

ORDINANCE NO. 1347

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TRINITY RESTRICTING MASS GRADING

Findings and Declarations

The Board of Supervisors of the County of Trinity, State of California, hereby finds and declares as follows:

1. **WHEREAS**, the State Planning and Zoning Law (Cal. Gov' t Code Sections 65000, et seq.) broadly empowers the County to plan for and regulate the use of land in order to provide for orderly development, the public health safety and welfare, and a balancing of property rights and the desires of the community, and
2. **WHEREAS**, grading is defined as any excavation or filling or combination thereof, and
3. **WHEREAS**, mass grading is defined as grading over a large volume or over a large area, and
4. **WHEREAS**, unregulated grading has the potential to endanger structures intended for human or animal occupancy, threaten the stability of any public road, or obstruct watercourses and drainage conduits, and
5. **WHEREAS**, The County of Trinity has not adopted rules and regulations specifically applicable to grading, and the lack of such controls may lead to increased sedimentation and the inability to regulate grading in a manner that will protect the general public, homes and businesses adjacent to and near such grading activities, and
6. **WHEREAS**, Trinity County's geographic and climatic conditions, low population density, availability of resource lands previously utilized for forestry and grazing, and history and reputation as a Cannabis producing region have attracted a steady influx of individuals for the purpose of participating in Cannabis activity, whether for medicinal or commercial reasons, and
7. **WHEREAS**, the State Water Resources Control Board ("SWRCB"), the North Coast Regional Water Quality Control Board ("NCRWQCB") and the California Department of Fish and Wildlife ("CDFW") have documented a dramatic increase in the number of Cannabis cultivation sites, corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. These impacts result from the widespread unpermitted, unmitigated and unregulated impacts of land grading, road development, vegetation removal, timber clearance, erosion of disturbed surfaces and stream banks, and threaten the survival of endangered fish species, and
8. **WHEREAS**, California Regional Water Quality Control Board, North Coast Region Order #2015-0023 (Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region) was passed on August 13, 2015. The purpose of this order is to provide a water quality structure to prevent and/or address poor water quality conditions and adverse impacts to water resources associated with cannabis cultivation on private land, and
9. **WHEREAS**, grading activities may lead to increased sedimentation in waterways and negatively impact natural resources, such as state listed species, environmental health,

- clean water and overall function of County water resources, and
10. **WHEREAS**, The Trinity County Board of Supervisors passed and adopted resolution number 2016-077 establishing guiding principles for cultivation on September 20, 2016. The resolution states that, with respect to cannabis cultivation, Trinity County will be a safe place for all residents to live, to work or enjoy retirement and to raise their families; and the historical quality of life and natural environment in Trinity County will be protected and restored; and Cannabis cultivation in Trinity County will take place without environmental damage and without detriment to neighbors or communities, and
 11. **WHEREAS**, a grading ordinance is necessary to support the County's obligation to promote environmental protection and limit unregulated activity that could undermine or negatively affect our ability to protect Trinity County environment, and
 12. **WHEREAS**, based on County staff observations, multiple state agency concerns, and reports from the public of widespread and ongoing grading activities (i.e. road, terraces and pads) associated with legal and illegal Cannabis cultivation sites, particularly in response to existing and proposed regulation related to site expansion or new site development, grading impacts are of particular and immediate concern, and
 13. **WHEREAS**, County staff have verified unregulated grading activity associated with legal and illegal cannabis operations, and
 14. **WHEREAS**, the County now has the departmental resources and process framework to provide regulatory oversight of site development and expansion related to cannabis cultivation, and
 15. **WHEREAS**, concerns exist that with no specific County regulations to address the impact of Cannabis cultivation related grading within the County of Trinity, those impacts will have drastic negative effects on community as a whole, and
 16. **WHEREAS**, the County finds that in the absence of a formal regulatory framework, the negative impacts frequently associated with grading operations, including those associated with Cannabis cultivation operations, are expected to increase in immediate future due to existing and proposed cannabis local and state level regulations, resulting in an unregulated, unstudied and potentially significant negative impact on the environment and upon the public peace, health and safety, and
 17. **WHEREAS**, the County of Trinity recognizes that the need for a grading ordinance has been of interest to State agencies for years, and
 18. **WHEREAS**, historic issues related to grading activities are not solely related to Cannabis cultivation, Cannabis related ordinances or illegal Cannabis land use activities, and
 19. **WHEREAS**, in the absence of a formal local regulatory framework, grading operators and landowners are less likely to learn of, or implement, guidelines that are protective of the public health, safety and the environment, and
 20. **WHEREAS**, an ordinance is necessary for the immediate preservation of the public peace, health and safety by balancing the needs of individual landowners and their agents with the needs of the community to be protected from public safety and nuisance issues associated with the grading and excavation of building pads, trenches, roadways, driveways and agricultural sites. Due to the lack of a County grading ordinance in Trinity County, there is a concern that, if left unregulated, unsafe grading practices will continue, and
 21. **WHEREAS**, a grading ordinance is necessary to provide for additional enforcement

capability by the County and limit further degradation of the environment and damage to neighboring property owners, and

22. **WHEREAS**, a mass grading ordinance is required in order to provide the County with enough time to thoroughly and adequately review, study, and revise the County's laws, rules, procedures, and fees related to new development and expansion or modification of existing buildings or sites, as well as to enable the County to adequately and appropriately balance the rights of existing operators and future applicants who wish to grade on new development and expansion or modification of existing developments or sites while preserving the health, safety, and welfare of the communities in the County of Trinity.

NOW THEREFORE be it resolved that the Board of Supervisors of the County of Trinity ordains as follows:

Trinity County Code Section 15.24 shall be created to read:

SECTION I. Grading Restrictions

1. Prohibition on grading activities

This Ordinance is adopted pursuant to California Constitution, Article XI, Section 7, and Government Code Section 25123.

This ordinance is necessary for the preservation of the public peace, health, safety and environmental protection by balancing the needs of individual landowners and their renters, leasees and representatives with the needs of the community to be protected from public safety and nuisance issues associated with mass grading.

The use of equipment to mass grade, excavate or fill native or nonnative material, soil, rock or combination thereof is prohibited.

2. Restrictions Applicability:

The restrictions prohibit all grading activities in the unincorporated area of Trinity County, including underground excavations associated with human occupancy, agricultural grading activities that convert undisturbed vegetation to agricultural cropland and activities that modify previously cleared land unless the proposed activities are exempt from this requirement pursuant to Section I.4. These grading restrictions apply to all individual parcels and any activity that:

- A. Affects, contains, involves or consists of a volume of graded material greater than 800 cubic yards, whether contiguous or noncontiguous; and/or
- B. The total contiguous or noncontiguous surface area to be graded is greater than 20,000 square feet.

3. Fees:

Normal Use Permit planning fees shall apply in addition to associated direct costs accrued by the County for staff time related to plan review, site inspection, administration and coordination.

4. Exemptions:

The following categories of grading projects are exempt from this grading ordinance:

- A. Any project that obtains a Director's Use Permit.
- B. A project that grades a volume over 800 yd³ that obtains a Conditional Use Permit.
- C. Any function that requires a Director's or Conditional Use Permit.
- D. Grading done under the supervision of a County agency for which the Board of Supervisors is the controlling body, or a public agency governed by an elected Board of Directors.
- E. Excavation and placement of fill associated with the installation, maintenance, repair or replacement of facilities for the production, generation, storage, treatment, or transmission of water, wastewater (including recycled water), or electrical energy by a utility company regulated by the California Public Utilities Commission, a public agency governed by an elected Board of Directors, an agency of the State of California or an agency of the United States of America.
- F. Trenching incidental to the construction or installation of county-approved underground pipelines, septic tank disposal fields, conduits, electrical or communication facilities, and drilling or excavation for approved wells or post holes.
- G. Grading in accordance with plans and specifications incorporated into an approved surface mining permit, timber harvest plan, reclamation plan, solid waste facilities permit
- H. Any activity covered under the California Environmental Quality Act and/or subject to Regulations adopted by the State Board of Forestry and the California Forest Practice Rules, except for 3 acre conversions.
- I. Grading involving the ongoing operations of a vested mining facility that is conducted in conformance with an approved reclamation plan and approved by Use Permit
- J. Maintenance of existing firebreaks and roads to keep the firebreak or road substantially in its original condition.
- K. Declared emergency work conducted, planned and/or overseen by local, state or federal agencies, included after incident mitigation placement.
- L. Access roads and building pads consistent with conditions of approval for subdivision or parcel map approved by Public Works Department, Planning Department or Department of Transportation.
- M. Grading of existing access roads, private roads and driveways.
- N. Fuel reduction and fire protection activities that do not grade more than two (2) foot either above or below existing ground or substantially change the natural contour of the land.
- O. Agricultural grading:
 - a. That does not grade more than two (2) foot either above or below existing ground or substantially change the natural contour of the land, or that
 - b. Uses "best management practices," where applicable, as approved/recommended by a Construction General Permit Qualified Stormwater Pollution Prevention Plan (SWPPP) Qualified SWPPP Developer (QSD).

Exempt projects shall comply with all other requirements of CEQA and all other relevant codes and ordinances.

5. Time Limits on Ordinance:

Within 30 days of receipt of a grading DUP or CUP permit application by the county, the county

will approve, deny or request more information from an applicant. If the application is not approved, denied or more information is not requested the application will be deemed complete and project approval will be granted.

6. Validity:

Grading projects exempt from this ordinance, or the approval of plans and specifications through other departmental permitting processes, shall not be construed as an approval of any violation of the provisions or of any other applicable County, State or Federal law, ordinance, rule or regulation. If a permit is issued by the County due to inaccurate plans and informational materials submitted by the applicant, the Director may revoke the permit at any time.

7. Appeals:

Final decisions made by the Director, or by any applicable County commission, appeals board or decision-maker, pursuant to this Ordinance may be appealed to the Board of Supervisors within ten (10) working days of the date of such decision. The appeal to the Board shall be made in writing and shall list the specific grounds for the appeal.

8. Hazards:

Grading activities that cause or have the potential to result in the following conditions, as determined by the Director, are prohibited.

- a. The creation of a hazard to public health and safety.
- b. A threat to the stability or use of adjacent property.
- c. Damage to public or private utilities.
- d. Damage to a public or private roadway or other transportation facility.
- e. Damage to, or obstruction of, watercourses or drainage facilities.
- f. Observable degradation of water quality of any water body.
- g. Damage to existing septic systems and water supply wells.
- h. Damage to survey markers, monuments, benchmarks or geodetic marks.

If one or more of the above conditions exist or have the potential to occur, it is the responsibility of the landowner to immediately cease all grading activities and notify the Director. The landowner shall pursue corrective actions per Section III.4 to eliminate the hazard. The Director may require the submission of plans and engineering or geological reports that include professional design recommendations. The Director may require design modifications to address the identified issues. In the case of an emergency condition, the Director may authorize immediate work to occur pursuant to Section I.9.

9. Emergency work:

Grading activities to protect life or property, or to implement necessary erosion control measures, may be initiated prior to obtaining approval when a situation exists that requires immediate action. Only the volume of grading necessary to abate an imminent hazard may be performed prior to obtaining a Director Use permit or permit required as conditions necessitate. The person performing such emergency work shall notify the Director and provide photographic evidence of the scope and necessity of the work as soon as possible after the onset of the emergency situation. The person performing the emergency work or the landowner shall apply for a permit, including

photographic evidence of the work already completed, within ten (10) calendar days after the commencement of grading. The Director may order work to be stopped or restricted in scope based upon the nature of the emergency.

SECTION II. Administrative Authority

1. Administrative Authority:

This ordinance shall be implemented and enforced by the County agency or agencies granted administrative and enforcement authority by the Board of Supervisors of the County of Trinity. For purposes of this ordinance, the term "Director" is interchangeably used to refer to the County Administrative Officers, Director of Transportation or Planning Director as having administrative and enforcement authority. The "Director" may authorize persons to implement and enforce the provisions of this ordinance.

SECTION III. Enforcement

1. Violations of this Ordinance.

Any person who violates any provisions of this Code, as amended from time to time, or any person who owns property upon which a violation exists, irrespective of whether that person caused the violation, shall be subject to an administrative fine, land use restriction as determined by the Director or penalty up to the maximum amounts set forth in this Ordinance.

Prior to commencing any action under this Ordinance, the Director shall attempt to ascertain whether the violation of the County Code are being carried on substantially or exclusively by individuals who rent, lease, or otherwise have no ownership interest on the property on which the violation is occurring. If the Director determines that the violation is being caused by a renter, lessor, or other person who has no ownership interest in the property, the Director shall not commence proceedings under this Ordinance until the Director has attempted to contact the owner of the property and has provided the owner a reasonable period of time, not exceeding 10 days, in which to cure the violation or cause the violation to be cured. If the owner of the property does not respond within a reasonable time, or the owner cannot be found following the exercise of reasonable diligence to locate the owner, the Director may thereafter commence proceedings pursuant to this Ordinance against the owner.

2. Violation - Penalty.

A. Any person, firm or corporation, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of any of the provisions of this ordinance, shall be guilty of an infraction and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars per day. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed or permitted by such person, firm or corporation.

B. Further, and in addition to the above penalties, said person shall be civilly liable for

damages related to the grading activity and shall pay all costs reasonably incurred in causing the degradation activity to cease and in cleaning up or stabilizing grading materials.

- C. The Director may suspend or revoke any existing Public Works permit associated with a parcel for good cause related to violation of this Ordinance, subject to appeal to the Board of Supervisors. Except for erosion control facility installation and maintenance, no work shall be performed pending an appeal except as authorized by the Director.

Fines and penalties may be waived at the Director's discretion based on corrective remedies, plans or proposals per Section III. 4(A) and (b). Fines will continue until the Director determines that reasonable corrective action has been taken.

3. Nuisance - Remedies.

It is declared that any such grading activity as aforesaid which violates any provision of this Ordinance is a public nuisance and the county may cause proceedings to be brought to abate or otherwise remedy the nuisance.

Any person who conducts grading activities that cause the waters of the state in the County of Trinity to be degraded will be reported by the Public Works department to the responsible state agency(ies). The county Public Works department will assume the position of responsible agency for violations of this ordinance irrespective of the responsibilities of any state agency(ies) assuming authority to address the activity.

If the responsible state agency(ies) do not take appropriate action to stop the degradation activity the county will have the authority to call upon other County departments to assist in stopping the degradation activity and to issue abatement orders within the proper jurisdiction of the County.

4. Corrective Work

A. Abatement of unlawfully created conditions:

i. Entry onto property:

1. Pursuant to Section III.5, the Director may order County workers or contractors to immediately enter private property to conduct work necessary to abate hazards to public health and safety such as:
 - a. The alteration of drainage patterns that has caused, or has the potential to cause, flooding of or siltation upon any adjacent, adjoining or downstream property as determined by the Director.
 - b. Grading activities that cause or have the potential to cause erosion, sedimentation or landslides that could affect offsite property, sensitive environmental resources or public safety as determined by the Director.
 - c. Other emergency conditions that threaten public or private

property.

2. The County may enter the property for the purpose of inspection as allowed by law.
- ii. The County can abate the property by means of Trinity County Code section 8.64, and all other legal method.
- iii. Cost recovery: Whenever the County expends any funds or takes any action, the County shall bill the person, firm or corporation, landowner, lessee or licensee for the costs indicated herein for any and all cost associated with the violation and mitigation. Pursuant to the requirements of Government Code Section 54988, the costs shall become a lien on the property, or shall be recoverable from the property owner by other legal means.

B. Stop work orders:

- i. Required actions by violator: Upon receipt of such stop work notice, the person performing the work shall comply with all of the following:
 1. Stop work immediately except as allowed under Section I.4.
 2. Within twenty-four (24) hours, provide the Director with a list of remedies which can be immediately undertaken to bring the work into compliance with this Ordinance. The Director shall review the proposed remedies for conformance with this Ordinance, the Trinity County General Plan and other applicable laws and regulations;
 3. Within twenty-four (24) hours after acceptance of the proposed remedies by the Director, implement the remedies accepted by the Director as is necessary to bring the work into compliance with this Ordinance. All costs associated with the remedial work are the responsibility of the violator.
- ii. Engineering work: Necessary engineering work required to identify and define the proper course of action, as determined by the Public Works department, shall be funded by the violator at no cost to the County.

C. Noncompliance notification by licensed professional:

Any Geotechnical Engineer, Certified Engineering Geologist or Civil Engineer retained to monitor construction shall immediately notify the Director if it is observed that the work is not being performed substantially in accordance with the approved plans and specifications. The licensed professional shall make recommendations for corrective measures that would abate the violation. Any necessary modifications of project plans shall be submitted to the Director for review and approval.

5. Liability:

Neither issuance of a permit under the provisions nor compliance with the provisions hereof or with any conditions created in a permit issued hereunder shall relieve any person from responsibility for damage to any person or property or impose any liability against the county for damage to any person or property.

6. Nonexclusive remedies:

The remedies provided in this Chapter are not exclusive, and are in addition to any other remedy or penalty provided by law.

SECTION IV. CEQA Exemption

The County finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15378(b)(2) (ordinance is a continuing administrative activity), 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment because the Ordinance prohibits changes in the environment pending the contemplated review of the Zoning Ordinance and/or amendments applicable to construction or agricultural activities), and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement). Finally, this ordinance adoption is not subject to CEQA under the “general rule” because it can be seen with certainty that there is no possibility the proposed adoption of an ordinance prohibiting new activities may have a significant effect on the environment.

SECTION V. Severability

The Board of Supervisors declares that it would have adopted this ordinance and each Section, subsection, sentence, clause, phrase or portion of it, irrespective of the fact that any one or more Sections, subsections, clauses, phrases or portions of it be declared invalid or unconstitutional. If for any reason any portion of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall remain valid and enforceable.

SECTION VI: Adoption

This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Trinity Journal, a newspaper of general circulation published in the County of Trinity State of California.

Introduced at a regular meeting of the Board of Supervisors held on the 2nd day of April, 2019, and passed and enacted this 16th day of April, 2019 by the Board of Supervisors of the County of Trinity by motion, second (Fenley/Groves), and the following vote:

AYES: Supervisors Groves, Fenley, Chadwick and Morris
NOES: None
ABSENT: Supervisor Brown
ABSTAIN: None
RECUSE: None



JUDY MORRIS, CHAIRMAN
Board of Supervisors
County of Trinity
State of California

ATTEST:

RICHARD KUHNS, Psy.D
Clerk of the Board of Supervisors

By: 
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:


Margaret E. Long, County Counsel