitude per foot of horizontal distance. As an example, a change in altitude of 30 feet over 100 feet of horizontal distance would be a 30% slope or 16.7 degrees. The relationship between % slope and slope angle is summarized on Table 2.

Table 2. Relationship Between % Slope and Slope Angle

Vertical Change in Feet per 100 Feet of Horizontal Distance	% Slope	Slope Angle in degrees
100 ft.	100 %	45.0°
70 ft.	70 %	35.0°
60 ft.	60 %	31.0°
50 ft.	50 %	26.5°
40 ft.	40 %	21.8°
30 ft.	30 %	16.7°
20 ft.	20 %	11.3°
10 ft.	10 %	5.7°

Work Which Exceeds the Permitted Scope

If the volume or scope of a permit is exceeded, the Code allows, at the discretion of the inspector, a stop work notice which can lead to violations and fines. Alternatively, the inspector may allow the landowner to submit a document which describes only work done in excess of the original permit. This document is commonly known as an “as built”. If it was a grading issue, the inspector might require a current survey depicting several points of elevation, which allows for wide variations in discretion. At that point the permit would be finalized or, at the discretion of the inspector, the landowner may be required to submit a revision to the grading plan of the original permit. Any revision requires re-approval by P&D but no notice is given to adjacent landowners.

If a revision is deemed appropriate by the inspector, a new set of plans is required showing the particulars of the revision in accordance with the LUDC Post Approval Procedures 35.84.040. (See Appendix B). The variations within the LUDC have substantially different effects. For the landowner, the cost in lost time and financial impact varies. For the community and surrounding landowners, they lose the opportunity to review, dispute, or appeal the final result.

The LUDC revision protocol requires the P&D Director to determine whether a change is minor and it conforms substantially to the approved plans and the original permit. In reality, a subordinate planner in P&D, makes the decision relying partially on the grading inspector’s input. Once the decision is made to allow minor changes, they become final and not subject to appeal. These changes do not require additional notice to neighbors and generally do not require additional fees.

According to interviewees, numerous revisions can be, or have been, issued for the same original permit. This effectively prolongs the permit life and is in direct violation of Code Chapter 35 that states, “2. *Where a minor change of an approved or issued Coastal Development Permit or Land Use Permit, or*

issued Zoning Clearance is approved, the permit or clearance shall have the same effective and expiration dates as the original permit or clearance and no additional public notice shall be required.” Numerous revisions can significantly and incrementally expand the scope of the project, one *minor* revision at a time. A review of these cumulative changes would possibly trigger a much higher level of scrutiny or even denial of the original permit.

Additionally, an “as-built” or revision, put into effect after the fact, can bypass the proper required inspection for *minimum safety standards* for work performed on 20% and greater slopes. Multiple revisions, issued either before or after the work was completed, can effectively extend the life of the original permit for years. These same multiple revisions, each one minor, can add up to a major modification of the impact on the local area 50 cubic yards at a time. Those multiple revisions can also directly impact the CEQA, coastal zones, environmentally sensitive habitats and total review of the project. It also bypasses the neighbors’ right to review the changes that could cumulatively impact them.

The ambiguities in the Code and the subjective enforcement practices allow a range of outcomes. As an example, one landowner could move 49 cubic yards of earth every few weeks and be exempt from any permit requirements, while a neighbor could be required to submit a revision request, or receive a violation for the same activity.

A landowner who exceeds the scope of the permit could be allowed an “as-built”, or be required to submit a revision without being fully reviewed by P&D or neighbors. These procedures could bypass the careful consideration that County staff use in analyzing local ordinances and regulations during the LUP process. For example, one Community Plan within the county prohibits any grading on slopes greater than 30%, while the *Grading Code Sec. 14-25 – Excavations*, states: “(a) No excavation shall be made with a cut face steeper in slope than one and one-half units horizontal to one unit vertical....” This allows the creation of slopes of 33.7° or 67%. Differences between the Community Plans and the County Code can be problematic. The inconsistencies make it very difficult to understand which Code takes precedence. Historically, appeals have usually been resolved in favor of the local Community Plan.

The Jury found that grading inspectors from county P&D who are responsible for North and South County inspections vary in their interpretation as it applied to processing LUDC applications that included grading 50 cubic yards of earth.

Observed Grading Where No Permit Exists

Currently, no policy requires inspectors to investigate improper activities involving grading observed by an inspector when no complaint has been filed. The only method of initiating an investigation is by a complaint initiated by a member of the community.

CONCLUSIONS

The 2015-2016 Santa Barbara County Grand Jury concluded that the Santa Barbara County Grading Code does not adequately define the criteria the County Planning and Development Department must

use when it processes Land Use Permit Applications that require grading. As a result, decisions are left to the individual grading inspector’s discretion. This can lead to inconsistent treatment of permittees and their neighbors, which unfairly allows variability in the permitting process.

FINDINGS AND RECOMMENDATIONS

Finding 1

The Santa Barbara County Planning and Development Department is inconsistent in its enforcement of grading violations.

Recommendation 1

That the Santa Barbara County Board of Supervisors review and revise the Santa Barbara County Grading Code, Chapter 14, to include language that ensures more consistent enforcement.

Finding 2

There is no present requirement for the Santa Barbara County Planning and Development Department inspectors to investigate questionable grading activities they observe unless a complaint is filed by a member of the community.

Recommendation 2

That the Santa Barbara County Board of Supervisors mandate that the County Planning and Development Department inspectors investigate all questionable grading activities that they observe, or become aware of by any other means.

Finding 3

Because the Code is vague in its definition of time frame, grading inspectors for North and South County differ in their interpretation of how to enforce the Santa Barbara County Grading Code, Chapter 14, when processing Land Use Development Permit Applications that include grading of 50 cubic yards or more of earth.

Recommendation 3

That the Santa Barbara County Board of Supervisors revise the Santa Barbara County Grading Code, Chapter 14, to further define its 50 cubic yard criterion; specifically, how it relates to time frame and/or permit.

Finding 4

The Grading Code, Chapter 14, (Sections 14-6, 14-8, 14-9.2) does not state how often a property owner can move less than 50 cubic yards of earth, which is exempt from the permitting process; allowing a property owner to move massive amounts of earth in multiple 49.9 cubic yard increments without any timeframe limitation.

Recommendation 4

That the Santa Barbara County Board of Supervisors revise the Grading Code to specify how many times within a given timeframe the property owner can move less than 50 cubic yards of earth without a permit.

Finding 5

The Grading Code, Chapter 14, (Sections 14-6, 14-8, 14-9.2) does not state what degree of compaction is used in defining what constitutes 50 cubic yards of earth.

Recommendation 5

That the Santa Barbara County Board of Supervisors mandate that the County Planning and Development Department revise the Grading Code, Chapter 14, (Sections 14-6, 14-8. and 14-9.2) to further define 50 cubic yards of earth, as it applies to compaction.

Finding 6

Santa Barbara County Land Use Development Code Chapter 35 section 35.84.040 allows multiple permit revisions, which can incrementally and substantially expand the scope of a permit without notice or review by adjacent property owners.

Recommendation 6

That the Board of Supervisors direct the Santa Barbara County Planning and Development Department to revise the Santa Barbara County Land Use Development Code Chapter 35 section 35.84.040 to notify neighbors whenever they consider revisions on active projects to ensure that all affected parties are included in the notice and review process.

Finding 7

Differences between the Santa Barbara County Grading Code and local Community Plans regarding definition of slope cause inconsistent grading and enforcement.

Recommendation 7

That the Board of Supervisors direct the Santa Barbara County Planning and Development Department to establish internal policies which eliminate inconsistencies between the County grading code and local Community Plans, regarding the definitions of slope.

REQUEST FOR RESPONSE

Pursuant to *California Penal Code Section 933 and 933.05*, the Jury requests each entity or individual named below to respond to the enumerated findings and recommendations within the specified statutory time limit:

Santa Barbara County Board of Supervisors – 90 Days

Findings 1, 2, 3, 4, 5, 6 and 7

Recommendations 1, 2, 3, 4, 5, 6 and 7

APPENDIX A

Appendix A is a portion of the Santa Barbara County Grading Code and has been edited selectively to show only those Grading Code text sections dealing with ***fifty cubic yards*** of grading. Any mention of ***fifty cubic yards*** within the code has been bolded/italicized for reader convenience.

- Section 14-6. - Scope; general regulations,
- Section 14-8. - Grading for agricultural practices; and
- Section 14-9.2. - Pollution, sediment and erosion control permits, applications and inspections.

SANTA BARBARA COUNTY GRADING CODE, CHAPTER 14 (Sections 14-6, 14-8 and 14-9.2)

(Ord. No. 4766, 11-9-2010)

Sec. 14-6. - Scope; general regulations.

(a) **Except as herein provided or exempted elsewhere in this chapter**, these regulations, including the incorporation of relevant best management practices, shall apply to all new grading, excavations, fills, non-agricultural land disturbance, erosion and sediment control measures, drainage devices, cuts, borrow pits, stockpiling, compaction of fill, and land reclamation projects on privately owned land **where the transported amount of materials** individually for any of the abovementioned operation(s) (I) **exceeds fifty cubic yards**; (II) causes a cut or fill which exceeds three feet in vertical distance to the natural contour of the land; (III) cause any changes in elevation to the natural contour within the watercourse/drainageway setback, regardless of volume moved; (IV) disturb an area of land in excess of that outlined in section 14-9.2b of this chapter. Agricultural grading, whether exempt or required to be permitted hereunder, is not subject to NPDES Phase II storm water regulations or the local storm water requirements imposed by this chapter. No work subject to the provisions of this chapter shall be commenced, maintained or completed, in violation of these regulations. These regulations shall also apply to native oak tree removal that is subject to the guidelines for native oak tree removal in Appendix A to this chapter.

Notwithstanding these regulations, no person shall cause or allow a significant environmental impact to occur as a result of new grading as defined herein, including grading that is otherwise exempt from these regulations. In the event that the director determines that a significant environmental impact is likely to occur or has occurred as a result of new grading, the director may deny or revoke grading and/or land use permits for such grading. If necessary, the director may also require grading and land use permits for work that is otherwise exempt from these regulations in order to address the significant environmental impact identified. Grading that is undertaken as part of a Federal Cost Share project (including, but not limited to, projects under the Conservation Reserve Program (CRP), the Wildlife Habitat Improvement Program (WHIP) and/or the Environmental Quality Incentive Program (EQIP), approved by the Natural Resources Conservation Service (NRCS) with a finding of no significant impact under the National Environmental Policy Act and conducted pursuant to the National Handbook of Conservation Practices, consistent with the mandated nine-step planning process including post installation field assessment, shall not be considered to result in a significant environmental impact under this section. Native oak tree removal of protected and unprotected size, as defined in Appendix A, that is subject to and performed consistent with the guidelines for native oak tree removal as set out in Appendix A to this chapter is not subject to the significant environmental impact clause above. All other oak tree removal that involves grading is still subject to the requirements of this chapter.¹ (Footnotes appear in the original document, but have been omitted in this Appendix for clarity)

The term "grading," for purposes of this chapter, shall not include the activities of the County of Santa Barbara, the Santa Barbara County Flood Control and Water Conservation District, the Beach Erosion Authority for Clean Oceans and Nourishment, the State of California, or the United States.

The term "grading," for purposes of this chapter, shall also not include surface mining or quarrying operations (including the extraction and stockpiling of excavated products and the reclamation of mined lands) carried out under a vested rights determination, or under a permit or reclamation plan approval issued pursuant to the county's

SANTA BARBARA COUNTY – GRADING CODE

surface mining and reclamation (SMARA) ordinances (except where such grading is intended to support structures which require building permits). The county's surface mining and reclamation ordinances contain provisions for the imposition of appropriate engineering and geologic standards and other environmental mitigation requirements for surface mining permits and reclamation plans, together with associated fees payable to the director.

(b) Aside from areas designated as open space on the Orcutt Community Plan Open Space Areas Map, **these regulations shall not apply to the following exceptions:**

- (1) The stockpiling of rock, sand or aggregate involved in the construction of a building authorized by valid county building permit, as it appears on approved plans;
- (2) Excavation and fill of trenches for utility lines not exceeding twenty-four inches wide or an average of five feet deep, or holes for utility poles or anchors and minor grading accessory thereto;
- (3) Excavation and fill of trenches for maintenance and repair of existing oil and natural gas transmission lines, within established petroleum producing areas not exceeding five hundred cubic yards of material or twenty-four inches wide or an average of five feet deep. The grading shall not occur within two hundred feet of an exterior boundary of a petroleum producing area or within two hundred feet of any residential development including three or more housing units;
- (4) The initial excavation and fill necessary to effect such temporary repair or maintenance of oil and gas and utility lines (located outside of an existing oil producing area) as can be completed within seven days of commencement where such excavation or fill does not exceed a total of one hundred cubic yards of material and where all work is protected, as may be required, by a safety fence or other similar protective device;
- (5) Temporary holes or trenches for geological, geotechnical and archeological exploration, not exceeding one hundred cubic yards of material, where such holes or trenches are protected by a safety fence meeting Occupational Safety and Health Agency standards;
- (6) The excavation of material below finished grade for tanks, vaults, basements, swimming pools, bomb shelters or footings of a building or structure where such excavation is authorized and under the provisions of a valid county building permit; fill placed **in excess of fifty cubic yards**, even if fill is obtained from exempt excavations as noted above, require permits as outlined in this chapter.
- (7) The excavation or deposit of earth materials within a property dedicated, used, or to be used, for cemetery purposes, except where such grading is intended to support structures or affects natural drainage patterns;
- (8) The maintenance and construction work by or under contract with the Santa Barbara County Flood Control and Water Conservation District within prescribed easements or lease agreements;
- (9) The digging of trenches or holes for utility poles and anchors, or underground electric and natural gas vaults that do **not exceed fifty cubic yards** in volume, by public companies within their easements and that are regulated by the California Public Utilities Commission.
- (10) Non-agricultural land disturbance where the area disturbed is, less than one acre, is not within an environmentally sensitive area and is outside the watercourse/drainage way setback (see section 14-9.2b of this chapter for non-agricultural land disturbance permit requirements).
- (11) Maintenance of existing non-agricultural roads and driveways where the cut or fill does not: exceed eight inches, increase the footprint of the roadway, or alter the drainage pattern. Maintenance of existing roads or driveways within this exemption shall not be construed to cause any change to the natural contour.

(Ord. No. 4766, 11-9-2010)

Sec. 14-8. - Grading for agricultural practices.

(a) The county recognizes the importance of agriculture and shall provide for protection and conservation and the promulgation of safe and environmentally sane earthwork practices. Therefore, grading for the production of food and fiber, the growing of plants, the raising and keeping of livestock incidental to agriculture shall be exempt as provided in this chapter. Such agriculturally associated earthwork as grading for recognized, normal and usual agricultural practices to prepare a field for a crop or range improvement, including such harrowing, disking, ridging, listing, fire breaks, chaining, maintenance of existing agricultural roads, and construction of support roads on land with a natural gradient of less than thirty percent, and similar practices which provide prudent measures for erosion control, and which conform to the recommendations of guidelines made or promulgated by the Santa Barbara County agricultural advisory committee is exempt. Agricultural leveling, pursuant to normal and usual agricultural practices, which does not result in any cut or fill which

SANTA BARBARA COUNTY – GRADING CODE

exceeds, at any point, three feet from the natural contour of the surface of the land and which conforms to recommendations or guidelines made or promulgated by the Santa Barbara County agricultural advisory committee is also exempt. In order to qualify for exemption under the provisions of this subdivision; the grading must be conducted upon a parcel or contiguous parcels of land exceeding twenty acres in size under the same ownership upon which crops are grown or livestock is raised. In addition, the property must be in an agriculturally zoned district and/or land use designation with no other special overlay district or designation, as shown on the adopted county zoning maps or comprehensive plan land use maps.

Native oak tree removal associated with the agricultural practices listed above that is subject to and complies with the Guidelines for Native Oak Tree Removal set forth in Appendix A to this chapter is exempt unless a grading permit is required under subsection (c) below.

- (b) Agricultural grading **not exempt** under subsection (a) of this section, grading on slopes with a natural gradient **over thirty percent and where earthwork exceeds fifty cubic yards** in volume and/or when excavation and fills are made in excess of three feet in vertical distance to the natural contour shall require an erosion control permit for agriculturally associated grading such as:
- (1) Grading to establish any new agricultural road, as defined in this chapter;
 - (2) Terracing and leveling where the cut or fill slope exceeds three feet in depth or height.

Note: The director may waive the requirements for the issuance of an erosion control permit if the proposed grading meets the departmental regulations for erosion control permit waiver.

- (c) Agricultural grading for the following projects and including **the following practices is not exempted** under subsections (a) and (b) of this section, and shall comply with all other provisions of this chapter.
- (1) Excavation or fill upon which a building requiring a county building permit is to be supported;
 - (2) The entire length of any access driveway from an existing road to any building which requires a county building permit or site for such building;
 - (3) The grading is in **excess of fifty cubic yards within two hundred feet of any exterior property line**;
 - (4) Grading for areas which are to be used for commercial wholesale or retail nursery operations, or grading for the construction of greenhouses, commercial shade structures, or buildings for which a county building permit may otherwise be required;
 - (5) Grading for horse training facilities, horse tracks, arenas, polo fields, or commercial horse breeding facilities;
 - (6) Any grading within fifty feet of the top of the bank of any stream, creek or natural watercourse; Except where the grading is for maintenance as outlined in section 14-6(b)12 and defined in this chapter or the area has been historically disturbed for farming;
 - (7) The construction of water impounding structures of earth (which are not under the direct control of the State of California or the federal government) where the maximum depth to which water may be impounded is five feet or more where one acre-foot or more of water will be impounded, and is located within two hundred feet of the property line;
 - (8) Grading on agricultural land on slopes over thirty percent which does not meet the departmental regulations for an erosion control permit waiver and which is not deemed appropriate by the agricultural advisory committee, or any grading where there is potential for significant environmental damage. Grading that is undertaken as part of a Federal Cost Share project (including, but not limited to, projects under the Conservation Reserve Program (CRP), the Wildlife Habitat Improvement Program (WHIP) and/or the Environmental Quality Incentive Program (EQIP)), approved by the Natural Resources Conservation Service (NRCS) with a finding of no significant impact under the National Environmental Policy Act and conducted pursuant to the National Handbook of Conservation Practices, consistent with the mandated nine-step planning process including post installation field assessment, shall not be considered to result in significant environmental damage under this section;

The significant environmental damage clause does not apply to native oak tree removal of protected and unprotected size, as defined in Appendix A that is subject to and complies with the guidelines for native oak tree removal in Appendix A to this chapter.³ All other oak tree removal that involves grading is still subject to the requirements of this section.⁴

- (9) Agriculturally associated grading within five hundred feet of any urban boundary line.

(Ord. No. 4766, 11-9-2010)

Sec. 14-9.2. - Pollution, sediment and erosion control permits, applications and inspections.

2015-16 Santa Barbara County Grand Jury

- (a) **No person shall perform any non-agricultural land disturbance which requires a pollution, sediment and erosion control permit as specified in this section and as defined in this chapter, without first obtaining a pollution, sediment and erosion control permit for such work from the building official.**
- (b) These regulations, including the incorporation of relevant best management practices (BMPs), shall apply to all non-agricultural land disturbance, erosion and sediment control measures and drainage devices on privately owned land where, (I) **the volume of earth moved is less than fifty cubic yards**; (II) no cut or fill exceeds three feet in vertical distance to the natural contour of the land; (III) there are no elevation changes to the natural contour within the watercourse/drainage way setback; **and where the area of non-agricultural land disturbance meets or exceeds one or more of the following:**
 - (1) **One acre or more of non-agricultural land disturbance;**
 - (2) **Five thousand square feet or more of non-agricultural land disturbance occurs on slopes with a natural gradient over thirty percent;**
 - (3) **Five thousand square feet or more of land disturbance occurs within the watercourse/drainage way setback, including any street, curb, gutter and/or storm drain conveyance system that discharges directly into a watercourse or drainage way.**

Exception: Pollution, sediment and erosion control permits are not required for, (I) undisturbed land clearing or (II) non-agricultural land disturbance in an urban area within fifty feet of a drainage way or street, curb gutter, and/or storm drain conveyance system, or non-agricultural land disturbance in a rural area within one hundred feet of a drainage way or street, curb, gutter and/or storm drain conveyance system between April 15 and October 31 provided the area of disturbance is less than one acre and the area has been re-stabilized by October 31.

Note: These are minimum requirements. If the director or the building official determines that additional controls and/or lower thresholds for non-agricultural land disturbance are required to meet specific water quality regulatory requirements in watersheds that drain to impaired receiving waters (as defined by the Central Coast Regional Water Quality Control Board), additional requirements may be imposed due to the project's proximity to the watercourse, steepness of the slopes, soil type, sensitive habitats, etc.

- (c) Notwithstanding these regulations, no person shall cause or allow a significant environmental impact to occur as a result of non-agricultural land disturbance as defined herein, including non-agricultural land disturbance that is otherwise exempt from these regulations. In the event that the director determines that a significant environmental impact is likely to occur or has occurred as a result non-agricultural land disturbance, the director may deny or revoke the pollution, sediment and erosion control permit. If necessary, the director may require a pollution, sediment and erosion control permit for work that is otherwise exempt from these regulations in order to address the significant environmental impact identified.
- (d) Where pollution, sediment and erosion control permits are required under provisions in this chapter, they shall be valid for a period of two years from the date of issuance, except that prior to expiration of the permit the building official may grant a two-year extension for good cause shown.
- (e) Fees for each pollution, sediment and erosion control permit shall be paid to the county according to a fee schedule adopted from time to time by resolution of the board of supervisors. The amount shall be equal to the pollution, sediment and erosion control inspection fee for the purpose of a time extension.
- (f) The application and plans for a pollution, sediment and erosion control permit for non-agricultural land disturbance shall include evidence of the inclusion of erosion and sediment control measures, including, but without limitation, the following:
 - (1) An application and three sets of plans sufficiently detailed to allow reasonable review and interpretation of the proposed work and the associated erosion control measures provided. Maps

shall include all property boundaries and shall be drawn to the scale of one inch equals forty feet or the most reasonable scale available for the area;

- (2) The location and details of runoff control, drainage devices, sedimentation control, pollution control and other measures of erosion control (BMPs), including re-vegetation of denuded areas;
- (3) A brief description of the re-vegetation practices to be used, including types of seeds and their application rates. Where surface erosion will not be a nuisance, re-vegetation may be delayed until just prior to the end of the project.

APPENDIX B

This Appendix is a portion of the Santa Barbara County Land Use & Development Code, Chapter 35, and has been edited selectively to show only those codes which apply to Post Approval Procedures. To review the complete code use the following link; <http://sbcountyplanning.org/pdf/forms/LUDC/LUDC.pdf>

SANTA BARBARA COUNTY CODE - CHAPTER 35 - COUNTY LAND USE & DEVELOPMENT CODE Post Approval Procedures 35.84.040

SBC LUDC page 8-68 35.84.040 - Changes to an Approved Project

Development or a new land use authorized through a planning permit granted in compliance with this Development Code shall be established only as approved by the review authority and in compliance with any conditions of approval, except where a change to the project is approved in the following manner. A change may be requested before, during or after construction or establishment and operation of the approved land use.

A. Contents of application. An application for a change to an approved or issued planning permit shall be submitted in compliance with Chapter 35.80 (Permit Application Filing and Processing).

B. Minor changes to Coastal Development Permits, Land Use Permits, and Zoning Clearances. Minor changes to an approved or issued Coastal Development Permit or Land Use Permit, or issued Zoning Clearance, may be allowed; provided, the changes substantially conform to the approved or issued permit or clearance. A request shall be processed in the following manner:

1. The Director may approve a minor change to an approved or issued Coastal Development Permit or Land Use Permit, or issued Zoning Clearance, subject to all of the following:
 - a. The Director determines that the minor change substantially conforms to the approved plans and the originally approved or issued permit;
 - b. There is no change in the use or scope of the development;
 - c. The minor change does not result in a change to the Director's conclusions regarding the project's specific conformance to development standards and findings;
 - d. The Coastal Development Permit, Land Use Permit or Zoning Clearance has not expired; and
 - e. The minor change is exempt from Design Review in compliance with Section 35.82.070 (Design Review).
2. Where a minor change of an approved or issued Coastal Development Permit or Land Use Permit, or issued Zoning Clearance is approved, the permit or clearance shall have the same effective and expiration dates as the original permit or clearance and no additional public notice shall be required.
3. Where it cannot be determined that the minor change materially conforms to an approved or issued Coastal Development Permit or Land Use Permit or issued Zoning Clearance in compliance with the above criteria, a new Coastal Development Permit, Land Use Permit, or Zoning Clearance shall be required.
4. The determination to allow a minor change to an approved or issued Coastal Development Permit or Land Use Permit, or issued Zoning Clearance is final and not subject to appeal, except that a decision on a request to revise a Coastal Development Permit which allows development

defined as appealable development may be appealed in compliance with Chapter 35.102 (Appeals).

Note: Also refer to Appendix E (Guidelines for Minor Changes to Coastal Development and Land Use Permits).

**SANTA BARBARA COUNTY LAND USE AND DEVELOPMENT CODE
CHAPTER 35, APPENDIX E**

**GUIDELINES FOR MINOR CHANGES TO
COASTAL DEVELOPMENT PERMITS AND LAND USE PERMITS**

The following guidelines shall be used by the Department to determine if a minor change to an approved or issued Coastal Development Permit or Land Use Permit can be allowed without requiring a new permit.

1. The proposed change would otherwise be exempt from Design Review pursuant to Section 35.82.070 (Design Review).
2. The proposed change would otherwise be exempt from a Coastal Development Permit or Land Use Permit pursuant to Section 35.20.040 (Exemptions from Planning Permit Requirements).
3. The project has not been the subject of substantial public controversy or interest and there is no reason to believe that the proposed change has the potential to create substantial controversy.
4. The change does not increase the height of the roof ridgeline.
5. The change would not be counter to design direction provided by the applicable Board of Architectural Review.
6. If the site is one acre or less, the footprint of the structure may not be moved more than five percent closer to the property line. If the site is more than one acre, the footprint of the structure may not be moved more than 10 percent closer to the property line.
7. The change does not result in the removal of a specimen trees.
8. The change does not affect easements for trails, public access, or open space.
9. The change does not increase the required number of parking spaces.

If the proposed “minor” change does not conform to the guidelines identified above, the applicant should apply for a new planning permit.