



COUNTY OF HUMBOLDT

Legislation Text

File #: 21-1119, Version: 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Consent

SUBJECT:

Summarily approve Nuisance Abatement Assessment on Property Located at 46280 State Hwy 36, Dinsmore

RECOMMENDATION(S):

That the Board of Supervisors:

1. Summarily approve the proposed Nuisance Abatement Assessment on the property located at 46280 State Hwy 36, Dinsmore, CA (APN 208-341-024), which is in violation of Humboldt County Codes in the amount of \$332,125.75 in accordance with Title III, Division 5, Chapter 1, section 351-21 Summary Approval of Proposed Assessments.

SOURCE OF FUNDING:

Property Owner

DISCUSSION:

The Board is being asked to summarily approve the proposed Nuisance Abatement Assessment against a property owned by Bobby and Virginia Marks located at 46280 State Hwy 36, Dinsmore (APN 208-341-024).

The recent case history began in November of 2018 when Humboldt County Planning & Building's Code Enforcement Unit responded to a series of complaints on the subject property. A joint inspection was conducted by California Department of Fish and Wildlife (CDFW) and California Regional Water Board. In December 2018, the property was inspected in the presence of the owner, Mr. Marks. Upon inspection, the 6.25-acre property was found to have well over 200 junk vehicles, recreational vehicles, travel trailers and boats. The property was also observed to have solid waste, appliances, car parts, and scrap metal and suspected hazardous materials, Attachment A, Inspection Photos.

In March of 2019, an additional complaint was received from the California Environmental Protection Agency regarding vehicles adjacent to the Van Duzen River and possible

hazardous materials present on the site.

On April 2, 2019, a Notice to Abate Nuisance and a Notice of Violation and Proposed Administrative Civil Penalty was posted on the property for violation of Humboldt County Code (HCC) section 371-2 Maintaining a Junkyard, Attachments B & C. The Notice of Violation stated a proposed daily Administrative Civil Penalty of \$10,000 per day was to be imposed. Mr. Marks contacted Code Enforcement within the 10-day period to discuss the violation. Mr. Marks was instructed to submit a clean-up plan within two weeks. The owners did not request an appeal hearing and the cleanup plan was never received by the Department.

Since the time to abate the public nuisance as set forth in the Notice to Abate Nuisance had expired and no Code Enforcement Appeal Hearing was requested, the county had acquired jurisdiction to correct or abate the conditions causing the public nuisance pursuant to HCC section 351-13(a).

On April 30, 2019, another site inspection was conducted with representatives from California Department of Toxic Substances Control (DTSC), Humboldt County Department of Health and Human Services Division of Environmental Health (DEH), Code Enforcement and CDFW. Mr. Marks gave consent to this inspection and to the conduct of hazardous materials testing. Four samples were taken and all four samples contained diesel and used motor oil and two samples also exhibit the hazardous waste characteristic of toxicity for metals.

During the period from April to September 2019, Code Enforcement staff spoke with Mr. Marks on three occasions, and Mr. Marks indicated he was attempting to abate the vehicles but, as of September 2019, aerial imagery indicated minimal cleanup of the property had occurred.

This is a situation that posed a hazard to public health and safety and had high potential for detrimental environmental impacts upon water quality and sensitive species in and along the Van Duzen River. It is fairly apparent that over the years the owners created a public nuisance they were unable to address, and intentional actions were needed to remedy the situation and to prevent further environmental harm.

On January 28, 2020, your Board authorized the release of a Request for Proposal (RFP) for the Dinsmore Property Abatement Project.

In response to the RFP issued on February 10, 2020, a bid from Hudspeth and Associates, Inc., an ASRC Industrial Services Company (Hudspeth) was received and evaluated based on the criteria in the RFP. It was determined the proposal met the qualifications and experience to perform the work. Attachment D is the Hudspeth proposal. A Professional Services Agreement was executed with Hudspeth on July 28, 2020, Attachment E.

The commencement of the abatement was delayed for two reasons. The first delay was due to the

August Fire which threatened to spread into the region and caused an evacuation order in the area. The second delay was caused when the property owners, on August 5, 2020, transferred ownership of the property to Phillip Louis Viveiros through a Quitclaim Deed (Humboldt County Recorder's Office Doc. No. 2020-013280), Attachment F. The change in ownership required the situation to be re-evaluated to ensure the County was still able to legally move forward with the abatement.

The Director of Planning and Building and Code Enforcement staff met with Mr. Viveiros to discuss the County's plan for abatement. Mr. Viveiros presented an alternate proposal by Eel River Transportation and Salvage, Inc. for the abatement project and asked for the County to pay for it. He was informed that the RFP process had closed and, although staff had specifically invited Eel River Transportation and Salvage, Inc to respond to the RFP, no submittal from them was received. It was too late to consider a contractor who did not respond to the RFP in a timely manner.

Mr. Viveiros indicated the property was transferred to him in an effort to see if anything could be negotiated to stop or postpone the County abatement and the associated costs that would ultimately be charged to the property. There were concerns that Mr. and Mrs. Marks, who live on the property, could potentially be forced to move. At the time, the Director assured the parties involved that the Marks' would not be forced off the property. However, on further interpretation of the code, it appears the costs associated with a County abatement are subject to HCC section 351-24 which states "the Humboldt County Auditor-Controller shall enter each Nuisance Abatement Assessment upon the affected Property on the Humboldt County Secured Tax Roll. The Nuisance Abatement Assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the Imposition date until payment is received. The Nuisance Abatement Assessment may be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ordinary property taxes...". The Humboldt County Treasurer-Tax Collector may sell the property after three (3) years for unpaid delinquent Nuisance Abatement Assessments (HCC section 351-23(h)).

In discussion with staff from the Humboldt County Treasurer-Tax Collector's office, it appears the current procedure is to sell properties at auction that are delinquent on property taxes after five (5) years. While it was not the intention to mislead anyone, the assurances that Mr. and Mrs. Marks would not have to leave the property may not be true if the taxes, including the assessment, remain unpaid for five (5) years following the assessment being placed on the tax roll.

Once the legal and ownership transfer matters were settled, the first day of abatement began on October 26, 2020. Hudspeth's bid included removal of all hazardous materials, junk vehicles, appliances, tires, scrap metal, marine vessels, motorcycles and solid waste from the property and transport of the materials to a permitted waste or recycling facility. This portion of the abatement was completed by December 2020, Attachment G, Pre & Post Abatement Photos. A second phase of the cleanup will be required to remediate contaminated soils on the property and remove the vehicles and vehicle parts in the streambed of the Van Duzen River.

Pursuant to HCC section 351-16 a Notice of Nuisance Abatement Assessment was served in May 2021 to both Mr. Viveiros and Mr. and Mrs. Marks. At the time of service, it was unclear who the rightful

property owner was; staff had been told the property transferred back to Mr. and Mrs. Marks but County records did not yet reflect the transfer. Later in May the property was found to have been transferred back to Mr. and Mrs. Marks on April 5, 2021, Attachment H.

The total of the Nuisance Abatement Assessment is \$332,125.75 which includes the \$307,576.99 in costs paid to Hudspeth to perform the abatement, plus \$24,548.76 for administrative costs incurred on this enforcement action. Attachment I includes the Notice, administrative cost summary and invoice from Hudspeth. The rightful property owners at the time of Notice, Mr. and Mrs. Marks, did not submit an appeal request for a cost recovery hearing.

HCC section 351-21 states *“if an objection to the proposed assessment is not filed by any Owner, Beneficial Owner, Occupier or any other person in charge or control of the affected property within ten (10) calendar days after service of the Notice of Nuisance Abatement Assessment, the Humboldt County Board of Supervisors shall summarily approve the proposed assessment without holding a Cost Recovery Hearing.”*

The property owners were given ample opportunity to address the public nuisances on the property and avoid a County performed abatement. The amount of the proposed Nuisance Abatement Assessment, \$332,125.75, equals the actual costs of abatement and staff time. Although Code Enforcement served a NOV with daily penalties of \$10,000 on this property (that was not appealed), administrative civil penalties are not being sought in this case. The approval of the proposed Abatement Assessment will repay the County for the actual costs of abating the public nuisances and correcting the code violations on this property. At this point, there is not a rationale for a reduction or elimination of the proposed Nuisance Abatement Assessment because it is based on expenses already paid.

Based upon these factors, it is recommended that the Board of Supervisors confirm the proposed Nuisance Abatement Assessment.

Upon summary approval of the Nuisance Abatement Assessment, the property owners will be served a Notice of Nuisance Abatement Assessment Lien. This notice will inform the property owners of the assessment and provide the property owners forty-five (45) calendar days to pay the assessment before the recording of the Notice of Nuisance Abatement Assessment Lien.

Pursuant to HCC section 351-24 after the Notice of Nuisance Abatement Assessment Lien is recorded “the Humboldt County Auditor-Controller shall enter each Nuisance Abatement Assessment upon the affected Property on the Humboldt County Secured Tax Roll. The Nuisance Abatement Assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the Imposition date until payment is received. The Nuisance Abatement Assessment may be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ordinary property taxes...”. The Nuisance Abatement Assessment shall also have the same force, effect and priority of a judgment lien governed by the provisions of California Code of Civil Procedure sections

697.310 *et seq.*

FINANCIAL IMPACT:

The cost of preparing the case and serving the notices has been included as administrative costs in accordance with established policies and County Code sections. Administrative staff costs associated with this assessment total \$24,548.76 and have been budgeted in the salaries and expenses of budget unit 1100-269 (Code Enforcement). The cost of the abatement totals \$307,576.99 and was paid out of monies set aside for County abatements in the General Fund and transferred to budget unit 1100-269. The total Nuisance Abatement Assessment is proposed in the amount of \$332,125.75. With staff recommendation, there is minimal impact to the General Fund with this Board item.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents

OTHER AGENCY INVOLVEMENT:

Department of Health and Human Services Division of Environmental Health, CDFW, DTSC, California Regional Water Board and the Sheriff's Department.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Board could choose not to approve the Abatement Assessment. However, this is not recommended because staff recommendations align with Title III, Division 5 of Humboldt County Code. By choosing this option there will be no reimbursement from the property owner for the public funds spent to clean up and abate the public nuisance.

ATTACHMENTS:

Attachment A - 2018 Inspection Photos
Attachment B - Notice to Abate Nuisance
Attachment C - Notice of Violation and Proposed Administrative Civil Penalty
Attachment D - Hudspeth Bid Proposal
Attachment E - Professional Services Agreement with Hudspeth
Attachment F - Property transfer to Viveiros
Attachment G - Pre & Post Abatement Photos
Attachment H - Property transfer back to Marks
Attachment I - Notice of Nuisance Abatement Assessment, Admin Costs & Hudspeth Invoice

PREVIOUS ACTION/REFERRAL:

Board Order No.: C-18, C-14
Meeting of: 01/28/2020, 07/14/2020
File No.: 19-1560, 20-854