

EL DORADO COUNTY GRAND JURY 2013-2014

GRADING OF BOULDER BUMP ROAD

Case Number GJ-13/14-15

REASON FOR REPORT

An agent representing a group of homeowners repaired a road easement on another land owner's property. The group of homeowners traversed the road to access their respective properties. Grading to repair the road began without an El Dorado County Grading Permit. The easement property owner complained to the County Department of Transportation and a stop work order was issued. The homeowners' agent applied for and obtained an improperly issued grading permit. Work resumed and a final inspection was eventually done.

The easement land owner complained the road was improperly repaired, widened, his private property was damaged, Maidu Indian protected lands damaged, his privately owned road materials were used without permission or compensation and improper materials were used during the repair that were not certified to be asbestos content compliant.

BACKGROUND

The homeowner's group agent hired a grading contractor to conduct repairs, replace existing culverts and install new culverts. The contractor started grading without a permit. The County Department of Transportation issued a stop work order after the easement property owner complained. The homeowner's group agent then secured a permit from the County Development Services Department for grading and culverts. The grading and culvert work resumed.

After the grading permit was issued the County Air Quality Management District contacted the agent informing him that an approved Asbestos Dust Mitigation Plan was also needed. The plan was submitted and approved.

The County Development Services Department performed only rough grading, erosion control and final inspections. There was no inspection of culverts. The County Air Quality Management District did not perform any inspections telling the Grand Jury that it was not necessary after Development Services had signed off their final inspection.

The newly graded roadway washed out onto Salmon Falls Road, a County road, sometime after grading was complete. The complainant reported that it was cleaned up by the County Department of Transportation (DOT) and provided photographic evidence of DOT maintenance vehicles at the site of the washout.

ACTIONS

- The complainant was interviewed.
- Representatives of the County Building Department, Department of Transportation and Air Quality Management District were interviewed.
- Files from Development Services and Air Quality Management relating to the property, permitting and inspection of the grading work were reviewed.
- The County FINAL Revised Grading Design Manual, 2-5-07, Adopted by the Board of Supervisors on 3-13-07 (Resolution #047-2007) was reviewed.
- The County FINAL Revised Grading Ordinance, 2-5-07 (Ordinance #4716) Revised 8-10-10 (Ordinance #4949) was reviewed.
- Board of Supervisors Resolution 048-2007, Implementation of the County Grading, Erosion and Sediment Control Ordinance, dated 2/27/2007, was reviewed.

DISCUSSION

Board of Supervisor's Resolution 048-2007 designates administrative authority for implementation of the County Grading, Erosion and Sediment Control Ordinance (Chapter 15.14 of the County Code) among the Departments of Transportation, Agriculture and Development Services. The Development Services Department has administrative authority over and responsibility for rural access roads under the General Grading provision; Boulder Bump Road was determined to be a rural access road.

The Development Services permit application and documents for this project were requested by and supplied to the Grand Jury by the County Building Department. They are severely lacking information and plans necessary to 1) properly issue the grading permit as defined in the County FINAL Revised Grading Design Manual, 2-5-07, Section D, and 2) subsequently inspect that the work comported with the plans and county regulations. There was no parcel map, no site plan showing the easement, drainage or location of new and replaced culverts. There was no grading cross section. There was no evidence that the easement did indeed exist, no evidence of a road maintenance agreement among the users of the easement and no evidence that the permit applicant was legally entitled to perform the proposed work.

The approved Asbestos Mitigation Plan and documents requested by and supplied to the Grand Jury by the County Air Quality Management District appear complete. They include a County Surveyor's section map showing the existing road (Boulder Bump) and a topographic site plan showing the easement/roadway, drainage, new culvert locations, culvert replacements and a typical road section that denotes "match existing roadway width."

The grading permit was issued to the homeowner's agent for the parcel he owned. The work was done on the easement property; **a different parcel**. Testimony from Building Department personnel stated that a permit issued to one parcel cannot be used to perform work on another parcel. The approved Asbestos Mitigation Plan was also submitted by and approved to the agent of the homeowner's group but using the easement parcel number where the work was actually done.

It appears that the County Development Services Department was completely unaware of the Air Quality Management Asbestos Mitigation Plan. Both departments enter their data into the County Land Management Information System (LMIS) and both have access to data entered by the other. It also appears that Air Quality was automatically notified of the new Development Services permit, while Development Services was not automatically notified of the Air Quality Plan.

The County DOT was unable to confirm that they cleaned up a washout on Salmon Falls Road saying that they did not keep records or logs of those operations.

FINDINGS

1. Non-paved private roads are notoriously deficient in meeting any standard. Situations like described here are opportunities to bring them to present day standards through a permitting process that embraces those standards.
2. The lack of information and plans by both the permit applicant and the Planning department make it impossible to validate the complainant's claim. However, the Grand Jury does find that the Planning and Building Departments were deficient in their analysis of the scope of work for the project, acquisition and inspection of documents germane to the permit and subsequent inspections.
3. There was no evidence that the Development Services Department verified the existence of the easement and the permit applicant's legal right to grade it at all, in any manner. Coupled with the improper parcel numbers referenced above the permit should not have been issued.
4. The permit was for roadway repairs and culvert installation, yet there was no inspection of culverts, but merely an inspection of rough grading, erosion control and a final inspection. Further, the Grand Jury finds that Development Services did not properly administer the County Grading, Erosion and Sediment Control Ordinance, and should have neither issued the permit nor inspected the work.
5. The El Dorado County Grading, Erosion, and Sediment Control Ordinance is Chapter 15.14 of the County Code. It is the law of El Dorado County. Public officials failed to follow the provisions of the Grading Ordinance; they failed to follow the law.
6. There was insufficient communication and interaction between the Development Services and Air Quality Management departments.
7. DOT was unable to recover the cost of cleaning up the washout. It did not have any record that it was actually done.
8. All County permit fees paid were later refunded by Board of Supervisors agenda item 11-1161 without explanation.
9. The El Dorado County Grading Ordinance may put undue burden on simple maintenance of rural roads when strict adherence to the Ordinance is practiced.

RECOMMENDATIONS

1. The Grand Jury recommends that the administrative authority over the issuance of grading permits in Resolution 048-2007 be revised. The investigation of this complaint indicates that Development Services was not capable of properly administering the Grading, Erosion and Sediment Ordinance in this case. The Administration of the Grading Ordinance defined by Resolution 048-2007 should be revised to transfer administration under the headings Encroachments and General Grading from Development Services to the Department of Transportation. The Administration defined in heading Residential Grading should remain with Development Services.
2. The Planning and Building Departments should exercise increased due diligence in the processing of permit applications, analysis of the project and acquisition and inspection of documents.
3. The LMIS system should be improved to provide automatic notifications of one department's activity that affect another department's actions.
4. The County Grading Policy should be evaluated and possibly changed to provide a well-defined, yet less onerous and more permissive permitting process for simple maintenance of rural roads.

RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury, presiding judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This Report has been provided to the El Dorado County Board of Supervisors, Development Services Department and Department of Transportation.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at:

courtadmin@eldoradocourt.org

ATTACHMENTS [Adobe Reader is required to view attachments]

El Dorado County Board of Supervisors Agenda Item 11-1161

El Dorado County Grading, Erosion and Sediment Control Ordinance (Chapter 15.14)

El Dorado County Grading Design Manual