

Attachment A

Status of Case Communication



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CODE ENFORCEMENT

3015 H Street • Eureka CA 95501
Phone: (707) 476-2429 • Fax: (707) 268-3792

September 9, 2024

Charles Garth
473 Quarry Road
Trinidad, CA 95570

RE: Status of Case Communication
473 Quarry Road, Trinidad, CA, 95570, APN: 515-172-010
Case No: 12CEU-117 and CE21-1263

Dear Mr. Garth,

This letter is to serve as a status update for the two cases Code Enforcement has open on your property located at 473 Quarry Road, Trinidad, APN: 515-172-010, Cases 12CEU-117 and CE21-1263 and to communicate to you Code Enforcement's intentions moving forward.

As you are aware Code Enforcement has been working with you and your representation for some time to seek alternative solutions for the violations associated with your property and nuisance conditions that remain. To date, there have been no viable solutions proposed to accomplish getting the property into compliance.

The following nuisance conditions remain on the property, which were ordered corrected by the California Hearing Officer's Finding of Nuisance and Order of Abatement signed July 26, 2018, after the Code Enforcement Appeal Hearing you requested:

- **HCC section 354-1 – Junk and/or Inoperable Vehicles:** restore vehicles to operative condition, and/or remove inoperable vehicles, and/or store inoperable vehicles within an enclosed structure
- **HCC section 611-3 – Unapproved Sewage Disposal System:** cease use of all pit privies, remove and dispose of any and all, including 55-gallon drums, containers of human waste by contracting with a licensed sewerage pumper who is permitted by the Division of Environmental Health, and provide a receipt showing removal and disposal fees to Code Enforcement
- **HCC section 331-28 – Construction of Building/Structure in Violation of Building, Plumbing and/or Electrical Codes:** apply for and obtain permits
- **HCC section 314-81.1 – Use of a Recreational Vehicle or Mobile Home as a Residence:** disconnect utilities and cease using recreational vehicles as a residence

- **HCC section 331-115 – Non-approved water supply system:** apply for permits for a water supply system or remove the water supply system
- **HCC section 371-2 – Maintaining a Junkyard:** remove all debris/solid waste/scrap metal from the property to an approved disposal site, and/or contain it within a 200 square-foot area, and/or contain in an enclosed structure
- **HCC section 521-4 – Improper Storage and Removal of Solid Waste:** contain and dispose of all solid waste on the Property to an approved disposal site
- **HCC section 351-3(c) – Building Conditions Endanger Life, Health, Safety, or Welfare of the Public:** apply for permits for repair, securement, or demolition of buildings
- **HCC section 314-87.1 – Secondary Dwelling Unit Without Permits:** apply for permits and remove all unpermitted structures
- **HCC section 311-10.1 – Property/Building use in Violation of Zoning Codes –** apply for permits for repair, securement, or demolition of the single family residence and all accessory structures, including unpermitted underground and above surface infrastructure on the property that require permits in an AG zone

For a complete list of ordered corrective actions, refer to the attached Finding of Nuisance and Order of Abatement.

Code Enforcement was requested to bring this case before the Humboldt County Board of Supervisors to present the case’s current status and plans moving forward. It is Code Enforcement’s intent to undertake a County Abatement. Currently, the County has jurisdiction to abate the nuisance conditions on the property, excluding the junk vehicles, pending the Junk Vehicle Hearing you requested.

This item is **tentatively** scheduled to go before the Board of Supervisors on the September 24, 2024, meeting.

Lastly, it has been brought to Code Enforcement’s attention that a recent survey of the neighboring property lines has been drafted and areas previously documented as being your property may actually be on a neighboring property, specifically the north portion near the locked gate and entry into your property.

This area has a documented history of being an area you store numerous items and we have received a complaint that these stored items may be a violation of Humboldt County Code.

As a courtesy and to respect your reasonable expectation of privacy, we are requesting to conduct an inspection of this area described above that you may or may not be storing belongings on. We are asking access through the locked gate to this north area only, and do not intend to continue further into/onto your property during this inspection.

Please contact Code Enforcement if you are willing to consent to an inspection and to schedule an inspection date and time.

If Code Enforcement does not hear from you by September 25, 2024, we will assume you

have denied your consent for an inspection.

If you have any questions or concerns about this letter, please feel free to contact me by telephone at (707) 268-3715 or by email dbeck1@co.humboldt.ca.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dean Beck', written over a horizontal line.

Dean Beck
Code Enforcement Manager

Attachment: Finding of Nuisance and Order of Abatement

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

Property address:
473 Quarry Road
Trinidad, CA 95570

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

In the matter of:)	ADMINISTRATIVE HEARING
)	FINDING OF NUISANCE AND
Charles Garth)	ORDER OF ABATEMENT AND
)	FINDING OF VIOLATION AND
APN: 304-211-011-000)	ORDER IMPOSING
)	ADMINISTRATIVE CIVIL
)	PENALTY
)	
and)	
)	Case No.: 12CEU-117
Notice to Abate Nuisance issued by)	
<u>COUNTY OF HUMBOLDT</u>)	

I. INTRODUCTION

This matter was heard on June 11, 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 August 24, 2017, Notice to Abate Nuisance and the August 24, 2017, Notice of Violation and Proposed Administrative Civil Penalty (Exhibits H, I), issued by the County of Humboldt (County), that state conditions on the property at 473 Quarry Road, Trinidad, California (Property), violate the Humboldt County Code and constitute a nuisance.

II. APPEARANCES

Deputy County Counsel John Nguyen represented the County; Shauna Soeth, Code Compliance Officer, Robert Russell, Deputy Director for Humboldt County Planning and Building Department, Charles Fielder, Code Compliance Officer, Adam Molofsky, Environmental Health Inspector, and Chad Pasquini, Chief Building Official, appeared on behalf of the County. Property owner Charles Garth (Property Owner) appeared and was represented by

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."

attorney Fred Fletcher. The County offered Exhibits A-OO, all of which were admitted as evidence.² The Hearing Officer received testimony from Officer Soeth, Officer Fielder, Inspector Molofsky, Mr. Pasquini, Mr. Russell, and the Property Owner. The record was left open until July 25, 2018, so the Property Owner could submit a copy of the Superior Court of Humboldt County's file in case number DR070834. On June 25, 2018, the Property Owner submitted the Superior Court of Humboldt County's June 14, 2018, Ruling and Order on Motion to Enforce Settlement Agreement and Motion to Set Aside Judgment in case number DR070834, which was labeled Exhibit PP and admitted as evidence. The County objected to the Property Owner's contention that the Hearing Officer should stay any decision pending the Court's findings. At 5:00 p.m. on June 25, 2018, the record was closed and the matter submitted for decision. The County submitted additional Court files relating to the Court's Ruling and Order for consideration on June 29, 2018; however, the record already was closed and the files will not be admitted as evidence.³

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 August 24, 2017, Notice to Abate Nuisance (Notice) issued by the Department pursuant to HCC section 351-7, notifying the Property Owner 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)).

² The Property Owner objected to County Exhibits LL-OO, citing a fundamental due process violation; he argued that he had not been given sufficient time to examine the exhibits, and that the County served the exhibits via mail rather than by email, which was "out of our standard of practice." The County stated that the exhibits are based on the June 5, 2018, Property Inspection, which includes the inspection report, photographs, the Building Inspector's report, and applicable zoning codes. The County argued the exhibits are not based on anything new and should be admitted because Mr. Fletcher was initially present when the June 5, 2018, inspection took place, the photos were taken during the inspection, and the Property Owner is well aware of the conditions on his own Property. Furthermore, Officer Fielder testified to the contents of the photographs during the hearing. The Hearing Officer finds that the County did not violate the Property Owner's due process rights by mailing him photographs that were taken during the June 5, 2018, inspection.

³ While the Hearing Officer very much appreciates that the County provided what was originally asked of Mr. Fletcher to provide, based upon the Ruling and Order on Motion to Enforce Settlement Agreement and Motion to Set Aside Judgment in case number DR070834, the Hearing Officer finds that she has authority to issue this Order and therefore does not need to reference to the Court's file.

In the present case, the Department asserts that the conditions on the Property, as specified on the August 24, 2017, Notice (Exhibit H), violate sections of the HCC and the Uniform Housing Code (UHC). The Property Owner appealed the decision and requested a hearing (Exhibit L). The Department issued Notices of Code Enforcement Appeal Hearings and Administrative Civil Penalty Hearings for November 13, 2017, and December 11, 2017, that were later continued to the June 11, 2018, hearing (Exhibits O-R).

The Department issued a Notice of Code Enforcement Appeal Hearing, setting the scheduled hearing for June 11, 2018. (Exhibit KK). The Notice of Code Enforcement Appeal Hearing was mailed by first class and certified mail to the Property Owner at 473 Quarry Road, Trinidad, California, on April 12, 2018 (Exhibit KK). The Notice of Code Enforcement Appeal Hearing also was mailed to Mr. Fletcher at 417 2nd Street, #204, Eureka, California, that same day (Exhibit KK). The Property Owner did not dispute notice of the hearing.

The Hearing Officer concludes that the efforts made by the County to notify the Property Owner of the alleged violations and the hearing were adequate and satisfied the notice requirements of the HCC. This is evidenced by proof of mailing via regular and certified mail, and that the Property Owner was present at the hearing (Exhibit KK).

During the hearing, the Property Owner argued that the pending Humboldt County Superior Court case (Court Case) precludes this Hearing Officer from issuing an order. Before the Court is a Motion to Enforce Settlement Agreement and Motion to Set Aside Judgment, based upon a 2008 Settlement Agreement wherein the County agreed to dismiss a case in exchange for the Property Owner applying for permits for "all development and structures" located on the Property (Exhibit BB). The Property Owner did submit a permit application in 2008 for building permits; however, the County rejected the application for not including the requisite information. The Property Owner resubmitted an application for permits in 2010; however, the application expired in 2011 (Exhibit CC). Since 2011, no permits have been issued for the Property, although, the Property Owner may be currently applying for sewage permits.

According to the County, a building inspector attempted a pre-site inspection in Fall 2008, but was unable to complete an inspection as the plot map in the Property Owner's permit application was deficient and required additional information (Exhibit HH). The Property Owner never submitted a revised plot map. Another pre-site inspection was scheduled in 2010, but the Property Owner and the County never scheduled an inspection date (Exhibit HH). The Property Owner argued that he submitted permit applications and that he was waiting for a pre-inspection to be conducted by the County. He testified that the County "dropped the matter until the latest notices of nuisances were served," that "the County claimed to have lost my paperwork," and that "the County never had any intentions of following the terms of the Settlement." (Exhibit FF).

The Property Owner argues, citing California Code of Civil Procedure 664.6, that this Hearing Officer cannot issue an order because the statute of limitations bars the County's claim, and that the Hearing Officer must wait until the Court issues its ruling as there may be an overlap of legal and factual findings. The County maintains that the statute of limitations does not exist for a public nuisance, and that the Court's decision is not relevant to the current nuisance

proceeding. The Property Owner provided a June 14, 2018, Order from the Court asking the parties for additional points and authorities. In the Order, the Court states, “[t]he Court does not have jurisdiction over the administrative processes identified by Garth in the context of subsequent code enforcement actions taken by the County. The Court therefore cannot make the findings that Garth requests within the confines of the instant motions. However, this does not preclude Garth from pursuing those issues appropriately in a separate litigation and/or subsequent administrative appeals.” (Exhibit PP). The Hearing Officer interprets the Court’s Order to mean that the Hearing Officer is not precluded from issuing an order in the present administrative nuisance hearing.

IV. STANDARD OF PROOF

In nuisance abatement hearings held under the provisions of the 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.⁴

⁴ 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.)

V. ISSUES

1. **Do conditions on the Property as identified in the August 24, 2017, Notice and Order constitute a public nuisance?**
 1. **HCC section 354-1, junk and/or inoperable vehicles.**
 2. **HCC section 611-3, unapproved sewage disposal system.**
 3. **HCC section 331-28, construction of building/structure in violation of Building, Plumbing and/or Electrical Codes.**
 4. **HCC section 314-81.1, use of a recreational vehicle or mobile home as a residence.**
 5. **HCC section 331-11.5, non-approved water supply system.**
 6. **HCC section 371-2, maintaining a junkyard.**
 7. **HCC section 521-4, improper storage and removal of solid waste.**
 8. **HCC section 351-2(c), building conditions endanger life, health, safety, or welfare of the public.**
 9. **Uniform Housing Code (UHC) section 1001.11, unsanitary conditions.**
 10. **HCC section 314-87.1, secondary dwelling unit without permits.**
 11. **UHC section 1001, substandard housing.**
 12. **HCC section 311-10.1, property/building use in violation of zoning codes.**
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

According to Officer Fielder's testimony and the Exhibit Packet, a Notice of Nuisance dated May 11, 2001, was recorded against the Property on December 5, 2002 (Exhibit D). Several years passed, and eventually the Property Owner and the County entered into a Mutual Release and Settlement Agreement wherein the County agreed to dismiss a case in exchange for the Property Owner applying for permits for "all development and structures" located on the Property (Exhibit BB). The Property Owner did apply for the permits; however, permits expired in 2009.

The Code Enforcement received four new complaints from the public between June and July 2017 about conditions on the Property (Exhibit J) and the Property was inspected pursuant to an inspection warrant on August 14, 2017, by Code Enforcement, Environmental Health, and other agencies. Subsequently, a Notice to Abate Nuisance and a Notice of Violation and Proposed Administrative Civil Penalty dated August 24, 2017, were issued by Code Enforcement for the alleged violations on the Property. The Notices were mailed to the Property Owner via USPS first class and certified mail on August 25, 2017; the Notices were posted on the Property on August 24, 2017, by Code Compliance Officer Bernadette Arwood. The Notices included Code Enforcement Appeal Hearing Request forms. (Exhibits E-I). On August 31, 2017, a Notice and Order of Substandard Housing and Order to Vacate was issued for the Property; the Notice was mailed via USPS first class and certified mail to the Property Owner on September 5, 2017, and posted on the Property on September 6, 2017 (Exhibit K). The Property Owner submitted an Appeal Hearing Request Form dated September 2, 2017, and received by the County on September 5, 2017, asserting that he entered into a contract with the County nine years ago to achieve compliance and that he improved many conditions on the Property. He further asserted that the contract and the common good were not furthered by assessing a civil penalty (Exhibit L). Appeal hearings scheduled for November 13, 2017, and December 11, 2017, were continued to June 11, 2018. Notice of all hearings were mailed to the Property Owner (Exhibits O-R). The Property Owner did not appeal the August 31, 2017, Notice and Order of Substandard Housing and Order to Vacate; however, that Notice and Order is not at issue before this Hearing Officer as those have a separate appeals process.

On or about February 28, 2018, the Property Owner filed a Motion to Enforcement Settlement in Humboldt County Superior Court, Case No. DR 070834 (Exhibit FF). The County opposed the Motion (Exhibits EE, GG, HH); according to both parties, that Motion is still pending resolution in the Court.

Subsequent inspections of the Property on December 7, 2017, February 28, 2018, and June 5, 2018, revealed conditions on the Property were not improved (Exhibits X, AA, and MM). During those inspections, Officers and County officials observed junk, inoperable vehicles, unpermitted structures, recreational vehicles/trailers being used as residences, a non-approved water supply system, unsafe and unsanitary building conditions, and substandard housing. Officer Fielder noted that conditions on the Property as noted in August 2017 have not been abated by the Property Owner.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE 1: Do conditions on the Property as identified in the Notice and Order 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” (HCC

section 351-3(a)), and “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt.” (HCC section 351-3(f)).

1. 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: “[t]herefore 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 “any 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)).

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting several inoperable vehicles being stored on the Property (Exhibits AA, pp. 220-223, and MM, pp. 7-10). The first is a dilapidated, light-colored station wagon with sunken tires that was covered by junk materials (Exhibits AA, p. 220, and X, p. 7). The second is a dilapidated blue vehicle being stored on the bed of a brown truck (Exhibits AA, p. 221). The third is a white truck filled with and surrounded by junk (Exhibits AA, p. 221, and X, p. 8). The fourth is a green station wagon with sunken tires, significant rust, and surrounded by junk (Exhibits AA, p. 222, and X, p. 9). The fifth is a purple vehicle/bus that previously had been used as a residence. The bus is surrounded by tall grass and its roof consists of a wooden, tarped structure (Exhibits AA, p. 223, and X, p. 10). Officer Fielder testified that none of the vehicles has current license plates or registration tags, and that the vehicles were in the same condition and location on the Property during both of his inspections.

The Property Owner testified that the white truck belongs to his son and has been stored on the Property for three years. He further testified that he is trying to restore the “antique ‘57 Chevy” and that his neighbor is trying to get the ‘66 [green station] wagon restored. The Property Owner testified that the purple bus runs. He acknowledged that none of the above-mentioned vehicles are currently registered, either as operable or non-operable. The Property Owner acknowledged that four of the vehicles have been inoperative for a period of thirty (30) consecutive days or more; furthermore, he argued the definition found in the California Vehicle Code for inoperable vehicles does not apply. The County agreed that the vehicles on the Property identified as junk vehicles were identified as inoperable because they have been in the same location for months or longer. The Property Owner questioned why the junk vehicles were not included in the 2002 Notice of Violation. However, whether or not the County could have pursued violations for junk vehicles in earlier actions does not preclude it from pursuing this violation in the current matter.

Officer Fielder's testimony, corroborated by the photographs and the Property Owner's testimony, demonstrates the presence of at least five junk vehicles 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 on the Property constitute a public nuisance per se under HCC section 351-3(a).

2. HCC section 611-3, unapproved sewage disposal system.

Section 611-3 states, "[n]o person shall construct, reconstruct, repair, maintain, use or occupy any building or place which is not provided with a sewage treatment system approved by the Health Officer or with a connection to a public sewer."

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting sewage disposal systems on the Property (Exhibits AA, pp. 227-231, and MM, pp. 13, 14). Officer Fielder testified that there are six sewage disposal systems (aka "pit privies") on the Property, none of which are approved by the Health Officer or are connected to a public sewer. He further testified that the waste is being collected in 55-gallon drums. The County testified that the Property Owner did apply for a sewage permit in 2008, but that permit was never completed and expired in 2011. Mr. Molofsky testified that the waste was being spread out on the Property. The Property Owner did not dispute the existence of the sewage disposal systems. He testified that the waste is not being dumped on the Property; rather, he disposes of the waste at an RV dump.

Officer Fielder's testimony, corroborated by the photographs and the Property Owner's admission, demonstrates the presence of multiple unapproved sewage disposal systems on the Property, that do not connect to a public sewer, in violation of HCC section 611-3. Section 351-3 of the HCC defines nuisance, and "any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt." (HCC Section 351-3(f)). The County therefore has shown by a preponderance of the evidence that the sewage disposal systems on the Property constitute a public nuisance under HCC section 351-3(f).

3. HCC section 331-28, construction of building/structure in violation of Building, Plumbing and/or Electrical Codes.

Section 331-28 states, "[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. The abatement, removal and/or enjoinder of any such public nuisance shall be in the manner provided by law. 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 Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting a total of 11 unpermitted structures on the Property (Exhibits AA, pp. 235-245, and MM, pp. 21-31). Officer Fielder testified that one of the structures was built in the 1920s, prior to the requirement for permits (Exhibits MM, p. 236, and AA, p. 22). The Property Owner testified that one of the buildings was permitted in the 1950s when it was constructed (Exhibits MM, p. 237, and AA, p. 23).

The Property owner further testified that, following the 2008 Settlement, he applied for a permit for the structures. He testified that an inspector came out once but there was no further communication about the permit; therefore, he argued, the County breached the Settlement with regard to the unpermitted structures. The County responded that a search of records revealed that only a sewage permit was applied for, and that no permits were taken out for any of the buildings. The Property Owner further testified that some of the structures serve as art. The Hearing Officer finds that there is no “art exception” to the requirement for a permit.

Even giving the Property Owner the benefit of the doubt that one of the residences was permitted in the 1950s, Officer Fielder’s testimony, corroborated by the photographs, demonstrates the presence of at least 9 remaining unpermitted structures 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 that the unpermitted structures on the Property constitute a public nuisance per se under HCC section 351-3(a).

4. HCC section 314-81.1, use of a recreational vehicle or mobile home as a residence.

Section 313-153 states a recreational vehicle⁴ is a “motor home, travel trailer, truck camper or camping trailer, with or without a motor, designed for human habitation for recreational, emergency, or other occupancy, with a living area less than 320 square feet, excluding built-in equipment such as wardrobes, closets, cabinets, kitchen units or fixtures, bath and toilet rooms.”

Section 314-81.1 states, “[t]he use of manufactured homes and recreational vehicles shall be subject to the following regulations: [¶] 81.1.1.1 Manufactured homes and recreational vehicles shall be used as residences only in manufactured home parks and special occupancy parks, or in any public camping area, subject to the applicable provisions of the Health and

Safety code of the State of California.” Additionally, the Property is zoned AG, which does not allow an RV to be used as a residence (see HCC section 314-7.2, AG: Agriculture General).

Section 314-81.1.1.5 allows a recreational vehicle to be temporarily inhabited on AG zoned property in limited circumstances and only with a special permit; however, none of the circumstances apply here and the Property Owner has not obtained a special permit.

Sections 314-81.1.1.6 and 314-81.1.1.7 states that any recreational vehicle that does not have a valid permit for temporary use in an AG zone must be disconnected from utilities and not be occupied.

Officer Fielder submitted photographs taken on February 28, 2018, depicting a recreational vehicle/trailer being used as a residence on the Property (Exhibit AA, p. 259).⁵ Officer Fielder testified that the trailer has a stovepipe vent. Furthermore, he observed several signs of human habitation, such as personal items like bedding, a wood stove that had been used, and lights and power being used in the trailer. The Property Owner did not dispute that the trailer was being used for a residence.

Officer Fielder’s testimony, corroborated by the photographs and the Property Owner’s admission, demonstrates the presence of a recreational vehicle/trailer being used as a residence on the Property, in violation of HCC section 314-81.1. Section 351-3 of the HCC defines nuisance, and “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt.” (HCC Section 351-3(f)). The County therefore has shown by a preponderance of the evidence that the habited recreational vehicle/trailer on the Property constitutes a public nuisance under HCC section 351-3(f).

5. HCC section 331-11.5, non-approved water supply system.

Section 331-11.5 states, “(a) An applicant for a building permit must provide proof acceptable to the Chief Building Inspector and Health Department that each dwelling unit will be served by an individual water supply which will supply at least 720 gallons of potable water per

⁵ Officer Fielder testified that another recreational vehicle trailer and two buses were previously inhabited, but not during his February or June 2018 inspections.

day or by a public water supply which conforms to the requirements of the State of California Waterworks Standards (22 California Administrative Code a 64551 et seq.)”

- (b) A “individual water supply” is a water system [not] required to conform with the California Safe Drinking Water Act (Health and Safety Code § 4010 et seq.)
- (c) If the available water is not potable, the plans provided shall include the equipment needed to make the water potable.
- (d) Violation of this section alone is not sufficient grounds for a building code abatement proceeding.”

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting an unpermitted water supply system on the Property (Exhibits AA, pp. 246, and MM, pp. 19, 32). Mr. Molofsky testified that the well casing for this water system is not sealed and therefore is open to cross-contamination. Officer Fielder testified that a permit has not been issued for the water supply. The Property Owner did not dispute the existence of the unpermitted water supply system on the Property. He testified that he has been in the process of cleaning up his Property and meeting with engineers.

Officer Fielder and Mr. Molofsky’s testimony, corroborated by the photographs, demonstrates the presence of an unpermitted water supply system on the Property in violation of HCC section 331-11.5. Section 351-3(f) of the HCC states that “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt” is a nuisance. The County therefore has shown by a preponderance of the evidence that the unpermitted water supply system on the Property constitutes a public nuisance under HCC section 351-3(f).

6. HCC section 371-2, maintaining a junkyard.

Section 371-2 states, “[n]o wrecking and salvage yard shall be operated, maintained or established in any area or location unless one of the following conditions are met:

- (a) Such area or location is zoned in such a manner as to allow the operation, maintenance and establishment of a wrecking and salvage yard and, if required by the applicable zoning provision, a use permit has been obtained.
- (b) A permit for the operation, maintenance and establishment of a wrecking and salvage yard is obtained from the Planning Commission of the County of Humboldt The permit procedure provided for herein shall not be applicable in the event that the area or location proposed for a wrecking and salvage yard has already been zoned in such manner as to preclude the operation, maintenance or establishment or wrecking and salvage yards.

HCC section 371-1 defines a wrecking or salvage yard 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 term "wrecking and salvage yard" includes, but is not limited to, auto and trailer wrecking yards, other wrecking yards, scrap metal yards, used lumber yards and places or yards for storage of salvaged house wrecking and structural steel material and equipment. Any of the activities or conditions that would otherwise be a wrecking and salvage yard shall not constitute a wrecking or salvage yard if conducted entirely within a completely enclosed building. The term "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."

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting junk vehicles, large piles of scrap wood, tarps, scrap metal, and plastic objects on the Property (Exhibits AA, pp. 220-222, 225, 226, 233, and MM, pp. 7-12). Officer Fielder testified that there is more than 200 square feet of junk on the Property. Officer Fielder did acknowledge that a significant amount of junk had been removed from the Property since his February 28, 2018, inspection. The Property Owner testified that he has completed many garbage runs and scrapped multiple vehicles since the 2008 Settlement Agreement was executed. He did not dispute that junk still remains on the Property.

Officer Fielder's testimony, corroborated by the photographs, and the Property Owner's testimony demonstrates the presence of an aggregate area of more than 200 square feet of junk being stored on the Property in violation of HCC section 371-2. Section 351-3(f) of the HCC states that "any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt" is a nuisance. The County therefore has shown by a preponderance of the evidence that the presence of junk on the Property constitutes a public nuisance under HCC section 351-3(f).

7. HCC section 521-4, improper storage and removal of solid waste.

Section 521-4 lists the Standards for Storage and Removal of Solid Waste and Source-Separated Materials, Per Section 521-4:

- a. General Prohibition. It shall be unlawful for any person to store or remove solid waste or source-separated materials except as provided herein.
- b. Storage.
 1. Solid waste shall be contained in the following manner:

It shall be the duty of every person in possession of or having charge of any boarding house, eating place, lodging house, restaurant, store, apartment house, flat or dwelling house, or any other establishment of human habitation, or where food is served or sold, to provide and keep at all times one (1) or more suitable watertight receptacles with tight fitting covers, in which all solid waste from such premises shall be placed and kept until removed. Any person may occasionally

store excess non-putrescible solid waste in appropriate receptacles adjacent to the regular solid waste container while waiting for a regularly scheduled collection.

2. Source separated materials may be accumulated for recycling and composting but must be stored in a clean, sanitary manner, separate from the storage of solid waste.
 3. It is unlawful for any person to utilize a solid waste container not belonging to that person without the express approval of the owner.
- c. Removal of Solid Waste.
1. All putrescible solid waste from any boarding house, lodging house, restaurant, hotel, hospital or store shall be removed from said premises at least twice each week, and from dwellings and apartments at least once each week. All non-putrescible solid waste shall be removed at least once each week unless volume of waste produced in that period of time is less than the minimum amount of waste provided for by franchise collection service rates and user fee structures. In any case, removal frequency shall be such as to prevent the propagation of vectors or creation of a nuisance.
- d. Removal of Source-Separated Materials. Except for on-site composting and properly permitted burning as specified in Section 521-10, all segregated recyclable and compostable materials shall be removed from said premises with sufficient frequency to ensure the maintenance of said premises in a neat, sanitary manner. In any case, removal frequency shall be such as to prevent the propagation of vectors or creation of a nuisance.
- e. Removal of Unseparated Recyclable and Compostable Materials. Materials not separated by the generator for diversion from disposal will be considered solid waste, unless and until the point at which such materials are separated from such solid waste.

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting junk vehicles, large piles of scrap wood, tarps, scrap metal, and plastic objects on the Property (Exhibits AA, pp. 220-222, 225, 226, 233, and MM, pp. 7-12). There is no evidence that the waste was being properly contained and or stored in a neat, sanitary manner, or that the solid waste was being stored for recycling or composting. The Property Owner did not dispute the existence of solid waste on the Property.

Officer Fielder's testimony, corroborated by the photographs and the Property Owner's testimony, demonstrates the presence of solid waste being stored on the Property, in violation of HCC section 521-4. Section 351-3(f) of the HCC states that "any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt" is a nuisance.

The County therefore has shown by a preponderance of the evidence that the presence of solid waste on the Property constitutes a public nuisance under HCC section 351-3(f).

8. HCC section 351-3(c), building conditions endanger life, health, safety, or welfare of the public.⁶

Per HCC section 351-3(c), “[a] nuisance is hereby defined to be any condition, act or failure to act which is dangerous to human life or unsafe or detrimental to the public health or safety.”

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting an outdoor shower with a propane tank and water heater next to it; the shower drains grey water onto the ground that is unsanitary and dangerous, a back deck filled with garbage that is unsanitary, a large metal bathing tub erected on a platform that is heated by a lighting a fire underneath it that is unsafe, a propane tank indoors supplying fuel to a stove that, if used, is unsafe and could endanger life, an exposed and damaged electrical water heater in a bath house/shower room, uncovered outlets, and exposed cords on the Property that are all electrocution hazards (Exhibits AA, pp. 232-234, 247, 250-252, and MM, pp. 11, 33-38). According to Officer Fielder, many conditions on the Property constitute a fire hazard. Mr. Molofsky testified that he observed a leaking cistern and that grey water was being discharged from the showers and kitchens to the ground outdoors. Additionally, Mr. Molofsky testified that a drilled well lacked a proper cap such that water could be easily contaminated. The Property Owner did not dispute the existence of the conditions mentioned above.

Officer Fielder and Mr. Molofsky’s testimony, corroborated by the photographs, and the Property Owner’s testimony demonstrates the presence of conditions that are dangerous to human life or unsafe or detrimental to the public health or safety on the Property in violation of HCC section 351-3(c). Section 351-3(c) has declared this violation to constitute a public nuisance. The County therefore has shown by a preponderance of the evidence that the conditions inside buildings and outdoors on the Property are dangerous to human life or unsafe or detrimental to the public health or safety. Therefore, the conditions constitute a public nuisance per se under HCC section 351-3(c).

9. Uniform Housing Code (UHC) section 1001.11, unsanitary conditions.

Per UHC section 1001, “[t]he accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials, and similar materials or conditions on a premises constitutes fire, health or safety hazards that shall be abated in accordance with the procedures specified in Chapter 11 of this code.”

The corrective action stated on the Notice to Abate states, “[r]emove weeds, vegetation, vector harborage or combustible materials from the property.” The County did not present any evidence that weeds, or vegetation on the Property were violations or that combustible materials

⁶ While the Notice to Abate lists a violation of HCC 351-2(c), the description and corrective action note a violation of HCC 351-3(c). Because the Property Owner was on notice of the substance of the violation and what the corrective actions are, the Hearing Officer finds the citation of the improper code to be harmless error.

were present on the Property. The County has already proven by a preponderance of the evidence that there is solid waste on the Property in violation of HCC section 521-4, including the garbage on the back porch of the dwelling depicted in the February 28, 2018, photograph found in Exhibit AA, page 233, which is the basis of this UHC violation. As this violation is duplicative of the cited HCC violations, and no evidence was submitted regarding weeds, vegetation, or combustible materials, it will not be considered.

10. HCC section 314-87.1, secondary dwelling unit without permits.

Per HCC section 314-87.1.3.1, “[a] secondary dwelling unit shall be permitted as a principal permitted use in FR, R-1, RS, and U zoning districts if in conformance with the provisions of this chapter and all of criteria (87.1.3.1.1) through (87.1.3.1.6). A secondary unit that complies with all of the criteria (87.1.3.1.1) through (87.1.3.1.6) may also be permitted as a principally permitted use in any AG zone that is planned and zoned for parcel sizes of five (5) acres or less provided the parcel is within a community plan area and the use is specifically authorized by the plan designation.”

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting a total of 11 unpermitted residences on the Property (Exhibits AA, pp. 235-245, and MM, pp. 21-31). Officer Fielder testified that one of the residences was built in the 1920s, prior to the requirement of permits (Exhibits MM, p. 236, and AA, p. 22). The Property Owner testified that one of the buildings was permitted in the 1950s when it was constructed (Exhibits MM, p. 237, and AA, p. 23).

The Property owner further testified that, following the 2008 Settlement Agreement, he applied for a permit for the buildings. He testified that an inspector came out once, but there was no further communication about the permit. He argued the County breached the Settlement Agreement with regard to the unpermitted structures. The County responded that a search of records revealed that only a sewage permit has been applied for, and that no permits were issued for any of the buildings. The Property Owner further testified that approximately ten people currently live on the Property.

Even giving the Property Owner the benefit of the doubt that one of the residences on the Property was permitted in the 1950s, Officer Fielder’s testimony, corroborated by the photographs, demonstrates the presence of at least 9 remaining unpermitted dwelling units/structures on the Property in violation of HCC section 314-87.1.3.1. Section 351-3(f) of the HCC states that “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of Humboldt” is a nuisance. The County therefore has shown by a preponderance of the evidence that unpermitted dwelling units on the Property constitutes a public nuisance under HCC section 351-3(a).

11. Uniform Housing Code (UHC) section 1001, substandard housing

Section 1001.1 of the UHC states, “[a]ny building or portion thereof that is determined to be an unsafe building in accordance with Section 102 of the building code, or any building or portion thereof, including any dwelling unit, guest room or suite of rooms, or the premises on

which the same is located, in which there exists any of the conditions referenced in this section to an extent that endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof, shall be deemed and hereby are declared to be substandard buildings.”

The County has proven that the building conditions endanger life, health, safety, or welfare of the public in violation of HCC section 351-2(c), that no permits for sewer discharge have been issued in violation of Section 611-3, that the water supply system is not approved in violation of Section 331-11.5, and that most of the dwelling on the Property have not been permitted in violation of Section 314-87.1. Furthermore, the County’s corrective actions for the alleged violation states, “[c]orrect or repair substandard conditions as listed on the Conditional Release [*sic*] of Health Hold from the Division of Environmental Health including obtaining a building permit if necessary.” The County did not submit the Conditional Release with its list of substandard conditions. Environmental Health did issue a Notice and Order of Substandard Housing and Order to Vacate on September 5, 2017, that cite alleged substandard conditions; however, as stated above, that Notice is not at issue here. As this violation is duplicative of the cited HCC violations, it will not be considered.

12. HCC section 311-10.1, property/building use in violation of zoning codes.

Per HCC section 311-10.1, “[n]o building or part thereof or other structure shall be erected, altered, added or enlarged, nor shall any land, building, structure or premises be used, designated or intended to be used for any purpose or in any manner other than is included among the uses hereinafter listed as permitted in the zone in which such buildings, land or premises is located.” The Property is zoned AG-Agricultural General.

Section 314-7.2 lists the principal permitted uses of an AG zoned property. These uses include one-family dwellings and farm dwellings, rooming and boarding of not more than two persons not employed on the premises, and manufactured homes. Section 314-7.2 also lists several uses permitted with a use permit, including guest houses, servants’ quarters, labor camps, and labor supply camps.

Officer Fielder submitted photographs taken on February 28, 2018, and June 5, 2018, depicting multiple dwelling units on the Property, ranging from buildings to recreational vehicles/trailers (Exhibits AA, pp. 235-245, and MM, pp. 21-31). He testified that during the course of his inspections he observed more than two people living on the Property, but that most of the units that had been previously inhabited were no longer so during his June 2018 inspection. The Property Owner has not obtained a special use permit for guest houses.

The Property Owner testified that there are ten people currently living on the Property, that includes himself and his brother. The Property Owner further testified that some of the people are paying him rent, and others are helping him clean the Property.

Officer Fielder’s testimony, corroborated by the photographs and the Property Owner’s testimony, demonstrates the presence of buildings on the Property that are unpermitted uses in an AG zone, in violation of HCC section 311-10.1. Section 351-3(f) of the HCC states that “any use of buildings or Property that is contrary to the provisions of the ordinances of the County of

Humboldt” is a nuisance. The County therefore has shown by a preponderance of the evidence that the structures on the Property that are contrary to the uses allowed an AG zone constitute a public nuisance under HCC section 351-3(f).

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

Violation 1: HCC section 354-1, junk and/or inoperable vehicles.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as restore vehicles to operative condition, and or remove inoperable vehicles, and or store inoperable vehicles within enclosed structure. During the Hearing, the County requested the same corrective action.

With regard to all of the violations, the Property Owner did not request additional time to abate the conditions as he believes the matters are bound by the 2008 Settlement Agreement. The Property Owner further questioned the County’s good faith intent to move forward in working with the Property Owner.

The Hearing Officer finds that the corrective action reasonable. The Property Owner will be ordered to restore the junk vehicles to operative condition, and/or remove the inoperable vehicles, and/or store the inoperable vehicles within an enclosed structure(s) within thirty (30) days of the issuance of this order.

Violation 2: HCC section 611-3, unapproved sewage disposal system.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as apply for and receive a permit from Environmental Health Department for sewage disposal system. During the hearing, the County requested the Property Owner also discontinue use of all pit privies and remove and dispose of any and all 55-gallon drums that contain human waste by contracting with a licensed sewerage pumper who is permitted by the Division of Environmental Health, and providing a receipt(s) to Code Enforcement and Environmental Health showing removal and disposal fees (Exhibit S, pp. 175, 176).

The Hearing Officer finds that the corrective action reasonable. The Property Owner will be ordered to immediately cease use of all pit privies. The Property Owner will be ordered to remove and dispose of any and all, including 55-gallon drums, containers of human waste by contracting with a licensed sewerage pumper who is permitted by the Division of Environmental Health, and provide a receipt showing removal and disposal fees to Code Enforcement, within twenty (20) days from 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 Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as apply for and obtain permits. During the hearing, the County requested the same corrective action.

The Hearing Officer finds that the corrective action reasonable. The Property Owner will be ordered to apply for permits and schedule a pre-inspection within thirty (30) days from the issuance of this order.

Violation 4: HCC section 314-81.1, use of a recreational vehicle or mobile home as a residence.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as disconnect utilities and cease use as residence. During the hearing, the County requested the same corrective action. The Hearing Officer finds the corrective action reasonable. The Property Owner will be ordered to immediately disconnect utilities and cease using the recreational vehicle/trailer as a residence.

Violation 5: HCC section 331-11.5, non-approved water supply system.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as apply for permits for system or remove the system. During the hearing, the County requested the additional corrective action of securing all wells on the Property by installing a well cover that is secured by a lock (Exhibit S, p. 175).

The Hearing Officer finds the corrective actions reasonable. The Property Owner will be ordered to secure all wells on the Property by installing a well cover that is secured by a lock within five (5) days of the issuance of this order. Additionally, the Property Owner will be ordered to apply for permits for a water supply system or remove the water supply system within twenty (20) days of the issuance of this order.

Violation 6: HCC section 371-2, maintaining a junkyard.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action 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 requested the same corrective action.

The Hearing Officer finds the corrective action reasonable. The Property Owner will be ordered to remove all debris/solid waste/scrap metal from the Property to an approved disposal site, and or contain it within a 200 square-foot area, and or contain it in an enclosed structure within sixty (60) days of the issuance of this order.

Violation 7: HCC section 521-4, improper storage and removal of solid waste.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as contain and dispose of all solid waste properly. During the hearing, the County requested the same corrective action. The Hearing Officer finds the corrective action reasonable, and the Property Owner will be ordered to contain and dispose of all solid waste on the Property to an approved disposal site within sixty (60) days of the issuance of this order.

Violation 8: HCC section 351-2(c), building conditions endanger life, health, safety, or welfare of the public.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as apply for permit for repair, securement, or demolition. During the hearing, the County requested the same corrective action. The Hearing Officer finds the corrective action reasonable, and the Property Owner will be ordered to apply for permits for repair, securement, or demolition of buildings within sixty (60) days of the issuance of this order.

Violation 10: HCC section 314-87.1, secondary dwelling unit without permits.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as apply for and obtain permits from the Planning and Building Department. During the hearing, the County requested the same corrective action, and that the Property Owner remove all unpermitted structures by March 25, 2019. The Hearing Officer finds the corrective action reasonable, and the Property Owner will be ordered to apply for permits within twenty (20) days from the issuance of this order, and remove all unpermitted structures by March 25, 2019.

Violation 12: HCC section 311-10.1, property/building use in violation of zoning codes.

The Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty state the corrective action as apply for permits from the Planning and Building Department. During the hearing, the County requested the same corrective action. The Hearing Officer finds the corrective action reasonable, and the Property Owner will be ordered to apply for permits for repair, securement, or demolition of the single family residence and all accessory structures, including unpermitted underground and above surface infrastructure, on the Property that require permits in an AG zone within sixty (60) days of the issuance of this order.

All permit applications to keep or to remove the single family residence and or accessory structures must be submitted to the Planning and Building Division and Division of Environmental Health. Permit applications to keep any structure must be complete and have plans drawn by or under the supervision of a licensed architect and or structural engineer.

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)). 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 1 violations, the lowest level allowed under Section 352-6. According to the County, the Property Owner was issued a Notice of Violation and Proposed Civil Penalty on August 24, 2017, alleging violations for junk and or inoperable vehicles; unapproved sewage disposal systems; construction of building/structure in violation of building, plumbing, or electrical codes; use of a recreational vehicle or mobile home as a residence; non-approved water supply system; maintaining a junk yard; improper storage and removal of solid waste; building conditions endanger life, health, safety, or welfare of the public; unsanitary conditions; secondary dwelling unit without permits; substandard housing; and property/building use in violation of zoning codes. The County has proven by a preponderance of the evidence that no significant improvements have been made to the nuisance conditions on the Property since 2017 (Exhibits AA, MM). The County submitted a proposed administrative civil penalties worksheet, requesting \$666 per day, per violation for the twelve violations. The

County acknowledged that “due to the timeframe which has lapsed in order to schedule the appeal hearing and by granting the continuance requested by the opposing party, the proposed administrative civil penalty has accumulated to a significant and arguably unconstitutional amount of \$720,000”; therefore, the County “proposes to further reduce the amount of the administrative penalty to \$50,000” (Exhibit S).

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 contained multiple pit privies and was being used to store human waste; the Property contained a water supply system that was subject to cross contamination; the Property Owner has 100 percent control of the Property, but has made few discernable efforts to stop or abate the violations; the Property Owner has been on notice of the violations since August 2017 and has received multiple written notices and has had in-person meetings with the County regarding those violations and notices; and the violations continue as of the hearing date. On his Appeal Hearing Request Form, the Property Owner stated that “our contract and the common good are not furthered by assessing a civil penalty.” (Exhibit L). Penalties will be assessed accordingly for each violation.

The County included a Proposed Estimated Administrative Costs Calculation in Exhibit T; 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 1: 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.”

There is evidence that the Property Owner was willful in permitting the junk and/or inoperable vehicles to remain on the Property. The County proved that junk and/or inoperable vehicles have remained on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of

\$4,500. If the Property Owner complies with the corrective action within thirty (30) days⁷ from the issuance of this Order, the penalty will be reduced to \$1,000.

Violation 2: HCC section 611-3, unapproved sewage disposal system

There is evidence that the Property Owner was willful and negligent in building and maintaining six pit privies, using 55-gallon drums to store human waste, and to allow that waste to remain on the Property. The County proved that the pit privies remained on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within twenty (20) days from the issuance of this Order, the penalty 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 evidence that the Property Owner was willful and negligent in building and maintaining at least nine unpermitted buildings/structures on the Property. The County proved that the buildings remained on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within thirty (30) days from the issuance of this Order, the penalty will be reduced to \$1,000.

Violation 4: HCC section 314-81.1, use of a recreational vehicle or mobile home as a residence

There is evidence that the Property Owner was willful and negligent in allowing recreational vehicles/trailers to be maintained on the Property. The County proved that one or more recreational vehicles/trailers had been inhabited on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner immediately complies with the corrective action, the penalty will be reduced to \$1,000.

⁷ "Days" herein mean calendar days.

Violation 5: HCC section 331-11.5, non-approved water supply system

There is evidence that the Property Owner was willful and negligent in allowing a non-sealed water system to remain on the Property. The County proved that unapproved water supply system remained on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action to secure all wells on the Property within five (5) days and to apply for permits for the water supply system within twenty (20) days from the issuance of this order, the penalty will be reduced to \$1,000.

Violation 6: HCC section 371-2, maintaining a junkyard

There is evidence that the Property Owner was willful and negligent in allowing junk and garbage to remain on the Property. The County proved that a substantial amount of junk, garbage, and debris remained on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within sixty (60) days from the issuance of this Order, the penalty will be reduced to \$1,000.

Violation 7: HCC section 521-4, improper storage and removal of solid waste

There is evidence that the Property Owner was willful and negligent in allowing solid waste to be improperly stored on the Property. The County proved that a substantial amount of solid waste remained on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within sixty (60) days from the issuance of this Order, the penalty will be reduced to \$1,000.

Violation 8: HCC section 351-2(c), building conditions endanger life, health, safety, or welfare of the public

There is evidence that the Property Owner was willful in allowing multiple building conditions on the Property that endangered the public's life, health, safety and welfare. The County proved that propane tanks were used indoors to operate stoves and used outdoors to heat

showers, that a bathing tub was being heated by a fire underneath it, and that there was exposed electrical wires and cords on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within sixty (60) days from the issuance of this Order, the penalty will be reduced to \$1,000.

Violation 10: HCC section 314-87.1, secondary dwelling unit without permits

There is evidence that the Property Owner was willful in maintaining unpermitted secondary dwelling units on the Property. The County proved that there were multiple unpermitted secondary dwelling units on the Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within twenty (20) days from the issuance of this Order, the penalty will be reduced to \$1,000.

Violation 12: HCC section 311-10.1, property/building use in violation of zoning codes

There is evidence that the Property Owner was willful in allowing the room and board of more than two employees who lived in multiple unpermitted dwellings on the Property. The County proved that there were multiple unpermitted secondary dwelling units that provided housing for more people than allowed on the AG zoned Property since 2017, when the Property Owner was made aware of the violations.

The County proposed that this Category 1 violation be assessed at approximately \$50 per day for 90 days. Using the same criteria that are used to determine which category a violation falls to determine the total amount of penalty, a fine of \$50 per day will be ordered, for a total of \$4,500. If the Property Owner complies with the corrective action within sixty (60) days from the issuance of this Order, the penalty will be reduced to \$1,000.

VIII. ORDER

1. The Department's Notice to Abate Nuisance August 24, 2017, is upheld, except for violations number 9 (UHC section 1001.11) and 11 (UHC 1001).
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 thirty (30) days of issuance of this order, Property Owner shall restore the junk vehicles to operative condition, and or remove the junk vehicles from the Property, and or

store the junk vehicles within an enclosed structure(s). Photographs of the junk vehicles are attached and identified as a dilapidated, light-colored station wagon with sunken tires that was covered by junk materials (Exhibits AA, p. 220, and X, p. 7); a dilapidated blue vehicle being stored on the bed of a brown truck (Exhibits AA, p. 221); a white truck filled with and surrounded by junk (Exhibits AA, p. 221, and X, p. 8); a green station wagon with sunken tires, significant rust, and surrounded by junk (Exhibits AA, p. 222, and X, p. 9); and, a purple vehicle/bus that previously had been used as a residence. The bus is surrounded by tall grass and its roof consists of a wooden, tarped structure (Exhibits AA, p. 223, and X, p. 10).

4. The Property Owner is ordered to immediately cease use of the pit privies on the Property. Within twenty (20) days of issuance of this order, Property Order shall remove and dispose of any and all, including 55-gallon drums, containers of human waste by contracting with a licensed sewerage pumper who is permitted with the Division of Environmental Health, and provide a receipt(s) to Code Enforcement and Environmental Health showing removal and disposal fees.
5. The Property Owner is ordered to apply for permits and schedule a pre-inspection within thirty (30) days from the issuance of this order. All permit applications to keep or to remove the single family residence and or accessory structures must be submitted to the Planning and Building Division and Division of Environmental Health. Permit applications to keep any structure must be complete and have plans drawn by or under the supervision of a licensed architect and or structural engineer.
6. The Property Owner shall immediately disconnect all utilities from the recreational vehicle/trailer and cease using the recreational vehicle/trailer as a residence.
7. The Property Owner shall secure all wells on the Property by installing a well cover that is secured by a lock within five (5) days of the issuance of this order. Additionally, the Property Owner shall apply for permits for a water supply system or remove the water supply system within twenty (20) days of the issuance of this order.
8. The Property Owner shall remove all debris/solid waste/scrap metal from the Property to an approved disposal site, and or contain it within a 200 square-foot area, and or contain it in an enclosed structure within sixty (60) days of the issuance of this order.
9. Property Owner shall contain and dispose of all solid waste on the Property to an approved disposal site within sixty (60) days of the issuance of this order.
10. Property Owner shall apply for permits for repair, securement, or demolition of buildings found herein in violation of HCC section 351-2(c) within sixty (60) days of the issuance of this order. All permit applications to keep or to remove the single family residence and or accessory structures must be submitted to the Planning and Building Division and Division of Environmental Health. Permit applications to keep any structure must be

complete and have plans drawn by or under the supervision of a licensed architect and or structural engineer.

11. Property Owner shall apply for permits for all buildings found in violation of HCC 314-87.1 herein within twenty (20) days from the issuance of this order, and remove all unpermitted structures by March 25, 2019. All permit applications to keep or to remove the single family residence and or accessory structures must be submitted to the Planning and Building Division and Division of Environmental Health. Permit applications to keep any structure must be complete and have plans drawn by or under the supervision of a licensed architect and or structural engineer.
12. Property Owner shall apply for permits for repair, securement, or demolition of the single family residence and all accessory structures, including unpermitted underground and above surface infrastructure, on the Property that require permits in an AG zone within sixty (60) days of the issuance of this order. All permit applications to keep or to remove the single family residence and or accessory structures must be submitted to the Planning and Building Division and Division of Environmental Health. Permit applications to keep any structure must be complete and have plans drawn by or under the supervision of a licensed architect and or structural engineer.
13. If the 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)).
14. Property Owner shall pay administrative fines in the amount of \$40,500 to the County. If Property Owner abates the violations by complying with the ordered corrective actions in paragraphs numbered 3-12 above within the respective timelines for each violation, the total administrative fine for each of the abated violation shall be reduced to \$1,000; if all violations are abated timely, the total administrative fine shall be reduced to \$9,000.
15. 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.”
16. 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)).


17. 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: July 26, 2018

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

17. 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: July 26, 2018



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

473 Quarry Road, Trinidad
APN: 515-172-010
Junk Vehicle



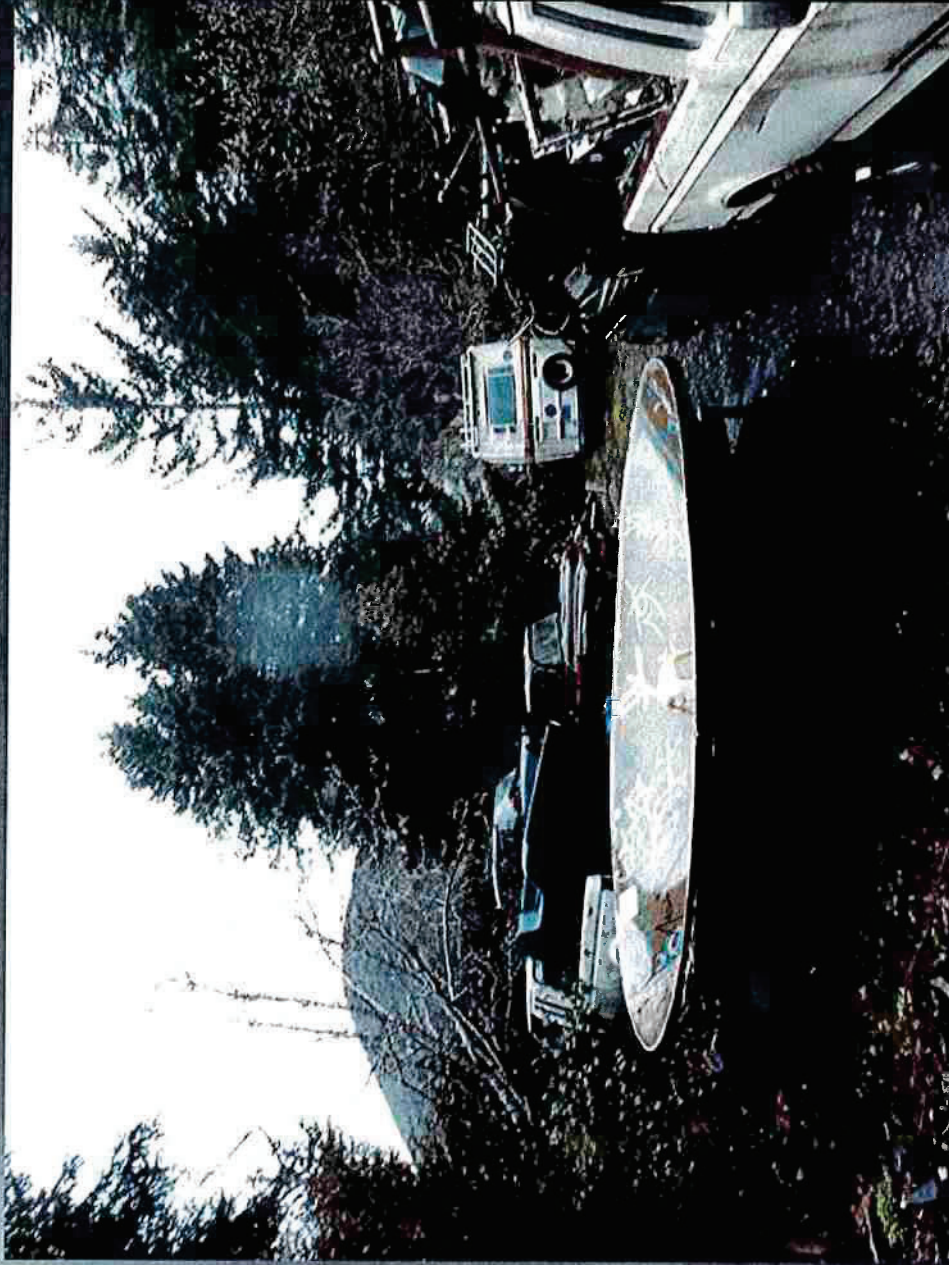
473 Quarry Road, Trinidad, APN: 515-172-010

June 5, 2018

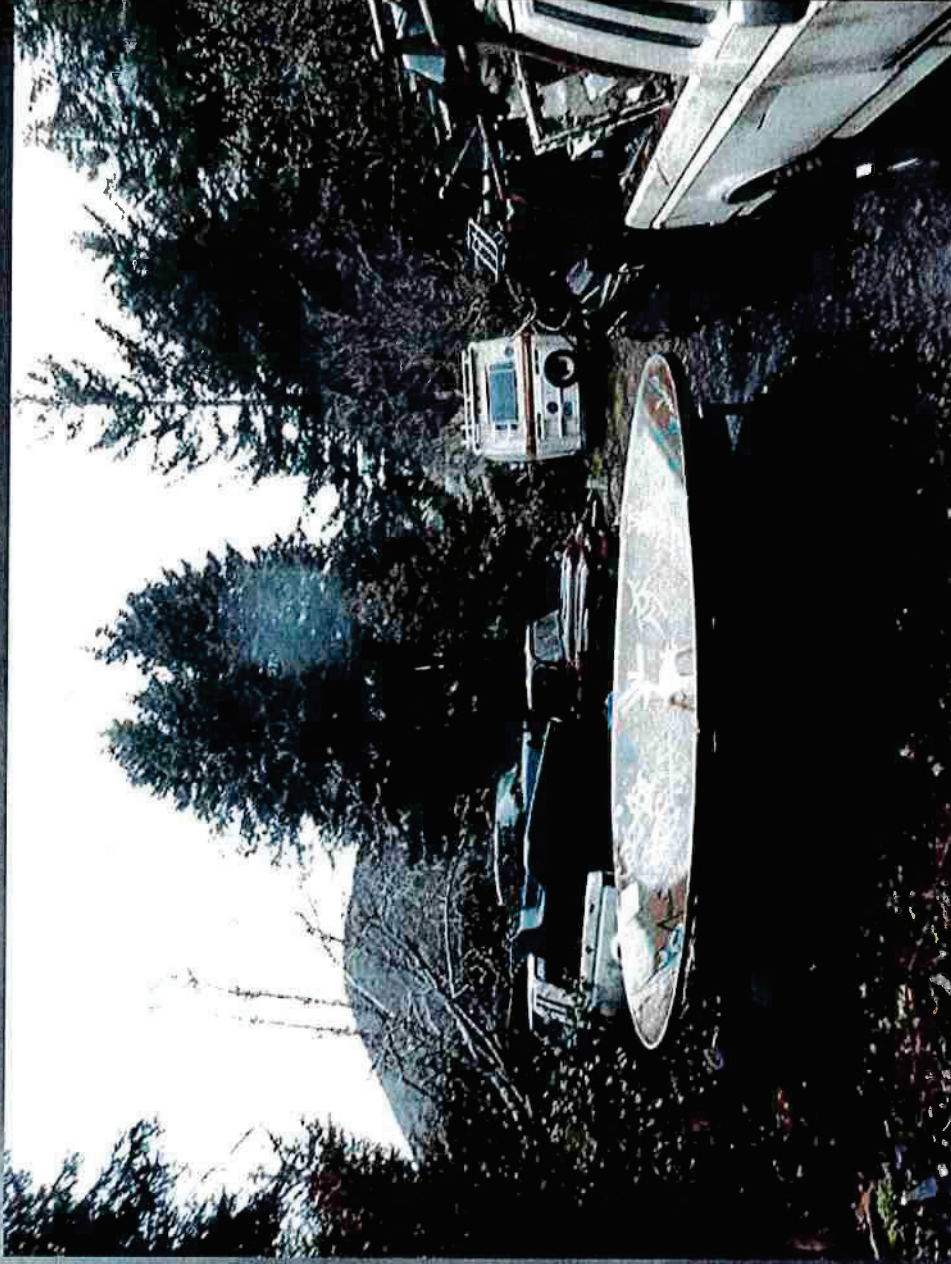
Junk Vehicle



473 Quarry Road, Trinidad
APN: 515-172-010
Junk Vehicle



473 Quarry Road, Trinidad
APN: 515-172-010
Junk Vehicle



473 Quarry Road, Trinidad
APN: 515-172-010
Junk Vehicle



473 Quarry Road, Trinidad, APN: 515-172-010

June 5, 2018

Junk Vehicle



473 Quarry Road, Trinidad, APN: 515-172-010

June 5, 2018

Junk Vehicle



473 Quarry Road, Trinidad
APN: 515-172-010
Junk Vehicle



473 Quarry Road, Trinidad, APN: 515-172-010
June 5, 2018

Junk Vehicle, sub-standard housing



473 Quarry Road, Trinidad
APN: 515-172-010
Hazardous and Insanitary Conditions



Effective: January 1, 2018

Ca. 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 Section 25132 and subdivision (b) of Section 36900.Go

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision 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 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.

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.