

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.

Response: Respondent disagrees with finding. “Non-paved private roads” by definition do not meet any County road standards. The County does not have the authority to require private roads to be improved to County standards. Roads are typically improved as required through the subdivision process authorized by the State Subdivision Map Act, County Ordinance Title 16, and the County Subdivision Design Improvement Standards Manual. In this particular situation, the parcels are 40 acres and larger and were not required to improve road at the time of the parcel creation. Title 16 Section 16.44.120.E states that creation of 40 acre parcels are not required to improve roads to County standards. The parcels along Boulder Bump Road are 40 acre parcels.

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.

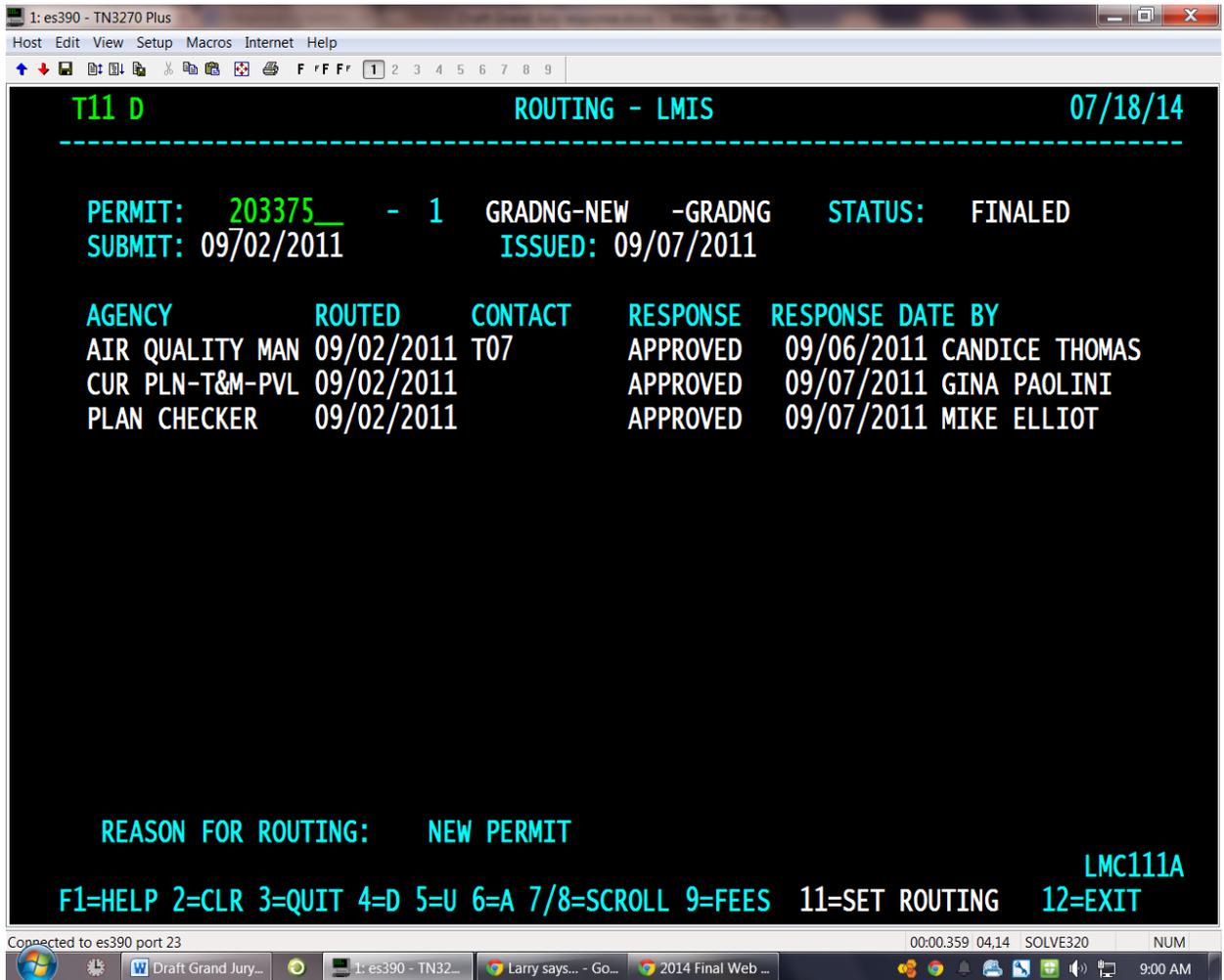
Response: Respondent disagrees with finding. A grading permit (203375) was issued after most construction had occurred and an inspector had visited the construction site in response to a citizen complaint. Plans were reviewed and meetings held between the applicant and County staff to address permit requirements. The grading plans were prepared and stamped by a registered professional civil engineer and approved by the County's civil engineer. The County engineer required hydrology calculations for sizing the culverts. A Senior Planner familiar with the property because of the processing of a tentative parcel map in 2007 also approved the permit, specifically reviewing potential impacts to Native American resources and determined the grading would not impact those resources. There was no lack of analysis for this permit.

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.

Response: Respondent disagrees with the finding. The County does use all available documents to verify accuracy of grading plans, including Records of Survey, Parcel Maps, and recorded Deeds. The County issues permits based on consideration of that information and the information provided on the grading plans prepared by a registered professional civil engineer. Property owner disputes regarding the validity, use, or location of easements is a civil matter.

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.

Response: Respondent disagrees with finding. Development Services received an application and collected fees on September 2, 2011, reviewed the application and plans (including culverts), and issued the permit on September 7, 2011, including the Air Quality Management District. (Below is a screen shot of the approvals from AQMD, Planning, and Building staff:)



Inspections occurred on September 9, 2011 and October 11 2011. Permit was finalized on October 11, 2011. Final inspection included review of all improvements shown on the plans, including road improvements, two culverts, and erosion control measures

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.

Response: Respondent disagrees with the finding. Grading permit 203375 was applied for, reviewed, approved, inspected, and finalized as noted in the County files. The finding does not specify what portion of the law was not followed.

6. There was insufficient communication and interaction between the Development Services and Air Quality Management departments.

Response: Respondent disagrees with the finding. Grading permit 203375 was applied for, reviewed, approved, inspected and finalized. This included AQMD review on September 6, 2011, one day before the grading permit was issued and four days

after the permit was submitted. In fact, the permit was submitted on Friday September 2. September 3 and 4 were weekend days and September 5 was a holiday. The permit was effectively processed in three working days with AQMD responding within two working days.

7. DOT was unable to recover the cost of cleaning up the washout. It did not have any record that it was actually done.

Response: Respondent agrees with the finding.

8. All County permit fees were later refunded by the Board of Supervisors agenda item 11-161 without explanation.

Response: Respondent agrees with the finding.

9. The El Dorado County Grading Ordinance may put undue burden on simple maintenance on rural roads when strict adherence to the Ordinance is practiced.

Response: Respondent disagrees in part with this finding. The Grading Ordinance allows maintenance of roads without a permit. Section 15.14.140.J of the Grading Ordinance exempts from the Grading Permit process: "Maintenance of existing firebreaks and roads to keep the firebreak or road substantially in its original condition." A permit was required in the Boulder Bump Road area because the building inspector visited the site determined that the road was being improved and not simply being maintained "substantially in its original condition." In addition, two culverts were being added to the road, which is not exempt from the Grading Ordinance.

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.

Response: The recommendation will not be implemented because it is not warranted. It may be considered in the future when the County reviews updates and amendments to Title 15, including the Grading Ordinance in FY14/15. Note that the Department of Transportation and Development Services Department have both been

absorbed into the Community Development Agency. Coordination of Grading Ordinance permitting and review now occurs within a single organization.

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.

Response: The recommendation will be implemented.

3. The LMIS system should be improved to provide automatic notifications of one department's activity that affect another department's actions.

Response: The recommendation will not be implemented because it is not warranted. The Grand Jury investigation report did not identify that the grading permit was issued appropriately, in three working days, based on three approvals on the T11 screen in LMIS: AQMD, Planning, and Building. The AQMD approval on T11 indicates that the permit may be issued by Development Services.

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.

Response: The recommendation will not be implemented because it is not warranted. The Grand Jury findings do not support changing the Grading Ordinance to be "less onerous and more permissive permitting process for simple maintenance of rural roads" because the Grading Ordinance already exempts maintenance of roads (Section 15.14.140.J.)