Exhibit F

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JAN 17 2020

NEVADA COUNTY
BOARD OF SUPERVISORS

ec: DPW
Counsel

COUNTY OF NEVADA (Attach pages if needed)

APPEAL TO BOARD OF SUPERVISORS

(Per Article 5 of Chapter II of the Land Use and Development Code)

Any applicant or interested party may file an appeal with the Board of Supervisors requesting review of any final action taken by Various County Agencies. Such appeal shall be filed with the Clerk of the Board of Supervisors within **ten (10) calendar days** from the date of the decision, except for recommendations on general plan amendments which by State law are subject to a **five (5) calendar day** appeal period. (If the final calendar day falls on a weekend or holiday, then the deadline is extended to the next working day.) Filing shall include all information requested herein and shall be accompanied by the appropriate filing fee. The statements (required below) must contain sufficient explanation of the reasons for and matters being appealed in order to facilitate the Board of Supervisors initial determination as to the propriety and merit of the appeal. Any appeal which fails to provide an adequate statement may be summarily denied. The filing of such an appeal within the above stated time limit shall stay the effective date of the action until the Board of Supervisors has acted upon the appeal.

I. APPEAL: I/We, the undersigned, hereby appeal the decision/recommendation of the

Community Development Agency, Department of Public Works
Agency Name

Encroachment Permit Violation on Floriston Ave — December 20, 2019
Agency File No. — Date of Decision

PLANNING AGENCY DECISIONS:

_____ Environmental Impact Report
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.20 Appeals of the Adequacy of the EIR

_____ Floodplain Management Regulations (Floodplain Administrator)
L-XII Floodplain Management Regulations; 1.4 Administration

_____ Historic Preservation Combining District
L-II Zoning Regulations; Zoning Districts; 2.7.2 HP Combining District

_____ Inoperable Vehicles
L-II Zoning Regulations; Administration and Enforcement, 5.20 Abatement and Removal of Inoperable Vehicles

_____ Land Use Applications
L-II Zoning Regulations; 5.12 Administration and Enforcement

_____ Negative Declaration
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration

_____ Rules of Interpretation
L-II Zoning Regulations; 1.4 Rules of Interpretation Regarding:

PUBLIC WORKS DECISIONS:

✓ Roadway Encroachment Permit
G-IV General Regulations; 4.A Regulating Roadway Encroachments; 15.1 Appeals

FIRE AGENCY DECISIONS:

_____ Fee Assessments (Fire Protection District)
L-IX Mitigation and Development Fees; Fire Protection Development Fees; 2.6 Appeal from Fee Assessment

_____ Fire Safety Regulations; General Requirements (Fire Safety Reg. Hearing Body)
L-XVI Fire Safety Regulations; General Requirements; 2.7 Appeals

_____ Hazardous Vegetation Abatement (Lodal Fire Official)
G-IV General Regulations; 7.9 Appeals Process (No Fee to File Appeal)

ENVIRONMENTAL HEALTH DECISIONS:

_____ Sewage Disposal (Sewage Disposal Technical Advisory Group)
L-VI Sewage Disposal; 1.18 Appeals

_____ Water Supply and Resources (Health Officer)
L-X Water Supply and Resources; 5.1 Appeal Procedures

List All Agency Action(s) Taken That Are Being Appealed: See attached response.

II. STATEMENT OF THE REASONS FOR THE APPEAL:

See attached response.

III. STATEMENT OF THE SPECIFIC PROVISIONS WHICH ARE BEING APPEALED:

See attached response.

IV. STATEMENT OF THE CHANGES OR ACTION REQUESTED OF THE BOARD OF SUPERVISORS: See attached response.

V. SUMMATION OF THE ARGUMENTS TO BE RAISED BY THE APPELLANT(S):

See attached response.

VI. IDENTIFICATION OF THE APPELLANT(S):

Larry and Cheryl Andresen	[redacted]	
(Name)	(Mailing Address)	(Telephone)

VII. NOTICE: (Multiple appellants should select one representative for purposes of notice.

All notices to appellant(s) should be mailed to: (Please Print)

Larry and Cheryl Andresen [redacted]

(Name/Representative) (Mailing Address) (Telephone)

Appellant:

[redacted]

(Sign)

Dated: 1-17-2020

Larry Andresen

(Print)

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1,546.40
Filing Fee

1/17/2020
Date Filed

Tina Mathiasen
Received By
Clerk of the Board Office

Appeal form to be returned to: Nevada County Board of Supervisors Office, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959-8617. (530) 265-1480

I. AGENCY ACTIONS TAKEN THAT ARE BEING APPEALED

Appellants appeal the Notice of Violation ("NOV") titled "Encroachment Permit Violation on Floriston Ave" issued by Trisha Tillotson, the Director of Public Works[1], to Larry Andresen on December 20, 2019. Specifically, Appellants appeal:

(1) The County's determination that Appellant violated Nevada County Code Section G-IV 4.A;

(2) The fines, restoration, relocation, replacement, and repair work imposed following the County's determination that Appellant violated the County Code when it removed an unlawful encroachment on Floriston Avenue; and

(3) The imposition of additional conditions on Appellants' unrelated and pending encroachment permit.[2][3]

II. STATEMENT OF THE REASONS FOR THE APPEAL

Appellants appeal the NOV on the basis that the NOV is a selective enforcement action and, thus, an improper use of the County's police powers, in violation of the United States Constitution's protections of due process and equal protection of the law. (U.S. Const., amend XIV, §1; Cal. Const., art. 1, §7; see also U.S. Const., amend. XIV.) Appellants raise equal protection and due process claims based on the County's disparate treatment of them compared to their similarly situated neighbors. This differential treatment, exemplified in how the County is processing Appellants' encroachment permit, issuing this enforcement action, and imposing

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[1] The Community Development Agency is comprised of five Departments, including the Department of Public Works.

[2] Appellants submitted an encroachment permit (EP 19-0096) on September 9, 2019 to remove the roadway obstructing tree/bush, rock-lined planter, and topsoil. Despite the Encroachment Permit Application stating, "Once submitted, expect 7-10 days to issue initial permit", Appellants have waited for approval for over three months. (See *Encroachment Permit Application Process*, County of Nevada Community Development Agency, https://www.mynevadacounty.com/DocumentCenter/View/27741/Encroachment-Permit---rev-2019?bidId= (last accessed Jan. 12, 2019).)

[3] Appellants also bring this Appeal pursuant to County Code Section G-IV A.36 on the basis that adjacent property owners have installed and/or maintained encroachments within the County right-of-way on Floriston Avenue, which create an obstruction to the sight distance of users of Floriston Avenue, and which create unsafe conditions to the users of Floriston Avenue. Appellants are beneficially interested in the County's enforcement of Section G-IV A.36, as they own two residences on Floriston Avenue and three homes accessed off of Floriston Avenue, and therefore, are subject to the unsafe conditions resulting from the illegal and unpermitted encroachments. Accordingly, Appellants appeal fee must be waived. (County Code Section G-IV A.36(E).) Appellants reserve all rights to claim a refund of any appeal fee paid.

conditions on Appellants' pending permit application, lacks any rational basis in County policies or codes. As a result, these actions are unconstitutional.

Furthermore, because the tree/bush rock-lined planter that Appellant removed was a nuisance, an unpermitted encroachment, and itself violative of the County Code and applicable law, Appellant was authorized to remove the encroachments pursuant to California Civil Code section 3495. (Civ. Code, § 3495.) The tree/bush planter encroachment obstructed the use of the public highway and violated road safety requirements under the Nevada County Code and California law.[4] Because this encroachment uniquely affected Appellants and their ability to enter and exit their properties, the vegetation was both a public and private nuisance. As such, Appellant undertook self-help in accordance with the law.

Finally, Appellants argue the imposition of special conditions in the NOV are improper based on two independent grounds: (1) Appellants' pending permit application is a separate and distinct matter from this code compliance action and (2) the arbitrary imposition of special conditions on Appellants' permit, different from its similarly situated neighbors, violates the Equal Protection Clause of the Constitution.

III. STATEMENT OF THE SPECIFIC PROVISIONS WHICH ARE BEING APPEALED

Appellants appeal the following provisions of the County of Nevada Community Development Agency's December 20, 2019 letter, titled "Encroachment Permit Violation on Floriston Ave":

(1) The County's determination that Appellant violated Nevada County Code Section G-IV 4.A;

(2) Imposition of enforcement fines totaling $1,070.02 and imposition of restoration, relocation, replacement, and repair work as provided in the NOV; and

(3) The attachment of new conditions on the Appellants' already pending application, which is equivalent to the imposition of a fine, and which will cost in excess of $14,900 to complete.

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[4] See, e.g., County Code, Sec. G-IV 4.A.35 [no hedge, shrub, or other planting shall be planted, erected, or maintained in the right-of-way without a permit] and Sec. G-IV 4.A.36 [it is unlawful to maintain encroachment where to do so would create an unsafe condition to the users of the County highway in violation of the Code].

An electronic copy of the County of Nevada's Code is accessible at: http://qcode.us/codes/nevadacounty/.

IV. STATEMENT OF THE CHANGES OR ACTIONS REQUESTED OF THE BOARD OF SUPERVISORS

First, Appellants respectfully request that the Board of Supervisors ("Board") rescind the NOV in full, in accordance with Appellants' arguments explained below.

Second, Appellants request that the Board facilitate proper review of their pending encroachment permit, EP 19-0096, and any subsequently submitted road improvement plans, with the Community Development Agency to avoid further prejudice based on bias, malice, or personal animus. As will be explained more thoroughly below, Appellants have been subjected to an impermissibly long delay and harassment in the processing of this permit application.

Third, Appellants request that the Board direct the Community Development Agency to take immediate action to abate any public nuisances within the dedicated right of way on Floriston Avenue, including requiring the removal of unpermitted or unlawfully permitted structures and objects creating a public safety and/or fire road access hazards.

V. SUMMATION OF THE ARGUMENTS TO BE RAISED BY THE APPELLANTS

A. Introduction and Background

At issue in this appeal is a forty-foot dedicated and accepted public right of way on Floriston Avenue.[5] The County neither maintains nor owns fee title to the land underlying Floriston Avenue; rather, the County controls and administers the use of the right-of-way, which is maintained by adjacent property owners.[6] Unlike a private easement, the use rights of a public right-of-way are vested equally in each and every member of the public. (*In re Anderson* (1933) 130 Cal.App. 395, 398–399.)

The right-of-way on Floriston Avenue is subject to the Streets and Highway Code as a public highway. A "highway" is defined to include the entire width of the right-of-way, whether or not it is actually used for highway purposes. (Sts. & Hy. Code, § 1450.) An "encroachment" is any tower, pole, pole line, fence, billboard, stand or building, or any structure or object of any kind or

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[5] Many of the background facts, evidence, data, and other materials relating to the encroachments on Floriston Avenue have previously been provided to the County. Because of the volume of information contained in these prior transmittals, and the County's familiarity with many of the issues, Appellants incorporate by reference all materials presented to the County in this and prior hearings regarding the right-of-way, including, but not limited to, all prior correspondence between Appellants and the County and documents produced by the County in response to Appellants' Public Record Act requests, or which are otherwise responsive to those requests. Appellants also reserve the right to submit additional information/justification in support of this appeal.

[6] The Appellants, for example, have provided road maintenance, repair, and snow removal throughout the Hirschdale area including the public right-of-way on Floriston Avenue for over 27 years, free of charge.

character placed in, under, or over any portion of a highway. (*Ibid.*; See also County Code, Sec. G-IV 4.A.1.)

Appellants own two residences along the right-of-way and another three homes accessed by the right-of-way via Iceland Road. In addition, Appellants have a private easement over Floriston Avenue due to their "abutter's rights" and the fact their property was conveyed by a deed referencing a recorded subdivision map.

Among others, Appellants' neighbors include the Minnises, directly across the street from Appellants, the Rivaras, next door and to the north of the Appellants, the Fehrts, across the street and to the north east of Appellants, and the Brunsons to the north of the Fehrts. Two of Appellants' neighbors have unlawfully erected and maintained encroachments obstructing the public right-of-way. The Minnises, for example, have installed numerous encroachments, including planters, wooden curbs, sheds, a paved driveway, a utility pole, a bear garage container and a junk yard storage area. Pertinent to the present appeal, there was a large vegetated planter area with a bush/tree rock-lined planter located in front of the Rivaras' property, which neither the Rivaras nor the Fehrts claimed ownership to. The County similarly claimed no interest in the planter and agreed that there was no benefit for the obstruction to remain. On November 26, 2019, Appellants removed this vegetation and planter after working cooperatively, yet unsuccessfully, with the County for over eight years to have this work completed.[7]

Following Appellant's actions on November 26, 2019, the Public Works Department issued the NOV requiring Appellants to restore the highway, relocate water facilities, pay a fine, and re-submit their encroachment permit. Appellants timely appealed the imposition of fines and additional conditions on their pending permit to the Board. Appellants appreciate the Board's attention to and consideration of this matter.

B. The County's Disparate Treatment of Appellants Violates the Equal Protection Clause of the Constitution

The Equal Protection Clause "secure[s] every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." (*Vill. of Willowbrook v. Olech* (2000) 528 U.S. 562, 564.) Pursuant to the Equal Protection Clause, all persons similarly situated should be treated alike. (*City of Cleburne, Tex. v. Cleburne Living Ctr.* (1985) 473 U.S. 432, 439.)

Local government land use decisions violate the Equal Protection Clause when similarly-situated properties are treated differently and there is no rational basis for such differential treatment. (*Larsen v. Town of Corte Madera* (N.D. Cal. Mar. 25, 1996) No. C-95-2514 SI, 1996

[7] Appellants first presented the dangerous conditions of the right-of-way to the County in August 2012. During this prolonged delay, Appellants have abstained from fulfilling occupancy of its residences due to the compromised access and unsafe conditions and, consequently, have lost valuable profits. In addition, Appellants and its neighbors have been at heightened wildfire and safety risks due to these encroachments blocking the free flow of traffic.

WL 147627, at *1 (quoting *Kawaoka v. City of Arroyo Grande* (9th Cir. 1994) 17 F.3d 1227, 1240.) There is no rational basis where state action "is malicious, irrational, or plainly arbitrary." (*Armendariz v. Penman* (9th Cir. 1996) 75 F.3d 1311, 1326, *overruled on other grounds as stated in Crown Point Dev., Inc. v. City of Sun Valley* (9th Cir. 2007) 506 F.3d 851, 852-53.)

In *Squaw Valley Development Co. v. Goldberg*, the plaintiffs alleged an equal protection violation by the executive officer of the regional water quality control board, claiming they were subjected to stricter enforcement by the board's management because of personal animus. (*Squaw Valley Development Co. v. Goldberg* (9th Cir. 2004) 375 F.3d 936, 944-945.) The Ninth Circuit held that while there may have been a rational basis for selective enforcement, there was evidence the purported rational basis was merely a pretext. (*Id.* at p. 948.) Evidence the officials were motivated by some personal or extra-statutory end supported the finding the decision was "irrational" and in violation of the Equal Protection Clause. (*Id.* at pp. 944-946.)

Here, the County's selective enforcement action against Appellants is but the most recent example of its long-standing disparate treatment of Appellants compared to their similarly situated neighbors. This history of events demonstrates that the County is acting irrationally and with personal malice against Appellants in this enforcement action, thereby precluding any finding that the County has a rational basis for this action. As a result, this enforcement action is unconstitutional and must be rescinded.

The County's arbitrary and personally motived actions against the Appellants include, but are not limited to, (1) its threat to condemn part of Appellants' property in order to maintain illegal encroachments blocking the right-of-way; (2) the disparate, arbitrary and irrational way it processed Appellants' Road Improvement Plan, Permit Application # 16000127; (3) the disparate, arbitrary and irrational processing of Appellants' currently pending encroachment permit, EP # 19-0096; and (4) this NOV and the conditions imposed therein.

Appellants first asked the County to intervene in removing the unlawful encroachments on Floriston Avenue in 2012.[8] The basis for Appellants' request was the need for Floriston Avenue to be a fire safe road, proposing to eliminate a dangerous roadway condition and improve road way access to meet Nevada County requirements. For reference, the encroachments blocking the right-of-way cause the path of travel to be less than ten feet at some locations, whereas County Code Fire Standard Access Road C-1 requires two lane roads to be at least 20 feet in width to allow two vehicles to pass on a two-lane traffic road. Consequently, the one lane road condition

[8] County Code G-IV 4.A.35 states, "No encroachment will be permitted or maintained which impedes, obstructs, or denies pedestrian or other lawful travel within the limits of the County highway of a public highway or impairs adequate sight distance for safe pedestrian or vehicular traffic." Further, "No hedge, shrub or other planting whatever, or fence or similar structure shall be planted, erected, or maintained in a right-of-way without a permit…No encroachment will be permitted or maintained which impedes, obstructs, or denies pedestrian or other lawful travel within the limits of the County highway of a public highway or impairs adequate site distance for safe pedestrian or vehicular traffic." (County Code, Sec. G-IV 4.A.35.)

frequently becomes completely blocked, creating serious public safety access obstructions and causing persons and vehicles to travel over the Rivaras' private property to pass through. Rather than take appropriate action, as prescribed by the County Code, the County refused to enforce its ordinances.

In 2016, Appellants submitted an application to the County to remove encroachments in order to improve and widen Floriston Avenue. The County Fire Marshal and other neighbors supported Appellants' plan. Nevertheless, the County failed to proceed in a lawful manner. The County first submitted requests to other County officials and agencies to find potential regulatory violations with Appellants' properties. Then, when the search proved fruitless, the County threatened to file a lawsuit to acquire a public easement over Appellants' property by virtue of an implied dedication. Finally, the County attempted to acquire part of Appellants' property through eminent domain. In its eminent domain proceedings, the County proposed to allow Appellants' neighbors, the Minnises, the right to purchase the existing public right-of-way, while moving the right-of-way onto Appellants property. In other words, the County threatened to condemn Appellants' private property in order to benefit the neighboring properties. The County was forced to abandon its eminent domain actions after failing to identify a public necessity to take Appellants' property.

More recently, the County demonstrated its personal animus against Appellants in the manner it is processing Appellants' pending encroachment permit. Appellants submitted its application on September 9, 2019. The permit application information states that once a permit application is submitted, an applicant should expect 7-10 days for the County to issue an initial permit. (*Encroachment Permit Application Process*, County of Nevada, https://www.mynevadacounty.com/DocumentCenter/View/27741/Encroachment-Permit---rev-2019?bidId= (last accessed Jan. 14, 2020.) Over three months later, Appellants are still awaiting a decision.

Perhaps more important than the undue delay, however, is the fact the County has recently issued encroachment permits to Appellants' neighbors and utilized different processes in doing so. After Appellants submitted their permit, the County issued notice to the neighbors asking for feedback, an action that is contrary to usual County policies. In her deposition in a related matter earlier this year, Trisha Tillotson confirmed that with encroachment permits, the County does not typically request public comment. There was no notice provided, for example, when Appellants' neighbors, the Minnises applied for and were granted an encroachment permit in July 2019.[9]

Thus, Appellants have faced a vastly different process for acquiring an encroachment permit, being subjected to an undue delay of over three months and a public notice procedure. It is very difficult, if not impossible, to ascertain any rational basis for why the County would permit

[9] The County surreptitiously issued the permit after the parties had reached a tentative settlement at a mediation in April 2019 wherein the Minnis' agreed to thereafter work with the County to remove all of the encroachments in the right-of-way to permit a fire safe road. Following the mediation, the County and Minnis' failed to respond to communications from Appellants and instead proceeded to permit the encroachments without notice to Appellants and in violation of applicable law.

unlawful encroachments that are blocking the public right-of-way, causing severe fire and public safety hazards by compromising fire access road conditions, in a timely manner but not Appellants' permit to safeguard Floriston Avenue and the surrounding community.

The County's issuance of its NOV against Appellants is a further example of improper governmental action. Appellants are being fined over $1,000 and required to comply with conditions totaling almost $15,000 following its removal of an unlawful encroachment. In contrast, the County has repeatedly refused to take any type of enforcement action against the property owners who built and maintain the unlawful encroachments. This case presents an even clearer example of improper governmental action than *Squaw Valley*, as Appellants are not faced with "stricter" enforcement but have been singled out as the only party against whom enforcement is sought. The fact that the conditions require Appellant to replace the neighbors' encroachments clearly exemplifies that the County is taking personal action against one landowner in order to benefit neighboring properties. This type of action is squarely in violation of the Equal Protection Clause of the Constitution. As a result, the Board of Supervisors must rescind the NOV.

C. <u>This Enforcement Action Violates Appellants' Constitutional Due Process Rights</u>

The Due Process Clause is intended, in part, to protect an individual against "the exercise of power without any reasonable justification in the service of a legitimate governmental objective". (See, e.g., *County of Sacramento v. Lewis* (1988) 523 U.S. 833, 846.) Government conduct may not deprive a person from life, liberty, or property in such a way that "shocks the conscience" or "interferes with rights implicit in the concept of ordered liberty." (*Nunez v. City of Los Angeles* (9th Cir. 1998) 147 F.3d 867, 871.) Land use regulations and actions must substantially advance legitimate governmental interests. (See *Lingle v. Chevron USA, Inc.* (2005) 544 U.S. 528, 540.)

A governmental decision is arbitrary and irrational when it amounts to "egregious official conduct" that is "an abuse of power lacking any reasonable justification in the service of legitimate government objectives." (*Shanks v. Dressel* (9th Cir. 2008) 540 F.3d 1082, 1088; see also *Stamas v. Cty. of Madera* (E.D. Cal. 2011) 795 F. Supp. 2d 1047, 1075.) A "sudden change in course, malice, bias[] [or] pretext" suggests such egregious conduct and constitutional arbitrariness. (*Shanks*, 540 F.3d at 1089; see also *Del Monte Dunes at Monterey, Ltd. v. City of Monterey* (9th Cir. 1990) 920 F.2d 1496, 1508 (concluding there was triable issue of fact when city approved project subject to conditions and city then "abruptly changed course and rejected the plan, giving only broad, conclusory reasons").)

Appellants believe that they have been the target of improper harassment and unreasonably stricter code enforcement, arbitrary and unreasonable application of the County's land use regulations, and unreasonable and unnecessary conditions in the process of applying for an encroachment permit and this subsequent NOV. Enforcing the County Code against Appellants and not its neighbors in this instance is wholly incompatible with County policies and the concept of ordered liberty. Appellants are being deprived of the ability to enjoy their properties and easement in a safe and lawful manner because of the County's actions. As such, this enforcement action violates Appellants' due process rights under the Constitution.

D. Appellant Lawfully Removed the Encroachments Pursuant to County Code Section G-IV 4.A.40 and Civil Code Section 3495

A "nuisance" includes anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or property. (Civ. Code, § 3479.) Activities that disturb or prevent the comfortable enjoyment of property are sufficient to constitute nuisances even if they do not directly damage land or prevent its use. (*Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, 126.)

A nuisance may be public, in that it affects the community at large, private, or both. The distinction is not about the number of persons affected but in the special injury which results to a particular individual. (*Biber v. O'Brien* (1934) 138 Cal.App.353, 357.) A public nuisance may also be a private nuisance when it interferes with enjoyment of land. (*Freitas v. Atwater* (1961) 196 Cal.App.2d 289, 294-295.) Some examples of a special injury constituting both a public and private nuisance include a fence that blocked a neighbor's ingress and egress from their garage, thereby causing fear of being in a vehicle collision or of hitting a pedestrian, and an obstruction that hindered a landowner's right to access the ocean from his land. (*Kempton v. City of Los Angeles* (2008) 165 Cal. App. 4th 1344, 1349-1350; *San Francisco Sav. Union v. R. G. R. Petroleum & Mining Co.* (1904) 144 Cal. 134, 139 [quoting "Whenever the obstruction immediately adjoins or is upon or against the front of plaintiff's premises, it is to him a private nuisance for which an action will lie, or which may be restrained by injunction."].)

Pursuant to County Code section G-IV 4.A.40, any act in violation of any provision of the County General Code Article on Regulating Roadway Encroachments is deemed to constitute a public nuisance. (County Code, Sec. G-IV 4.A.40.) The maintenance or continuance of such a nuisance may be "abated, removed, and/or enjoined" by any appropriate proceeding in accordance of the law. (*Ibid.*) Furthermore, hazardous vegetation and combustible materials located along roadways that serve as primary ingress and egress routes are public nuisances and similarly may be abated in accordance with the County Code or by any other means available by the law. (County Code, Sec. G-IV 7.4.)

Under California law, a private person may, in addition to bringing a civil action, abate a public nuisance by removing, or if necessary, destroying the nuisance. (Civ. Code, § 3495.) Self-help is appropriate so long as the nuisance is specifically injurious to the private person, and the destruction or removal is accomplished without committing a breach of the peace or unnecessary injury. (*Ibid.*)

Here, the tree/bush planter that Appellant removed was both a public and private nuisance.[10] The vegetated planter obstructed an important fire access roadway, evacuation route, emergency

[10] Note that any County permits and/or approvals do not eradicate the fact the encroachments at issue constitute a public nuisance. California courts hold that a nuisance may be present even where it is constructed or maintained in accordance with all existing statutes. (*Vedder v. County of Imperial*, 36 Cal.App.3d 654, 661 (1974).) More relevant to the situation here, a local government does not have the power to authorize the use of roads or streets for

access route, and the sole ingress and egress route for many residences. The vegetated rock planter restricted the roadway to one lane, effectively forcing traffic over private property in light of over 80% of the public dedicated right of way being obstructed. It caused Appellants and others to travel over the Rivaras private property in order to have access through this area.[11]

This harm affected the community at large, but also particularly affected Appellants. Appellants have a private easement over Floriston Avenue, similar to the access rights at issue in *San Francisco Sav. Union v. R. G. R. Petroleum & Mining Co.* The encroachment particularly harmed Appellants in entering and exiting their property and caused increasing fear of being in a collision or harming a pedestrian. This fear was communicated to the County in numerous correspondences, including those regarding Appellants' pending encroachment permit to remove the bush planter.

Appellant was authorized under the County Code to abate the nuisance bush and planter in any appropriate manner under the law. Pursuant to Civil Code section 3495, Appellant removed the nuisance at his own cost, time, and expense. This action was only undertaken after years of attempting to work cooperatively with the County to remove this encroachment. With inclement weather pending and increasing reports of high fire dangers, Appellants resorted to self-help in order to protect the residences and homes on Floriston Avenue and the public at large. This action is authorized under California law and the County Code. Furthermore, neither the County nor Appellants' neighbors claimed ownership over the bush planter, and the Rivaras agreed to permit its removal. The County's imposition of fines based on its finding that Appellants violated the County Code is thus misplaced and must be reversed by the Board.

E. Imposition of Special Conditions on Appellants' Pending Permit is Improper

In addition to imposing an enforcement fine on Appellants, the Community Development Agency seeks to impose numerous special conditions on Appellants' pending encroachment permit. These conditions include restoring the highway by replacing railroad ties and personal property fronting the Minnis property, replacing the landscape barrier fronting the Ferht property, and relocating water utilities for the Minnis and Fehrt properties. These conditions are improper for two separate and independent reasons.

First, the County may not merge Appellants' pending permit application with this code compliance action. These are two distinct issues and should properly be dealt with as such. The

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private purposes, except where the use is temporary. (*County of El Dorado v. Al Tahoe Inv. Co.* (1959) 175 Cal.App.2d 407, 410; See also *People v. Henderson* (1948) 85 Cal.App.2d 653, 658-659 [holding "…It would be in clear violation of the rights and interests of the public to follow a general policy of permitting structures and obstructions of various types to be maintained upon public rights of way."].)

[11] The Rivaras, understandably, did not appreciate Appellants or others traveling over their private property. In fact, the Rivaras have assaulted Appellants multiple times when crossing over their property. At one point, Appellants had to obtain a temporary restraining order because of Mr. Rivara's behavior.

County is improperly attempting to impose post hoc conditions on Appellants' permit application which was submitted months ago for the County's consideration and review. It is unreasonable for the County to now state Appellants must spend almost $15,000 in replacing encroachments in the public highway for the private benefit of its neighboring properties before its application can be approved.

Second, these special conditions violate the Equal Protection Clause of the United States and California Constitutions. A local government may not single out a landowner to bear the burden of remedying problems the government seeks to correct. (See, e.g., *Del Monte Dunes at Monterey, Ltd.*, 920 F.2d at 1508-1509.) Even assuming the conditions have legitimate purposes, such conditions violate the Equal Protection Clause when a landowner is singled out. (See *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 935.) In other words, a landowner may not have his use and enjoyment of his property restricted where owners of comparable properties are not subjected to such conditions and restrictions.

The new conditions imposed on Appellants' permit require Appellants, in part, to replace private party encroachments that are unlawful under the County's Code and California law. These conditions are irrational considering the County's policies to improve wildfire safety, minimize fire risks, and its code provisions prohibiting the erection or maintenance of encroachments in public highways.[12] Moreover, highway restoration is permitted under the County Code only where "it is necessary for protection of the county highway and/or for the protection or convenience of the public". (County Code, Sec. G-IV 4.29.) Here, restoring encroachments that severely limit safe travel on Floriston Avenue and that compromise, restrict, and impede fire road access is wholly incompatible with the County Code provision authorizing highway restoration work.

The condition that Appellants relocate and repair water utilities for its neighbors is particularly egregious. As an initial matter, there is no stated basis for why Appellants' must shoulder the cost of relocating and possibly repairing the Minnis and Fehrt water utilities. The letter does not connect or even purport to explain how or why this cost is the Appellants' burden. The Truckee Donner Public Utility District ("TDPUD") has purview over these utilities, and the County singling out Appellants to cover costs that are wholly unrelated to its pending permit and this code compliance action is unconstitutional.

Imposing these conditions on Appellants and not on its similarly situated neighbors in its encroachment permit is a manifest violation of the Constitution.

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[12] For example, in February 2019, the Board adopted a Resolution making reducing the risk of local wildfire and the effects of wildfire on life, property, and the environment as the highest priority [a "Priority A"]. (*County of Nevada 2019 Board Objectives*, County of Nevada, https://www.mynevadacounty.com/DocumentCenter/View/13400/Board-Objectives-and-Legislative-Priorities-PDF?bidId= (last accessed Jan. 15, 2020).)

F. Conclusion

Based on the abovementioned facts, Appellants respectfully request the Board rescind the December 20, 2019 NOV, direct immediate correction of the identified encroachments on the right-of-way, and request the Community Development Agency to issue a final decision on Appellants' pending encroachment permit application as soon as practicable, without the imposition of additional conditions.

VI. IDENTIFICATION OF THE APPELLANTS

Appellants: Larry and Cheryl Andresen
Mailing Address: [redacted]
Telephone: [redacted]

COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
950 MAIDU AVENUE NEVADA CITY, CA 95959
(530) 265-1222 http://mynevadacounty.com

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NEVADA COUNTY
BOARD OF SUPERVISORS

BUILDING FAX (530) 265-9854 | CODE COMPLIANCE FAX (530) 265-9851 | ENVIRONMENTAL HEALTH FAX (530) 265-9853 | PLANNING FAX (530) 265-9851 | PUBLIC WORKS FAX (530) 265-9849 | SANITATION FAX (530) 265-9849

AGREEMENT TO PAY FORM

LAND USE APPEALS

Nevada County Community Development Agency fees for land use appeals are based on Board of Supervisor approved fee schedules. Hourly fees and fees for services in excess of a minimum fee collected are billed to the applicant based on the Board approved fee schedule in effect at the time the work is performed by staff. This *Agreement To Pay Form* must be signed and original signatures submitted to the Clerk of the Board along with copies of initial project application forms and the initial payment of appeal fees.

The Community Development Agency will bill as services are rendered, and I/We agree to pay such billing within thirty (30) days of the mailing of such billing for the appeal identified here within.

Billings should be mailed to:

Larry and Cheryl Andresen

[redacted]

I certify that I have reviewed the above information, and the appropriate fee schedules. I agree, as appellant or authorized representative, to pay the Community Development Agency for all staff services and other related charges attributable to my land use appeal.

[redacted] Dated: 1-17-2020 CDL# [redacted]

Signature

Larry Andresen Tel #: [redacted]

Printed Name

THIS SECTION FOR OFFICE USE ONLY:

COPIES OF ORIGINAL PROJECT FEE AGREEMENTS _____ Yes _____ No

APPEAL FILING FEE _____

ADDITIONAL DEPARTMENT FEES:
ENVIRONMENTAL HEALTH _____
PUBLIC WORKS/SANITATION _____

TOTAL FEES COLLECTED _____

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I certify that I have reviewed the above information, and the appropriate fee schedules. I agree, as appellant or authorized representative, to pay the Community Development Agency for all staff services and other related charges attributable to my land use appeal.

[redacted] Dated: 1-17-2020 CDL [redacted]

Signature

LARRY ANDRESEN Tel #: [redacted]

Printed Name

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COPIES OF ORIGINAL PROJECT FEE AGREEMENTS _____ Yes _____ No

APPEAL FILING FEE _____

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TOTAL FEES COLLECTED _____