

ATTACHMENT C

Yesenia Ramirez & Russell Moxon APN: 018-142-006

Case: CE21-1258

Finding of Nuisance and Order of Abatement

Finding of Violation and Order Imposing Administrative Civil Penalty



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CODE ENFORCEMENT

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

Certified Mailing No.: 9171 9690 0935 0252 8862 44

November 14, 2022

Russell Moxon
4092 Excelsior Road
Eureka, CA 95503

**RE: Service of Finding of Nuisance and Order of Abatement and
Finding of Violation and Order Imposing Administrative Civil Penalty
4092 Excelsior Road, Eureka, CA 95503 APN: 018-142-006
Case No: CE21-1285**

Dear Mr. Moxon,

Please see attached the Finding of Nuisance and Order of Abatement and the Finding of Violation and Order Imposing Administrative Civil Penalty regarding the decision from the Code Enforcement Appeal Hearing and Administrative Civil Penalty Appeal Hearing held on September 9th, 2022, for Code Enforcement Case CE21-1285.

If you have any questions or concerns about these documents, please feel free to contact Code Compliance Officer Daniela Parada by telephone at (707) 268-3733, or by email dparada2@co.humboldt.ca.us.

Sincerely,

Daniela Parada
Code Compliance Officer

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

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 CE21-1258
4092 Excelsior Road	)	
Eureka, California 95503	)	FINDING OF NUISANCE AND
	)	ORDER OF ABATEMENT
(APN 018-142-006)	)	
	)	
Property of:	)	
Yesenia Ramirez & Russell Moxon	)	
<u>(Property Owners)</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 decide whether to uphold the Notice to Abate Nuisance (Notice to Abate) issued by the County of Humboldt (County) on March 4, 2022, that states conditions at 4092 Excelsior Road, Eureka, California (Property), constitute a nuisance and to order that the nuisance be abated.²

II. APPEARANCES

Alex Grotewohl, Deputy County Counsel, Karen Meynell, Code Enforcement Manager, and Daniela Parada, Code Enforcement Officer, appeared on behalf of the County. Appellant and Property owner Russell Moxon was also present at the hearing.³ The County offered Exhibits A-O, all of which were admitted as evidence. After receiving all documentary evidence and

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 Owners 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 and Amended Notice to Abate that was served on July 18, 2022.

³ Per Mr. Moxon, he and Yesenia Ramirez are divorced and she no longer resides at the Property. The County's Megabyte Assessor Inquiry, as of June 16, 2022, showed the Property ownership details as "Ramirez Yesenia & Moxon Russell WHJT"; furthermore, the Grant Deed listed the owners of the Property as, "Yesenia Ramirez and Russell Moxon, wife and husband, as joint tenants."

testimony from Officer Parada, Ms. Meynell, and Mr. Moxon, the record was closed and the matter was submitted for decision.

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 March 4, 2022, Notice to Abate (Exhibit H) issued by the CEU pursuant to HCC section 351-7.

On March 4, 2022, Officer Parada issued the Notice to Abate. The CEU sent the Notice to Abate via USPS first class and certified mail to the Property Owners at the address found on the County Assessor's last property tax inquiry; the Notice to Abate was also posted on the Property by CEU Investigator Christine Werner (Exhibit H). The Notice to Abate stated that nuisance conditions on the Property exist and the Property Owners 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 included the alleged County Code being violated, the nature of the violation, a description of conditions causing the nuisance, and the required corrective action. Attachment B consisted of the legal description of the Property.⁴ Attachment C consisted of a blank Code Enforcement Appeal Hearing Request Form (Exhibit H).

Mr. Moxon completed the Code Enforcement Appeal Hearing Request Form on March 4, 2022, and it was received by the County on March 7, 2022 (Exhibit I).

On March 23, 2022, the County sent a letter to the Property Owners confirming that the County had received the appeal request and that the County would send a hearing notice at least 15 days prior to the scheduled appeal hearing date (Exhibit J). The appeal hearing was subsequently set for September 9, 2022. On August 15, 2022, the CEU posted the Notice of Code Enforcement Appeal Hearing (Hearing Notice) on the Property and sent the Hearing Notice via USPS certified and first-class mail to the Property Owners at the address found on the last property tax assessor inquiry (Exhibit N).

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

⁴ Office Parada testified that the original March 4, 2022, Notice to Abate listed the correct street address but Attachment B contained the wrong parcel description. An Amended Notice to Abate Nuisance and Amended Notice of Violation and Proposed Administrative Civil Penalty were served to the Property Owners on July 18, 2022; the only change was to correct the legal description of the Property (Exhibit L). Mr. Moxon, who was present and participated in the hearing on September 9, 2022, raised no objection to notice. The County stated that the Amended Notice to Abate was issued solely to correct the clerical error. The Hearing Officer finds that the error was harmless and Mr. Moxon's appeal of the Notice to Abate also applies to the Amended Notice to Abate.

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.⁵

V. ISSUES

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

VI. BACKGROUND

The Property is zoned Residential One Family (R-1), with a combining zone of Greenway and Open Space (GO) (Exhibit B).

On or about September 7, 2021, the CEU received a complaint via telephone regarding crowing roosters, that too many ducks and chickens were kept on the Property, and that the animal enclosure was unsanitary, smelled bad, and was too close to the fence line.

On December 7, 2021, the CEU mailed a complaint letter to the Property Owners at the Property to advise them that the CEU had received a complaint regarding their Property (Exhibit D).

On December 28, 2021, the CEU received a call from Mr. Moxon in response to the complaint letter he received; Mr. Moxon said he was willing to schedule a Property inspection.

On January 14, 2022, CEU Officers Allison Bartles and Daniela Parada conducted a site inspection of the Property and observed eight ducks, nine chickens, and one rooster. The number of animals was in conformance with HCC section 314-43.3. The rooster was wearing a crow collar and did not crow during the inspection, but both officers did hear crowing that sounded like it was coming from a neighboring parcel.

The chicken coop sits behind the residence on the northeast portion of the Property. The chicken coop was measured and found to be seven feet from the back property line (northside of the parcel), 12 feet, 10 inches from the side property line (the eastside of the parcel), and 13 feet, 2 inches and 13 feet, 3 inches from two different exterior walls of the residence. Photographs were taken during the January 14, 2022, inspection. Officer Bartles filled out a field report during the inspection (Exhibit E).

⁵ 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.)

After the inspection, the CEU composed a diagram of the Property to indicate the setback measurements from the chicken coop to the property lines and residence (Exhibit F).

On February 9, 2022, a Violation Letter was mailed to the Property Owners citing a violation of HCC section 314-43.3 for animal keeping, with the corrective action stated as “[r]educe the number of animals to that allowed by County Code.” (Exhibit G).

On February 14, 2022, the CEU received an additional complaint about the Property stating that the rooster was making “purring” sounds and the noise and smell still existed (Exhibit A).

On February 23, 2022, Officer Parada received a call from Mr. Moxon. He stated that he received the Violation Letter. At that time, it was identified that there was a clerical error listed under the Corrective Actions Required section on the Violation Letter. The Violation Letter should have shown the corrective action as remove or relocate the animal enclosure to comply with the HCC. Mr. Moxon expressed his frustration to Officer Parada and said he would not remove anything.

On March 4, 2022, Investigator Werner posted the Notice to Abate on the front gate of the Property and sent a copy via USPS first-class and certified mail to the Property Owners (Exhibit H).

On March 7, 2022, Mr. Moxon submitted a timely appeal (Exhibit I).

On July 18, 2022, the CEU served the Amended Notice to Abate to correct a clerical error.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue 1: Do conditions on the Property, as identified in the Amended 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)).

HCC section 314-43.3.6: Animal Keeping - Animal Enclosure Setbacks.

Section 314-43.3.6 of the HCC states, “[i]n addition to conforming with all applicable yard requirements, enclosures for animal in residential zones (RS, R-1, R-2, R-3, R-4) shall have the minimum setbacks specified in the Animal Enclosure Table.” Directly under that statement is the “Animal Enclosure Setbacks Table,” which lists the appropriate setbacks for large, medium, and small domestic animals. Furthermore, Note (a) states that animal enclosures include “shelters, pens, coops, runs, hutches . . . and similar structures used for the keeping of poultry or animals.” Note (b) states, “[p]oultry setbacks same as Medium Domestic Animals.”

The Property is zoned R-1 (Exhibit B), so the Animal Enclosure Setbacks Table (Table) applies; furthermore, the setbacks are listed under the "Medium Domestic Animals" column. Per the Table, the minimum required setbacks are 50 feet from the dwelling, 50 feet from the front lot line, 20 feet from the side lot line, and 20 feet from the rear lot line.

The evidence presented is that the animal enclosure on the Property sits seven feet from the rear property line, 12 feet, 10 inches from the side property line, and 13 feet, 2 inches from one exterior wall of the residence and 13 feet, 3 inches from another exterior wall of the residence (Exhibits E, F).

Mr. Moxon provided no evidence that the coop was not located within the required setbacks. Mr. Moxon argued that he is currently in litigation because his residence is sinking into an 80-foot by 15-foot hole and that some provision of that litigation precludes him from moving the coop until the litigation is settled. Mr. Moxon provided no legal authority or any other evidence to support his position. Mr. Moxon's argument that he should be able to keep fowl for his family wherever he wants on his Property is also unavailing.

The Hearing Officer finds that the County has proven by a preponderance of the evidence the following:

- a. The chicken coop on the Property is 13 feet, 2 inches and 13 feet, 3 inches from two different exterior walls of the residence, which is less than the required 50-foot setback stated in HCC section 314-43.3.6.
- b. The chicken coop on the Property is 12 feet, 10 inches from the side lot line, which is less than the required 20-foot setback stated in HCC section 314-43.3.6.
- c. The chicken coop on the Property is seven feet from the rear lot line, which is less than the required 20-foot setback stated in HCC section 314-43.3.6.

Therefore, pursuant to HCC section 351-3(f), the violation constitutes a nuisance; if the Property Owners, Beneficial Owner(s), Occupiers, or any other person in charge or control of the Property (individually and collectively referred to hereafter as Responsible Parties) do not voluntarily complete the abatement as ordered, the nuisance shall be abated by the County.⁶

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

The Amended Notice to Abate stated the required corrective action as "[r]emove or relocate animal enclosure in compliance with County Code."

The County's corrective action is reasonable, and the Responsible Parties will be ordered to remove the coop from the Property or, in the alternative, relocate the coop on the Property so it is in compliance with the setback requirements stated in HCC section 314-43.3.6.

⁶ Per HCC section 351-3(f), the definition of a nuisance includes "[a]ny use of buildings of Property that is contrary to the provisions of the ordinances of the County of Humboldt."

VIII. ORDER

1. The County's Amended Notice to Abate dated July 18, 2022, 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. Within 30 days of service of this Finding of Nuisance and Order of Abatement, the Responsible Parties shall remove the coop from the Property or, in the alternative, relocate the coop to a location on the Property that is in compliance with the setback requirements stated in HCC section 314-43.3.6.
4. Pursuant to HCC section 351-13, if the Responsible Parties fail 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 pursuant to a Notice of Nuisance Abatement Assessment (HCC section 351-16 *et seq.*)
5. 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.*)
6. 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

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.

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 NUISANCE AND ORDER OF ABATEMENT

Property Owners: Yesenia Ramirez & Russell Moxon

Property Address: 4092 Excelsior Road, Eureka, California 95503

APN: 018-142-006

Case No.: CE21-1258

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 CE21-1258
4092 Excelsior Road	)	
Eureka, California 95503	)	FINDING OF VIOLATION AND ORDER
	)	IMPOSING ADMINISTRATIVE
(APN 018-142-006)	)	CIVIL PENALTY
	)	
Property of:	)	
Yesenia Ramirez & Russell Moxon	)	
<u>(Property Owners)</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 decide whether to uphold the Notice of Violation and Proposed Administrative Civil Penalty (Notice of Violation) issued by the County of Humboldt (County) on March 4, 2022, that states conditions at 4092 Excelsior Road, Eureka, California (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, Karen Meynell, Code Enforcement Manager, and Daniela Parada, Code Enforcement Officer, appeared on behalf of Humboldt County. Property owner Russell Moxon was also present at the hearing.³ The County offered Exhibits A-

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 Owners 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 Amended Notice of Violation.

³ Mr. Moxon testified that he and Ms. Ramirez are divorced, and that Ms. Ramirez does not live at the Property. The County's Megabyte Assessor Inquiry, as of June 16, 2022, showed the Property ownership details as "Ramirez

O, all of which were admitted as evidence. After receiving all documentary evidence and testimony from Officer Parada, Ms. Meynell, and Mr. Moxon, the record was closed and the matter was submitted for decision.

III. JURISDICTION

The County of Humboldt, Code Enforcement Unit (CEU), has found that conditions at the Property violate the HCC. Those findings resulted in the March 4, 2022, Notice of Violation (Exhibit H) issued by the CEU pursuant to HCC section 352-8, notifying the Property Owners to abate the violations within ten days of service of the Notice of Violation (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 \$50 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 March 4, 2022, the CEU issued the Notice of Violation via USPS certified and first-class mail to the Property Owners at the address found in the County Assessor's records (Exhibit H). The Notice of Violation was posted on the Property on March 4, 2022, by CEU Investigator Christine Werner (Exhibit H).

The Notice of Violation contained Attachments A-C. Attachment A included the alleged County Code being violated, a description of conditions causing the nuisance, the violation category, and the proposed daily civil penalty; Attachment B consisted of the legal description of the Property⁴; and Attachment C consisted of a blank Administrative Civil Penalty Appeal Hearing Request Form (Exhibit H).

Yesenia & Moxon Russell WHJT"; furthermore, the Grant Deed listed the owners of the Property as, "Yesenia Ramirez and Russell Moxon, wife and husband, as joint tenants." (Exhibit C).

⁴ Officer Parada testified that the original March 4, 2022, Notice of Violation listed the correct street address, but Attachment B contained the wrong parcel description. An Amended Notice to Abate Nuisance and Amended Notice of Violation and Proposed Administrative Civil Penalty (Amended Notice of Violation) were served to the Property Owners on July 18, 2022; the only change was to correct the legal description of the Property (Exhibit L). Mr. Moxon, who was present and participated in the hearing on September 9, 2022, raised no objection to notice. The County stated that the Amended Notice of Violation was issued solely to correct the clerical error. The Hearing Officer finds that the error was harmless and that Mr. Moxon's appeal of the Notice of Violation also applies to the Amended Notice of Violation.

Mr. Moxon completed the Administrative Civil Penalty Appeal Hearing Request Form on March 4, 2022, and it was received by the County on March 7, 2022 (Exhibit I).

On March 23, 2022, the County sent a letter to the Property Owners confirming that the County had received the appeal request and that the County would send a hearing notice at least 15 days prior to the scheduled appeal hearing date (Exhibit J). The appeal hearing was subsequently set for September 9, 2022.

On August 15, 2022, the CEU posted the Notice of Administrative Civil Penalty Appeal Hearing (Hearing Notice) on the Property and sent the Hearing Notice via USPS certified and first-class mail to the Property Owners at the address found on the last property tax assessor inquiry (Exhibit N).

The Hearing Officer finds that the efforts made by the County to notify the Property Owners of the alleged violations on the Property and the potential administrative penalties in the Notice of Violation as well as 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.⁵

V. ALLEGATIONS

The Notice to Abate alleged the following violation:

HCC section 314-43.3.6 – Animal Enclosure Setbacks

VI. BACKGROUND

The Property is zoned Residential One Family (R-1), with a combining zone of Greenway and Open Space (Exhibit B).

On or about September 7, 2021, the CEU received a complaint via telephone regarding crowing roosters, too many ducks and chickens kept on the Property, and the animal enclosure was unsanitary, smelled bad, and was too close to the fence line.

⁵ 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.)

On December 7, 2021, the CEU mailed a complaint letter to both Property Owners at the Property to advise them that the CEU had received a complaint regarding their Property (Exhibit D).

On December 28, 2021, the Code Enforcement Unit received a call from Mr. Moxon in response to the complaint letter he received; he said he was willing to schedule a Property inspection.

On January 14, 2022, CEU Officers Allison Bartles and Daniela Parada conducted a site inspection of the Property and observed eight ducks, nine chickens, and one rooster. The number of animals was in conformance with HCC section 314-43.3. The rooster was wearing a crow collar and did not crow during the inspection, but both Officers did hear crowing that sounded like it was coming from a neighboring parcel.

The chicken coop sits behind the residence on the northeast portion of the Property. The chicken coop was measured and found to be seven feet from the back property line (northside of the parcel), 12 feet, 10 inches from the side property line (the eastside of the parcel), 13 feet, 2 inches and 13 feet, 3 inches from two different exterior walls of the residence. Photographs were taken during the January 14, 2022, inspection. Officer Bartles filled out a field report during the inspection (Exhibit E).

After the inspection, the CEU composed a diagram of the Property to indicate the setback measurements from the chicken coop to the property lines and residence (Exhibit F).

On February 9, 2022, a Violation Letter was mailed to both Property Owners citing a violation of HCC section 314-43.3 for animal keeping, with the corrective action stated as “[r]educe the number of animals to that allowed by County Code.” (Exhibit G).

On February 14, 2022, the CEU received an additional complaint about the Property stating that the rooster was making “purring” sounds, and the noise and smell still existed.

On February 23, 2022, Officer Parada received a call from Mr. Moxon. He stated that he received the Violation Letter. At that time, it was identified that there was a clerical error listed under the Corrective Actions Required section on the Violation Letter. The Violation Letter should have shown the corrective action as remove or relocate the animal enclosure to comply with the HCC. Mr. Moxon expressed his frustration to Officer Parada and said he would not remove anything.

On March 4, 2022, Officer Werner posted the Notice of Violation on the front gate of the Property and sent a copy via USPS first-class and certified mail to each of the Property Owners (Exhibit H).

On March 7, 2022, Mr. Moxon submitted a timely appeal (Exhibit I).

On July 18, 2022, the CEU served the Amended Notice of Violation to correct a clerical error.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

HCC section 314-43.3.6 – Animal Enclosure Setbacks

Section 314-43.3.6 of the HCC states, “[i]n addition to conforming with all applicable yard requirements, enclosures for animal in residential zones (RS, R-1, R-2, R-3, R-4) shall have the minimum setbacks specified in the Animal Enclosure Table.” Directly under the that statement, is the “Animal Enclosure Setbacks Table” that lists the appropriate setbacks for large, medium, and small domestic animals. Furthermore, Note (a) states that animal enclosures include “shelters, pens, coops, runs, hutches . . . and similar structures used for the keeping of poultry or animals.” Note (b) states, “[p]oultry setbacks same as Medium Domestic Animals.”

Per HCC section 352-3(t), a violation is defined, in relevant part, as “[a]ny act or omission for which an administrative civil penalty may be imposed pursuant to this Chapter, including: (1) Any failure to comply with the provisions of the Humboldt County Code. (2) Any failure to comply with the provisions of any other uniform codes and/or ordinances adopted by the Humboldt County Board of Supervisors, including, but not limited to, building and zoning ordinances. . . .”

The Property is zoned R-1 (Exhibit B), so the Animal Enclosure Setbacks Table (Table) applies; furthermore, the setbacks are listed under the “Medium Domestic Animals” column. Per the Table, the minimum required setbacks are 50 feet from the dwelling, 50 feet from the front lot line, 20 feet from the side lot line, and 20 feet from the rear lot line.

The evidence presented is that the animal enclosure on the Property sits seven feet from the rear property line, 12 feet, 10 inches from the side property line, and 13 feet, 2 inches from one exterior wall of the residence and 13 feet, 3 inches from another exterior wall of the residence (Exhibits E, F).

Mr. Moxon provided no evidence that the coop was not located within the required setbacks. Mr. Moxon argued that he is currently in litigation because his residence is sinking into an 80-foot by 15-foot hole and that some provision of that litigation precludes him from moving the coop until the litigation is settled. Mr. Moxon provided no legal authority or any other evidence to support his position. Mr. Moxon’s argument that he should be able to keep fowl for his family wherever he wants on his Property is also unavailing.

The Hearing Officer finds that the County has proven by a preponderance of the evidence the following:

- a. The chicken coop on the Property is 13 feet, 2 inches and 13 feet, 3 inches from two different exterior walls of the residence, which is less than the required 50-foot setback stated in HCC section 314-43.3.6.
- b. The chicken coop on the Property is 12 feet, 10 inches feet from the side lot line, which is less than the required 20-foot setback stated in HCC section 314-43.3.6.

- c. The chicken coop on the Property is seven feet from the rear lot line, which is less than the required 20-foot setback stated in HCC section 314-43.3.6.

Accordingly, the location of the coop on the Property is contrary to HCC section 314-43.3.6, 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.

According to 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, pursuant to HCC section 352-56(c), "[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, the Code Enforcement Unit or the court is given discretion to determine the category and/or amount of civil penalties, which vary from \$1-\$10,000 per day per violation. The County found the violation to be a Category 1 Violation. Per HCC section 352-6(a), in relevant part, "[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."

The Notice of Violation dated March 4, 2022, clearly stated that if the required corrective actions are “not commenced, prosecuted and completed within ten (10) calendar days after service of the Notice of Violation and Proposed Administrative Civil Penalty, a daily administrative penalty of **Fifty Dollars (\$50.00)** 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 March 4, 2022⁶; 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 has requested a civil penalty of \$1,250 calculated by assessing \$50 per violation per day starting from the date the hearing was requested on March 7, 2020, until the first available hearing date, which was 25 days later.

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:

In 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.

⁶ 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.”

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 evidence presented shows that there were two complaints about the condition of the Property made by the same complainant who claimed there was noise and odor associated with the chicken coop. The evidence did not prove that Mr. Moxon's rooster made any of the offending noise and established that the rooster was wearing a crow collar, and there were other roosters in neighboring properties that were actively crowing. The inspection conducted on January 14, 2022, shows the chicken coop in a clean and good condition. Accordingly, the conduct resulting in the violations did not greatly affect the health, safety and/or general welfare of the public. Mr. Moxon acknowledged the animals are under his control, but he did not know the zoning requirements for the placement of his coop.

The County has expended a small amount of administrative staff time investigating or addressing the violation at issue that, as of the hearing, totaled \$2,525.33 (Exhibit K). There have been minimal efforts by Mr. Moxon to correct the violation; however, Mr. Moxon testified he was unable to relocate the coop due to litigation regarding construction damage on his Property, a sink hole developing in his yard, and financial constraints.

The Hearing Officer finds the County's calculation of civil penalty of \$50 per day per violation is reasonable and appropriate as it relates to the violation of HCC section 314-43.3.6 given the factors in HCC section 352-6 as outlined above. Therefore, a \$1,250 civil penalty furthers the stated purpose, intent and scope of the County's civil penalty ordinance to "penalize Responsible Parties for . . . Violations,"⁷ "protect the public health, safety and welfare of the communities and citizens in the County of Humboldt,"⁸ 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 the County of Humboldt, or conditions on entitlement set forth in permits and/or agreements issued or approved by the County of Humboldt."⁹

⁷ See HCC section 352-2(a).

⁸ See HCC section 352-2(b)(1).

⁹ See HCC section 352-2(b)(3).

IX. ORDERS

1. The July 18, 2022, Amended Notice of Violation is upheld.
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 \$1,250 are awarded to the County. Payment in full is due within 20 calendar days of service of this Finding of Violation and Order Imposing Administrative Civil Penalty (HCC section 352-14(2)).
4. A Responsible Party(s) 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 Owners 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 Owners 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 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(c)).

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 Owners: Yesenia Ramirez & Russell Moxon

Property Address: 4092 Excelsior Road, Eureka, California 95503

APN: 018-142-006

Case No.: CE21-1258

Addressed to:

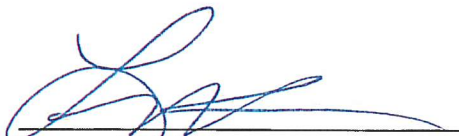
**Humboldt County
Planning and Building Code Enforcement
3015 H. Street
Eureka, CA 95501**

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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF HUMBOLDT)

I, DANIELA PARADA, say:

I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Planning and Building Department, 3015 H Street, Eureka, California; that on April 6, 2023, I served a true copy of **NOTICE OF ADMINISTRATIVE CIVIL PANELTY ASSESSMENT**

 X by placing a true copy of the aforementioned document in a sealed envelope individually addressed to each of the parties and caused each such envelope to be deposited with the U.S. Postal Service and/or picked up by an authorized representative, on that same day with fees fully prepaid at Eureka, California, in the ordinary course of business as set forth below (First Class & Certified Mail): **Russell Moxon 4092 Excelsior Road Eureka, CA 95503**

Yesenia Ramirez 4092 Excelsior Road Eureka, CA 95503

 by personally hand delivering a true copy thereof to the occupants who resides at the premises located at:

 X by personally posting a true copy thereof on the premises located at:

Russell Moxon 4092 Excelsior Road Eureka, CA 95503

Yesenia Ramirez 4092 Excelsior Road Eureka, CA 95503

 by placing a true copy thereof in the designated place at Court Operations to the attorney/parties named below:

 by placing a true copy in the County's Mailroom designated to the attorney named below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of April 2023, in the City of Eureka, County of Humboldt, State of California.



Daniela Parada – Code Compliance Officer