

# **CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT: A CASE STUDY IN COMPLAINT-RESOLUTION (GONE AWRY)**

## **SUMMARY**

In the fall of 1999, the San Diego City Council approved a development permit for the Seabreeze Farms project in Carmel Valley. The project included single- and multi-unit housing, open space, and an equestrian center.

In the spring of 2002, homeowners living along the equestrian center's eastern boundary noticed that the facility under construction was taking shape with significant differences from what they had been told and shown when buying and occupying their homes in 2001. This Grand Jury (GJ) report covers events occurring from September 1999, when the project was approved, through January 2003 when the Grand Jury completed its investigation.

Four key issues of contention embroiled certain homeowners and the San Diego Development Services Department (DSD) in a lengthy series of written and face-to-face communications. The issues, in brief, were zoning footage, distancing requirements, citizen participation in administrative decision-making, and health and safety. The Grand Jury investigated the origins of the issues and how they were resolved (or not resolved).

The Grand Jury's recommendations suggest changes in the Development Services Department's methods and procedures to keep such problems from happening again.

## **PURPOSE OF THE STUDY**

The purpose of this study is to address the City's handling of the following questions:

- Does the equestrian center facility have its required minimum zoned footage and is the footage-per-horse requirement fulfilled?
- Was the location of the equestrian center facility in compliance with the distance requirements as set forth in the San Diego Municipal Code?
- Did the planning, approval, and conformance review processes enable appropriate public input/hearing opportunities for area residents and were subsequent plan revisions in compliance with the approved development plan?

- Are facility managers observing stipulated site health, sanitation, and safety requirements?

## **BACKGROUND INFORMATION**

On July 10, 2002, the Grand Jury received a complaint signed by seven homeowners in Carmel Valley. All of the parties had moved into their homes during 2001. The complaint centered on various aspects of the planning, development, and construction processes for an 80-horse facility known as Seabreeze Farms Equestrian Center. The eastern boundary of the facility abuts the backyard fences of some 18 residences along Sandown Way and Rider Place. This border is the primary focus of the Grand Jury's investigation.

The investigation revealed an on-going dialog via letters, faxes, and meetings between the concerned citizens and various staff and management personnel of the DSD. These communications had begun in early April 2002 and extended into early 2003. A review of the correspondence shows that the DSD made a major effort to respond to the distressed citizens to explain their decisions and the reasons behind them.

The sequence of events leading up to a formal complaint to the Grand Jury began when a proposal for constructing residential units and an equestrian facility on the Carmel Valley site first appeared in 1996. A 1999 conceptual plan for the equestrian center appears in Figure 1.

On August 5, 1999, the Planning Commission accepted, via Resolution 2834-PC, a DSD project recommendation for the Seabreeze Farms project.

At a public hearing held on September 14, 1999, the San Diego City Council approved the Carmel Valley Planned District Development Permit No. 96-7919 which identified a plan for the Seabreeze Farms project in Carmel Valley.<sup>1</sup> The Seabreeze Farms project, which would be developed by Del Mar Land Management, Inc., envisioned 147 single residence units on 38 acres, 38 multi-unit residences on 2.5 acres, 25 acres of open space, and an equestrian center on approximately 9 acres.

On July 17, 2000, the San Diego City Council gave its approval to the final map of the Seabreeze Farms project in resolution R-293478.

On September 25, 2001, a Substantial Conformance Review (SCR) occurred.

Building permits B201013 02 and B201014 02 for two barns at the equestrian center site were issued to Bell Valley Holding Company on April 2, 2002.

A final building inspection occurred on September 25, 2002. Building inspection records show that both barns failed that inspection, and the building inspector gave the site manager a

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<sup>1</sup> Resolutions R-292173, R-292174, R-292175, and R-292176

FIGURE 1 Conceptual Plan (Spring 1999) Equestrian Center Facility

Please contact the Grand Jury Office at 619-515-8707 for copies of Figures 1 and 2.

Cease Illegal Occupancy notice for each barn. (The notice applies to both horses and to humans providing care for the horses inside the barns.)

## PROCEDURES EMPLOYED

The 2002-2003 San Diego County Grand Jury:

- Reviewed copies of correspondence and faxes originated by the complainants.
- Reviewed copies of correspondence and faxes originated by the DSD to respond to the complainants.
- Examined permits, approvals, documents, correspondence as well as various plans and maps in the DSD's Records Section and the Office of the City Clerk.
- Reviewed appropriate chapters and articles in the San Diego Municipal Code.
- Visited and viewed the neighborhood and met with complainants twice.
- Interviewed four members of the Development Services Department management and staff.

## FACTS AND FINDINGS

The Grand Jury's investigation centered on four primary issues. The following questions and answers address these very concerns.

### **1. Did DSD assure that the equestrian center facility had its required minimum zoned footage and that the footage-per-horse requirement was fulfilled?**

**Facts:** Both of these issues were debated at length in the complainants' correspondence with the DSD. Lot 153 (the equestrian center facility) is approximately 9 acres in size.<sup>2</sup> It is zoned AR-1-1 and surrounded by 25 acres of zoned open space and about 40 acres of single- and multi-family residences. All comprise the Seabreeze Farms Project. The applicable San Diego Municipal Code reference specifies that AR-1-1 zoning requires minimum 10-acre lots.<sup>3</sup>

The applicable code reference indicates that 5,000 square feet of stable, pasture or corral, or combination thereof, must be provided for each horse.<sup>4</sup> When more than four horses are to be maintained, a permit is required for authorizing additional horses.<sup>5</sup> According to DSD

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<sup>2</sup> Development Permit's Vesting Tentative Map, September 1999.

<sup>3</sup> San Diego Municipal Code §131.0303(b).

<sup>4</sup> San Diego Municipal Code §44.0308(b).

<sup>5</sup> San Diego Municipal Code §44.0308(c ).

staff, the approximate 9 acres of the equestrian facility meet the 5,000 square foot requirement for 76 horses, not 80.

An examination of the development permit 96-7919 document, approved on September 14, 1999, by the San Diego City Council, reveals no specific mention of the 10-acre zoning requirement, the 5,000 square foot-per-horse requirement, the 80 horses, or the “more than four horses” authorization requirement. Nor do the accompanying resolutions help. In fact, resolution R-292175 includes a statement that all Seabreeze Farms project lots meet the minimum dimension requirements of their respective zones.

The DSD management and staff indicate that the specific issues are cited in various staff memos, reports, maps, layouts, and proposals addressed to the Planning Commission and to the City Council as part of the project’s pre-approval process. All of that documentation is found in the DSD’s “project file”. The “project file” is normally reviewed by the City Council during the sequential approval decision points for a project. For the Seabreeze Farms project, the DSD’s position is that, since the development permit 96-7919 was approved by City Council, they—as the decision-makers—gave due consideration and consent to the issues raised by the complainants.

The Grand Jury examined all pertinent files and documents to ensure that the zoning acreage and per-horse square footage issues were part of the pre-approval record and that they were discussed by the decision-making body as part of the approval process. The Grand Jury’s review included an examination of the project file in the DSD’s Records Section as well as a copy of the City Clerk’s file of project documents. Grand Jurors also listened to the audiotape of the entire City Council proceedings on the day that the Seabreeze Farms Council item was approved. Throughout the documents, we found only a few scattered references to “equestrian village of 8.9 acres”, “8 acre equestrian area”, and “80-horse facility”. The audiotape yielded no information of use as it apparently appeared on the Council’s Consent Agenda, which eliminated the need for any discussion.

Subsequent DSD correspondence indicated a possible solution. Specifically, the owner of lot 153 can reallocate two lots currently abutting the western border of the equestrian facility. Those lots are part of the 25-acre open space zoning and are to be used for brush management support purposes. Incorporating those lots—155 and 156—into the equestrian facility would achieve the 10-acre minimum zoning and thus meet the 5,000 square foot-per-horse requirements. Procedurally, the developer would seek zoning footage changes for the open space and equestrian facility areas and notify the Tax Assessor of the changed lot acreages. The developer may take those steps voluntarily or not at all.

**Findings:** Based on a review of the development permit 96-7919 and accompanying resolutions, and the documents from the San Diego City Council meeting held September 14, 1999, the San Diego City Council did not provide express declaration of their consideration of, or their decisive intent to override, known provisions of San Diego Municipal Code §44.0308(b) and (c), and §131.0303.

Accessing the “public record” is not for the ‘faint-of-heart’. For John Q. Public, tracking a project from its developmental beginnings through its final construction inspection only begins in the DSD’s Records Section (archives). It soon becomes obvious that there are both active and inactive components of a project file. In addition, documents include paper files, drawings, computer files and records, microfiche, and microfilm. Some data reside with other agencies; some project documents reside in workplace settings under name or function classifications.

Project files and documents, that exist in these various sub-collections, require a range of access options: project development number, plan number, building permit number, site address, and the individual’s name. We hope that, ultimately, all will end up in the archives for easy public access.

The Grand Jury’s research of the archived project files revealed at least one document that ought not be in the file; often documents or drawings that should be in the file, but weren’t; and most often, duplicates, triplicates, etc.

## **2. Did DSD assure that the location of the equestrian center facility was in compliance with the distance requirements as set forth in the San Diego Municipal Code?**

**Facts:** Figure 1 shows the proposed layout of the Seabreeze Equestrian Center. An equestrian facility falls within the allowable uses in a lot zoned for agricultural purposes. The developer is free to include all the structures, equipment, and standard farm features deemed necessary to achieve the maximum utility of the property.

However, as part of the permit approval process, the decision-maker (City Council) requires that the developer address such issues and requirements as landscaping, vector control, noise abatement, rodent control, manure disposal, etc. The developer commits to submitting plans and obtaining reviews and approvals by the DSD staff. This commitment ensures that the development is appropriately planned and implemented in accordance with the community standards. Those issues become particularly important in a mixed land use setting such as the project area described in this report. Two major issues, discussed herein, concern measures of distance.

One Municipal Code provision states that one cannot have a “corral, pasture or stable” if the number of dwelling units located within a one-fourth mile wide belt surrounding them exceeds 300.<sup>6</sup> Another requires a distance of 75 feet between a residence or dwelling and any “stable, corral or pasture”.<sup>7</sup>

Both provisions stated in the code indicate attempts to minimize exposure of a facility to its neighbors by 1) providing for a less than maximum dwelling density in the surroundings, and 2) creating a buffer between adjacent differing land uses. Both provisions are for reasons of aesthetics as well as health and sanitation.

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<sup>6</sup> San Diego Municipal Code §44.0308(a).

<sup>7</sup> San Diego Municipal Code §44.0308(d).

Interpretation and application of these code provisions can lead to a variety of outcomes. The following hypothetical examples illustrate this confusion:

In a mixed land use setting, there is a farm the shape and size of which is a perfect circle with a diameter of one-fourth mile. In example one, a barn sits in the center of the circle. In example two, there are four barns – one sits up against the fence in each of the circle's four quadrants.

As a result of applying the code, in example one, the number of dwelling units within one-fourth mile equals zero, and the 75-foot wide belt is non-applicable. However, in example two, all of the dwelling units from the farm's outer fence to a distance of one-fourth mile beyond will be counted; the 75-foot wide belt begins at the farm's outer fence line.

With the foregoing as background, we can proceed to examine how the interpretation and application of both the one-fourth mile wide belt and the 75-foot wide belt provisions became flashpoints of contention.

As part of the project's pre-approval process leading up to the granting of the development permit, the DSD staff sent a letter to Del Mar Land Management, in early December 1998, requesting certain additional information about various aspects of the Seabreeze Farms project. Plans were in a conceptual layout phase at that time. That letter indicated that DSD staff was evaluating previously submitted information, and they were seeking to collect additional data. That information was to be used to make an appropriate recommendation to the Planning Commission and the City Council. That standard practice helps DSD staff bring development projects to a successful and timely approval.

This particular letter sought maps, layouts, and other documents for a variety of needs. For the equestrian center portion of the project, it specified the following requests:

Provide an exhibit to demonstrate compliance with Section 44.0308 of the Municipal Code (number of dwelling units within ¼ mile of the stables, corrals, or pasture, adequate area for the number of horses on site, etc.). Equestrian uses must be at least 75 feet from residences. Lots 48-51, 57 & 61-68 may not meet this requirement. Plot residences on these lots to demonstrate compliance with Section 44.0308(d) of the Municipal Code.

In the project files made available to us for review in the Records Section, we found no documented response from the developer.

The first major issue of the two measures of distance is that of the one-fourth mile wide belt provision. One can draw a scaled circle on a housing tract plat and count the units inside the line or walk the area and achieve a similar count. Determining the belt line and the number of dwelling units within it is a more difficult task than it would first appear. The neighbors, in various counts, found 437, 440, and 500 dwelling units. DSD staff reported an initial

figure of . . . 276 houses existing or planned within one-quarter mile of the barns.<sup>8</sup> After a second counting, the DSD specified the count total as 233.<sup>9</sup>

How can there be such a wide range of numbers? A portion of the problem seems to be from which point, in the equestrian center, one chooses to measure. Residents measured from the facility's perimeter (500 count) and from the barns (437/440 counts); DSD staff measured from the barns where the horses are "kept" (i.e., fed and bedded). (We address using the barns as a measurement starting point in succeeding paragraphs.)

Another portion of the problem lies in the inclusion, or non-inclusion, of planned or future dwellings within the one-fourth mile belt line. When DSD management indicated a revised count of 233, it reported that **an additional** (Grand Jury emphasis) 75 dwellings fell within the belt line.<sup>10</sup> Their interpretation of Municipal Code §44.0308(a), however, was that the provision does not apply to additional dwelling units being located near an existing facility.

The Grand Jury surmises that the Municipal Code § 44.0308 phrase, "No person shall bring **or maintain** [Grand Jury emphasis] within the City, any horse...." demands inclusion of planned and future dwelling units in the count. Any other interpretation subverts the underlying intent of the one-fourth mile wide belt of minimizing potential threats to public health and sanitation.

The second major issue of the two measures of distance is that of the 75-foot wide belt requirement. The DSD's interpretation of the Municipal Code's provision is that at the far end of the 75 feet lies a dwelling unit – specifically, the homeowner's exterior wall. However, the Municipal Code also specifies the term "residence". Though not defined in the Municipal Code, the question arises as to whether a residence could refer to a backyard fence or rear lot line. Cannot the 75-foot wide belt end at the homeowner's property line?<sup>11</sup> This is complainants' interpretation. The complainants pose the example of a barn that borders a 75-foot deep backyard – the homeowner's backyard becomes, in fact, the buffer!

Again, DSD chooses to measure the 75 feet starting from the barns where the horses are "kept" (i.e., fed and bedded). (Depending upon the barns' locations within the facility, the distances to the dwelling units' walls will differ – but the minimum distance for any one dwelling unit measurement must be 75 feet.) Cannot the term "kept" refer to the entire area within the facility's perimeter fence? Which barn(s)? If a barn is relocated when constructed, will a new measurement of the 75 feet be taken? If a corral or pasture is located closer to a residence than a barn, should not one have to measure from the barn, pasture, or corral nearer to a homeowner's dwelling? Can one consider a training arena, or a jump area, to be a form of corral?

The argument against using the barns as a measurement starting point, however, is that the barns represent only the nighttime aspect of equine care. For the residents, it is during the

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<sup>8</sup> DSD staff response dated April 18, 2002.

<sup>9</sup> DSD management letter dated August 15, 2002.

<sup>10</sup> City Council approved the neighboring Pacific Highlands Ranch Unit 2-4 project in July 2001.

<sup>11</sup> Consider, for example: San Diego Municipal Code §141.0604 Boarding Kennels (a)(2) Kennels and associated structures shall not be any closer than 50 feet to any property lines.



daytime hours when the real activity begins: exercising, horse washing, hot walking, riding, corral activities, manure processing, etc. This seems to be the time when that buffer assumes a paramount importance.

The concept of “equestrian uses” (a DSD term appearing in the record of correspondence) can help clarify the issue. The Grand Jury finds that use of the term should encompass structures and activities as well as nighttime and daytime intervals. Thus, for both the one-fourth mile and 75-foot wide belt measures, we suggest that measurements start at the outer edge of any significant equestrian use. Such a “use” includes: permanent and semi-permanent structures such as barns, stables, paddocks, riding arenas, corrals, pens, turnouts, storage sheds, hot walkers, wash racks, and clubhouses. It also includes areas devoted to riding paths, pastures, arenas, manure management, etc. For those perimeters of the equestrian facility directly abutting residential properties, it seems logical to expect a sensitive application of the 75-foot buffer that would include a minimum 50-foot offset from the facility’s perimeter fence line for any significant equestrian use.

In the spring of 2002, neighbors of the equestrian center had to look at the world in a completely new way – literally. In the next section, we discuss the event that triggered the complaints.

**Findings:** The Seabreeze Farms Equestrian Center may be in violation of the San Diego Municipal Code §44.0308(a). Both liberal and conservative counts of dwelling units within the one-fourth mile wide belt result in numbers in excess of 300.

The Development Services Department applied a strict interpretation and application of the San Diego Municipal Code §44.0308(d). A more reasonable interpretation could have caused measurement to originate at the jump arena fence and at the outer edge of the horse wash racks. Certainly, a preferable option is that of measuring from the outer edge of any significant “equestrian use”. Even better, a 75-foot separation beginning at the homeowners’ property lines to the “equestrian use” should be specified. Public health and safety concerns should require an interpretation resulting in the widest possible buffer.

**3. Did the planning, approval, and conformance review processes enable appropriate public input/hearing opportunities for area residents and were subsequent plan revisions in compliance with the approved development plan?**

**Facts:** The residents on Sandown Way and Rider Place began purchasing, or renting, and moving into their newly built Seabreeze Farms homes in 2001. The residents were not invited to, nor did they attend, the public hearing on September 14, 1999, during which the City Council approved the development permit for the entire 73-acre project. Additionally, they were not invited to, nor did any attend, the public hearing on July 17, 2000, when the San Diego City Council gave its approval for the final map of the Seabreeze Farms development project.

The Grand Jury asked a few of the residents what plans they were shown, or what they were told by their realtors, about the equestrian center as part of their home buying process. Their

responses indicated they had been shown a conceptual layout similar to Figure 1. They also signed a document stating that they had been made aware that their future neighbor would be an equestrian facility.

In early April 2002, the residents of Sandown Way and Rider Place noticed that construction at the equestrian facility differed significantly from what they expected or imagined, based on the conceptual layout they had been shown prior to purchasing or renting their homes.

On September 25, 2001, the DSD staff had performed a Substantial Conformance Review (SCR) of several requested equestrian center site changes that had been requested by the developer. Information in the Records Section's "project file" reveals neither documents, nor correspondence, between the developer and the DSD staff leading up to the SCR action. After reviewing the requested changes, the DSD staff determined that they were in substantial conformance with the City Council-approved permit and planning documents and thus merited approval by the DSD.

Before we discuss the changes that were approved, it is important to analyze the how, what, and why of the process known as Substantial Conformance Review and define its place in the hierarchy of project approval decision-making.

Municipal Code article §112.0501 indicates that a proposed development project (and its subsequent permits and maps) must go through one of five established levels of project approvals. Seabreeze Farms, because of its size, multiple land use characteristics, location, and complexity went through the highest (level five) approval. A level five process begins with a DSD staff review, a Planning Commission Recommendation Hearing, and a San Diego City Council Hearing. Before each of these events, property owners within 300 feet of the development project are to be given public notice of the review or hearing.

A level four process can terminate after the Planning Commission Hearing unless the applicant chooses to appeal that decision. If they appeal, the San Diego City Council will hold an appeal hearing.

A level one process consists of a DSD staff review with a DSD staff decision to approve or deny. Neither notices nor public hearing is required. Various sections of the Municipal Code authorize and define the use of a level one ("ministerial") process to evaluate proposed minor revisions to an already approved development permit.<sup>12</sup> This level one review results in a determination as to whether the revisions are in substantial conformance with the approved permit and applicable code provisions. This review can occur at any point along a project's implementation. If the level one DSD decision-maker concludes that the requested change(s) is/are in substantial conformance, the request is approved. If the change(s) is/are not in substantial conformance, the DSD decision-maker will deny the requested change(s). If denied, the applicant can request an amendment to the original permit. This application must

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<sup>12</sup> As to the purpose of the substantial conformance review, the Grand Jury believes that if such a process did not exist, someone would have to invent it. However, questions remain as to application and use of the substantial conformance review process in this case and in general. Specifically, how does a "formal" review process differ from one that is not formal? How does one reconcile the statement in the DSD's Bulletin 500 (April 2001) that reads, "If the only prior discretionary action, however, was a tentative map or vesting tentative map, and a final map for the project has been approved, then this service (SCR) is not available" with the use of the process in this case?

then go through the same level of approval process that the original permit approval followed.

Proposed changes for the equestrian center went through a level one substantial conformance review. The DSD staff approved, under level one SCR authority, the changes and revisions to the original development permit. These SCR approved changes included:

- Three barns being consolidated into two.
- The barn nearest several residences growing from 10,000 to 15,800 square feet, lengthening by 80 feet and showing 26 additional horse stalls for a total of 52. A roof cupola being removed from the barn's roof.
- The manager's residence moving further from the residences.
- Trees being added between the barn and the residences.
- A trailer loading-unloading area being replaced.

Figure 2 shows the layout of the equestrian facility after the SCR approval by the DSD staff.

The DSD staff believed that the homeowners on Sandown Way and Rider Place would welcome the changes.

However, in April 2002, some Sandown Way residents took exception to the action: the re-oriented barns blocked some backyard views; complainants perceived that one barn had been moved closer to their properties; fixed structures known as wash racks appeared between their fence line and the larger barn.

Complainants' concerns raised the issue of due process. There had been no public hearing or any opportunity to influence the DSD's decision that the changes were in substantial conformance with the project's permit and plans. They asked for a stop work order.

The complaints and responses began in earnest.

The Grand Jury found that the DSD staff made a judgment call that the requested changes were minor as opposed to major. If staff determined that the requested changes were major, a level one review would not be applicable. Because the DSD staff performs these level one reviews on a regular and daily basis, one could defer to their decision that the proposed revisions were minor in total. However, when one compares the site layouts in Figure 1 and Figure 2, it is clear that major and significant site realignment occurred as a result of this DSD staff approval.

Given the mixed land use features of this specific development project, along with the obvious "quality of life" implications of the review decision for the residents, it is reasonable to believe that the complainants deserved the opportunity to view, discuss, and attempt to influence the DSD's level one review decision. Noticing the residents and informally

FIGURE 2 Equestrian Center Layout-After a Substantial Conformance Review, Sept. 2001

Please contact the Grand Jury Office at 619-515-8707 for copies of Figures 1 and 2.

meeting with the homeowners could have accomplished this communication process. The level one review process, as currently structured, does not allow public involvement. Perhaps this is a shortcoming. Not every review merits public input. However, for the

occasional project that bears “quality of life” issues, perhaps a level one-and-a-half process, or simply an appeal process to the DSD itself, is needed.<sup>13</sup>

One cannot overlook concerns that the complainants note in their early letters. What can be done about the equestrian use fixtures (i.e., wash racks) that now appear between barn and residences? Has the one-fourth mile wide belt changed again? (It was noted in the previous section that the “less than three hundred dwelling units” provision might have already been violated.) When the barns were re-oriented, was the 75-foot wide belt reduced so that some residences now had less than the required buffer?

**Findings:** The Development Services Department staff exhibited insensitivity, given the mixed land use character of this specific project, in performing a substantial conformance review process on September 25, 2001, thereby disallowing any input from the 18-20 homeowners most affected by the revised facility layout. The results of this process triggered the ensuing complaints. If the SCR level one process precludes public input in all cases, the Grand Jury finds that the process is flawed and needs to be amended.

#### **4. Is the City making sure that facility managers are observing stipulated site health, sanitation, and safety requirements?**

**Facts:** Members of the Grand Jury visited the Seabreeze Farms neighborhood in early January 2003 and viewed the equestrian center from the backyards of three different residents. We saw a long, flat stretch of land bearing an attractive large barn (the second barn is located behind the larger one and thus hidden), several temporary house-trailer units, a parking area, small corrals or pens, horse wash racks, the partially hidden manure storage area, and several large riding arenas. At the north end, the facility lies at the bottom of a 25-30 foot steep drop from the backyards; in the southern end, the drop is a mere 3-5 foot from the abutting backyards. Trees on the slope are still small.<sup>14</sup> The manager’s residence, the clubhouse, and the employee housing – which all appear on the conceptual plan to be permanent structures – may or may not be housed in the house-trailer units at this time.

In the northern section several homeowners have an “up close and personal” view of horses being washed in the wash racks. Homeowners in the southern section endure the sounds and action of horse training just a short distance from their backyard fence. These same residents claim that their day begins earlier than the usual 6:30 a.m. tractor startup; regularly between three and four a.m., they are roused by what sounds like a horse attempting to kick its way out of its stall!

The approved development permit required that the developer submit a variety of plans including manure management, and fly and dust control. The permit also specified requirements concerning lighting, hours of operation, noise abatement, vector control, rodent control, brush management, etc.<sup>15</sup>

<sup>13</sup> DSD management states that a level two process – a department level one review with an appeal option to the Planning Commission – is not available in this case because the original permit approval occurred via a level five process.

<sup>14</sup> Subsequent to our visit, two residents noticed a landscaping change that significantly altered their backyard views. We do not know if the department had approved the location and type of the new plantings.

<sup>15</sup> The permit also specified a facility fence. Residents found that their own backyard fences serve as the facility’s perimeter fence.

During the construction phase of the facility, the DSD management and staff negotiated with the developer over such issues as appropriate placement of the manure storage system, and location of the hot walker and wash racks, in an attempt to maintain adherence to the approved layout.

The manure management program appears to be a particular challenge for the facility's personnel. By early December 2002, homeowners noted that both manure and soiled bedding appeared to be stored and processed quite differently from the procedures outlined in the manure management program. Once again, they wrote their concerns in a letter to the DSD. They also captured these processes on film and videotape.

Over the past six months, neighbors contacted the Neighborhood Code Compliance agency three times. Concerns dealt with noise and manure processing. They were told that because the equestrian center was under an "open permit" the agency was not empowered to respond. However, by late December, the Grand Jury learned that a Neighborhood Code Compliance representative was investigating the facility's manure management program in an aggressive manner.

As of mid-January 2003, the Department of Environmental Health (known as the Board of Health in the Municipal Code), the agency responsible for administering code provisions relating to horses, was not aware of the equestrian center's existence.

**Findings:** The Development Services Department staff failed to consider "quality of life" issues for the neighboring homeowners by (1) allowing the construction of the horse wash racks between the large barn and property line (a visual nuisance not shown on any conceptual plan), (2) allowing placement of the dressage or training arena directly behind the properties at the southern end of the facility (a noise and dust nuisance that was shown elsewhere on the conceptual plan), and (3) allowing the site manager to consistently violate his own manure management plan (a public health nuisance).

The Department of Environmental Health was, until mid-January 2003, unaware of the existence of the equestrian center. This agency needs to be included in the loop earlier, for development and construction projects involving large-scale animal facilities, if it is to fulfill its responsibilities for public health and sanitation.

The information in this question and answer section can be concluded by suggesting that a Good Neighbor policy has not yet cleared 'the hurdle'.

## COMMENDATIONS

1. The neighbors, as revealed in the written record, pursued their complaints with both

diligence and persistence.

2. The Development Services Department management expended significant time and energy in responding to the complaints. Responses included both written and face-to-face meetings. We commend their efforts.

## **RECOMMENDATIONS**

### **The San Diego County Grand Jury Recommends that the San Diego City Council:**

- 03-19:** Amend its DSD procedures to expressly state in approved development permits or their accompanying ordinance(s) and resolutions, any known, specific provisions of the San Diego Municipal Code that are being waived or overridden as a result of the City Council's deliberations and decision-making.

### **The San Diego County Grand Jury Recommends that the Director, Development Services Department:**

- 03-20:** Re-emphasize within and across the DSD its records management and retention policy and procedures. The objective is to ensure that all department sections and offices are cognizant of their responsibilities in creating, managing, storing, and disposing of project documents, records, and files in accord with said policy and procedures.
- 03-21:** Establish a formal communication link process with the Department of Environmental Health (DEH) so that in future development projects involving large-scale animal facilities, the DSD staff can notify the DEH of such projects so that it can execute its responsibilities as described in the Municipal Code Chapter 4: Health and Sanitation.
- 03-22:** Determine an appropriate course of action for implementing the Cease Illegal Occupancy order that was served on September 25, 2002, to the site manager of the Seabreeze Equestrian Center.
- And, if Seabreeze Farms Equestrian Center continues to operate under an "active or open" permit:
- 03-23:** Work with the Equestrian Center's manager to achieve consistent and appropriate implementation of the site's manure management program.
- 03-24:** Work with the Equestrian Center's manager to achieve consistent and appropriate implementation of the site's fly control, dust control, rodent control, and vector control programs.

- 03-25:** Work, in consultation with Sandown Way and Rider Place residents whose properties abut the equestrian center's boundary, to:
1. Relocate the horse wash racks (a visual nuisance) to another location, and
  2. Relocate the dressage arena (a noise and dirt nuisance behind the Rider Place residents) in accord with the conceptual layout.

**The San Diego County Grand Jury Recommends that the Director, Department of Environmental Health:**

- 03-26:** Recommend to the City Council an amendment to Municipal Code Chapter 4: Health and Sanitation Article 4: Disease Control – Nuisance Division 3: Animals 44.0308 Horses by:

1. Replacing the words stable, corral, and pasture with the phrase “equestrian uses”. The intent of this change is to include nighttime and daytime activities as well as permanent and non-permanent equine and equine-related structures and facilities,
2. Clarifying the meaning, intent, and use of the words, “dwelling”, “residence”, “corral”, and “pasture”,
3. Changing section (d) to read that the 75-foot wide belt extends from the outer edge of any equestrian use and terminates at the homeowner property line.

And, if Seabreeze Farms Equestrian Center continues to operate under an “inactive or closed” permit:

- 03-27:** Work with the Equestrian Center's manager to achieve consistent and appropriate implementation of the site's manure management program.

- 03-28:** Work with the Equestrian Center's manager to achieve consistent and appropriate implementation of the site's fly control, dust control, rodent control, and vector control programs.

- 03-29:** Work, in consultation with Sandown Way and Rider Place residents whose properties abut the equestrian center's boundary, to:



1. Relocate the horse wash racks (a visual nuisance) to another location, and
2. Relocate the dressage arena (a noise and dirt nuisance behind the Rider Place residents) in accord with the conceptual layout.

**03-30:** Perform the measurements specified in the San Diego Municipal Code §44.0308 (a) and (d) (i.e., one-fourth mile and 75-foot wide belt measures) at the Seabreeze Farms Equestrian Center owner's expense and take whatever action is necessary as a result.

**The San Diego County Grand Jury Recommends that the City Manager:**

**03-31:** Assure that the Director, Department of Environmental Health and Director, Development Services Department:

Work with the Equestrian Center's manager to achieve consistent and appropriate implementation of the site's manure management program,

Work with the Equestrian Center's manager to achieve consistent and appropriate implementation of the site's fly control, dust control, rodent control, and vector control programs,

Work, in consultation with Sandown Way and Rider Place residents whose properties abut the equestrian center's boundary, to:

1. Relocate the horse racks (a visual nuisance) to another location,
2. Relocate the dressage arena (a noise and dirt nuisance behind the Rider Place residents) in accord with the conceptual layout.

**03-32:** Otherwise, order reasonable restoration or mitigation as authorized by San Diego Municipal Code §121.0312. in the Seabreeze Farms development for all violations of the San Diego Municipal Code.

## **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 headed by an elected officer, both the 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 when applicable. This time frame shall not exceed six months from the date of 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 from:

RESPONDING AGENCY	RECOMMENDATIONS	DATE
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<b>San Diego City Council</b>	<b>03-19</b>	<b>07/15/03</b>
<b>Director, Development Services Department</b>	<b>03-20 through 03-25</b>	<b>07/15/03</b>
<b>Director, Department of Environmental Health</b>	<b>03-26 through 03-30</b>	<b>07/15/03</b>
<b>San Diego City Manager</b>	<b>03-31 and 03-32</b>	<b>07/15/03</b>