

ATTACHMENT F

Finding of Nuisance and Order or Abatement

Finding of Violation and Order Imposing Administrative
Civil Penalty

May 8, 2018

~Sent via U.S. Mail and Email~

Paula Mushrush
Planning & Building Department
Housing Division
3015 H Street, Eureka, CA 95501



Institute for
Administrative Justice

3200 Fifth Avenue
Sacramento, CA 95817
www.mcgeorge.edu
Tel 916.739.7049
Fax 916.669.3005

**RE: FINDING OF NUISANCE AND ORDER OF ABATEMENT AND
FINDING OF VIOLATION AND ORDER IMPOSING
ADMINISTRATIVE CIVIL PENALTY
Werner Weltsch, Sarah Weltsch, and Jonathan Weltsch
Case No.: 14CEU-51
Property Address: 6451 Elk River Road, Eureka, CA 95503
APN: 304-211-011-0000**

Dear Ms. Mushrush:

Enclosed please find the Administrative Hearing Finding from Hearing Examiner Kimberly Buchholz. This administrative hearing was held on April 9, 2018. Please serve a copy to the Property Owners. An invoice will follow shortly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lynette McPherson", with a long horizontal flourish extending to the right.

Lynette McPherson
Paralegal

Enclosure

INSTITUTE FOR ADMINISTRATIVE JUSTICE
 UNIVERSITY OF THE PACIFIC
 MCGEORGE SCHOOL OF LAW
 3200 Fifth Avenue
 Sacramento, CA 95817
 Telephone: 916-739-7049

Property address:
 6000 Elk River Road
 Eureka, CA 95503

**COUNTY OF HUMBOLDT
 PLANNING AND BUILDING DEPARTMENT
 CODE ENFORCEMENT DIVISION**

In the matter of:)	FINDING OF NUISANCE AND
)	ORDER OF ABATEMENT AND
Werner Weltsch, Sarah Weltsch, &)	FINDING OF VIOLATION AND ORDER
Jonathan Weltsch)	IMPOSING ADMINISTRATIVE CIVIL
(Property Owners))	PENALTY
)	
APN: 304-211-011-000)	
)	
and)	
)	Case No.: 14CEU-51
Notice to Abate Nuisance issued by)	
COUNTY OF HUMBOLDT)	

I. INTRODUCTION

This matter was heard on April 9, 2018, via video conference in Sacramento, California, before Kimberly Buchholz, Hearing Officer for the Institute for Administrative Justice, University of the Pacific, McGeorge School of Law.¹ The purpose of the hearing was to determine whether to uphold the Notice of Violation and Proposed Administrative Civil Penalty dated October 16, 2017 (Exhibit M), issued by the County of Humboldt (County), that states conditions on the property at 6000 Elk River Road, Eureka, California (Property), violate the Humboldt County Code and constitute a nuisance.

II. APPEARANCES

Shauna Soeth, Code Compliance Officer, and Robert Russell, Deputy Director for Humboldt County Planning and Building Department, appeared on behalf of the County, with Deputy County Counsel John Nguyen. Werner Weltsch, and Jonathan Weltsch were present along with their attorney, Ken Bareilles (Property Owners). The County offered Exhibits A-V,

¹ Humboldt County Code states that the Code Enforcement Unit shall set hearings under Chapter 1 before a Hearing Officer appointed by the Humboldt County Board of Supervisors pursuant to California Government Code Section 27720. (HHC section 351-8(i)). Government Code section 27720 states that “[t]he board of supervisors of any county may establish the office of county hearing officer. The duties of the office are to conduct hearings for the county or any board, agency, commission, or committee of the county.”

all of which were admitted as evidence.² The Hearing Officer received testimony from Officer Soeth, Mr. Russell, Werner Weltsch and Jonathan Weltsch. The Property Owners offered a grading permit, which was labeled Exhibit W and admitted as evidence. The record was left open until April 13, 2018, so the County could investigate the grading permit offered by the Property Owners. The County submitted a letter with attachments dated April 12, 2018, which was admitted as evidence. At 5:00 p.m. on April 13, 2018, the record was closed and the matter submitted for decision.

III. JURISDICTION

The Planning and Building Department, Code Enforcement Division (Department), has found that conditions on the Property constitute a nuisance as defined in Division 5, Chapter 1, section 351-3 of the Humboldt County Code (HCC). Those findings resulted in the October 16, 2017, Notice of Violation and Proposed Administrative Civil Penalty (Notice) issued by the Department pursuant to HCC section 351-7, notifying the Property Owners to abate the nuisance. (HCC section 351-7).

Section 351-7 of the HCC provides that whenever the Code Enforcement Unit has found and determined after inspection that a public nuisance exists on a property, the Code Enforcement Unit shall prepare, and serve upon each owner a "Notice to Abate Nuisance." The owner may then file with the Code Enforcement Unit an appeal of the determination that a nuisance exists on the affected property. (HCC Section 351-8(g)). Upon receipt of an appeal of the determination that a nuisance exists on the affected property, the Code Enforcement Unit shall set the matter for hearing before the hearing officer, and serve a "Notice of Code Enforcement Appeal Hearing" upon each appellant. (HCC Section 351-9). Notice may be served by personal service, by first class and certified mail and by posting at the property, or by publication. (HCC Section 351-6(a)).

In the present case, the Department asserts that the conditions on the Property, as specified on the October 16, 2017, Notice (Exhibit M), violate sections of the HCC. The Property Owners appealed the decision and requested a hearing (Exhibit N). The Department issued a Notice of Code Enforcement Appeal Hearing, setting the scheduled hearing for April 9, 2018, at 11:00 a.m. (Exhibit P). The Notice of Code Enforcement Appeal Hearing was mailed by first class and certified mail to the Property Owners at 6451 Elk River Road, Eureka, California, on March 23, 2018 (Exhibit P). The Notice of Code Enforcement Appeal Hearing was posted on the Property that same day (Exhibit P). The Property Owners did not dispute notice of the hearing.

The Hearing Officer concludes that the efforts made by the County to notify the Property Owners of the alleged violations and the hearing were adequate and satisfied the notice requirements of the HCC.

² Mr. Bareilles objected to the evidence being admitted as evidence prior to their relevance being established during the hearing. The objection was not raised following the hearing. The Hearing Officer finds that all Exhibits are relevant and admissible.

IV. STANDARD OF PROOF

In nuisance abatement hearings held under the provisions of HCC, Division 5, Chapter 1, the hearing officer “shall determine whether or not a Nuisance exists on the affected Property.” If a nuisance is found not to exist on the affected property, the hearing officer shall terminate the abatement proceedings. If a nuisance is found to exist on the affected property, the hearing officer “shall order each Owner . . . of the affected Property to abate such Nuisance within ten (10) calendar days after service of a ‘Finding of Nuisance and Order of Abatement,’ or such longer period which the Hearing Officer finds reasonable.” (HCC section 351-12).

No burden of proof is specified in the HCC. Since the HCC is silent as to the burden of proof, the County shall have the burden of showing by a preponderance of the evidence that the condition of the premises constitutes a public nuisance.³

V. ISSUES

- 1. Do conditions on the Property as identified in the October 16, 2017, Notice violate the HCC and constitute a public nuisance?**
- 2. If so, what action must be taken to correct the violation(s)?**
- 3. If conditions on the Property constitute a public nuisance, should the administrative penalties sought by the County be granted?**

VI. BACKGROUND

Officer Soeth testified that the Planning and Building Department (Department) received a complaint in February 2014 of a possible salvage yard being run on the Property. The Department mailed a letter to the Property Owners on February 4, 2014, advising them of a possible violation regarding a salvage yard, and instructed them on how to comply with the HCC (Exhibit D). A Second Notice was mailed to the Property Owners on June 6, 2014, acknowledging that on May 5, 2014, the Department granted the Property Owners an extension to abate the conditions, and requesting a progress update within 15 days (Exhibit D). A Final Notice was mailed to the Property Owners on September 2, 2014, stating that further time extensions were not possible and that the Property Owners needed to show progress in cleaning up the Property within 15 days (Exhibit D). Compliance was not achieved and a Notice of Nuisance was recorded against the Property on September 18, 2014 (Exhibit D).

Following an inspection of the Property on October 23, 2014, a second Notice of Nuisance dated November 13, 2014, was recorded, alleging improper grading, unpermitted building/structure, storage of junk vehicles, and maintaining a junkyard⁴ (Exhibits F, G). Following an inspection of the Property on March 2, 2015, an Amended Notice of Nuisance

³ Under California Evidence Code section 115, the standard of proof at an administrative hearing is proof by preponderance of the evidence, “[e]xcept as otherwise provided by law.” (*San Benito Foods v. Veneman* (1996) 50 C.A.4th 1889, 1892, 58 C.R.2d 571.)

⁴ Junkyard, salvage yard, and wrecking and salvage yard are used synonymously herein.

dated April 7, 2016, was recorded, alleging unpermitted development in a Streamside Management Area in addition to the former list of alleged violations (Exhibit J). The Amended Notice was posted to the Property On April 13, 2016, and mailed to the Property Owners on April 12, 2016 (Exhibit J). The Amended Notice to Abate Nuisance noted the conditions constituting a nuisance as well as corrective actions.

Subsequent Property inspections conducted on May 19, 2017, and September 15, 2017, revealed conditions on the Property were not improved (Exhibits K, L). A Notice of Violation and Proposed Administrative Civil Penalty dated October 16, 2017, was mailed to the Property Owners and posted to the Property (Exhibit M). Werner Weltsch submitted an Appeal Hearing Request Form on November 15, 2017, asserting that there is no debris on the Property, that “no plumbing or electrical on property,” road grading was done with a permit, and that a Streamside Management Area does not exist on the Property (Exhibit N).

Further inspections were conducted on January 22, 2018, and April 4, 2018. During those inspections, the County observed numerous piles of discarded items, including scrap wood, pipes, metal, plastic bins, a wooden staircase, a discarded door, wood pallets, plywood, gym equipment, metal frames, buckets, tires, inoperable vehicles, unpermitted buildings, grading, and excavated trees (Exhibits O, U).

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE 1: Do conditions on the Property as identified in the October 16, 2017, Notice violate the HCC and constitute a public nuisance?

Section 351-3 of the HCC defines nuisance, in relevant part, as “any condition declared by any statute of the State of California or ordinance of the County to be a nuisance,” and “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt.” (HCC Sections 351-3(a), (f)).

Violation 1: HCC section 371-2, Maintaining a salvage yard

No wrecking and salvage yard is allowed in Humboldt County unless certain conditions are met, including obtaining a use permit (HCC section 371-2). A “wrecking and salvage yard” is defined as “any aggregate area of more than 200 square feet within any parcel, lot or contiguous lots of real property which is used as a place where imported waste, inoperable machinery, inoperable motor vehicles or discarded or salvaged materials are disassembled, handled, placed, processed, baled, packaged or stored . . . the terms ‘wrecking and salvage yard; does not include areas used for the sale or storage [of] operable automobiles, tractors, farm machinery, house trailers or boats. The term ‘wrecking or salvage yard’ also does not include areas used for the salvaging of materials incidental to and used in manufacturing or farming operations, providing such salvaging of materials takes place where the manufacturing or farming is done.” (HCC section 371-1).

Officer Soeth testified that on April 4, 2018, she observed and took photographs of numerous piles of discarded items, including solid waste and garbage throughout the Property

(Exhibit U). Her photographs show within those piles lumber, fencing materials, washers, dryers, a discarded door, staircases, scrap metal, plastic bins, a large rusted metal frame, a pool ladder, exercise equipment, tires, tarps, salvaged materials, scrap wood, tubs, containers, and household furniture stored throughout the Property (Exhibit U). Officer Soeth testified that the piles of solid waste and garbage cover an area greater than 200 square feet. Officer Soeth further testified that no permit has been issued for a salvage yard on the Property.

The Property Owners contend that the materials shown in Officer Soeth's photographs are used for farming; specifically, worm farming according to Jonathan Weltsch's testimony. However, Werner Weltsch testified that there currently is no farming or manufacturing occurring on the Property, but that he does plan on using the Property for keeping goats. Jonathan Weltsch testified that he has a commercial fencing business, but that the items on the Property are just for building a fence around the Property and for his worm farming. Jonathan Weltsch further testified that the machinery on the Property either works or can be made to work. He also testified that the staircases are used to access large piles of hay. The Property Owners further contend that the materials present no danger to the community, therefore the piles of items do not constitute a nuisance.

The Hearing Officer does not find the Property Owners' arguments persuasive. As stated above, section 351-3 of the HCC defines nuisance, in relevant part, as "any condition declared by any statute of the State of California or ordinance of the County to be a nuisance," and "any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt." (HCC sections 351-3(a), (f)). One of the definitions of Nuisance does include danger to the public health or safety (HCC section 351-3(c); however, HCC sections 351-3(a) and (f) do not include an element of danger to the community in order to determine a nuisance.

Furthermore, not only did Werner Weltsch testify that neither farming nor manufacturing were being done on the Property, but the Hearing Officer does not find Jonathan Weltsch's claim that he is farming worms to be supported by any evidence in the photographs. Additionally, the photographs depict many items, such as exercise equipment, household furniture, a rusted metal frame, and a washer and dryer, that do not support the business and manufacturing of fences.

Accordingly, Officer Soeth's testimony, corroborated by the photographs, demonstrate an aggregate area greater than 200 square feet of the Property is being used for storage of imported waste, inoperable machinery, and discarded or salvaged materials. The County has therefore shown by a preponderance of the evidence that the Property Owners are maintaining a junkyard on the Property in violation of HCC section 371-2, which is a nuisance pursuant to HCC section 351-3(f).

Violation 2: HCC section 354-1, Junk and/or Inoperable Vehicles

Section 354-1 of the HCC states that "[t]he accumulation and storage of junk vehicles on private or public property not including highways is hereby found to create a condition tending to reduce the value of property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the public health,

safety and general welfare.” The section continues: “Therefore the presence of a junk vehicle on private or public property not including highways, except as expressly hereinafter permitted, is hereby declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter.”

A “junk vehicle” is defined as “a vehicle or part thereof which is either (1) Substantially wrecked, dismantled, or inoperative and its salvage value and cost of repair together exceed its market value if repaired; or (2) Inoperative for a period of thirty (30) consecutive days or more.” (HCC section 354-2(e)). Per Section 352-2(a), a vehicle is defined as “a device, whether or not operable, designed for the purpose of propelling, moving or drawing upon a highway any person or property”

Officer Soeth testified that on April 4, 2018, she observed multiple junk vehicles on the Property, including a white truck and a black truck that Werner Weltsch stated were inoperative (Exhibit U, p. 183); a white trailer home that Werner Weltsch stated has been on the Property for two years (Exhibit U, p. 183); an elevated mobile home that constitutes a vehicle part (Exhibit U, p. 185); a white van that Werner Weltsch stated was inoperable (Exhibit U, p. 185); and, a white box truck surrounded by piles of wood and debris that has not been moved since the prior inspection on January 22, 2018 (Exhibits O, p. 85, U, p. 186).

During the hearing, the Property Owners admitted that two of the vehicles were inoperable and likely would be taken to a scrap yard. Jonathan Weltsch testified that the other vehicles are either operable or that he can easily make them operable. The Property Owners further contend that since there is no evidence of oil or other liquids leaking from the vehicles, they present no danger and therefore are not nuisances. Again, the HCC states that “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt” constitutes a nuisance (HCC section 351-3(f)).

Officer Soeth’s testimony, corroborated by her photographs and the Property Owners’ admission, demonstrates the presence of junk vehicles that have been inoperable for a period of thirty consecutive days or more on the Property in violation of HCC section 354-1. Section 354-1 has declared this violation to constitute a public nuisance. The County therefore has shown by a preponderance of the evidence that the junk vehicles stored on the Property constitute a public nuisance per se under HCC section 351-3(a).

Violation 3: HCC section 331-28, Construction of Building/ Structure in Violation of Building, Plumbing and/or Electrical Codes

Section 331-28 of the HCC states that, “[a]ny building or structure erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, equipped, used, occupied or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. . . . Any failure, refusal, or neglect to obtain a permit as required by this chapter shall be prima facie evidence of the fact that a public nuisance has been committed in connection with the erection, construction, enlargement, alteration, repair, movement, improvement, removal, conversion or demolition, equipping, use, occupation or maintenance of a building or structure erected, constructed, enlarged, altered,

repaired, moved, improved, removed, converted or demolished, equipped, used, occupied or maintained contrary to the provisions of this chapter.”

Officer Soeth testified that on April 4, 2018, she observed and took photographs of a large building sitting on pallets, as well as two metal storage containers (Exhibit U, p 195). The County maintains that no permits were acquired for the erection of these structures, and that the structures require permits as they are all larger than 120 square feet. Officer Soeth also testified that the wooden structure is not safe as it is stacked on wooden pallets.

The Property Owners testified that the large wooden building was moved from an adjacent property three years ago and that they have plan to ultimately place it on a concrete foundation. The Property Owners further testified that the building is being used to store hay. Regarding the metal containers, the Property Owners cut a 40 by eight foot metal shipping container in half to use as storage. The Property Owners do not dispute they lack permits for any of the structures; rather, they argued they tried to permit the wooden structure but could not because of this open code enforcement case.

Officer Soeth’s testimony, corroborated by the photographs and the Property Owners’ testimony, demonstrates the presence of three unpermitted structures erected on the Property in violation of HCC section 331-28. Section 331-28 has declared this violation to constitute a public nuisance. The County therefore has shown by a preponderance of the evidence a public nuisance per se under HCC section 351-3(a).

Violation 4: HCC section 331-14, Grading Without Permits

Section 331-14 of the HCC “sets forth rules and regulations to control excavation, grading and earthwork construction . . . [and] establishes the administrative procedure for the issuance of permits” (HCC section 331-14(B)). Per HCC section 331-14(D), a permit is required for “any grading,” unless specifically exempted, including fills less than a foot or two feet in depth, which does not exceed 50 cubic yards on any one lot. (HCC section 331-14(D)(2)(h) and (i)). Grading is defined in HCC Section 331-14 as “all grading, filling, land contouring, clearing and grubbing, drainage activities, site preparation, and road building.”

Officer Soeth testified that she observed grading in various areas of the Property that, in total, is well over 50 cubic yards (Exhibit V, pp. 187-194, 197-200). Officer Soeth testified that the grading included multiple piles of wood chips and earth materials, and tree removal in the center of the Property. The County provided photographic evidence that a large number of trees have been excavated on the Property based on comparisons of inspections conducted on January 22, 2018, and October 21, 2014 (Exhibit U, pp. 197-200). The County maintains that there were no permits issued for this grading.

Officer Soeth testified that the Property Owners have excavated a dirt road that forks off north to the property line. Officer Soeth testified that no permits have been issued for that grading (Exhibit V, pp. 187-194).

The Property Owners contend that they have an ongoing permit that applies to the parcel that allows them to conduct grading, including cutting a hill and taking rock and dirt from the Property. The Property Owners submitted an application and permit fee record for “grading/excavation fill on parcel to create road for two parcels as access ingress/egress” (Exhibit W). According to the County’s letter dated April 12, 2018,

“[The Department] issued permit number 11-230-X-4 on March 15, 2011 for grading activity across two parcels to create an ingress/egress access to the parcels. . . . This grading activity was only for a total of approximately 600 cubic yards of excavation and fill (Total excavation of 450 cubic yards and Total Class II base of 150 cubic yards) to create specific ingress and egress road segments described on the tentative map for this area. No grading activity beyond the access road has been approved with this permit. Additionally, the approved tentative map shows a riparian area on Parcel 2 [Property] that should have been fenced with no work authorized within that riparian habitat area.

”Huboldt County Planning and Building’s records show that no inspections have been requested or performed for this permit, either by our inspectors or the engineer of record. . . . Grading permits are occasionally allowed to continue if the engineer of record provides an annual update of grading progress when the work is ongoing. Due to the lack of inspections or engineering reports on this particular permit, the subject permit was expired effective March 15, 2012 according to our records. Any grading work on these road segments completed after this date, or any grading work on other portions of the property would not be covered by this permit.”

Accordingly, despite the Property Owners’ contentions that they have a grading permit to build a road including grading, the permit submitted by the Property Owners does not cover grading work completed by the Property Owners since March 15, 2012. There is no dispute that grading work has been completed on the Property within the past year.

The County has proven by a preponderance of the evidence that grading was done on the Property without permits in violation of HCC section 331-14. Chapter 1 of HCC Title III – Land Use and Development contains the County’s grading requirements; furthermore, per HCC section 331-28, also contained in Chapter 1 of Title III - Land Use and Development, “[a]ny building or structure erected, constructed, . . . used, occupied or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance.” Additionally, “[a]ny failure to obtain a permit as required by this chapter shall be prima facie evidence of the fact that a public nuisance has been committed” The Property Owners submitted a permit for grading; however, the Property Owners vastly exceeded the amount of and location for grading than the permit granted, the grading was never inspected, and the permit was never finalized. Mr. Russell testified that the grading permit expired on March 15, 2012, due to no required annual updates for ongoing work and no inspections or engineering reports (Response to Property Owner’s Exhibit W). Despite the Property Owners’ assertion that their permit was valid for the work they did, they did not overcome the County’s prima facie evidence that the grading they did is a public nuisance. Accordingly, the County has proven by a preponderance of the evidence that grading was done on the Property without permits in violation of HCC section 331-14, and that the violation is a public nuisance per se.

Violation 5: HCC section 314-61.1, Development in a Streamside Management Area Without a Permit

Section 314-61.1 of the Humboldt County Zoning Code, also called the Streamside Management Area Ordinance of the County of Humboldt, states its purpose is to “provide minimum standards pertaining to the use and development of land located within Streamside Management Areas (SMAs) and other wet areas such as: natural ponds, springs, vernal pools, marshes, and wet meadows (exhibiting standing water year-long or riparian vegetation).” Pursuant to HCC section 314-61.1.5, “[a]ll development as defined in the Framework Plan within or affecting SMAs or other wet areas not exempted under subsection 314-61.1.4 above shall require a permit pursuant to an application for development within SMAs or other wet areas and processed as a Special Permit pursuant to the Humboldt County Zoning Regulations (Section 312-3.1.1 et seq).”

The HCC defines SMAs “as defined in the Humboldt County General Plan (Page G-8) and includes, a natural resource area along both sides of streams containing the channel and adjacent land.” (HCC section 314-61.1.7.6). HCC section 314-61.1.7.6.7 defines “other wet areas” as “natural ponds, springs, vernal pools, marshes and wet meadows which exhibit standing water year-long or riparian vegetation. The existence of possible Other Wet Areas shall be identified by the responsible department using normal soils investigation criteria. These criteria indicate the presence of any of the following: standing water, evidencing a natural pond or poor drainage conditions, marshy soils, or hydrophilic vegetation (e.g., swamp grass).” The Humboldt County General Plan states riparian vegetation “refers to vegetation commonly occurring adjacent to stream banks and includes such plants as willows, alders, cottonwood, wax myrtle, big leaf maple, California laurel, red elderberry, etc.”

The County offered a U.S. Fish and Wildlife Service and a National Wetlands Inventory Map Report for the Eel River/Humboldt Bay Mapping Project that designated the northwest corner of the Property as a Freshwater Emergent Wetland (Exhibit T, pp. 162-173). Officer Soeth testified and submitted photographic evidence, that an unpermitted road had been built through that wetland area, and that a significant portion of the wetland area had been graded and or filled and was being used to store things (Exhibit T, pp. 161, 162). According to former County Code Enforcement Officer Jeff Conner’s March 2, 2015, Inspection Report, the Property Owners “admitted that they were aware that the willow covered area was a wetland and they did not deny that they had pushed dirt into it to make their work area larger.” (Exhibit H). During the hearing, Officer Soeth testified that there exists riparian vegetation on the northwest corner of the Property, further supporting the definition of the area as an “Other Wet Area.”

The Property Owners testified that there is no water where the trees are, that a well in that area is dry, and that the National Wetlands Inventory Map is not reliable as the designation was made by someone sitting in an office looking at aerial maps. They dispute that there is any water near the area designated as a wetland. The Property Owners further dispute the designation of the area as an “Other Wet Area.” The Property Owners argue that any water that Officer Soeth observed during her inspections was simply runoff from several days of rain prior to her inspections.

The County's evidence is persuasive that the land in the northwest corner of the Property has been designated as a Streamside Management Area. The National Wetlands Inventory Map and the grading permit issued for the Property both point to the area as being a wetlands and the area, prior to the grading, was full of willow trees, which is riparian vegetation (Exhibit H). The County has also provided persuasive evidence that extensive grading, including tree excavation, filling, and grading has been done in the Streamside Management Area without a permit. Accordingly, the County has proven by a preponderance of the evidence that the Property Owners have developed areas within a Streamside Management Area without permits in violation of HCC section 314-61.1, and that violation is a public nuisance per se (HCC section 331-28).

ISSUE 2: What action must be taken to correct the violation(s)?

Violation 1: HCC section 371-2, Maintaining a Salvage Yard

The October 16, 2017, Notice of Violation and Proposed Administrative Civil Penalty (Notice) stated the corrective action for violations of HCC section 371-2 as contain all debris within a 200 square-foot area, and/or contain all debris within an enclosed structure, and/or remove all debris. During the Hearing, the County proposed the same corrective action (Exhibit S) within ninety (90) days from the date of issuance of this Finding of Nuisance and Order of Abatement and Finding of Violation and Order Imposing Administrative Civil Penalty (Order). The Property Owners requested additional time.

The Hearing Officer finds the proposed schedule of compliance and corrective action reasonable. The Property Owners will be ordered to remove all debris/solid waste/scrap metal from the Property, and or contain it within a 200 square-foot area, and or contain it in an enclosed structure within ninety (90) days of the issuance of this order.

Violation 2: HCC section 354-1, Junk and/or Inoperable Vehicles

The October 16, 2017, Notice states the corrective action for violations of HCC section 354-1 as 1) restore the vehicles to an operative condition, and/or 2) remove the inoperable vehicles from the Property, and/or 3) store the inoperable vehicles within an enclosed structure. During the Hearing, the County proposed the same corrective action within ninety (90) days from the date of issuance of this Order (Exhibit S).

The Hearing Officer finds the proposed schedule of compliance and corrective action reasonable and will order the abatement to be completed within ninety (90) of the issuance of this order.

Violation 3: HCC section 331-28, Construction of Building/ Structure in Violation of Building, Plumbing and/or Electrical Codes

The October 16, 2017, Notice states the corrective action for violations of HCC section 331-28 as apply for and obtain permits. During the hearing, the County proposed that the Property Owners apply for and obtain an Agricultural Exemption or apply for, obtain, and

finalize Building Permits for the metal storage containers and the older wooden structure that was moved onto the Property. In the alternative, apply for, obtain, and finalize the proper permits to remove and or demolish the unpermitted structures that are on the Property. The County requested the corrective action be completed within six (6) weeks from the date of issuance of this Order (Exhibit S).

The Hearing Officer finds the proposed schedule of compliance and corrective action reasonable and the Property Owners will be ordered to apply for and obtain an Agricultural Exemption or apply for, obtain, and finalize a Building Permit for the metal storage containers and the older wooden structure, or apply for, obtain, and finalize the proper permits to remove the unpermitted structures within six (6) weeks of the date of issuance of this Order.

Violation 4: HCC section 331-14, Grading Without Permits

The October 16, 2017, Notice states the corrective action for violations of HCC section 331-14 as apply for and obtain permits for grading. During the hearing, the County proposed that the Property Owners submit a complete application for all of the permits, at minimum a grading permit, required to complete the restoration plan within four (4) weeks of obtaining the restoration plan. All work required by these permit(s) must be completed within six (6) months of the issuance of the permit (Exhibit S).

The Hearing Officer finds the County's proposed schedule of compliance and corrective actions reasonable and it shall be so ordered.

Violation 5: HCC section 314-61.1, Development in a Streamside Management Area Without a Permit

The October 16, 2017, Notice stated the corrective action for violations of HCC section 314-61.1 as apply for and receive a permit from the Planning Division. During the hearing, the County proposed that, within eight (8) weeks of the date of issuance of this Order, the Property Owners submit a restoration plan, designed by a qualified professional, to remediate the graded areas. All areas that have been graded without permits must be returned to an area that is environmentally stable based on the restoration plan and recommendations by the qualified professional. The qualified professional may determine that an area would have a greater negative environmental impact if restored to natural contours/vegetation. Property Owners shall apply for and obtain any permits required for development in a wetland area (Exhibit S).

The Hearing Officer finds the County's proposed schedule of compliance and corrective actions reasonable and it shall be so ordered.

ISSUE 3: Should the administrative penalties sought by the County be granted?

Title III, Division 5, Chapter 2 of the HCC allows for the imposition of civil penalties. (HCC section 352-1). The chapter defines "Responsible Party" as "[a]ny owner, beneficial owner, person, business, company, or any other entity . . . who has caused, permitted, maintained, conducted or otherwise allowed a Violation to occur." (HCC section 352-3(s)).

Any violation may be subject to an administrative civil penalty up to ten thousand dollars (\$10,000) per calendar day. (HCC section 352-5(a)). The amount of the administrative penalty shall be set by category. (HCC section 352-6(a)). The most serious penalties are Category 4 violations, subject to a penalty of six thousand dollars to ten thousand dollars per calendar day. (HCC section 352-5(a)(iv)). Category 2 violations are subject a penalty of one thousand dollars to three thousand dollars per calendar day (HCC section 352-5(a)(ii)). The least serious penalties are Category 1 violations, subject to a penalty of one dollar to one thousand dollars per calendar day. (HCC section 352-5(a)(i)).

Pursuant to HCC section 352-6(b), in determining which category a violation should be placed, the following factors are considered:

- i. The severity of the violation's impact on the health, safety, and general welfare of the public.
- ii. The number of complaints received regarding the violation;
- iii. The willfulness and/or negligence of the Responsible party, including:
 - a. How much control the responsible party had over the events which caused the violation to occur
 - b. Whether the responsible party took reasonable precautions against the events
 - c. Whether the responsible party knew or should have known the impacts associated with the violation
 - d. The level of sophistication of the responsible party in dealing with compliance issues
- iv. The number of times which the responsible party has done the same violation in the past three years
- v. The amount of administrative staff time expended in addressing the violations
- vi. The amount of civil penalties in similar cases
- vii. The efforts made by the Responsible party to correct the violations.

The County classified the violations as Category 2 violations under Section 352-6. According to the County, the Property Owners were issued a Notice of Nuisance on November 14, 2014, for operating a salvage yard in violation of HCC section 371-2, and an Amended Notice of Nuisance on April 7, 2016, with additional violations, finding no significant improvements have been made since the 2014 Notice (Exhibit R). The County submitted a proposed administrative civil penalties worksheet, requesting \$1,600 per day, per violation for the junk vehicles, unpermitted building/structures, unpermitted grading, unpermitted development within an SMA, and maintaining a salvage yard.

Per HCC section 352-12(a), the same criteria used to determine which category a violation falls will be used to determine the total amount of penalty per violation. The County has proven by a preponderance of the evidence the following: the severity of the violations are a potential health risk due to vector harborage, and the violations on the Property are an eyesore that impacts local property values and promotes blight; the case was opened due to a complaint received by the Planning and Building Department that alleged among other things that the Property was being used as a salvage yard; the Property Owners have 100 percent control of the Property, but have made no discernable efforts to stop or abate the violations, in fact the

continuing violations worsened since the initial notice of violation; the Property Owners have been on notice of the violations since February 2014 and have received multiple written notices and have had in-person meeting with the County regarding those violations and notices; and the violations continue as of the hearing date. Penalties will be assessed accordingly for each violation.

The Property Owners testified that the violations are the result of spite and payback from the County, after the County spilled toxic dirt onto the Property and failed to clean it properly. Werner Weltsch testified that he has had personal issues with the County and continually ran into dead ends, so he gave up on the paperwork. Additionally, the Property Owners argue that the penalties are excessive and offensive. They maintain that no damage to people, property, or society has been shown, and that more serious criminal charges do not result in as many penalties as the County seeks for this matter. The Property Owners urge the Hearing Officer to consider how the violations result in adverse effects to society when determining penalties. The Property Owners also urged the Hearing Officer to consider giving them an opportunity to clean up the Property to mitigate, or in lieu of, penalties.

Violation 1: HCC section 371-2, Maintaining a Salvage Yard

There is evidence that the Property Owners were willful in creating and permitting the salvage yard to remain on the Property. The County provided evidence that the salvage yard has remained and expanded on the Property since 2014, when the Property Owners were first put on notice of the violation.

The County proposed that this Category 2 violation be assessed at \$1,600 per day for 35 days. However, the Hearing Officer finds that in a similar case involving the Property Owners' adjacent property, a Category 1 violation was proposed and ordered. Therefore, this violation will be considered Category 1 and a penalty of \$100 per day for salvage yard will be ordered, for a total of \$3,500. However, if the Property Owners abate the Property within the timelines ordered herein, the penalties will be reduced to \$1,000.

The County included a Proposed Estimated Administrative Costs Calculation in Exhibit R; however, costs can only be recovered pursuant to HCC section 351-18 to 351-20 after proper notice and hearing. Accordingly, costs will not be determined or ordered herein.

Violation 2: HCC section 354-1, Junk and/or Inoperable Vehicles

The County has held under HCC section 354-1 that junk vehicles in the County have a severe impact on the health, safety, and general welfare of the public by "creat[ing] a condition tending to reduce the value of property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the public health, safety and general welfare."

The Property Owners were willful and negligent, as Werner Weltsch acknowledged to Officer Soeth that at least two of the vehicles were inoperable and belonged to the Property Owners. None of the vehicles have been removed as of the date of the hearing.

The County proposed that this Category 2 violation be assessed at \$1,600 per day for 35 days. However, the Hearing Officer finds that in a similar case involving the Property Owners' adjacent property, a Category 1 violation was proposed and ordered. Therefore, this violation will be considered Category 1 and a penalty of \$100 per day for all of the inoperable/junk vehicles will be ordered, for a total of \$3,500. However, if the Property Owners abate the nuisance within the timelines ordered herein, the penalties will be reduced to \$1,000.

Violation 3: HCC section 331-28, Construction of Building/ Structure in Violation of Building, Plumbing and/or Electrical Codes

There is persuasive evidence that the Property Owners were willful in placing the unpermitted structures on the Property. The County provided evidence that the structures have remained on the Property since 2014, when the Property Owners were put on notice of the violation.

The County proposed that this Category 2 violation be assessed at \$1,600 per day for 35 days. However, the Hearing Officer finds violation's impact on the health, safety, and general welfare of the public to be less severe and will consider this violation a Category 1 violation. A fine of \$250 per day will be ordered, for a total of \$8,750. However, if the Property Owners abate the Property within the timelines ordered herein, the penalties will be reduced to \$2,000.

Violation 4: HCC section 331-14, Grading Without Permits

The County stated in HCC section 331-14 that "[t]he purpose of this section is to safeguard life, limb, property and the public welfare, including the protection of water resources and their related habitats" The County provided evidence that unpermitted grading has occurred on the Property since 2014, when the Property Owners were put on notice of the violations.

While the County argues the Property Owners were willful in grading large areas on their Property, the Property Owners produced evidence demonstrating their mistaken belief that they were working under a valid permit.

The County proposed that this Category 2 violation be assessed at \$1,600 per day for 35 days. However, the Hearing Officer finds that this violation is a Category 1 violation and will impose fine of \$250 per day will be ordered, for a total of \$8,750. However, if the Property Owners abate the Property within the timelines ordered herein, the penalties will be reduced to \$3,000.

Violation 5: HCC section 314-61.1, Development in a Streamside Management Area Without a Permit

There is evidence that the Property Owners were willful in developing in the wetlands on the Property. The County provided evidence that grading has continued on the Property since 2014, when the Property Owners were made aware of the violation.

The County proposed that this Category 2 violation be assessed at \$1,600 per day for 35 days. However, the Hearing Officer finds violation's impact on the health, safety, and general welfare of the public to be less severe and will consider this violation a Category 1 violation. A fine of \$250 per day will be ordered, for a total of \$8,750. However, if the Property Owners abate the Property within the timelines ordered herein, the penalties will be reduced to \$4,000.

VIII. ORDER

1. The Department's October 16, 2017, Notice of Violation and Proposed Administrative Civil Penalty, is upheld.
2. The Department shall forthwith serve a copy on the owner of record in the same manner as set forth in HCC section 351-6 (HCC section 351-12).
3. Within ninety (90) days of the issuance of this Order, all debris, solid waste, and/or scrap metal stored outdoors on the Property shall be contained within a 200 square-foot area, and or contained in an enclosed structure, and or removed from the Property and taken to an approved disposal site.
4. Within ninety (90) days of the issuance of this order, each of the inoperable vehicles shall be restored to an operative condition, and or 2) stored within an enclosed structure, and or 3) removed from the Property.
5. Within six (6) weeks of the date of issuance of this Order, the Property Owners shall apply for and obtain an Agricultural Exemption or apply for, obtain, and finalize Building Permits for the metal storage containers and the older wooden structure that was moved onto the Property. In the alternative, apply for, obtain, and finalize the proper permits to remove and or demolish the unpermitted structures that are on the Property.
6. Within thirty (30) days of the issuance of this Order, the Property Owners shall obtain a restoration plan for grading work on the Property outside of the SMA. The Property Owners are ordered to apply for and obtain a grading permit, and complete the restoration plan within four (4) weeks of obtaining the restoration plan. The Property Owners are ordered to complete all work required by the permit(s) within six (6) months of the issuance of the permit.
7. Within eight (8) weeks of the date of issuance of this Order, the Property Owners shall submit a restoration plan to the County, designed by a qualified professional, to remediate the graded areas. All areas that have been graded without permits must be returned to an area that is environmentally stable based on the restoration plan and

recommendations by the qualified professional. The qualified professional may determine that an area would have a greater negative environmental impact if restored to natural contours/vegetation. Property Owners shall apply for and obtain any permits required for development in a wetland area. If each nuisance is not abated within the time specified above, the nuisance may be abated by the Code Enforcement Unit in such manner as may be ordered by the Department Head (HCC section 351-13)).

8. The County is entitled to \$33,250 in administrative civil penalties under HCC section 352-5. In the alternative, if the Property Owners abate all of the nuisance conditions found herein within the timelines ordered above, the administrative civil penalties will be reduced to \$11,000.
9. Pursuant to HCC section 352-12(c), “[a] Finding of Violation and Order Imposing Administrative Civil Penalty issued by the Hearing Officer shall be final in all respects unless overturned or modified on appeal by the Humboldt County Superior Court.”
10. A Finding of Violation and Order Imposing Administrative Civil Penalty may be reviewed as set forth in California Government Code section 53069.4(b)(1)-(2). (HCC section 352-12(c)).
11. A Finding of Nuisance and Order of Abatement issued by the Hearing Officer shall be final in all respects. Any appeal of the Hearing Officer’s Finding of Nuisance and Order of Abatement shall be governed by California Code of Civil Procedure section 1094.6, as such section may be amended from time to time. (HCC section 351-12(b)).

Date: May 8, 2018



Kimberly Buchholz, Hearing Officer
Institute for Administrative Justice
University of the Pacific, McGeorge School of Law

California Code of Civil Procedure § 1094.6. Judicial review; decisions of local agencies; petition; filing; time; record; decision and party defined; ordinance or resolution

(a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, denying an application for a permit, license, or other entitlement, imposing a civil or administrative penalty, fine, charge, or cost, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

California Government Code § 53069.4. Enactment of administrative fines and penalties; maximum amounts; procedure, review and appeal

(a)(1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b)(1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

PROOF OF SERVICE VIA EMAIL & U.S. MAIL

I, Lynette McPherson, declare as follows:

I am employed in the County of Sacramento, California, the county where the mailing took place; I am over the age of 18 years and not a party to the within action. My business address is 3200 Fifth Avenue, Sacramento, California 95817. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On May 8, 2018, I served a copy of the following document:

**FINDING OF NUISANCE AND ORDER OF ABATEMENT AND
FINDING OF VIOLATION AND ORDER IMPOSING
ADMINISTRATIVE CIVIL PENALTY
Werner Weltsch, Sarah Weltsch, and Jonathan Weltsch
Case No.: 14CEU-51
Property Address: 6451 Elk River Road, Eureka, CA 95503
APN: 304-211-011-0000**

on the person named below by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, that same day in the ordinary course of business, addressed as follows:


**Paula Mushrush
Planning & Building Department
Housing Division
3015 H Street, Eureka, CA 95501**

And via email addressed as follows:

PMushrush@co.humboldt.ca.us

tevenson1@co.humboldt.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 8, 2018, in Sacramento, California.


Lynette McPherson, Paralegal
Institute for Administrative Justice
McGeorge School of Law