

INTER-OFFICE MEMORANDUM
DEPARTMENT OF PUBLIC WORKS

DATE: February 9, 2004

TO: Marin County Planning Commission

FROM: Eric Steger, Senior Civil Engineer

ITEM NO.: 4

RE: Appeal Hearing on St. Vincent's Catholic Youth Organization Notice of Violation and Stop Work notice for Excavation, Grading and Filling without a Grading Permit, One St. Vincent Drive, San Rafael, Assessor's Parcels 155-010-69 & 76

RECOMMENDATIONS:

The Department of Public Works (DPW) staff recommends that your Commission:

Adopt a resolution denying the appeal, and affirming DPW's Notice of Violation of Marin County Code Section 23.08, Excavation, Grading and Filling, and that all work filling an area immediately east of the railroad tracks on the subject property shall cease until a valid grading permit is issued by DPW.

SUMMARY:

On August 26, 2003 DPW conducted an inspection of an area immediately east of the railroad tracks on the Catholic Youth Organization (CYO) St. Vincent's property, and issued a Notice of Violation and stop work notice for excavating, grading and filling without a grading permit, in violation of Marin County Code, Chapter 23.08. Approximately 58,000 cubic yards of imported fill has been placed 12 feet deep over about 3 ¼ acres.

Pursuant to Marin County Code (MCC) section 23.08.140, on September 2, 2003 CYO filed a timely appeal of DPW's action. The basis of CYO's appeal are that: 1) CYO is entitled to maintain the grading exemption it has applied for many years to its property for agricultural uses pursuant to MCC section 23.08.030(2)(c), 2) the earthwork and grading is for agricultural purposes, and 3) the violation notice is arbitrary, capricious and improper given prior (agricultural) exemption letters from the County.

DPW staff reviewed the agricultural operation exemption with County Counsel and finds that the filling and grading work is not necessary for agricultural operations, but rather, is used for soil disposal from non-agricultural, off-site construction activities. Staff concurs that agricultural operations such as disking, plowing, planting, field leveling and other agricultural operations typically expected in the operation of a hay fields is exempt from needing a grading permit. However, questionable agricultural related activities require review by the County on a case-by-case basis, with the agricultural zoning a prerequisite for a grading exemption to be considered. Grading for future speculative agricultural buildings does not rise to the level of agricultural operations when there are existing buildings used for the purposes given, and when there is available land for such structures that would not result in significant grading nor removal of productive agricultural lands. For these reasons, DPW recommends that the Planning Commission deny the appeal, and affirm DPW's Notice of Violation and that the subject filling shall cease until a grading permit is issued by DPW.

BACKGROUND:

St Vincent's School for Boys was first established in 1855 and was operated as an orphanage for boys. As part of the needed self-sufficiency the school developed a comprehensive farming operation. The school is now a nonprofit, privately owned residential treatment center that includes an agricultural component.

In late June 2003, DPW began receiving complaints about heavy truck traffic and grading activities in an area used for hay fields east of the railroad tracks on CYO property (Attachment 2). DPW conducted a site inspection and sent a letter requesting additional information on the scope of work and the purpose of the filling operations (Attachment 3). Previously, in June 1994, DPW had reviewed an agricultural operation exemption (MCC 23.08.030) request and approved) the request from CYO to move approximately 20,000 cubic yards of soil from a water tank construction site on CYO property to this general area without requiring a grading permit (Attachment 4). At that time the proposed fill area was about 250 feet square (1.4 acres).

CYO responded by letter dated July 11, 2003, that the work was associated with construction of an agricultural staging area (Attachment 5). On August 11, 2003, DPW requested additional information whether the filling was in support of agricultural operations (Attachment 6). Soil and rock materials continued to be imported during this time with a total volume of approximately of 58,000 cubic yards of imported material at the site spread out over approximately 3.4 acres.

On August 26, 2003, without any further information from CYO and continued construction activity occurring, DPW conducted an inspection of the area east of the railroad tracks on the CYO St. Vincent's property and issued a Notice of Violation and stop work notice for excavating, grading and filling without a grading permit, in violation of Marin County Code Section 23.08 (Attachment 7, photos).

Pursuant to MCC section 23.08.140, on September 2, 2003, CYO filed a timely appeal of DPW's action (Attachment 8). DPW staff subsequently met with CYO and discussed information needed to further evaluate the agricultural operations exemption, to winterize the site, and to evaluate whether there were any environmental impacts. Through a series of submittals CYO provided topography, existing site conditions, an erosion and sediment control plan, a wetlands impact evaluation, a plan for future structures for the site, and ultimate limits of filling contemplated for the site (Attachment 9). The wetlands evaluation indicated that approximately 100 square feet of low quality wetlands were filled.

Community Development Agency (CDA) Information

The site is zoned A-2, Limited Agricultural, which allows agricultural accessory structures, subject to development standards contained in the County's Development Code, Title 22. Specifically, any accessory structure greater than 30 feet in height, as measured from the original grade (not from top of fill), requires a Variance Permit (see MCC Sections 22.08.040 (Table 2-2), 22.20.060.F) from CDA. Structures within 300 feet from a property line of an abutting parcel under separate ownership require Design Review (MCC Section 22.42.020 B.3) by CDA. CDA staff reviewed the information provided and determined that there are no CDA permits required at this time insofar as CYO has not submitted plans for the future agricultural structures.

BASIS AND ANALYSIS OF NOTICE OF VIOLATION AND APPEAL:

Background

Between the 1950's and the early 1970's the County's grading ordinance included a provision exempting grading on agricultural lands from a grading permit "provided no excavated material is removed from premises." The implication was that excavation was occurring on the property and that the cuts and fills were being balanced on site. In the early 1970's, apparently because of grading abuses on agriculturally zoned lands, the agricultural exemption was removed from the grading ordinance. The agriculture operation exemption was added back to the grading ordinance in its present form in the early 1980's (Attachment 10).

St. Vincent's Filling

DPW staff reviewed the agricultural operation exemption with County Counsel and finds that the filling and grading is not "necessary for agricultural operations", but rather, is used for soil disposal from non-agricultural, off-site construction activities. Information was provided by the contractor that most of the fill material is imported from off-site city and sanitary district construction work (Attachment 11). In addition, grading for future speculative agricultural buildings does not rise to the level of agricultural operations when there are existing buildings used for the purposes given, and when there is available land for such structures that would not require significant grading or removal of lands from productive agriculture.

In addition, County Counsel advised Mr. McNeil, counsel for the appellant, that the Public Works Director can use discretion when applying any exemption found in the grading ordinance pursuant to the note at the end of MCC 23.08.030 stating, ""(s)uch exemption may be denied by the director where, in his opinion, conditions exists which justify more extensive review under the provisions of this chapter." (Attachment 12).

Basis of Appeal

The basis of CYO's appeal are that: 1) CYO is entitled to maintain the grading exemption it has applied for many years in its property for agricultural uses pursuant to MCC section 23.08.030(2)(c), 2) the earthwork and grading is for agricultural purposes, and 3) the violation notice is arbitrary, capricious and improper given prior (agricultural) exemption letters from the County.

Staff concurs that agricultural operations such as disking, plowing, planting, field leveling and other agricultural operations typically expected in the operation of a hay fields is exempt from needing a grading permit. However, it is the County's position that the current activity is not exempt from a grading permit, and in any case, questionable agricultural related activities require review by the County on a case-by-case basis. In 1994, as a result of water tank construction by MMWD on the property, a specific request was made before the work done and specific approval, limiting filling to 20,000 cubic yards, was given. DPW has information from the contractor in 1994 that the material was actually transported off-site (Attachment 13), and the approval was not acted on. Whether or not the 1994 approval was correct, the current notice or violation is not arbitrary or capricious as the facts are substantially different and because no request was made prior to the work.

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this administrative decision to enforce the requirements of an entitlement or adopted standard is Categorically Exempt pursuant to Section 15321 of the California Environmental Quality Act (CEQA) Guidelines as a Class 21 Categorical Exemption.

A grading permit application submitted to continue the work would constitute a discretionary project that would be subject to environmental review pursuant to CEQA.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject properties.

CONCLUSION:

DPW staff recommends that your Commission conduct the hearing, review the record, and adopt a resolution denying the appeal, and affirming the Public Works Director's decision that the filling on CYO's property is in violation of Marin County Code Section 23.08, Excavation, Grading and Filling, and that all work filling an area immediately east of the railroad tracks on the subject property shall cease until a valid grading permit is issued by DPW.

StVincentPCLtr

cc: Steve Grant, CYO St. Vincent's Facilities Director
Mark J. Rice, attorney for CYO, McNeil, Silvera, Rice, Wiley & West
Alex Hinds, CDA
Pat Faulkner, County Counsel
Interested Parties List

Attachments:

- 1) Proposed Resolution recommending denial for the Catholic Youth Organization Appeal
- 2) St. Vincent's Site map
- 3) Department of Public Works letter, June 25, 2003
- 4) CSW Letter, May 19, 1994, and Public Service Agency letter, June 2, 1994
- 5) The Catholic Youth Organization letter, July 11, 2003
- 6) Department of Public Works letter, August 11, 2003
- 7) Notice of Violation 03-04, August 26, 2003, and two photos
- 8) Petition for Appeal, September 2, 2003
- 9) CSW Submittals, site plan and wet land evaluation, various dates
- 10) Marin County Code, Chapter 23.08 Excavating, Grading and Filling, Selected Sections
- 11) "Job Log" provided by job site contractor
- 12) County Counsel of Marin County letter, September 3, 2003
- 13) Ghilotti Construction Company letter, September 19, 1994

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

**A RESOLUTION DENYING THE CATHOLIC YOUTH ORGANIZATION
APPEAL AND AFFIRMING THE DEPARTMENT OF PUBLIC WORKS
GRADING NOTICE OF VIOLATION AND STOP WORK NOTICE**

1 ST. VINCENT'S DRIVE, SAN RAFAEL
ASSESSOR'S PARCELS 155-010-69 &76

SECTION I: FINDINGS

- I. WHEREAS the Department of Public Works staff conducted a series of inspections beginning in June 2003 in an area immediately east of the railroad tracks at 1 St. Vincent Drive, San Rafael, Assessor Parcels 155-010-69 & 76, on lands owned by the Catholic Youth Organization (CYO), and
- II. WHEREAS the Department of Public Works staff observed the importation, filling, compacting and grading of soil and rock with heavy construction equipment, and
- III. WHEREAS the Marin County Code, Chapter 23.08, Excavation, Grading and Filling, states that it is in the public interest, and is necessary for the promotion and protection of public safety, convenience, comfort, prosperity, general welfare and the county's natural resources to establish minimum requirements for grading, and
- IV. WHEREAS the Marin County Code section 23.08.025 (1) requires a permit for the artificial movement of over two hundred fifty cubic yards of earth, and
- V. WHEREAS the Department of Public Works staff estimates that 58,000 cubic yards of soil has been filled and graded at the site without a grading, filling, and excavation permit issued by the Department of Public Works, and
- VI. WHEREAS the Department of Public Works on August 26, 2003, issued a Notice of Violation and stop work notice to CYO for the aforementioned filling and grading, and
- VII. WHEREAS on September 2, 2003, pursuant to Marin County Code section 23.08.140, CYO filed a timely appeal of the decision to issue the Notice of Violation and stop work notice on the basis that: 1) CYO is entitled to maintain the grading exemption it has applied for many years in its property for agricultural uses pursuant to MCC section 23.08.030(2)(c), 2) the earthwork and grading is for agricultural purposes, and 3) the violation notice is arbitrary, capricious and improper given prior (agricultural) exemption letters from the County, and
- VIII. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on February 9, 2004, to consider the merits of the appeal and hear testimony in favor of, and in opposition to, the appeal, and

- IX. WHEREAS, the Director of the Department of Public Works has determined that the filling and grading is not necessary for agricultural operators and is used for off site construction material disposal, and in the director's opinion such activity requires more extensive review and a grading permit, and
- X. WHEREAS, the Environmental Coordinator has determined that this administrative decision to enforce the requirements of an entitlement or adopted standard is Categorically Exempt pursuant to Section 15321 of the California Environmental Quality Act (CEQA) Guidelines as a Class 21 Categorical Exemption

SECTION II: DECISION

NOW, THEREFORE BE IT FURTHER RESOLVED that in accordance with the Planning Commission's action taken at the meeting of February 9, 2004, the Planning Commission hereby affirms the Department of Public Works Director's decision that the filling on CYO's property is in violation of Marin County Code Section 23.08, Excavation, Grading and Filling, and that all work filling an area immediately east of the railroad tracks on the subject property shall cease until a valid grading permit is issued by the Department of Public Works, and the appeal of such decision is hereby denied.

SECTION III: APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$675.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m.** on **February 19, 2004.**

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 9th day of February, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

ALLAN BERLAND, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary