

WHO DROPPED THE BERM?

SUMMARY

Late in 2002, a country club decided to build the remaining 9 holes of their golf course on City land as required by their lease with the City of San Diego. A grading plan and accompanying Engineering Permit were signed on April 22, 2003. Work began almost immediately. Within a few days, City inspectors observed and reported that large amounts of fill were being imported to the site. This fill was used to construct a 5 to 6-foot high berm along the southern edge of the golf course. The approved grading plan and Engineering Permit did not authorize any import of fill to the site. Nothing was done by the City to stop the activity for about six months. A stop work order was issued after the Development Services Department received a complaint. Negotiations between the City and the country club resulted in modest changes to the grading that did not require the removal of any of the imported material. As of the date of this report, the City has not granted final approval of the project. Significant deficiencies in City procedures and project control were noted by the Grand Jury.

PURPOSE OF THE STUDY

The Grand Jury undertook this investigation in order to:

- Understand the development process followed in the approval of the 9-hole extension to an existing 18-hole golf course on City land
- Examine the level of oversight to the process and its effectiveness as exercised by the three major departments responsible for development within the City of San Diego.

PROCEDURES EMPLOYED

The Grand Jury:

- Examined several agreements between the City and the original developer of the golf course
- Obtained and reviewed plans for the course extension prepared by the country club and approved by the Development Services Department (DSD)
- Interviewed representatives from DSD
- Interviewed a representative from the Neighborhood Code Compliance Department (NCCD)
- Interviewed representatives from the Engineering and Capital Projects Department (E&CP)

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- Interviewed a representative from the country club
- Members made several inspection visits to the site.

DISCUSSION

In 1983, the original developer and the City of San Diego entered into an agreement for the building of a 27-hole golf course, clubhouse and associated facilities. The first 18 holes of the golf course, the associated clubhouse, and other facilities were built immediately. The lease agreement with the City required the last 9 holes to be built before the end of 2008. Since a separate development agreement for this work was due to expire on December 31, 2003, the club decided in 2002 to construct the remaining 9-holes.

A DSD employee, acting as a Deputy City Engineer, on April 22, 2003, approved the grading plans for the project. At the same time, an Engineering Permit was issued. The required fees were deposited and the development bond posted. A condition of the permit was that all grading would comply with the approved grading plans. The plans clearly state that the amount of excavation and embankment would be equal, specifically, 380,000 cubic yards. This condition obviously implied that there was no necessity or expectation for the import or removal of any soil to or from the site.

Early in May 2003, the import of fill to the site was noted. The fill was used to construct a 5 to 6-ft high berm along a road on the southern boundary of the course. The resulting berm completely blocked the view of the river valley from the road. Two city inspectors from E&CP repeatedly noted and reported that approximately 3000 cubic yards of fill were being imported each day. The management of E&CP did not act on the reports and did not forward them to the DSD employee responsible for the project.

After the work had been underway for many months and just before its completion, NCCD received a complaint to investigate the situation. An inspector visited the site and determined that the work was done under an “open permit”. In the case of an “open permit”, NCCD could take no action because oversight rests with the department that originally issued the permit. The complainant asked DSD if the berm was in conformance with the approved project plans. Investigation by DSD led to a stop-work order.

Negotiations between the country club and the DSD engineer resulted in a tentative agreement to lower the berm by redistributing the upper part of it into the valley. This agreement did not require removal of any of the fill imported in violation of the original approvals and permits granted by the City.

The Grand Jury believes in this case that the City departments involved displayed no sense of urgency or concern in dealing with a developer who violated their obligations under City ordinances and permits.

FACTS AND FINDINGS

Facts

- The country club had a right and a duty to complete a 27-hole golf course on City owned land before the end of 2008.
- The country club had an opportunity to complete the 27-hole golf course under rules and regulations in force in 1983, if the work was completed before December 31, 2003.
- A DSD employee acting, as Deputy City Engineer, approved the grading plans prepared by country club for the 9-hole extension on April 22, 2003.
- An Engineering Permit was issued the same day. The permit states that the work to be done shall conform to the approved grading plans.
- The drawings do not show any indication of a berm along the southern boundary of the course, nor does the Environmental Impact Report for the development evaluate the impact of such a berm.
- The grading plans clearly state in the middle of the first page that:

“TOTAL GRADING QUANTITY

EXCAVATION 380,000 C.Y.

EMBANKMENT 380,000 C.Y.”

There is no provision for the import of fill.

- Work began a week after the plans and permit were signed, and on May 5, 2003 an E&CP inspector first noted that fill was being imported.
- Numerous subsequent reports state that approximately 3000 cubic yards, or more, were being imported each day.
- There is no evidence that E&CP took any action based on the inspectors’ reports.
- There is no evidence that E&CP provided the inspection reports to DSD.
- This importation of soil continued until a Stop Work Order was issued on October 29, 2003.
- The berm was over 0.8 miles long, and its height was, at least, 5 to 6 feet above the level of the adjacent roadway.

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- The remedy approved by the Deputy City Engineer required country club to grade the upper part of the berm into the valley. There was no request to remove any of the imported fill.

Findings

- Actions by the E&CP, DSD and NCCD regarding the berm may not have been in the best interests of the City.
- The City Engineer who heads E&CP deputized a member of DSD to act as City Engineer for this project, but he did not assure that inspection reports for the project were given to this Deputy City Engineer. The authority to make decisions for the City was delegated, but the responsibility and ability to monitor the project was not.
- When a City Department receives a complaint concerning an activity under the oversight of another City Department, it does not generally forward the complaint to that Department or contact the complainant to explain the situation.

RECOMMENDATIONS

The Grand Jury recommends that the San Diego City Council:

- 04-17-1** Establish policies that will ensure that City departments monitor and enforce development agreements between the City and applicants.
- 04-17-2** Assure when the City Engineer delegates authority to an employee in another Department, he also assures that the employee receives all information and reports needed to properly enforce any issues that may arise.
- 04-17-3** Establish uniform departmental policies regarding the handling of complaints. If the original complaint goes to an incorrect department, the policy should specify how the complaint should be handled.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933 (c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b),(c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required by the date indicated:

RESPONDING AGENCY	RECOMMENDATIONS	DATE
San Diego City Council	04-17-1 through 04-17-3	10/04/04

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