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COUNTY OF SANTA BARBARA

July 12, 2016

Honorable James Herman
Presiding Judge
Santa Barbara Superior Court
County Courthouse
1100 Anacapa Street
Santa Barbara CA 93101

Reference: Response to Santa Barbara Civil Grand Jury report titled, “*Santa Barbara County Grading Code: Where the Dozer Meets the Dirt – Poorly Defined and Unevenly Enforced*”, (Published May 5, 2016, Grand Jury Website).

Judge Herman:

Please find attached the Santa Barbara County Board of Supervisors (Board) response to the above referenced Civil Grand Jury Report. As directed by the Grand Jury, all responses are provided in accordance with Section 933.05 of the California Penal Code.

The Board appreciates the work conducted by the Planning and Development Department for their assistance in responding to this matter.

Sincerely,

Peter Adam, Chair
Santa Barbara County Board of Supervisors

CC: Santa Barbara County Board of Supervisors
Maria Millsaps, Foreperson, 2015-16 Santa Barbara Civil Grand Jury

Attachment A

Santa Barbara County Board of Supervisors
Response to the Santa Barbara County Grand Jury 2015-2016 Report
**“Santa Barbara County Grading Code: Where the Dozer Meets the Dirt – Poorly
Defined and Unevenly Enforced”**

Finding 1

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

The Board partially disagrees with the finding.

The Grand Jury’s report states that the lack of a timeframe for the <50 cubic yard permit exemption in the Grading Ordinance may allow for different interpretations and possibly inconsistent application of the code. Planning and Development (P&D) grading inspectors use the Grading Code and any approved land use or coastal development permits in the evaluation and enforcement of grading violations. P&D’s grading unit has a single supervisor for both north and south county inspectors. Substantial effort is made to have consistent evaluation and interpretation of projects in the field and in the application of the Grading Code. Grading staff have frequent communication regarding projects to ensure consistency when encountering unusual cases. While Planning and Development has not observed significant inconsistencies in the application of the < 50 cubic yard permit exemption, the department agrees that the ordinance language can be clarified to provide more specificity to the public and staff.

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.

The recommendation has not been implemented but will be implemented in the future.

Planning and Development will propose and bring amendments to the Board of Supervisors to the Grading Code regarding grading permit exemptions in prior to the close of FY 2016-17.

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.

The Board partially disagrees with the finding.

The Planning and Development Department’s code enforcement for Grading, Building and Zoning is complaint driven at the direction of the Board of Supervisors and the vast majority of code enforcement cases are initiated through a complaint received from a member of the public. However, there are

circumstances where enforcement actions are taken in the absence of a public complaint as described below.

The P&D Code Enforcement Manual, page 8, states that complaints may be received from a number of sources, including internal referrals. The manual also states that no anonymous complaints are accepted unless they involve an imminent threat to public safety or a destruction of habitat or sensitive resources. In the past, the Department has acted on code violations in the absence of a complainant where imminent threats were present or the potential of major environmental impact was observed

Complaints for both Zoning and Building violations may be received from a number of sources:

- Enforcement Hotline – (805) 568-3358
- Public Information Counters
- E-mail
- Referrals from other Departments/agencies
- Referrals from internal staff

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.

The recommendation will not be implemented because it is not warranted or is not reasonable.

As noted above, existing Department procedures already provide for code enforcement action in lieu of a complainant and it is not warranted or reasonable for the Department to investigate every potentially questionable grading activity observed.

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.

The Board disagrees with the finding.

An approved Land Use or Coastal Development permit is required prior to the issuance of a grading permit for earth work greater than 50 cubic yards. Land Use Permit and Coastal Development permits are issued by planning division staff not grading or building division staff.

Chapter 14-13, below, specifies the time limits for grading permits. Grading permits expire in one year if work is not commenced. Work performed under a grading permit may not be suspended for more than 180 days.

- Sec. 14-13. - Time limits of permits.

(a)

The permittee shall fully perform and complete all of the work required to be done pursuant to the permit, and any applicable land use permit. Every permit issued by the building official under the provisions of this chapter shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one year from the date of issuance of such permit. If the work authorized by such permit is started and then the work is suspended or abandoned for a period of one hundred eighty days or longer, the work shall not be recommended until a new permit is obtained by paying all applicable fees currently in effect, provided that no revisions have been made to the original plans and specifications for such work and provided that the suspension or abandonment of the work has not exceeded one year. If the suspension or abandonment of the work has exceeded one year, a full review of the project and a new permit shall be required.

(b)

Applications for which no permit is issued within one year following the date of application shall expire by limitation and plans and other data submitted for review may be returned to the applicant or destroyed by the building official. Upon showing that circumstances beyond the control of the applicant have prevented action from being taken, the building official may grant an extension not to exceed one hundred eighty days. Additional extension requests may be granted at the building officials discretion, but at no time will an extension be granted beyond the expiration date of the land use permit. In order to renew an application after expiration, the applicant shall resubmit plans and pay a new submittal fee.

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.

The recommendation will not be implemented because it is not warranted or is not reasonable.

Chapter 14-13 does specify time limits for the issuance and commencement of a grading permit. Work must begin within one year of permit issuance and work may not be suspended for more than 180 days.

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.

The Board partially disagrees with the finding.

The Grading Code does not specify how frequent the exemption of < 50 cubic yards may be utilized for a given property; however, the Planning and Development Department does not interpret the Grading Code to allow for grading in successive 49.9 cubic yard increments in order to achieve a large grading project. It has been the practice of Planning and Development grading and public counter staff to require permits for grading projects that include grading as a whole that exceeds 50 cubic yards.

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.

The recommendation has not been implemented, but will be implemented in the future.

Planning and Development will propose and bring amendments to the Board of Supervisors to the Grading Code regarding grading permit exemptions in prior to the close of FY 2016-17.

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.

The Board agrees with the finding.

The Grand Jury report correctly states that Grading Code does not address soil compaction as factor for computation of grading volume. Natural soil density varies due to composition and location. Soil can be mechanically compacted with machinery in preparation for development of a roadway, foundation, etc.

The Grand Jury's report states that the Grading Code does not address compacted vs uncompacted earth. The report does not explore how soil compaction would change the number of enforcement actions or impact grading permits. Since 2013, the department has received 130 complaints for alleged violations of Chapter 14, Grading. Of the 130 complaints received, only five (5) were near the 50 cubic yard threshold and could have been affected by mechanical compaction. In the most favorable scenario, where existing soil is very loosely compressed, maximum compaction of the soil would allow approximately 12.5 additional cubic yards. Given our experience with reported violations, the level of soil compaction whether natural or mechanically processed, would have a very minor change to the number of projects that would exceed or fall below the 50 cubic yard threshold.

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.

The recommendation has not been implemented, but will be implemented in the future.

Planning and Development will propose and bring amendments to the Board of Supervisors to the Grading Code regarding grading permit exemptions prior to the close of FY 2016-17. This amendment will exclude the degree of earth compaction as a criterion for calculating the < 50 cubic yard exemption. This change will have a minor effect on the total yardage of exempt grading.

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.

The Board partially disagrees with the finding.

The Board agrees that the County LUDC does allow permit revisions without notice or review by adjacent property owners. However, the Board disagrees that multiple permit revisions can incrementally and substantially expand the scope of the permit. The minor amendment criteria prevent incremental, substantial expansions to the scope of the permit. These criteria include:

- 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).

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.

The recommendation will not be implemented because it is not warranted or is not reasonable.

Requirements in the Land Use Development Code listed above provide sufficient protections to adjacent property owners.

Finding 7

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

The Board disagrees with the finding.

Slope restrictions referenced in the Grand Jury's report are restrictions on the issuance of planning permits that would allow development on steep slopes. The report references hillside and water protection policies from the Goleta, Eastern Goleta, Montecito and Santa Ynez community plans. These documents are developed to address community desires and the unique characteristics of each community. Community Plans express unique local conditions and variations in standards are expected.

Grading permits implement the scope of grading allowed where a planning permit has been issued that authorizes development. The definition of slope in the grading ordinance is distinct from steep slope restrictions referenced in community plans. Slope is defined in Chapter 14-7 below. Calculation of slope and the application of the grading code are independent of Community Plan requirements.

Slope: An inclined ground surface. The inclination of which is expressed as a ratio of horizontal distance to vertical distance, as in two to one (2:1), meaning a horizontal distance of two feet to one foot vertical.

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.

The recommendation will not be implemented because it is not warranted or is not reasonable.

There is no need to establish the recommended policies because the differences in language of Community Plans and the Grading Code are not in conflict since they are used for different purposes and at different points of the permit process.