

## CHAPTER V: BUILDINGS

### Article 11: Landform Grading for Agriculture

#### Sec. L-V 11.1 Intent

In adopting this Article, it is the intent of the Board of Supervisors to adopt, in addition to the exemption for cultivation of land to raise crops, a more comprehensive exemption from grading permit requirements for other clearing and grading of land for agricultural operations, subject to criteria and procedures to avoid abuse. The purpose of this Article is to promote long-term viable agricultural use of agricultural lands while protecting natural resources and to provide reasonable minimum standards that will prevent man-induced land failures while controlling erosion, drainage and sediment discharge.

#### Sec. L-V 11.2 Applicability

Clearing and grading of land for agricultural operations may be exempted from grading permit requirements by the Building Department upon verification that a bona fide agricultural project is involved and a permit exemption has been recommended by the Agricultural Commissioner. An exemption under this section shall only be approved upon: 1) written verification by the landowner, which shall be deemed to be binding upon the landowner and any successors in interest; and 2) the permit-exempted lands shall be used for agricultural operations for a period of at least five (5) years following the granting of the exemption, provided all of the criteria established in this Article are met and there is full compliance with all of the procedures set forth in this Article 11.

#### Sec. L-V 11.3 Criteria

To qualify as other clearing and grading of land for agricultural operations that may be exempted from grading permit requirements pursuant to this Article, all of the following criteria must be met:

1. The land to be cleared and/or graded is zoned for agricultural use as:
  - a. "AG" (General Agriculture), or
  - b. "AE" (Agricultural Exclusive), or
  - c. "RA" (Residential Agriculture) where the parcel is 3 acres or more in size and the General Plan designation is Rural;
2. The clearing and/or grading is exclusively for agricultural purposes not associated with buildings that require a building permit;

3. Any vegetation removal or soil disturbance is outside any floodplain, watercourse, wetland or riparian area and any non-disturbance buffer for those areas as defined in Section L-II 4.3;
4. The work occurs on slopes of thirty percent (30%) or less;
5. The work does not disturb cultural resources;
6. Any excavated material remains on site, without changing the natural terrain or drainage and without creating any cuts or fills, except as follows:
  - a. The work, if associated with construction or maintenance of a pond for livestock raised on site, aquaculture or irrigation, does not create a dam that exceeds two feet in height above grade, an excavation in excess of six feet or a storage capacity of more than ten acre feet and results in no adverse hydrological impacts upon surrounding properties that are not mitigated to a level of insignificance, or
  - b. The work, if associated with construction of a farm or ranch road, is solely for the purpose of providing on-site access to water supplies, storage areas, grazing/crop lands or fence lines, does not service a structure requiring a building permit, and does not create a cut or fill greater than two feet in height;
7. Projects potentially impacting heritage oak groves or trees, as defined in LUDC Section L-II 4.3.15.B, and verified by a field inspection conducted by the Agricultural Commissioner or his/her agent, shall provide a management plan as defined in LUDC Section L-II 4.3.3.C Resource Standards. A Management Plan to mitigate the impacts of the proposed project on landmark trees or groves shall be required." An Agricultural Grading Exemption shall be denied to parcels or sites where these resources exist and no mitigation and/or avoidance is available through the Management Plan process.
8. To the extent possible, all work will be conducted between April 15th and October 15th to avoid the rainy season. Any work before April 15th or after October 15th of any year shall be permitted only if disclosed in the application and approved in the Permit Exemption. To secure such approval, the applicant shall submit an erosion and sediment control plan, including an effective re-vegetation program to stabilize all disturbed areas, expressly approved in writing by a State Certified Professional Erosion and Sediment Control (CPESC). If grading occurs, or if the land is left open and unplanted during the period from October 15<sup>th</sup> to April 15<sup>th</sup>, all projects over 2,500 square feet on slopes over 15% in areas of moderate to high erosion potential as defined by the Soil Survey of Nevada County, shall have an Erosion and Sediment Control Plan expressly approved in writing by the State Certified Professional Erosion

and Sediment Control (CPESC) and shall be implemented after October 15th, and maintained through April 15th.

9. Projects shall be in compliance with the RWQCB regarding Clean Water Act requirements, and all other applicable laws.
10. The following conditions of approval shall be applied to all projects approved through this agricultural grading exemption:
  - a. The applicant shall be responsible for ensuring that all adequate dust control measures are implemented in a timely manner during all phases of the proposed project.
  - b. Fugitive dust emissions resulting from site clearing shall be minimized at all times, utilizing control measures including dust palliatives, regularly applied water, graveled or paved roads, etc. Control measures shall be noted on grading plans.
  - c. All land clearing, grading, earth moving, or excavation activities on a project shall be suspended to prevent excessive windblown dust when winds are expected to exceed 20 mph.
11. Verification of NSAQMD clearance shall be filed with the Agricultural Commissioner prior to any surface disturbance (including clearing and grubbing) associated with agricultural (or other) road construction in any of the sections listed in the table. Mapping of areas of ultramafic rock/serpentine occurrence within the project area shall be on file at the Agricultural Commissioner's office. In addition, if naturally occurring ultramafic rock/serpentine is discovered once grading for a road commences, the NSAQMD must be notified no later than the next business day and requirements in CCR, Title 17, Section 93105 must be implemented within 24 hours.

Sections Mapped as Containing Ultramafic Rock/Serpentine in Nevada County

Range _ East	Township _ North	Sections
6	14	23, 25, 26
7	14	1, 12, 13
8	14	4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, 28, 29, 32
	15	29, 32, 33
	16	4, 5, 8, 9, 10, 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27
	17	29, 30, 31, 32
9	16	19, 30, 31
	18	13, 24
10	16	13, 24
	17	1, 2, 11, 12, 13, 14, 16, 17, 23, 24
	18	9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 24, 25, 26, 35, 36
11	16	5, 6, 7, 8, 17, 18, 19
	17	18, 19, 32
12	17	24, 25
13	17	19, 30

Sec. L-V 11.4 Procedure

- A. Exceptions pursuant to this Article must be applied for and a permit exemption may be granted hereunder only if each of the following procedures is fully complied with and completed in the order specified:
1. The applicant obtains, completes and submits to the Agriculture Commissioner:
    - a. an "Agricultural Clearing/Grading Permit Exemption Form" provided by the Building Department;
    - b. an Agricultural Project Plan acceptable in form and content to the Agricultural Commissioner; and
    - c. a binding commitment of five (5) years to continue use of the permit-exempted lands for agricultural operations acceptable in form and content to County Counsel.
  2. The Agriculture Commissioner reviews the submitted "Agricultural Clearing/Grading Permit Exemption Form and Agricultural Project Plan and, based upon field verification of the information therein, determines that the clearing or grading proposed is for a bona fide agricultural project and recommends approval of the requested exemption to the Building Department.

3. The Agricultural Commissioner shall review applications for positive occurrence of rare or threatened species. Applications within proximity to endangered, rare or threatened species as shown on the California Natural Diversity Database (CNDDDB) shall provide biologist report to verify if occurrence or absence of resource. Applications with State or Federally listed species shall require permit through jurisdictional agency (USFWS or CDFG) prior to issuance of an exemption.
  4. To verify potential riparian resources for applicants for the agricultural grading exemption, all applications submitted to the Agricultural Commissioner shall include a mapping of the parcel or parcels for which the application is made, a map showing all Lakes, Rivers, FEMA Flood Zone on a background map of the USGS topographic maps, as provided by the County of Nevada GIS system public mapping resources. Mapping shall be verified during field inspection by staff biologist for other wetland habitats.
  5. The Building Department reviews the application and considers the recommendation of the Agriculture Commissioner, determines that the proposed project meets all of the criteria and satisfies all of the procedures required for exemption, and approves the exemption request, notifying the applicant in writing of a favorable decision.
  6. Notification of granting of the Agricultural Grading Exemption by the Building Department shall include the following statement: "Any person involved in any form of ground disturbance is advised of the remote possibility of encountering subsurface cultural or historic resources. If such resources are encountered or suspected, all subsurface work within 200 feet of the potential cultural or historic discovery shall be halted immediately, and the Planning Department and a professional archaeologist shall be consulted who shall access any discoveries and develop appropriate management recommendations for archaeological resource treatment. If bones are found and appear to be human, California Law requires that the Nevada County Coroner and the Native American Heritage Commission be contacted. If Native American resources are involved, Native American Organizations and individuals recognized by the County shall be notified and consulted about any plans for treatment."
- B. Applications shall be processed by the Agriculture Commissioner within thirty (30) days of receipt of a complete application and by the Building Department within thirty (30) days of submittal to it of the approval by the Agriculture Commissioner.

- C. Any clearing or grading work done pursuant to a Permit Exemption shall be subject to a site inspection upon completion of the work or prior to October 15<sup>th</sup> of each year, whichever first occurs, by a CPESC to determine compliance with the project plan and erosion control and stabilization of the site.
- D. Permit Exemptions may be issued for up to two (2) years.
- E. If it is determined during the term of the Permit Exemption that the actual clearing or grading is not for agricultural purposes as represented to and approved by the Agriculture Commissioner, all further work shall cease, the site shall be stabilized and revegetated in accord with recommendations of a CPESC, and a grading permit shall be required for any further work, provided, however that a grading permit shall not be granted earlier than five (5) years from the date of application for the exemption.
- F. In the event that work is done on property pursuant to a Permit Exemption that is determined to be subject to the requirements of subsection E and application is made within the five (5)-year period during which no grading permit can be granted for any development or project unrelated to agricultural operations or involving construction of a structure or structures for which a building permit is required, it may be required as a condition of approval that the site be restored to its original condition prior to such clearing or grading to the extent feasible, and to the extent full restoration is not possible, mitigation measures shall be imposed to remediate any damage caused.

Sec. L-V 11.5 Fees

The costs of providing the services of the Building Department, Agriculture Commissioner and CPESC required by this Article shall be paid by the applicant for an exception to the grading permit requirement. Permit and plan review fees shall be as set forth in the fee schedule adopted by Resolution of the Nevada County Board of Supervisors.

Sec. L-V 11.6 Appeals

Appeals from discretionary orders, decisions or determinations pursuant to this Article shall be heard by the Building and Accessibility Standards Board of Appeals established pursuant to Section L-V 2.2 of the Nevada County Land Use and Development Code.