

CODE COMPLIANCE IN NEVADA COUNTY

REASON FOR INVESTIGATION

The Grand Jury received citizen complaints that the Code Compliance Department is not adequately enforcing building codes and regulations. The 2001-2002 Grand Jury report addressed this issue and responses to the report raised further questions.

BACKGROUND

The Code Compliance Department is a part of the Nevada County Community Development Agency (CDA).

In September 1999, the Board of Supervisors (BOS) adopted Recommendations of the Code Enforcement Ad Hoc Committee as an interim guide for code compliance. The purpose of the guidelines was to encourage voluntary compliance through a more lenient customer friendly approach.

In March 2002, the CDA issued a Code Compliance Manual to be used as a training manual for staff and a reference source for daily operations for staff and the public.

In January 2004, the CDA issued Procedural Guidelines of the Code Compliance Department, which they presented to the BOS on April 6, 2004.

This Grand Jury report is primarily directed to non-permitted building code compliance issues and their ramifications.

PROCEDURE FOLLOWED

The Grand Jury interviewed members of the BOS, the County Executive Officer, the CDA Director, the Building Department Director and the Interim Head of Code Compliance. The Grand Jury reviewed the 2001-2002 Grand Jury report and responses thereto. The Grand Jury also reviewed Code Compliance files.

FINDINGS

1. The Code Compliance Manual states: "Potential violations can come to the attention of Code Compliance through the public, community groups, other agencies, and Board of Supervisor referrals. Code Compliance works with communities and neighborhoods to resolve key

enforcement issues; it is Code Compliance's sole authority to decide complaints or violations to pursue based on the priority system and staff resources. Code Compliance is strictly a complaint driven process. Compliance is the goal; enforcement is to be used after all other options have failed."

2. The 2001-2002 Grand Jury report found that code compliance in Nevada County is strictly complaint driven except in cases that involve health and safety issues. This is still true.
3. The 2001-2002 Grand Jury report found that there were 11 separate notices/letters used to serve notice of building code violations. Included in the notices is a "Warning Notice of Violation" which states that infractions are punishable by a mandatory fine of \$100 for the first offense, \$200 for the second, and \$500 for the third and subsequent violations within a 12-month period, plus penalty assessments. The BOS did not agree or disagree with this finding because the Code Compliance Manual was still in draft form and not yet presented to the BOS for consideration.
4. The current Grand Jury noted that the 2004 Procedural Guidelines of the Code Compliance Department now contains 13 separate letters/notices, which can notice a violation of non-permitted building.
5. The 2001-2002 Grand Jury report found that if a property owner builds without a permit, and no complaint is filed, property taxes on improvements are not collected. In addition, mitigation fees and other development fees are not collected. This remains a true statement. In response to this Grand Jury finding, the BOS partially disagreed stating "un-permitted construction is sometimes observed and reported by building department officials during performance of their official duties."
6. When building permits are issued, the County receives fees. In addition, schools and fire districts receive separate funds from building permit fees. For example, the property owner of a 2200 sq. ft. home in Penn Valley paid \$9,279.81 for the following fees:

- County fees:

Nevada County Grading Permit	\$64.73
Nevada County Plan Site Review	472.89
Nevada County Inspection Permits	2,113.07
Total	\$2,650.69

- Other fees:

NID hookup	\$700.00
PG&E hookup	750.00
Penn Valley Fire District	1,054.52
School Mitigation	4,124.60
Total	\$6,629.12

7. The 2001-2002 Grand Jury report found more than 1000 open code violation cases. As of the date of this report, the code compliance department acknowledges approximately 600 open code violation cases.

8. The 2001-2002 Grand Jury report found that the Assessor's Office does not actively communicate with the CDA regarding non-permitted building. The BOS responded that the Assessor allows CDA access to printed records and the Assessor and CDA communicate with each other on an as-needed basis. The current Grand Jury found little, if any, improvement in this process.
9. Other counties use law enforcement to ensure full compliance with existing codes. This was a finding of the 2001-2002 Grand Jury and remains true today. The BOS response to the 2001-2002 Grand Jury report states: "Some other counties most likely do use stricter code enforcement to compel compliance with their codes, just as other counties may not be as strict as Nevada County in seeking code compliance."
10. The Grand Jury notes that Placer County takes a more active approach to code enforcement:

"It shall be the duty of the Placer County Sheriff, the planning director, the chief building official, and/or the health officer and the employee(s) designated by the above officials as code enforcement officers to enforce the provisions of the County Code¹ as specified."

CONCLUSIONS

1. Code enforcement for non-permitted building in Nevada County continues to be practically non-existent.
2. The "strictly by complaint" directive has failed to resolve the problem of noncompliance to code. Surveillance of non-permitted building has been discouraged, if not eliminated altogether.
3. The process to correct a violation of non-permitted building appears to be bureaucratic and cumbersome. The County now uses up to 13 letters and notices to establish violations and resolve them.
4. Mandatory fines for violations of non-permitted building are still too nominal to be punitive. Fines should be a hefty percentage of all regular county fees, especially for second and subsequent violations. This would deter property owners from building without permits and provide Nevada County with much-needed additional cash flow.
5. The Grand Jury is unable to determine how much money is being lost to the County due to the apparent permissive attitude toward code violations. Had the owner of the Penn Valley home not taken out a building permit, \$2,650.69 would have been lost to the County. In addition, another \$6,629.12 in other development fees would not have been collected.

¹ Placer County Codes, Chapter 17 Zoning, 17.62.030 Enforcement Administration

6. Stricter code enforcement would prevent construction of non-permitted buildings that could be used for environmentally dangerous and illegal activities.

RECOMMENDATIONS

1. The Grand Jury continues to recommend that the Board of Supervisors:
 - A. Streamline the process to correct a violation of any non-permitted building
 - B. Encourage all Nevada County employees to file official complaints if they observe code violations
 - C. Increase amounts for mandatory fines and penalties to punitive levels
2. If the County cannot resolve a violation, a lien should be placed on the property to cloud the title, or add this assessment to the property tax bill.
3. The Grand Jury strongly recommends that the Board of Supervisors move away from the hands-off policy that exists today. Stop the County's loss of fees, fines and levies resulting from the continued unreported building taking place within the county by promoting CODE ENFORCEMENT policies that require everyone to "pay their fair share" of construction and development-related fees.

REQUIRED RESPONSES

The Board of Supervisors – September 23, 2004

COUNTY OF NEVADA

STATE OF CALIFORNIA

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September 15, 2004

REVIEWED
EE
9-16-04

The Honorable Judge Ersel Edwards
Presiding Judge of the Nevada County Courts
Nevada County Court House
Nevada City, CA 95959

Subject: Board of Supervisors Responses to the 2003-2004 Nevada County Civil Grand Jury Report, dated June 25, 2004 regarding Code Compliance in Nevada County

Dear Judge Edwards:

The attached responses by the Board of Supervisors to the 2003-2004 Nevada County Civil Grand Jury Report, dated June 25, 2004, are submitted as required by California Penal Code §933.

These responses to the Grand Jury's Findings and Recommendations were approved by the Board of Supervisors (Supervisor Sutherland absent) at their regular meeting on September 14, 2004. Responses to Findings and Recommendations are based on either personal knowledge, examination of official County records, information received from the Community Development Agency, the County Executive Officer, the Board of Supervisors and County staff members, or as modified at the Board meeting by the Board of Supervisors.

Submission of this Report completes the Board of Supervisors responses to the 2003-2004 Nevada County Civil Grand Jury Report. The Board would like to thank the members of the 2003-2004 Grand Jury for their participation and effort in preparing their Reports, and their participation in the Grand Jury process.

Sincerely,

Sue Horne
Vice-Chair, Board of Supervisors

Attachment

cc: CDA
Foreman, Grand Jury
Rick Haffey, County Executive Officer

**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO
2003/2004 CIVIL GRAND JURY REPORT**

DATED JUNE 25, 2004

RE: CODE COMPLIANCE IN NEVADA COUNTY

Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the responses by County Counsel, the Community Development Agency, the County Executive Officer, or testimony from the Board Chair and county staff members.

I. GRAND JURY INVESTIGATION:

Code Compliance in Nevada County.

A. RESPONSE TO FINDINGS & RECOMMENDATIONS:

Findings:

- 1. The Code Compliance Manual states: "Potential violations can come to the attention of Code Compliance through the public, community groups, other agencies, and Board of Supervisor referrals. Code Compliance works with communities and neighborhoods to resolve key enforcement issues; it is Code Compliance's sole authority to decide complaints or violations to pursue based on the priority system and staff resources. Code Compliance is strictly a complaint driven process. Compliance is the goal; enforcement is to be used after all other options have failed."**

Agree

- 2. The 2001-2002 Grand Jury report found that code compliance in Nevada County is strictly complaint driven except in cases that involve health and safety issues. This is still true.**

Agree

The Procedural Guidelines of the Code Compliance Department (now a division of the Planning Department) adopted by the Board of Supervisors states, "...*Code Compliance is strictly a complaint driven process, with the sole purpose of maintaining established norms and standards for our community.*" Building inspectors have a duty to address un-permitted work when they become aware of such work in the course of doing their job. When building inspectors find unpermitted work that requires a building permit, such discoveries are referred to Code Compliance as a complaint.

- 3. The 2001-2002 Grand Jury report found that there were 11 separate notices/letters used to serve notice of building code violations. Included in the notices is a "Warning Notice of Violation" which states that infractions are punishable by a mandatory fine of \$100 for the first offense, \$200 for the second, and \$500 for the third and subsequent violations within a**

12-month period, plus penalty assessments. The BOS did not agree or disagree with this Finding because the Code Compliance Manual was still in draft form and not yet presented to the BOS for consideration.

Partially agree

To the extent the Grand Jury is only summarizing from the 2001-2002 report we agree. New mandatory fine limits were set by the State of California in 2003 and are now \$100, \$500 and \$1,000.

- 4. The current Grand Jury noted that the 2004 Procedural Guidelines of the Code Compliance Department now contains 13 separate letters/notices, which can notice a violation of non-permitted building.**

Partially agree

There are 15 forms in the Procedural Guidelines of the Code Compliance Department adopted by the Board of Supervisors that pertain to various stages of enforcement of violations of non-permitted buildings, of which there are 2 exhibits of inspection warrants that are issued by a Superior Court Judge.

- 5. The 2001-2002 Grand Jury report found that if a property owner builds without a permit, and no complaint is filed, property taxes on improvements are not collected. In addition, mitigation fees and other development fees are not collected. This remains a true statement. In response to this Grand Jury Finding, the BOS partially disagreed stating "un-permitted construction is sometimes observed and reported by building department officials during performance of their official duties."**

Partially agree

However, it bears repeating, "un-permitted construction is sometimes observed and reported by building department officials during the performance of their duties." If the unpermitted structure is reported by building department officials, the Assessor's office will impose property taxes on property and structures that may be unpermitted.

Additionally, the BOS response to this 2001-2002 Finding also noted: "The Assessor's office also has the responsibility of discovery, and makes every attempt to discover and value unpermitted structures during their regular course of business." The Assessor's field personnel use due diligence during normal course of work to identify structures that are not on the assessment roll, and have done so very adequately. The Assessor's office uses building permit information as an important tool for notification, however the Assessor will always be ultimately responsible for discovering and valuing structures, regardless of whether they are legally permitted.

6. When building permits are issued, the County receives fees. In addition, schools and fire districts receive separate funds from building permit fees. For example, the property owner of a 2200 sq. ft. home in Penn Valley paid \$9,279.81 for the following fees:

• County fees:

Nevada County Grading Permit	\$ 64.73
Nevada County Plan Site Review	472.89
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Total	\$ 2,650.69

• Other fees:

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PG&E hookup	750.00
Penn Valley Fire District	1,054.52
School Mitigation	4,124.60
Total	\$ 6,629.12

Partially agree

Building permit fees vary depending on the site and land disturbance necessary for development. An example for a 2,200 square foot home for 2003-2004 would be:

Site Plan Check:	\$101.14
Inspections:	\$761.96
Plan Review Fees:	\$355.48
SMIP	\$ 15.40 (Strong Motion Instrument Program *State Fee)
Archiving	\$ 35.25
Road Impact Fees	\$926.00
Park and Rec Fees	\$348.00 (County collects)
Grading Inspection	\$142.56
Grading Plan Review	\$257.90
Driveway Inspection	\$ 71.28
Driveway Plan Review	\$121.36
Road Encroachment Fee	\$142.56 (if needed)
Total:	\$3,278.89

The following fees are paid directly to the responsible entity:

NID	\$700.00 (Grand Jury Finding)
PG&E	\$750.00 (can vary depending on situation)
Fire Protection District (varies by district)	\$924.000 (no hydrant) (\$902.00 with hydrant)
School District	\$4708.00 (\$2.14 per square foot)
Total:	\$7,082.00

7. **The 2001-2002 Grand Jury report found more than 1000 open code violation cases. As of the date of this report, the code compliance department acknowledges approximately 600 open code violation cases.**

Partially agree

There are approximately 540 open Code Compliance violation cases as of August 12, 2004.

8. **The 2001-2002 Grand Jury report found that the Assessor's Office does not actively communicate with the CDA regarding non-permitted building. The BOS responded that the Assessor allows CDA access to printed records and the Assessor and CDA communicate with each other on an as-needed basis. The current Grand Jury found little, if any, improvement in this process.**

Partially agree

The Board of Supervisors response to the 2001-2002 Grand Jury Report stated, "In the new fiscal year the CDA and Assessor's offices will work to share data on all non-confidential information through a shared database." The current reporting process of informal verbal or text notification to appropriate building department staff is effective for notification and tracking of possible permit violations.

9. **Other counties use law enforcement to ensure full compliance with existing codes. This was a finding of the 2001-2002 Grand Jury and remains true today. The BOS response to the 2001-2002 Grand Jury report states: "Some other counties most likely do use stricter code enforcement to compel compliance with their codes, just as other counties may not be as strict as Nevada County in seeking code compliance."**

Partially agree

The Finding accurately reflects the 2001-2002 Grand Jury Finding and Board of Supervisors response. However, to clarify: Nevada County Code Compliance officers are "law enforcement". They have power to issue infraction citations and can call the Sheriff for civil standby and/or active intervention in case of illegal activities.

In addressing building and planning code infractions, most Sheriff agencies follow Community Oriented Policing practices, which identify quality of life issues within the community, then use collaborative efforts with other areas of government, such as animal control, code enforcement, etc. to resolve problems within the community.

Furthermore, the fact that a county may use its Sheriff's Department to enforce Building and Planning codes does not ensure that this function would be treated as a priority compared to its other investigation and enforcement duties related to criminal activities.

10. The Grand Jury notes that Placer County takes a more active approach to code enforcement:

“It shall be the duty of the Placer County Sheriff, the planning director, the chief building official, and/or the health officer and the employee(s) designated by the above officials as code enforcement officers to enforce the provisions of the County Code as specified.”

Agree that the Finding may reflect the Code Enforcement policy of Placer County but the Board has no knowledge of the source of the quotation in the Finding.

In discussion with the Placer County Sheriff's office, the Nevada County Sheriff was informed that code enforcement is an area of very low priority for their officers, and their staff does not routinely become involved in code enforcement activities.

Recommendations:

1. The Grand Jury continues to recommend that the Board of Supervisors:

A. Streamline the process to correct a violation of any non-permitted building

B. Encourage all Nevada County employees to file official complaints if they observe code violations

C. Increase amounts for mandatory fines and penalties to punitive levels

A. The Recommendation has been implemented.

The process has been streamlined and included in the Procedural Guidelines of the Code Compliance Department adopted by the Board of Supervisors.

B. The Recommendation will not be implemented at this time.

The ability to identify violations often requires specialized training, which most County employees do not have. Current labor agreements with employee bargaining groups would also have to be amended to require employees to receive this type of training and perform additional duties outside of their normal duties and responsibilities.

C. The Recommendation has been partially implemented.

Fines were increased in 2003 by SB567, which amended Sections 25132 (applying to Counties) and 36900 (applying to Cities) of the Government Code.

Section 25132 now states: "*(a) Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a county ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action. Every violation determined to be an infraction is punishable by (1) a fine not exceeding one hundred (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.*

Notwithstanding any other provision of law, a violation of local building and safety codes determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for the first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation of the same ordinance within one year; (3) a fine not exceeding one thousand (\$1000) for each additional violation of the same ordinance within one year of the fines violation."

The County has no authority to increase penalties imposed by state law. Additionally, County Counsel has advised that the California Building Code limits the County's authority to raise fees to more punitive levels. With regard to fines, Counsel notes that State law is not clear to what extent the county may impose administrative fines, in which county authority is given to a hearing body or officer to punish a violator by imposing fines based

upon conduct proven at a hearing. Additionally, an administrative fine can be appealed to court, where it is likely to be scrutinized and reduced if adjudged excessive based on the conduct shown in the record.

It must be remembered that each day is a separate violation under both state and local law. A multi-day violation can be charged with compound penalties at \$500 and \$1000 per day. This punitive level is sufficient to get attention of most County code violators.

2. If the County cannot resolve a violation, a lien should be placed on the property to cloud the title, or add this assessment to the property tax bill.

The recommendation has been implemented, with clarification.

Standard County procedure is to attach a *Notice of Non-Compliance* to the property to cloud the title and is a tool that Code Compliance currently uses. This action is also reported to the Assessor.

If the County cannot resolve a violation that requires immediate abatement, the County can then take jurisdiction to do abatement itself and attach a *lien* for the full amount of expenses. Additionally, the Board of Supervisors may specially assess the costs of abatement against the parcel and collect the assessment through the property tax collection process.

The decision on pursuing abatement is a question of priorities (health and safety) and County resources. When taking jurisdiction over property for abatement, the County gives the landowner constitutional due process - adequate notice and fair hearing.

3. The Grand Jury strongly recommends that the Board of Supervisors move away from the hands-off policy that exists today. Stop the County's loss of fees, fines and levies resulting from the continued unreported building taking place within the county by promoting CODE ENFORCEMENT policies that require everyone to "pay their fair share" of construction and development-related fees.

The recommendation has been implemented.

The Board of Supervisors disagrees however with the Grand Jury's statement that a "hands off policy" towards Code Enforcement presently exists. The Board and individual Supervisors quickly deal with complaints of code violations as they are received and aggressively follow-up on them until they are resolved. The County Executive Officer has also fully supported the Code Compliance Division's efforts to fully investigate and enforce all reported violations and take appropriate enforcement action to the full extent of their resources.

There are hundreds of Code Compliance cases presently being processed with an average of five to ten new complaints per week. As noted in Response to Finding No. 5, building inspectors are aggressive about reporting unpermitted construction and the County pursues recovery of fees and penalties to the maximum extent allowed by law.

The policy of the Board of Supervisors has been, and will continue to be, that all citizens must comply with County Codes and pay required permit and mitigation fees. The Board also fully supports the efforts of the Code Compliance Division to enforce County Codes on a complaint driven basis that is fairly applied and administered.

REQUIRED RESPONSES

Board of Supervisors – by September 23, 2004

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The recommendation has been implemented.

(Added)

The Board of Supervisors disagrees however with the Grand Jury's statement that a "hands off policy" towards Code Enforcement presently exists. The Board and individual Supervisors quickly deal with complaints of code violations as they are received and aggressively follow-up on them until they are resolved. The County Executive Officer has also fully supported the Code Compliance Division's efforts to fully investigate and enforce all reported violations and take appropriate enforcement action to the full extent of their resources.

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REQUIRED RESPONSES

Board of Supervisors – by September 23, 2004

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