

Exhibit I

Finding of Nuisance
and Order of
Abatement

and

Finding of Violation
and Order Imposing
Administrative Civil
Penalty



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CODE ENFORCEMENT

3015 H Street • Eureka CA 95501
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November 11, 2022

Certified Mailing No: 9171 9690 0935 0252 8853 15

Gerald McGuire
P.O. Box 322
Fields Landing, CA 95537

**RE: Service of Finding of Nuisance and Order of Abatement and
Finding of Violation and Order Imposing Administrative Civil Penalty
240 Central Avenue, Fields Landing, California, 95537, APN: 306-033-003
Case No: 16CEU-64**

Dear Mr. McGuire,

Please see attached the Finding of Violation and Order Imposing Administrative Civil Penalty and the Finding of Nuisance and Order of Abatement regarding the decision from the Administrative Civil Penalty Appeal Hearing and the Code Enforcement Appeal Hearing held on September 9, 2022 for Code Enforcement Case 16CEU-64

If you have any questions or concerns about these documents, please feel free to contact me by telephone at (707) 441-2627 or by email at ssoeth@co.humboldt.ca.us

Sincerely,

Shauna Soeth
Code Enforcement Investigator

Attachment: Finding of Violation and Order Imposing Administrative Civil Penalty
Finding of Nuisance and Order of Abatement

CALIFORNIA HEARING OFFICERS, LLP
P.O. Box 279560
Sacramento, CA 95827
Telephone: 916.306.0980

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

In the matter of:)	Case Number 16CEU-64
240 Central Avenue,)	
Fields Landing, California 95503)	FINDING OF VIOLATION AND ORDER
)	IMPOSING ADMINISTRATIVE
(APN 306-033-003))	CIVIL PENALTY
)	
Property of:)	
<u>Gerald McGuire</u>)	

I. INTRODUCTION

This matter was heard on September 9, 2022, via video conference before Wraymond Plummer, Hearing Officer for California Hearing Officers, LLP.¹ The purpose of this hearing was to determine whether to uphold the Notice of Violation and Proposed Administrative Civil Penalty issued by the County of Humboldt (County) on July 1, 2019, that states conditions at 240 Central Avenue, Fields Landing, California, 95537 (Property), are in violation of state law and/or the Humboldt County Code (HCC) and imposes daily administrative civil penalties if the violations are not abated as ordered.²

II. APPEARANCES

Alex Grotewohl, Deputy County Counsel, and Shauna Soeth, Code Enforcement Investigator, appeared on behalf of the County. Appellant and Property Owner, Gerald McGuire (Property Owner), and his daughter, Britney McGuire, were also present at the hearing. The County offered Exhibits 1-178, all of which were admitted as evidence. After receiving all documentary evidence and testimony from Investigator Soeth and the Property Owner, the record was closed and the matter was submitted for decision.

¹ The County of Humboldt appoints hearing officers pursuant to California Government Code section 27720. California Hearing Officers, LLP contracts with the County of Humboldt to provide impartial hearing officers for administrative hearings.

² Per HCC section 352-11, "[t]he Administrative Civil Penalty Appeal Hearing may be combined with a Code Enforcement Appeal Hearing held pursuant to the provisions of this Division." The County served a Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty on the Property Owner at the same time. The hearings for both notices were heard at the same time, both notices share the same facts as the bases for the violations; however, separate findings and orders will be issued for each. This finding and order only concerns the Notice of Violation and Proposed Administrative Civil Penalty.

III. JURISDICTION

The County of Humboldt, Code Enforcement Unit (CEU), has found that conditions at the Property violate state law and/or the HCC. Those findings resulted in the July 1, 2019, Notice of Violation and Proposed Administrative Civil Penalty (Notice of Violation) (Exhibit H) issued by the CEU pursuant to HCC section 352-8, notifying the Property Owner to abate the violations within ten days of service of the Notice (HCC section 352-8(a)) and that failure to correct the violations as ordered would result in an administrative penalty accumulating in the amount of \$300 per day for up to 90 days. Section 352-2(a) of the HCC states:

The purpose of this Chapter is to provide alternative remedies to correct Violations of the Humboldt County Code and other ordinances adopted by the County of Humboldt, and where necessary, penalize Responsible Parties for such Violations. The procedure for the imposition of administrative civil penalties set forth herein shall not be exclusive, but shall be cumulative and in addition to all other civil and criminal remedies provided by law. Nothing in this Chapter shall prevent the County of Humboldt from using any other available remedies to address and correct Violations, either in lieu of, or in addition to, the imposition of administrative civil penalties pursuant to this Chapter.

On July 1, 2019, Investigator Soeth issued and posted the Notice of Violation on the Property. That same day, the CEU sent the Notice of Violation via USPS first class and certified mail to the Property Owner at the address found on the last property tax assessor inquiry (Exhibit H).

The Notice of Violation contained Attachments A-C. Attachment A consisted of a list showing the alleged codes being violated, a description of each violation, the cited violation category, the proposed daily civil administrative penalty, and the required corrective actions. Attachment B consisted of the legal description of the Property. Attachment C consisted of a blank Administrative Civil Penalty Appeal Hearing Request Form.

The Property Owner completed and submitted the Administrative Civil Penalty Appeal Hearing Request Form to appeal the Notice of Violation, which was received by the County on July 18, 2019 (Exhibit I).

On October 24, 2019, the CEU sent the Property Owner a Notice of Administrative Civil Penalty Appeal Hearing (Exhibit J). The appeal hearing was set for December 13, 2019 (Exhibit J). On December 2, 2019, the CEU issued a Postponement Notification Code Enforcement Appeal Hearing and Administrative Civil Penalty Appeal Hearing that was sent via USPS first class and certified mail to the Property Owner at the address found on the last property tax assessor inquiry (Exhibit K). The Postponement Notification stated the hearing "will need to be rescheduled to a later date." On October 21, 2020, Investigator Soeth sent the Property Owner a letter that stated the Property Owner had "expressed interest in reviewing a Compliance Agreement for the property instead of moving forward with the hearings. In February 2020, you were provided a copy of the proposed Compliance Agreement for you to review. You verbally agreed to the Compliance Agreement and said you would get it signed, notarized, and returned to

Code Enforcement.” The letter further stated in summary that the Property Owner did not return the Agreement; however, he was given an opportunity to do so with a November 3, 2020, deadline. The letter stated that “[i]f we do not receive the signed and notarized Compliance Agreement by November 3, 2020, we will assume you no longer want to enter into a Compliance Agreement and will move forward with scheduling your [appeal hearings].”

On July 18, 2022, Investigator Soeth sent the Property Owner a letter that included a Notice of Administrative Civil Penalty Appeal Hearing (Hearing Notice) that set the appeal hearing for September 9, 2022 (Exhibit O). On July 18, 2022, the CEU posted the Hearing Notice on the Property and sent copies of the Hearing Notice via USPS first class and certified mail to the Property Owner at the address found on the last property tax assessor inquiry (Exhibit O).

The Hearing Officer finds that the efforts made by the County to notify the Property Owner of the alleged violations on the Property, the potential administrative penalties in the Notice of Violation, and the date and time of the hearing in the Hearing Notice were adequate pursuant to HCC sections 352-4 and 352-8.

IV. STANDARD OF PROOF

No standard of proof is specified in the HCC. Since the HCC is silent as to the standard 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. ALLEGATIONS

The Notice to Abate alleged the following violations:

1. HCC section 354-1 – Junk and/or Inoperable Vehicles
2. HCC section 521-4 – Improper Storage and Removal of Solid Waste
3. HCC section 311-10.1 – Property/Building Use in Violation of Zoning Codes

VI. BACKGROUND

On or about June 15, 2016, the CEU received a referral from the Humboldt County Department of Health and Human Services Division of Environmental Health (DEH) for junk vehicles and solid waste being stored on the Property. The referral indicated that DEH’s efforts to resolve the complaint began in January 2016. On February 19, 2016, and on April 11, 2016,

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.)

DEH issued notices of violations for the conditions on the Property; however, DEH's efforts did not yield any results (Exhibit D).

The CEU was in contact with the Property Owner during 2016-2017, but the Property was never brought into compliance.

In April 2019, Investigator Soeth received additional complaints regarding the same conditions of junk vehicles and solid waste being stored on the Property. On April 12, 2019, a letter was mailed to the Property Owner requesting consent for an inspection (Exhibit E). The Property Owner did not consent to a Property inspection, so the CEU obtained an Inspection Warrant from the Humboldt County Superior Court (Exhibit F1).

Investigator Soeth posted the Property with the Inspection Warrant on May 6, 2019, along with a Letter of Intent to Serve Inspection Warrant that provided notice that on May 7, 2019, the Inspection Warrant would be served and the inspection would be conducted (Exhibit F1).

On May 7, 2019, the Inspection Warrant was served, and the inspection was conducted with the Property Owner present during the inspection, along with a DEH hazardous materials specialist and a building inspector. Photographs were taken throughout the inspection, and Investigator Soeth completed a written report documenting the conditions on the Property (Exhibit G).

The Property is zoned Residential Single Family (RS-5) with principally permitted uses of single-family residential, second residential unit, and cottage industry. During the inspection, it was determined that no residence or structures are on the Property and that the Property did not have a principally permitted use, nor any conditional use permits allowing uses other than those principally permitted. During the inspection, solid waste was observed strewn about the Property, as well as several junk vehicles, and several boats, including one boat that appeared to be in "good shape."

Based on the observed condition of the Property, on July 1, 2019, the Notice to Abate was issued and served upon the Property Owner (Exhibit H). The Property Owner appealed, and an Administrative Civil Penalty Appeal Hearing was scheduled and noticed for December 13, 2019 (Exhibits I, J). On December 2, 2019, the appeal hearing was postponed, and it was noted that the hearing would be rescheduled for a later date (Exhibit K).

In February 2020, the Property Owner expressed his desire to possibly enter into a Compliance Agreement with the County in lieu of an administrative hearing. On or about February 7, 2020, the Property Owner was provided a copy of a Compliance Agreement to review and determine if he wanted to enter into the Compliance Agreement with the County or to move forward with an administrative hearing. The Property Owner never returned the Compliance Agreement and did not further communicate any desire to enter into a compliance agreement. On July 18, 2022, the CEU set the matter for a hearing (Exhibit O).

On August 29, 2022, Investigator Soeth conducted another inspection where she observed three trailers containing solid waste, waste items strewn about the Property, including numerous junk tires, miscellaneous salvaged wood products, what appeared to be an old gas pump, and three inoperable vehicles. The three inoperable vehicles were the same three vehicles observed at the May 7, 2019, Property inspection that had been determined to be junk/inoperable at that time (Exhibit S). These vehicles included a blue Ford F350 pickup truck with California license plate 8D84837, a red pickup truck, and a green 4-door pickup truck; the vehicles appeared to be in substantially the same location as they were during the May 7, 2019, inspection. Investigator Soeth also observed a white pickup truck, a travel trailer, and a boat on the Property that had not been there during the previous inspection; these did not appear to be junk.

Investigator Soeth acknowledged that some effort had been made by the Property Owner to clean up the Property with the removal of some solid waste and vehicles.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Allegation 1: HCC section 354-1 – Junk and/or Inoperable Vehicles.

Section 354-1 of the HCC states, “[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 further states, “[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 “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)).

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, except a device designed to be moved by human power or used exclusively upon stationary rails or tracks.” (HCC section 354-2(a)).

During the May 7, 2019, inspection, there were numerous vehicles observed on the Property that had significant body damage or did not appear to have been operable for a period of 30 days or more (Exhibit G).

About three years later, on August 29, 2022, Investigator Soeth observed the Property from the sidewalk, as the Property Owner declined to sign a “Consent to Inspect Form.” Among other junk items, Investigator Soeth observed three of the same vehicles on the Property that

were observed during the May 7, 2019, Property inspection and were determined to be junk/inoperable at that time.

1. Blue Ford F350 pickup truck with California license plate 8D84837. Investigator Soeth testified that this vehicle appeared to be in the same location since the May 7, 2019, inspection (Exhibits G, S).
2. Red pickup truck. Investigator Soeth testified that this vehicle was observed on the Property during the May 7, 2019, inspection and appeared to have been rotated slightly, but it still was missing major components and was sitting directly on the ground with no wheels or tires and appeared to consist of only the main cab and engine/engine area (Exhibits G, S).
3. Green 4-door pickup truck. Investigator Soeth testified that this vehicle appeared to be in the same location from the May 7, 2019, inspection, where it was observed to have missing wheels/tires, body damage, and missing sections of paneling (Exhibits G, S).

Investigator Soeth also testified that there was also a white pickup truck and a travel trailer on the Property that had not been there during the previous inspection. The white pickup truck did not appear to be junk and appeared operational. She was not able to determine from the roadway if the travel trailer was junk/inoperable. Lastly, Investigator Soeth testified that she went to the Property on September 8, 2022, and from the right-of-way observed the same three vehicles on the Property.

The Property Owner testified that the California Highway Patrol directed him to put the vehicles on his Property, and that the County also allowed him to utilize his Property as a “staging area.” The Property Owner did not have any documentary evidence to support this testimony, and the Hearing Officer found this testimony to lack credibility.

The evidence did establish that numerous vehicles, including a blue Ford F350 pickup truck with California license plate 8D84837, a red pickup truck, and a green 4-door pickup truck, were observed on the Property from 2019 to 2022, a period that vastly exceeds a period of 30 consecutive days. These three vehicles are found to be substantially wrecked, dismantled, and inoperative. The Hearing Officer finds that the County has proven by a preponderance of the evidence that the three vehicles listed constitute junk vehicles as defined in HCC section 354-2, which, pursuant to HCC section 352-3(t), is a violation for which an administrative civil penalty may be imposed.

Allegation 2: HCC section 521-4 – Improper Storage and Removal of Solid Waste

Section 521-4 of the HCC lists the minimum requirements for the removal of solid waste and source-separated materials in the County. Per HCC section 521-4(b), in relevant part, “[n]o owner or occupant shall throw, drop, leave, dump, bury, burn, place or otherwise dispose of any refuse upon his/her premises, or allow any other person to dispose of refuse upon his/her premises” Furthermore, per HCC section 521-4(c), “[t]he owner . . . of any premises . . . shall be responsible for the satisfactory removal of all refuse accumulated by him/her on his/her

property or premises in accordance with State requirements (Title 14 of the California Code of Regulations Section 17331). The County may require removals as it deems necessary.” Additionally, a property owner shall remove solid waste by electing to use a waste hauling service or by self-removal.

Section 521-3(III) of the HCC states solid waste has the same definition as found in California Public Resources Code (PRC) section 40191. Per PRC section 40191, in relevant part, solid waste means “all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.” Per HCC section 521-3(ggg), refuse “includes all bulky waste, hard-to-handle waste, solid waste and recyclable materials that have not been segregated as defined in [HCC Title 5, Division 2, Chapter 1].”

On May 7, 2019, numerous solid waste items were observed throughout the Property, including, but not limited to, waste tires, metal rods/piping, miscellaneous salvaged wood products, plastic totes, luggage, vehicles parts, 55-gallon style drums, and tarps (Exhibit G).

About three years later, on August 29, 2022, Investigator Soeth observed three trailers filled with solid waste on the Property. The Property Owner told Investigator Soeth that the trailers were not his, but the solid waste that filled the trailers was his. On the portion of the Property that Investigator Soeth could observe from the sidewalk, she observed solid waste items still on the Property, including numerous junk tires, miscellaneous salvaged wood products, what appeared to be an old gas pump, and other miscellaneous solid waste items (Exhibit S).

The Property Owner did not offer any credible testimony refuting that there was solid waste covering much of the Property.

The Hearing Officer finds that the County has proven by a preponderance of evidence that miscellaneous items are stored on the Property that constitutes solid waste as defined by HCC section 521-3(III), which, pursuant to HCC section 352-3(t), is a violation for which an administrative civil penalty may be imposed.

Allegation 3: 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 to 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 Residential Single Family (RS-5) with a principal permitted use of single-family residential, second residential unit, and cottage industry (HCC section 313-6.1).

Per HCC section 313-1, “[t]he Principal Zone is the first zone designation applied to property which designates the principally permitted uses on the property.”

During the inspection, it was determined that the Property did not have a single-family residence, which is the principally permitted use of the Property, nor had any conditional use permits been issued to allow uses other than those principally permitted. Per HCC section 313-43.1.2, “in addition to the principal uses expressly set forth in the use classification, each use classification shall be deemed to include such accessory uses as are specifically identified by these regulations, and such other accessory uses as are necessarily and customarily associated with and are appropriate, incidental, and subordinate to, such principal uses.” Since there is no principally permitted use, accessory uses on the Property, such as storage or a storage yard, cannot be appropriate, incidental, and subordinate to a principal use and is in violation of HCC section 313-43.1 and constitutes a public nuisance.

The hearing testimony established, by a preponderance of the evidence, that there were other vehicles, including a travel trailer, and a boat and trailer, that are stored on the Property that would not be appropriately considered junk/inoperable vehicles pursuant to HCC section 354-1 nor solid waste pursuant to HCC section 521-3. Since there is no permitted primary residence on the Property, any storage of automobiles or other items on the Property constitutes a violation of HCC section 311-10.1.

The Hearing Officer finds that the County has proven by a preponderance of the evidence that the Property is being used to store miscellaneous items, such as operable vehicles, a travel trailer, and a boat and trailer, that constitute an unlawful land use pursuant to HCC section 311-10.1; which, pursuant to HCC section 352-3(t), is a violation for which an administrative civil penalty may be imposed.

VIII. ADMINISTRATIVE FINES

Paragraph (1) of California Government Code section 53069.4(a) provides that the legislative body of a local agency [County] may, by ordinance, make a violation of its ordinance 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.” Paragraph (2) of section 53609.4(a) states that “[t]he 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.”

Accordingly, the County has established by ordinance the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the County of those

administrative fines or penalties. The County has set forth its administrative fines and procedures in HCC Title III, Division 5, Chapter 2.

Per HCC section 352-5(a), “[a]ny and all Violations may be subject to an administrative civil penalty of up to ten thousand dollars (\$10,000.00), or as allowed by applicable state law, whichever is higher, per calendar day up to and including the ninetieth (90th) calendar day.” Additionally, HCC section 352-5(c) states, “[e]ach calendar day that a Violation occurs, continues or exists between the Imposition Date and the Completion Date shall constitute a separate Violation up to the ninetieth (90th) calendar day.”

Per HCC section 352-6(a), “[t]he amount of the administrative civil penalty to be imposed shall be set by the Code Enforcement Unit or the court according to the following schedule:

- (1) Category 1 Violations shall be subject to an administrative civil penalty of one dollar (\$1.00) to one thousand dollars (\$1,000.00) per calendar day.
- (2) Category 2 Violations shall be subject to an administrative civil penalty of one thousand dollars (\$1,000.00) to three thousand dollars (\$3,000.00) per calendar day.
- (3) Category 3 Violations shall be subject to an administrative civil penalty of three thousand dollars (\$3,000.00) to six thousand dollars (\$6,000.00) per calendar day.
- (4) Category 4 Violations shall be subject to an administrative civil penalty of six thousand dollars (\$6,000.00) to ten thousand dollars (\$10,000.00), or as allowed by applicable state law, whichever is higher, per calendar day.

The July 1, 2019, Notice of Violation clearly stated that if the required corrective actions are not commenced, prosecuted, and completed within ten calendar days after service of the Notice of Violation, “a daily administrative penalty of **three hundred dollars (\$300.00)** will be imposed for a period of up to ninety (90) calendar days pursuant to Humboldt County Code Section 352-5.” (Exhibit H). [*Emphasis in the original*].

Service of the Notice of Violation on the Property Owner was deemed complete on July 8, 2019⁴; however, the violations were not corrected within 90 days of service. Accordingly, the County is entitled to 90 days of accrued administrative penalties. Instead, the County requested only 20 days of administrative penalties (the 11th day after service was complete – July 20, 2022 – up to the first date a hearing could have been scheduled – August 9, 2022).

⁴ Section 352-4(a) of the HCC states that “[s]ervice by certified mail and posting shall be deemed complete on the date a notice, finding or order has been both mailed and posted as set forth herein.”

Per HCC section 352-12(a), if the Hearing Officer finds a violation has occurred or exists, “the Hearing Officer shall affirm, reduce or suspend the proposed administrative civil penalty in accordance with the criteria set forth in the Chapter.”

Section 352-6(b) of the HCC states, “[i]n determining which Violation category a Violation should be placed, and the amount of the administrative civil penalty to be imposed, the Code Enforcement Unit or the court shall consider, without limitation, all of the following factors:

- (1) The severity of the Violation’s impact on the health, safety and/or general welfare of the public, including, without limitation, the type and seriousness of the injuries or damages, if any, suffered by any member of the public.
- (2) The number of complaints received regarding the Violation at issue.
- (3) The willfulness and/or negligence of the Responsible Party. In assessing the degree of willfulness and/or negligence, all of the following factors shall be considered:
 - 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 which caused the Violation to occur.
 - C. Whether the Responsible Party knew, or should have known, the impacts associated with the conduct which caused the Violation to occur.
 - D. The level of sophistication of the Responsible Party in dealing with compliance issues.
- (4) The number of times in which the Responsible Party has committed the same or similar Violations in the previous three (3) years
- (5) The amount of administrative staff time which was expended in investigating or addressing the Violation at issue
- (6) The amount of administrative civil penalties which have been imposed in similar situations.
- (7) The efforts made by the Responsible Party to correct the Violation and remediate the impacts thereof.”

The County requested \$100 per day per violation for a total of \$300 per day. The evidence presented shows that since 2016 there have been multiple complaints about the conditions on the Property, and while the conduct resulting in the violations did not greatly affect the health, safety, and/or general welfare of the public, the conditions did result in visual blight

to the neighboring property owners. The Property Owner exercised sole control of the Property and should have known the collection of the junk vehicles and solid waste would constitute blight, especially since he has been contacted by the County about the condition of his Property numerous times since 2016.

The County has expended a large amount of administrative staff time investigating or addressing the violations at issue (Exhibit M). Additionally, there have been minimal efforts by the Property Owner to correct the violations cited, as evidenced by the condition of the Property observed during the latest August 29, 2022, inspection (Exhibit S).

The Hearing Officer recognizes the authority to set the civil penalty for a Category 1 violation between \$1 and \$1,000 per day pursuant to HCC section 352-6, with a maximum allowable civil penalty under the ordinance of \$10,000 per day for up to 90 days, or \$900,000. The County has instead requested a civil penalty of \$6,000 calculated by assessing \$100 per violation per day starting from July 20, 2019, until the first available hearing date, which was 20 days after July 20, 2019.

Section 352-12(a) of the HCC states, “[i]f it is found that a Violation has occurred or exists, the Hearing Officer shall affirm, reduce, or suspend the proposed administrative civil penalty in accordance with the criteria set forth in this Chapter.” The Hearing Officer finds the County’s calculation of a civil penalty of \$100 per day per violation reasonable as it relates to the violation of HCC section 354-1: Junk and/or Inoperable Vehicles, and HCC section 521-4: Improper Storage and Removal of Solid Waste.

The Hearing Officer finds the County’s calculation of a civil penalty of \$100 per day for violation of HCC section 311-10.1: Property/Building Use in Violation of Zoning Codes, to be excessive. While the Hearing Officer does find that there were items on the Property that would not constitute junk vehicles or solid waste, such as operable vehicles, and a boat on a trailer, it seems inappropriate to add an additional fine of the same magnitude for items on the Property that would have been included in the other two proven violations (and penalty assessments) if they had been in further disrepair. These items, while inappropriately stored on the Property pursuant to the HCC, are found to be less egregious and worth a lower penalty than the other violations found on the Property. Accordingly, the daily penalty for HCC section 311-10.1 is set at \$10 per day.

The Hearing Officer finds that a civil penalty amount of \$210 per day for 20 days, or a total of \$4,200, is reasonable and appropriate given the factors in HCC section 352-6 as outlined above. Therefore, an imposed civil penalty of \$4,200 furthers the stated purpose, intent, and scope of the County’s civil penalty ordinance to “penalize Responsible Parties for . . . Violations,”⁵ “protect the public health, safety and welfare of the communities and citizens in the County of Humboldt,”⁶ and “provide a method to penalize Responsible Parties who fail or refuse to comply with the provisions of the Humboldt County Code and other ordinances adopted by

⁵ See HCC section 352-2(a).

⁶ See HCC section 352-2(b)(1).

the County of Humboldt, or conditions on entitlement set forth in permits and/or agreements issued or approved by the County of Humboldt.”⁷

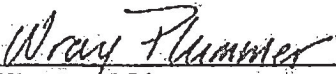
IX. ORDER

1. The July 1, 2019, Notice of Violation and Proposed Administrative Civil Penalty is upheld as modified below.
2. The County shall forthwith serve a copy of this Finding of Violation and Order Imposing Administrative Civil Penalty on each Responsible Party in the same manner as set forth in HCC section 352-4(a).
3. Administrative civil penalties in the amount of \$4,200 are awarded to the County. Payment in full is due within 30 calendar days of service of this Finding of Violation and Order Imposing Administrative Civil Penalty.
4. The Property Owner may contest this Finding of Violation and Order Imposing Administrative Civil Penalty by either:
 - a) Pursuant to California Government Code section 53069.4(b)(1)-(2), the Property Owner may file a request for judicial review in the Humboldt County Superior Court within twenty (20) calendar days after service of the Finding of Violation and Order Imposing Administrative Civil Penalty. The Appellant shall serve a copy of the request for judicial review of the Finding of Violation and Order Imposing Administrative Civil Penalty upon the Code Enforcement Unit either in person or by first class mail (HCC section 352-13(a)(1)).
 - b) Pursuant to California Code of Civil Procedure section 1094.6, the Property Owner may file a petition of writ of mandate within the time specified in Section 1094.6. The appeal of the Hearing Officer’s imposition of a final administrative civil penalty shall be governed by California Code of Civil Procedure section 1094.6, as such section may be amended from time to time.
5. If a Responsible Party(s) appeals this Finding of Violation and Order Imposing Administrative Civil Penalty and the Humboldt County Superior Court finds against the appellant, or if the Responsible Party(s) does not appeal this Finding of Violation and Order Imposing Administrative Civil Penalty and fails to pay the administrative civil penalties awarded herein, the Code Enforcement Unit may proceed to collect the administrative civil penalty as set forth in HCC Title III, Division 5, Chapter 2 (HCC sections 352-13(b), 352-14).
6. The failure to file a request for judicial review of a Finding of Violation and Order Imposing Administrative Civil Penalty in accordance with the requirements set forth in

⁷ See HCC section 352-2(b)(3).

California Government Code section 53069.4(b)(1)-(2) shall constitute a waiver of the right to contest the Hearing Officer's decision (HCC section 352-13(b)).

Dated: November 8, 2022



Wraymond Plummer
Hearing Officer
California Hearing Officers, LLP

California Code of Civil Procedure § 1094.6. Time limits for review

(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.

Cal Gov Code § 53069.4**§ 53069.4. Violation of ordinance of local agency subject to administrative fine or penalty; Appeal of order**

(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.

(2) (A) 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) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis. This subparagraph shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

(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.

Proof of Service

I, Lynette McPherson, am over 18 years of age and not a party to this action. I am employed in the county where the mailing took place.

My business address is P.O. Box 279560, Sacramento, California, 95827, which is located in the County of Sacramento.

On **November 9, 2022**, I served the following document(s) by email and via USPS by enclosing it in an envelope and depositing the sealed envelope with the United States Postal Service with the first-class postage fully prepaid:

**FINDING OF VIOLATION AND ORDER IMPOSING ADMINISTRATIVE
CIVIL PENALTY**

Property Owner: Gerald McGuire

Property Address: 240 Central Avenue, Fields Landing, California 95537

APN: 306-033-003

Case No.: 16CEU-64

Addressed to:

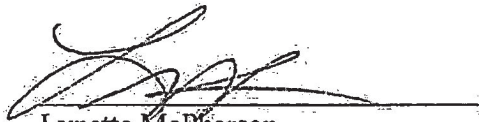
**Humboldt County
Planning and Building Code Enforcement
3015 H. Street
Eureka, CA 95501**

Via Email:

Alex Grotewohl agrotewohl@co.humboldt.ca.us

Karen Meynell KMeynell@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.



Lynette McPherson
Paralegal

CALIFORNIA HEARING OFFICERS, LLP
 P.O. Box 279560
 Sacramento, CA 95827
 Telephone: 916.306.0980

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

In the matter of:)	Case Number 16CEU-64
240 Central Avenue,)	
Fields Landing, California 95537)	FINDING OF NUISANCE AND
)	ORDER OF ABATEMENT
(APN 306-033-003))	
)	
Property of:)	
Gerald McGuire)	

I. INTRODUCTION

This matter was heard on September 9, 2022, via video conference before Wraymond Plummer, Hearing Officer for California Hearing Officers, LLP.¹ The purpose of this hearing was to decide whether to uphold the Notice to Abate Nuisance (Notice to Abate) issued by the County of Humboldt (County) on July 1, 2019, that states conditions at 240 Central Avenue, Fields Landing, California, 95537 (Property), constitute a nuisance and to order that the nuisance be abated.²

II. APPEARANCES

Alex Grotewohl, Deputy County Counsel, and Shauna Soeth, Code Enforcement Investigator, appeared on behalf of the County. Appellant and Property Owner, Gerald McGuire (Property Owner), and his daughter, Britney McGuire, were also present at the hearing. The County offered Exhibits 1-178, all of which were admitted as evidence. After receiving all documentary evidence and testimony from Investigator Soeth and the Property Owner, the record was closed and the matter was submitted for decision.

¹ The County of Humboldt appoints hearing officers pursuant to California Government Code section 27720. California Hearing Officers, LLP contracts with the County of Humboldt to provide impartial hearing officers for administrative hearings.

² Per Humboldt County Code (HCC) section 351-11, “[t]he Code Enforcement Hearing may be combined with an Administrative Civil Penalty Appeal Hearing held pursuant to the provisions of this Division.” The County served a Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty on the Property Owner at the same time. Both notices share the same facts as the bases for the violations, and both appealed notices were heard at the same time; however, separate findings and orders will be issued for each. This finding and order only concerns the Notice to Abate Nuisance.

III. JURISDICTION

The Humboldt County Code Enforcement Unit (CEU) has found that conditions at the Property constitute a nuisance as defined in HCC section 351-3. Those findings resulted in the July 1, 2019, Notice to Abate (Exhibit H) issued by the CEU pursuant to HCC section 351-7.³

On July 1, 2019, the CEU sent the Notice to Abate via USPS first class and certified mail to the Property Owner at the address found on the last property tax assessor inquiry; Investigator Soeth posted it on the Property that same day (Exhibit H). The Notice to Abate stated that nuisance conditions on the Property exist and the Property Owner must abate the nuisance within ten days after service of the Notice to Abate (Exhibit H).

The Notice to Abate contained Attachments A-C. Attachment A consisted of a list showing the alleged codes being violated, descriptions of the violations, and the corrective actions required; Attachment B consisted of the legal description of the Property; Attachment C consisted of a blank Code Enforcement Appeal Hearing Request Form.

The Property Owner completed and submitted the Code Enforcement Appeal Hearing Request Form appealing the Notice to Abate, which was received by the County on July 18, 2019 (Exhibit I).

On October 24, 2019, the County sent the Property Owner a Notice of Code Enforcement Appeal Hearing (Exhibits J). The appeal hearing was subsequently set for December 13, 2019 (Exhibit J1). On December 2, 2019, the CEU issued a Postponement Notification Code Enforcement Appeal Hearing and Administrative Civil Penalty Appeal Hearing that was sent via USPS first class and certified mail to the Property Owner at the address found on the last property tax assessor inquiry (Exhibit K). The Postponement Notification stated the hearing “will need to be rescheduled to a later date.” On October 21, 2020, Investigator Soeth sent the Property Owner a letter that stated the Property Owner had “expressed interest in reviewing a Compliance Agreement for the property instead of moving forward with the hearings. In February 2020, you were provided a copy of the proposed Compliance Agreement for you to review. You verbally agreed to the Compliance Agreement and said you would get it signed, notarized, and returned to Code Enforcement.” The letter further stated in summary that the Property Owner did not return the Agreement; however, he was given an opportunity to do so with a November 3, 2020, deadline. The letter stated, “[i]f we do not receive the signed and notarized Compliance Agreement by November 3, 2020, we will assume you no longer want to enter into a Compliance Agreement and will move forward with scheduling your [appeal hearings].”

³ Per HCC section 351-7, “[w]henver the Code Enforcement Unit determines that a public Nuisance exists on any Property within the unincorporated area of Humboldt County, the Code Enforcement Unit shall prepare, and serve upon each Owner, Beneficial Owner, Occupier and/or any other person in charge or control of the affected Property, a ‘Notice to Abate Nuisance’ as set forth in this Chapter. The Notice to Abate Nuisance may be combined with a Notice of Violation and Proposed Administrative Civil Penalty issued pursuant to the provisions of this Division.”

On July 18, 2022, Investigator Soeth sent the Property Owner a letter that included a Notice of Code Enforcement Appeal Hearing (Hearing Notice) that set the appeal hearing for September 9, 2022 (Exhibit O). On July 18, 2022, the CEU posted the Hearing Notice on the Property and sent copies of the Hearing Notice via USPS first class and certified mail to the Property Owner at the address found on the last property tax assessor inquiry (Exhibit O).

The Hearing Officer finds that the efforts made by the County to notify the Property Owner of the alleged violations on the Property in the Notice to Abate, as well as the hearing date in the Hearing Notice, were adequate pursuant to HCC sections 351-6 and 351-8.

IV. STANDARD OF PROOF

No standard of proof is specified in the HCC. Since the HCC is silent as to the standard 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

V. ISSUES

- 1. Do conditions on the Property, as identified in the Notice to Abate, constitute a nuisance?**
- 2. If so, what action must be taken to correct the violations?**

VI. BACKGROUND

On or about June 15, 2016, the CEU received a referral from the Humboldt County Department of Health and Human Services Division of Environmental Health (DEH) for junk vehicles and solid waste being stored on the Property. The referral indicated that DEH's efforts to resolve the complaint began in January 2016. On February 19, 2016, and on April 11, 2016, DEH issued notices of violations for the conditions on the Property; however, DEH's efforts did not yield any results (Exhibit D).

The CEU was in contact with the Property Owner during 2016-2017, but the Property was never brought into compliance.

In April 2019, Investigator Soeth received additional complaints regarding the same conditions of junk vehicles and solid waste being stored on the Property. On April 12, 2019, a letter was mailed to the Property Owner requesting consent for an inspection (Exhibit E). The Property Owner did not consent to a Property inspection, so the CEU obtained an Inspection Warrant from the Humboldt County Superior Court (Exhibit F1).

Investigator Soeth posted the Property with the Inspection Warrant on May 6, 2019, along with a Letter of Intent to Serve Inspection Warrant that provided notice that on May 7,

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.)

2019, the Inspection Warrant would be served and the inspection would be conducted (Exhibit F1).

On May 7, 2019, the Inspection Warrant was served, and the inspection was conducted with the Property Owner present during the inspection, along with a DEH hazardous materials specialist and a building inspector. Photographs were taken throughout the inspection, and Investigator Soeth completed a written report documenting the conditions on the Property (Exhibit G).

The Property is zoned Residential Single Family (RS-5) with principally permitted uses of single-family residential, second residential unit, and cottage industry. During the inspection, it was determined that no residence or structures were on the Property and that the Property did not have a principally permitted use, nor any conditional use permits allowing uses other than those principally permitted. During the inspection, solid waste was observed strewn about the Property, as well as several junk vehicles and several boats, including one boat that appeared to be in "good shape."

Based on the observed condition of the Property, on July 1, 2019, the Notice to Abate was issued and served upon the Property Owner (Exhibit H). The Property Owner appealed; subsequently, a Code Enforcement Appeal Hearing was scheduled and noticed for December 13, 2019 (Exhibits I, J). On December 2, 2019, the appeal hearing was postponed, and it was noted that the hearing would be rescheduled for a later date (Exhibit K).

In February 2020, the Property Owner expressed his desire to possibly enter into a compliance agreement with the County in lieu of an administrative hearing. On or about February 7, 2020, the Property Owner was provided a copy of a Compliance Agreement to review and determine if he wanted to enter into the Compliance Agreement with the County or to move forward with an administrative hearing. The Property Owner never returned the Compliance Agreement and did not further communicate any desire to enter into a compliance agreement. On July 18, 2022, the CEU set the matter for a hearing (Exhibit O).

On August 29, 2022, Investigator Soeth conducted another inspection where she observed three trailers containing solid waste, waste items strewn about the Property including numerous junk tires, miscellaneous salvaged wood products, what appeared to be an old gas pump, and three inoperable vehicles. The three inoperable vehicles were the same three vehicles observed at the May 7, 2019, Property inspection that had been determined to be junk/inoperable at that time (Exhibit S). These vehicles included a blue Ford F350 pickup truck with California license plate 8D84837, a red pickup truck, and a green 4-door pickup truck; the vehicles appeared to be in substantially the same location as they were during the May 7, 2019, inspection. Investigator Soeth also observed a white pickup truck, a travel trailer, and a boat on the Property that had not been there during the previous inspection; these did not appear to be junk.

Investigator Soeth acknowledged that some effort had been made by the Property Owner to clean up the Property with the removal of some solid waste and vehicles.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue 1: Do conditions on the Property, as identified in the Notice to Abate, constitute a nuisance?

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

Allegation 1: HCC section 354-1 – Junk and/or Inoperable Vehicles

Section 354-1 of the HCC states, “[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 further states, “[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 “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)).

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, except a device designed to be moved by human power or used exclusively upon stationary rails or tracks.” (HCC section 354-2(a)).

During the May 7, 2019, inspection, there were numerous vehicles observed on the Property that had significant body damage or did not appear to have been operable for a period of 30 days or more (Exhibit G).

About three years later, on August 29, 2022, Investigator Soeth observed the Property from the sidewalk, since the Property Owner declined to sign a “Consent to Inspect Form.” Among other junk items, Investigator Soeth observed three of the same vehicles on the Property that were observed during the May 7, 2019, Property inspection and were determined to be junk/inoperable at that time.

1. Blue Ford F350 pickup truck with California license plate 8D84837. Investigator Soeth testified that this vehicle appeared to be in the same location since the May 7, 2019, inspection (Exhibits G, S).

2. Red pickup truck. Investigator Soeth testified that this vehicle was observed on the Property during the May 7, 2019, inspection and appeared to have been rotated slightly, but it still was missing major components and was sitting directly on the ground with no wheels or tires and appeared to consist of only the main cab and engine/engine area (Exhibits G, S).
3. Green 4-door pickup truck. Investigator Soeth testified that this vehicle appeared to be in the same location from the May 7, 2019, inspection, where it was observed to have missing wheels/tires, body damage, and missing sections of paneling (Exhibits G, S).

Investigator Soeth testified that there was also a white pickup truck and a travel trailer on the Property that had not been there during the previous inspection. The white pickup truck did not appear to be junk and appeared operational. She was not able to determine from the roadway if the travel trailer was junk/inoperable. Lastly, Investigator Soeth testified that she went to the Property on September 8, 2022, and from the right-of-way observed the same three vehicles on the Property.

The Property Owner testified that the California Highway Patrol directed him to put the vehicles on his Property, and that the County also allowed him to utilize his Property as a “staging area.” The Property Owner did not have any documentary evidence to support this testimony, and the Hearing Officer found this testimony to lack credibility.

The evidence did establish that numerous vehicles, including a blue Ford F350 pickup truck with California license plate 8D84837, a red pickup truck, and a green 4-door pickup truck, were observed on the Property from 2019 to 2022, a period that vastly exceeds a period of 30 consecutive days. These three vehicles are found to be substantially wrecked, dismantled, and inoperative.

The Hearing Officer finds the County has proven by a preponderance of the evidence that the three vehicles listed constitute junk vehicles as defined in HCC section 354-2. Therefore, pursuant to HCC section 354-1, the violation constitutes a nuisance. If the Property Owner does not voluntarily abate the nuisance conditions as ordered, the nuisance shall be abated by the County.

Allegation 2: HCC section 521-4 – Improper Storage and Removal of Solid Waste

Section 521-4 of the HCC lists the minimum requirements for the removal of solid waste and source-separated materials in the County. Per HCC section 521-4(b), in relevant part, “[n]o owner or occupant shall throw, drop, leave, dump, bury, burn, place or otherwise dispose of any refuse upon his/her premises, or allow any other person to dispose of refuse upon his/her premises” Furthermore, per HCC section 521-4(c), “[t]he owner . . . of any premises . . . shall be responsible for the satisfactory removal of all refuse accumulated by him/her on his/her property or premises in accordance with State requirements (Title 14 of the California Code of Regulations Section 17331). The County may require removals as it deems necessary.” Additionally, a property owner shall remove solid waste by electing to use a waste hauling service or by self-removal.

Section 521-3(III) of the HCC states solid waste has the same definition as found in California Public Resources Code (PRC) section 40191. Per PRC section 40191, in relevant part, solid waste means “all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.” Per HCC section 521-3(ggg), refuse “includes all bulky waste, hard-to-handle waste, solid waste and recyclable materials that have not been segregated as defined in [HCC Title 5, Division 2, Chapter 1].”

On May 7, 2019, numerous solid waste items were observed throughout the Property, including, but not limited to, waste tires, metal rods/piping, miscellaneous salvaged wood products, plastic totes, luggage, vehicles parts, 55-gallon style drums, and tarps (Exhibit G).

About three years later, on August 29, 2022, Investigator Soeth observed three trailers filled with solid waste on the Property. The Property Owner told Investigator Soeth that the trailers were not his, but the solid waste that filled the trailers was his. On the portion of the Property that Investigator Soeth could observe from the sidewalk, she observed solid waste items still on the Property, including numerous junk tires, miscellaneous salvaged wood products, what appeared to be an old gas pump, and other miscellaneous solid waste items (Exhibit S).

The Property Owner did not offer any credible testimony refuting that there was solid waste covering much of the Property.

The Hearing Officer finds the County has proven by a preponderance of the evidence that miscellaneous items are stored on the Property that constitutes solid waste as defined by HCC section 521-3(III). Therefore, pursuant to HCC section 351-3, the violation constitutes a nuisance. If the Property Owner does not voluntarily abate the nuisance conditions as ordered, the nuisance shall be abated by the County.

Allegation 3: 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 to 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 Residential Single Family (RS-5) with a principal permitted use of single-family residential, second residential unit, and cottage industry (HCC section 313-6.1). Per HCC section 313-1, “[t]he Principal Zone is the first zone designation applied to property which designates the principally permitted uses on the property.”

During the inspection, it was determined that the Property did not have a single-family residence, which is the principally permitted use of the Property, nor had any conditional use

permits been issued to allow uses other than those principally permitted. Per HCC section 313-43.1.2, "in addition to the principal uses expressly set forth in the use classification, each use classification shall be deemed to include such accessory uses as are specifically identified by these regulations, and such other accessory uses as are necessarily and customarily associated with and are appropriate, incidental, and subordinate to, such principal uses." Since there is no principally permitted use, accessory uses on the Property, such as storage or a storage yard, cannot be appropriate, incidental, and subordinate to a principal use and is in violation of HCC section 313-43.1.

The County proved by a preponderance of the evidence that other vehicles, including, but not limited to, a white pickup truck, a travel trailer, and a boat and trailer are stored on the Property that would not appropriately be considered junk/inoperable vehicles pursuant to HCC section 354-1 nor solid waste pursuant to HCC section 521-3. Since there is no permitted primary residence on the Property, any storage of automobiles or other items on the Property violates HCC section 311-10.1.

The Hearing Officer finds that the County has proven by a preponderance of the evidence that the Property is being used to store miscellaneous items, such as operable vehicles, a travel trailer, and a boat and trailer that constitute an unlawful land use pursuant to HCC section 311-10.1. Therefore, pursuant to HCC section 351-3(f), the violation constitutes a nuisance. If the Property Owner does not voluntarily abate the nuisance conditions as ordered, the nuisance shall be abated by the County.

Issue 2: If so, what action must be taken to correct the violations?

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

The Notice to Abate stated the corrective action to abate the junk and/or inoperable vehicles stored on the Property in violation of HCC section 354-1 as "[r]emove all junk and inoperable vehicles."

The County's required compliance action is reasonable. Accordingly, the Property Owner will be ordered to remove the junk and/or inoperable vehicles that are stored on the Property in compliance with HCC Title V, Division 2, Chapter 1 within 30 days.

Violation 2: HCC section 521-4 – Improper Storage and Removal of Solid Waste

The Notice to Abate stated the corrective action to abate the improper storage and removal of the solid waste stored on the Property in violation of HCC section 521-4 as "[r]emove [and] dispose of all solid waste properly."

The County's required compliance action is reasonable. Accordingly, the Property Owner will be ordered to remove the solid waste from the Property in compliance with HCC Title V, Division 2, Chapter 1 within 30 days.

Violation 3: HCC section 311-10.1 – Property/Building Use in Violation of Zoning Codes

The Notice to Abate stated the corrective action to abate the violation of HCC section 311-10.1, described as “Property/Building Use in Violation of Zoning Codes,” as “[r]emove all vehicles, trailers, boats, solid waste, salvaged materials, vehicle parts and any or all other items from the property.”

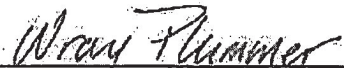
The County’s required compliance action is reasonable. Accordingly, the Property Owner will be ordered to remove vehicles, trailers, boats, solid waste, salvaged materials, vehicle parts, and any or all other items from the Property within 30 days.

VIII. ORDER

1. The County’s Notice to Abate dated July 1, 2019, is upheld.
2. The County shall forthwith serve a copy of this Finding of Nuisance and Order of Abatement on each Property Owner, Beneficial Owner, Occupier, and/or any other person in charge or control of the Property in the same manner as set forth in HCC section 351-6(a).
3. The Property Owner shall remove all junk and/or inoperable vehicles from the Property within 30 days of service of this Finding of Nuisance and Order of Abatement. The junk and/or inoperable vehicles include, but are not limited to, a blue Ford F350 pickup truck with California license plate 8D84837, a red pickup truck with an unknown California license plate, and a green 4-door pickup truck as shown in Exhibit S, which is attached to this Finding of Nuisance and Order of Abatement.
4. The Property Owner shall immediately remove all solid waste from the Property and dispose of it properly within 30 days of service of this Finding of Nuisance and Order of Abatement.
5. The Property Owner shall remove all vehicles, trailers, boats, solid waste, salvaged materials, vehicle parts, and any or all other items from the Property within 30 days of service of this Finding of Nuisance and Order of Abatement.
6. Pursuant to HCC section 351-13, if the Property Owner fails to abate the nuisance conditions as ordered and within the timelines ordered herein, the CEU shall acquire jurisdiction to abate the nuisance conditions. If the CEU abates the nuisance conditions, those costs may be levied against the Property Owner pursuant to a Notice of Nuisance Abatement Assessment (HCC section 351-16 *et seq.*)
7. As the prevailing party, the County is entitled to Abatement Costs, Administrative Costs, and Attorney’s Fees as defined in HCC section 351-4. Those costs may be recovered and/or levied against the Property pursuant to a Notice of Nuisance Abatement Assessment and Cost Recovery Hearing (HCC section 351-16 *et seq.*)

8. 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)).

Dated: November 8, 2022



Wraymond Plummer
Hearing Officer
California Hearing Officers, LLP