

COUNTY OF NEVADA

STATE OF CALIFORNIA

BOARD OF SUPERVISORS



21
Nathan H. Beason, 1st District
Chair Edward C. Scofield, 2nd District
Vice-Chair Dan Miller, 3rd District
Wm. "Hank" Weston, 4th District
Richard Anderson, 5th District

Julie Patterson Hunter,
Interim Clerk of the Board

March 4, 2015

Honorable Board of Supervisors
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, CA 95959

DATE OF MEETING: March 10, 2015

SUBJECT: Appeal filed by Charles and Catherine Frank of the November 21, 2014, Hearing Officer's Final Decision and Order of Abatement affecting property located at 20047 Wildwood West Drive, Penn Valley, CA.

RECOMMENDATION: Staff requests the Board review the administrative record of the Frank's Nuisance Abatement Hearing, and adopt a motion of intent to adopt, reject, or modify the Hearing Officer's decision.

FUNDING: N/A

BACKGROUND: On July 8, 2014 Mr. Nicholas Hoekstra, Code Compliance Officer, issued a Report of Inspection to Mr. Steven DeCamp, Director, Community Development Agency, in which he noted violations of the Nevada County Land Use and Development Code (LUDC) on property owned by Mr. and Mrs. Charles and Kathryn Frank, located at 20047 Wildwood West Drive, Penn Valley, CA. The violations involve an unpermitted cabin and septic system situated in a "No Build Zone" area of Mr. and Mrs. Frank's property. Subsequently, an Abatement Order was sent to Mr. and Mrs. Frank on July 9, 2014, notifying them that the LUDC violations on their property constituted a public nuisance, and that the Code Compliance Division was authorized to commence a nuisance abatement proceeding, as provided in Section L-5.22 of the LUDC.

On October 16, 2014, a Property Maintenance (Involuntary Abatement) Administrative Hearing was held in accordance with Section L-II 5.22.E.4 of the LUDC, during which Mr. and Mrs. Frank and Code Compliance Division personnel testified and presented documentary evidence on the issue of whether the conditions identified by the Community Development Agency on Mr. and Mrs. Frank's property constituted a public nuisance subject to abatement. On November 17, 2014, the Hearing Officer rendered his Final Decision and Order, upholding the Community Development Agency's determination that the unpermitted cabin and septic system constituted a public nuisance under L-II 5.22 of the LUDC. The Hearing Officer authorized abatement of the public nuisance and reimbursement of costs related to the Code Compliance Division's abatement actions.

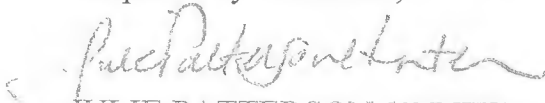
On November 21, 2014, Mr. Frank filed with the Clerk of the Board a timely appeal of the Hearing Officer's Decision, currently scheduled for March 10, 2015.

950 Maidu Avenue, Suite 200, Nevada City CA 95959-8617
phone: 530.265.1480 | fax: 530.265.9836 | toll free: 888.785.1480 | email: bdofsupervisors@co.nevada.ca.us
website: <http://www.mynevadacounty.com/nc/bos>

Pursuant to procedures set forth in LUDC L-II 5.22.E.4-8, the Board is required to decide this appeal based solely on review of the administrative record derived from the October 16, 2014, Property Maintenance (Involuntary Abatement) Hearing and November 17, 2014, decision of the Hearing Officer, and must either adopt, reject, or modify the Hearing Officer's decision.

Should the Board uphold the Hearing Officer's decision that the conditions on Mr. and Mrs. Frank's property constitute a public nuisance under the LUDC, it is required to order abatement of the public nuisance within a time certain. If the Hearing Officer's decision is upheld, then staff will return with a request to order that costs of abatement be assessed against the property and an abatement lien be recorded, as authorized by Government Code Section 25845(c).

Respectfully submitted,


JULIE PATTERSON-HUNTER
Interim Clerk of the Board

jph

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BOARD OF SUPERVISORS



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Richard Anderson, 5th District
Donna Landi, Clerk of the Board

January 30, 2015

Certified Mail 7009 3410 0001 7810 7604

Mr. and Mrs. Charles and Kathryn Frank
20047 Wildwood West Drive
Penn Valley CA 95946

Re: Appeal of the November 21, 2014 Hearing Officer's Final Decision and Order of Abatement Order

Dear Mr. and Mrs. Frank:

Please be advised that your appeal of the November 17, 2014 Hearing Officer's Decision and Order of Abatement Order has been scheduled before the Board of Supervisors on March 10, 2015, at 1:30 p.m., in the Board Chambers, First Floor, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, California.

As set forth in Nevada County Land Use and Development Code Section L-II 5.22.E.4-8, the Board will decide your appeal based solely on the review of the administrative record and the decision of the Hearing Officer, and will adopt, reject, or modify the Hearing Officer's decision. Although additional evidence or testimony will not be allowed at the meeting, you, as well as any member of the public, will be allowed three minutes each to address the Board.

Enclosed are your verbatim transcript and copies of the administrative record. Below are the final costs for transcribing and copying the proceedings:

Verbatim Transcript (17.25 hours at \$65.96 per hour)	\$1,137.81
Copies (194 pages at 10 cents per page x 7 – total of 1,358 pages)	135.80
Total Cost	1,273.61
Minus Deposit	- 1,000.00
Total Balance Due	<u>\$ 273.61</u>

We received your initial deposit of \$1,000 for the estimated cost of transcribing the oral proceedings of the Hearing and duplication of seven copies of the Administrative Record. There is now a balance due of \$328.91. Please submit the balance immediately.

Respectfully,
Donna Landi
DONNA LANDI
Clerk of the Board

DL:jph
Enclosures
cc: Nevada County Board of Supervisors
Steven DeCamp, CDA Director
Scott McLeran, Nevada County Counsel Attorney
Sheri Chapman, Assistant County Counsel

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phone: 530.265.1480 | fax: 530.265.9836 | toll free: 888.785.1480 | email: bdofsupervisors@co.nevada.ca.us
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VERBATIM TRANSCRIPT OF THE ADMINISTRATIVE HEARING HELD OCTOBER 16, 2014 REGARDING THE NOTICE TO ABATE NUISANCE AT 20047 WILDWOOD WEST DRIVE, PENN VALLEY, CALIFORNIA

Hearing Officer Baker: Can you hear me alright? Okay, we're on. My name is Stephen Baker. I am the Hearing Officer for the matter today of Charles and Catherine Frank regarding property located at 20047 Wildwood West Drive, in Penn Valley. Can I have an introduction of the parties involved here for both the County and Mr. and Mrs. Frank?

Mr. Hoekstra: Sure. As far as the County goes, my name is Nick Hoekstra. I'm a Code Enforcement Officer with Nevada County. Next to me is Mr. Gregory Shaffet, Code Compliance Program Manager and Sheri Chapman from Environmental, I'm sorry, from

Ms. Chapman: County Counsel.

Mr. Nick Hoekstra: County Counsel.

Hearing Officer Baker: OK. First, before we go on to the other parties, the spelling of your full name.

Mr. Hoekstra: Hoekstra. H O E K S T R A.

Hearing Officer Baker: First name Nick?

Mr. Hoekstra: Nick.

Hearing Officer Baker: Ok. And then next

Mr. Shaffer: Gregory Shaffer. S H A F F E R.

Hearing Officer Baker: Alright.

Ms. Chapman: Good afternoon. Sheri Chapman. C H A P M A N.

Hearing Officer Baker: And, are Mr. and Mrs. Frank here?

Mr. Frank: Yeah, we're here.

Hearing Officer Baker: Ok. What I would like to do first is to just read a little something about the purpose of what we're, and a description of what we're going to do today. And then we'll proceed with the presentation of evidence. We're here today because the Nevada County Community Development Agency has determined that conditions existing on the subject property constitute a public nuisance subject to abatement. The purpose of today's administrative hearing is to review the County's determination and to afford the property owner and/or occupants an opportunity to show cause why the identified conditions on the subject property should not be found to be a public nuisance and abated pursuant to the Nevada County Ordinance Code. As the Hearing Officer, my role is to hear the facts presented by the County

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and the property owner and/or occupants, and to render an impartial decision on whether the County's determination that the identified conditions on the subject property constitute a public nuisance subject to abatement conforms to the law and is supported by substantial evidence. All proceedings shall be recorded. If a transcript of the proceeding is requested, the requesting party must contact the Clerk of the Board to request a transcript. The requesting party shall be responsible for the cost associated with preparing the transcript. Order of presentation, unless otherwise agreed to by the parties, the Community Development Agency shall proceed first, followed by the property owner and/or occupants, and any other interested parties with the property owner and/or occupants allowed an opportunity for rebuttal. I will allow limited further rebuttal as I find necessary. Only evidence relevant to the issue of whether the conditions identified on the subject property constitute a public nuisance or why those conditions, if existing, should not be found to be a public nuisance and abated under the Nevada County Ordinance will be considered. You will be allowed, but are not required, to make a brief opening statement. While an opening statement will become part of the record, it is not considered evidence upon which I may base my decision. Each party shall be permitted to cross examine witnesses and I may also question any witness. Visual materials, exhibits and written argument may be admitted prior to the close of this hearing and considered, and shall become part of the public record and property of the County except upon stipulation of the parties that the originals may be returned. The administrative hearing will not be conducted according to technical rules relating to evidence and witnesses. Any evidence that I deem relevant to the issue of whether alleged conditions of the subject property constitute a public nuisance subject to abatement shall be admissible if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or irrelevant evidence may be excluded on my own motion or upon objection by the opposing party. Rules of privilege shall apply to the extent that they would be required by statute to be recognized at the hearing. As the Hearing Officer, I reserve the right to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. After all of the testimony is taken, I will close the hearing and take the matter under submission and render a decision within 30 calendar days, which shall be distributed to the Clerk of the Board and to both parties. If a public nuisance is found to exist, the decision shall include an order that the property owner abate the nuisance within a time certain. And if such is not accomplished, shall authorize the Community Development Agency to cause the abatement to occur thereafter. Further, if a public nuisance is found to exist, the decision shall include a statement of costs the incurred by the County in abating the violation and a demand that the administrative costs of abatement incurred be paid to the County within 10 days. The notice of decision shall also include notification of the right and procedure to appeal my decision to the Nevada County Board of Supervisors, including the last date upon such an appeal can be made.

Now, with that, first do the parties wish to make an opening statement?

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Mr. Hockstra: No, we don't.

Mr. Shea: Yeah, MR. Baker, my name is Glen Shea, I'm an attorney and I represent the Franks. Our opening statement would generally focus on a procedural matter rather than the substantive nature of the hearing.

Hearing Officer Baker: Fair enough. Before you begin, how do I spell your last name?

Mr. Shea: S H E A.

Hearing Officer Baker: And you

Mr. Shea: I have business cards showing you,

Hearing Officer Baker: That's fine.

Mr. Shea: The Clerk afterwards.

Hearing Officer Baker: Proceed.

Mr. Shea: With respect to the procedural nature, we're going to be requesting a continuance of this hearing, but I also want to set forth the reason for that continuance. The bottom line is we're in search of a solution rather than a problem. Mr. Frank, the family contacted me about 3 weeks ago, and we've been working with an engineer for purposes of submitting a revised plan to the County in the hopes that that revised plan would be favorably received by the County and avoid the cost (inaudible) not only of this hearing, but also of potential abatement, destruction of a valuable structure within the County. We view that as being a solution rather than, a solution around the problem which would be cost effective for both the County and for the Frank family. Because we're trying to approach this hearing in a constructive, rather than a non-constructive manner, we wouldn't be presenting any evidence challenging whether there is or is not a nuisance, but rather we'd be looking for having the opportunity to submit evidence not only to the County, but to also to you to show how those 14 items of claimed nuisance by the County can either be avoided or mitigated. And that may be revision in the nature of the structure from habitable to uninhabitable. It may be revision of the size of the structure. It may include elimination of certain utility services to it. We don't know because we haven't had the opportunity to engage in that type of dialog with the County so far and engage in that type of dialog with the County, with an engineer instead of Mr. Frank, who is not an engineer. We would kindly ask that this hearing be put over for something like 90 days and I'll represent to you and to the County that we'll be making every best effort to come to the County with an engineer in an effort to address each of the 14 points. Again, to either mitigate 'em or to eliminate them rather than simply challenge them. My experience has been that results, challenging them at this point in time, results in an acrimonious relationship rather than a solution-oriented relationship and that's what we want to pursue, and that's why we're asking for

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a brief continuance so that we can put that effort instead of into creating acrimony, into solving, frankly, the problem.

Hearing Officer Baker: Thank you. Mr. Hoekstra, do you have a response?

Mr. Hoekstra: I'll defer to County Counsel.

Hearing Officer Baker: Ms. Chapman, I'm sorry.

Ms. Chapman: If I may, Your Honor, the request for a continuance is untimely. Pursuant to the Uniform Nevada County Property Maintenance Hearing Procedures, which is set forth as Exhibit A in the packet that you received, a continuance was to have been made in writing to you, the Hearing Officer, no later than 10 days prior to the scheduled hearing date. Failure to comply with this provision shall be deemed to constitute a waiver of any right to request either a continuance or the issuance of subpoenas. So the request is untimely. In addition, this matter has been going on since 2011. We would submit there has been ample time for them to abate this nuisance. And finally, with respect to the continuance, a continuance is not necessary, even if you were to affirm the finding that there is a nuisance, they have the opportunity to self-abate at any time after that until we have to take the action to abate the nuisance ourselves. So a continuance is not necessary for them to self-abate the nuisance.

Hearing Officer Baker: I'm going to deny the request for a continuance. However, I will advise everyone that I will, I have 30 days from today to render an opinion. I'll hold off considering the evidence presented and drafting my opinion until as close to that 30 day mark as possible. I can't promise it will be the 29th day because it depends upon my other schedule and requirements. But if there is an opportunity for the parties to negotiate some sort of resolution short of my decision, prior to my decision being issued, then you have that opportunity within the time frame of the 30 days that I have.

Ms. Chapman: Thank you.

Hearing Officer Baker: Thank you. Any further opening statements?

Ms. Chapman: No.

Mr. Frank: I'd like to make an opening statement.

Hearing Officer Baker: Yes sir.

Mr. Frank: What we have here is a map of the Houghton Ranch properties which I'm a part of here. This is the Houghton Ranch properties, here is our parcel. And we are part of the Houghton Ranch covenant. So as far as the nuisance question, if my property was evaluated as a nuisance, ok, my property is evaluated as a nuisance, then it appears that this property over here which was given a final in 2002 is in a floodplain and he pays about \$1,200 a year, he pays \$1,200 a year to

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FEMA to be in that floodplain. He's on the same creek as I am. Here is an outbuilding on this parcel along the creek, in the same slope, well I guess that's a nuisance too. So we got two nuisances here, we have this property that was given a final in 2011 that belongs to the Estens and they, their steepness of their slope, which is over 30%, really wasn't productive for them to really even build a house and go down there and do what they needed to do, but they were given a variance because their ground is the same slope as mine and they were given a variance, and they got a final in 2011. This property here is part of the Houghton Ranch like I am. This was a no-build zone like mine. This belonged to Navickis and anyway he, his no-build zone, he got a variance for his property and now it's a build zone. So basically, you've got, you got, you had a nuisance in the sense here, a major nuisance here, and it was taken care of, you had one here, it was taken care of, and so basically what we have here in my opening statement is an equal protection issue that has already, it has already been set in stone, it was already set in stone in the Crown Point legal case, not very long ago. It was about a year ago. And so, what I have attempted to do is to lessen the impact through here, I've only got a 320 square foot building. It's that footprint, 320, it's less than the 400 square foot ag building or a green house. And so basically, if a greenhouse was gonna be a nuisance or an ag building was going to be a nuisance well, that's interesting, because what I need to show you here is that the County keeps telling me that it's on a, it's on, somebody help me here, it's on a slope, it's on a (inaudible). Ok, the County is concerned that it's in a sloped area. This represents the sloped area. Here is the structure here on flat ground. The ground has been flat ever since the, I don't know, 1700s or, I'm sorry, the 1800s, since the gold rush. So, what we're looking at here is, they told me that you can't build on a slope, and I said, fine, I didn't. And there it is. And there's an existing road, there's an existing road which is gonna be in the package that you have been given that comes down through here. And, anyway, I could walk down that road and get to a green house, I could get down there to an ag building. But basically, if it's not gonna be, it hasn't been inhabited for 3 years. We go down there now and then to just get away from all the smoke, because the smoke rises, and it's a health issue. OK. So the thing of it is, is that, that it very easily could be converted and modified into a green house or, let's say animal husbandry, because we wanted to do Jacobs sheep, we were talking about doing Jacobs sheep on the property now for quite a few years. Maybe we could do some Jacobs sheep. But the thing is, is that the building itself can serve many purposes, and I did have it as a, it was being used a lot more over 3 years ago. But it hasn't hardly ever been used since then except for our own personal use. But anyway, if you, if all of these properties, if all of those properties along the creek side were given a special probation, I don't know why the County has targeted me. And the thing of it is, is that what happened, and this is part of my opening statement, is that all I'm looking for is justice here, and I would say, in this state it would be, it, I'm talking about equal justice. Now, my question would be this, how can a person get equal justice when the CEO came out publicly in the Union and the Penn Valley Courier and he said that the structure was on Deer Creek in a floodplain? Well, he was inaccurate. It's on Squirrel Creek, and it's not in a floodplain. The property that I showed you that was in the floodplain is way above me about, I would say, it's about a quarter of a mile

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below, above me. And, it's interesting when you think that the body of water from that creek is 50 feet from the house, and the County tells me that I need to be a hundred feet from the high watermark. That's very funny. But, in an event, if I wasn't a hundred feet from the high watermark, the China wall that had been built back in the 1800s would have been washed away by now. But, what I'm saying is this, I am just looking for justice here when everybody else along the creek has got some justice, they got variances. And so, if the Navickis property, which is part of the Houghton Ranch, was right next to me, his property borders mine, he had actually a no-build zone. I don't know if he's here today. There he is. He can tell you more about it. Anyway, I'm going to, is it still open to the public?

Hearing Officer Baker: Yes, this is open to the public. Right now you're in your opening statement.

Mr. Frank: OK, this is my opening statement.

Hearing Officer Baker: I'm assuming you're about to close your opening statement.

Mr. Frank: OK. So anyway,

Hearing Officer Baker: So we can proceed with, continue with the evidence.

Mr. Frank: Mr. Navickis can tell you about his situation because he's an engineering contractor and he can tell you very, he can tell you better than me. All I am is kind of a, I am a home builder. I mean, I built three homes, and basically I am a, not a journeyman carpenter, but in any event, I took extra care in taking care of all the properties that I ever built and they're very safe. Now, my opening statement is this, before I even, before I even sought to put in a structure down there by the creek, I put in four hose bibs from my well all the way down to the cabin, and they are capable of running 200 psi in a 2 inch hose. I told this to the fire department and they were impressed. And so what it is, is that I can offer, coming down the existing road, I can offer, preventive fire maintenance or whatever you want to call it, I can offer for the neighboring community, I can offer enough water and volume to protect numerous properties because of the water that I have. And so, I would say this, that in that case I don't see how the property itself could be a nuisance nor can the structure be a nuisance, and it doesn't make any sense when you have so many other people along the creek that already have their structures, including a three bedroom two bath house, which was given a variance in 2011. And then you have the person that was on the floodplain. And so, it's interesting, I don't understand it all, but this is what I do understand, that I shouldn't have to be defending myself about equal protection. I really shouldn't. Because if somebody came to me and said, can you help me Chuck? I would be there to help them instead of attacking them. You know, nobody ever came to attack me until they got letters in the mail from the County. Nobody really cared. It was like it was only after they got letters from the County, and nobody can see the cabin from any part of the properties that they are on because it's down, secluded. How can something be a nuisance if you can't see it? But

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anyway, I would just say this, Stephen, that you just weigh these things in the balance, and I've given you a lot of information that you can look at, and I hope that you would actually evaluate this thing with all the other properties that are also included. Because I'm not asking for the moon, I'm just asking for justice.

Hearing Officer Baker: Thank you.

Ms. Chapman: Thank you. If we may briefly respond, truly the issue before you today is simply whether there is a public nuisance that should be abated. Constitutional arguments, arguments that there has been a denial of equal protection are respectfully beyond the jurisdiction of the Hearing Officer in this proceeding and should not be considered. And to that extent, we would move to exclude any evidence of disparate treatment or anything alleged to be demonstrating unequal, or lack of equal protection, or different treatment of the citizens, because that's not the issue that's before you today, and such evidence is irrelevant, and it would be an undue burden and a waste of time.

Hearing Officer Baker: Thank you.

Ms. Chapman: We'd like to proceed with our case in chief.

Hearing Officer Baker: I would like to proceed with the case. I will address if evidence is presented with respect to the equal protection issue if and when that time comes.

Ms. Chapman: OK, thank you.

Hearing Officer Baker: and proceed.

Mr. McLeran: Mr. Baker, we, Madam Clerk will need to administer an oath to all individuals anticipating to testify in this matter. Go ahead.

Hearing Officer Baker: Yes. Thank you.

Clerk Barbara Price: Anyone who is testifying in this matter, please stand and raise your right hand. You do solemnly affirm under penalty of perjury that the evidence you shall give today shall be the truth, the whole truth and nothing but the truth.

Witnesses: I do.

Clerk Price: And, for the record, we are recording so I will need each of you to come to the microphone please to state your name, those of you who just took that oath.

Mr. Frank: Charles Frank

Mr. Clark: Calvin Clark

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Mr. Griesbach: Craig Griesbach

Mr. Hoekstra: Nick Hoekstra

Mr. Foss: Brian Foss

Mr. Navickis: Edward Navickis

Mr. Shaffer: Gregory Shaffer

Ms. Brown: Diane Brown

Mr. Cullins: William Cullins

Clerk Price: Thank you.

Hearing Officer Baker: Thank you. Are those all the people that expect to testify today? Thank you. Proceed.

Ms. Chapman: Thank you. The County would go ahead and call Code Compliance Officer Nick Hoekstra.

Mr. Hoekstra: Thank you Mr. Baker. My name is Nick Hoekstra. I'm a Code Compliance Officer for Nevada County. For the record, my address is 950 Maidu Avenue in Nevada City, California. I have been a Code Enforcement Officer in Nevada County Code Compliance Division since October of 2013. I have attended more than 200 hours of training and have been certified by the California Association of Code Enforcement Officers. I have investigated and handled approximately 150 property complaints during my time with Nevada County. Before coming here, I spent ten years working as a Code Compliance Officer with the County of Butte. While there, I was involved in over 50 nuisance abatement proceedings. I would like to make a couple more introductions before we continue on with the hearing. Behind me is Mr. Craig Griesbach, the Building Official of Nevada County and Mr. Brian Foss, the Planning Director of Nevada County. They will both be testifying. With the Hearing Officer's permission, I would like to provide an informational binder to yourself and the property owners.

Hearing Officer Baker: Yes please.

(inaudible)

Mr. Hoekstra: You need our copy as well?

Clerk Price: For the record, I am marking County Exhibit 1. It is a Nevada County Community Development Agency binder tabbed 1 through 11.

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Ms. Chapman: For clarity of the record, we would like to introduce Exhibit A as Defendant's, as the County's Evidence in this matter. For ease of reference shall we refer to it as Exhibit A 1 through 11?

Hearing Officer Baker: Oh, it was indicated as Exhibit 1, are we gonna call it Exhibit A?

Ms. Chapman: Exhibit A or Exhibit 1?

Clerk Price: I have 1.

Ms. Chapman: 1? I'm just wondering how we're gonna refer to the individual exhibits inside of it. I guess we can refer to it as 1-1, 1-2.

Hearing Officer Baker: That's fine.

Ms. Chapman: OK.

Mr. Hoekstra: Mr. Baker, the binder contains 11 sections. Section 1 is pertinent maps and photos of the property. Section 2 is a case history of the property. Section 3 is the initial violation warning letter sent to the property owner by the County. Section 4 is the second warning letter sent to the property owner by the County. Section 5 is a letter to the property owner from the County of Nevada Fire Marshal. Section 6 is the Planning Commission Staff Report and Decision. Section 7 is the recorded Notice of Pendency on the property. Section 8 is a copy of the Denial of the Restraining Order issued to the property owner by the Superior Court of the State of California. Section 9 is a copy of the abatement order, reported inspection, that was posted on Mr. Frank's property as well as sent to him through first class and certified mail, and also a copy of the Notice to Abate Nuisance. Section 10 is a billing statement of charges relating to the nuisance abatement proceedings on the property. And lastly, section 11 is the recommendations of the Code Compliance Division in relation to this code case.

Prior to the start of the County's presentation, I would like to state for the record that the decision to declare a property a public nuisance is taken very seriously. This decision comes only after all attempts to gain voluntary compliance with the property owner to remove conditions that are detrimental and pose a risk to the health, safety and welfare of the residents of the property and County have failed. The property in question is located at 247 Wildwood West Drive in Penn Valley California. The parcel number is 50-400-07. The property owners are Charles and Katherine Frank who are in attendance today. The property is 36.64 acres and it is Zoned Ag X, which is agricultural, no further subdivision.

The compliance case in this property was opened on September 1st of 2011, the complaint being an unpermitted cabin possibly being used as a vacation rental. Research at that time confirmed that the cabin was constructed without any building permits and was also built on a portion of Mr. Frank's property that is designated as a no-build zone. Mr. Frank was issued a violation

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warning notice giving him 90 days to attempt to get the cabin made legal or to start the demolition or removal of the cabin on September 15, 2011. At that time, Mr. Frank responded back to the Code Compliance Officer handling the case, Lyle Bonet, who no longer works for the County, that he was aware of the no build area and that he talked to the County a number of years back and was told that a second dwelling unit could not be permitted due to the dead end road standards in place at that time. He also very plainly stated that he built the cabin anyways.

Mr. Frank was issued the follow up citation warning notice on November 9, 2011, due to lack of progress towards compliance. This notice's compliance deadline was December 7, 2011. Since the code case was opened, there have been nine site inspections by County Staff and three administrative citations have been issued. The citations were issued for unlawful structure due to the cabin being built without permits in a no-build zone and sewage disposal due to the cabin's unpermitted sewage disposal system.

The site inspections were as follows: On September 8th, 2011, Code Compliance Officer Bonet attempted to inspect the property and was denied permission by Mr. Frank's wife. On September 9th, 2011, Code Compliance Officers Bonet and Choate inspected the cabin from a neighboring property which has a view of the cabin. They observed someone apparently removing plumbing from under the cabin. They responded to the property and were once again denied inspection by the property owner's wife. On September 12th, 2011, Mr. Frank agreed to an inspection on this date by Code Officers Bonet and Parker. Mr. Frank had a contractor with him at the time of this inspection. On November 8th, 2011, Code Compliance Officer Bonet met with Mr. Frank on the property to look at a potential site to relocate the cabin. A suitable site was located on the north central portion of the parcel. On July 8th, 2014, Code Compliance Program Manager Shaffer and myself viewed the cabin from a neighboring property. The purpose of this inspection was to confirm that the illegal cabin remains on the property and to obtain photographs showing this. Photos and other observations confirm that the cabin remained on site at that time. On July 10th, 2014, Code Compliance Program Manager Shaffer and myself responded to Mr. Frank's property to post copies of the abatement order and report of inspection. Mr. Frank refused to accept the postings from me. I subsequently placed them on the ground next to Mr. Frank. Mr. Frank stated they might blow away. These notices were also mailed to Mr. Frank through certified, first class mail. On August 19th, 2014, Mr. Shaffer and I again responded to the neighboring property to confirm that the cabin remained at the site on Mr. Frank's property. The con, this confirmation was done because I intended on posting a notice to abate the nuisance on Mr. Frank's property the following day if the violation was still present. On August 20th, 2014, Code Compliance Program Manager Shaffer and myself posted the Notice to Abate Nuisance on Mr. Frank's property. This notice was also mailed to Mr. Frank through certified and first class mail. On October 16th, today's date, I responded to the adjacent neighboring property to view and photograph the illegal cabin prior to the scheduled abatement hearing the same day. The cabin was still present at the same location.

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Some background, Mr. Frank applied for a Management Plan and map amendment in March of 2013. It was subsequently denied by the Planning Commission in a hearing in June of 2013. Mr. Frank also paid for and received a Planner's consultation to find out the feasibility of getting the cabin permitted at its present location. He consulted with Planner Tod Herman. At that time Mr. Frank was told that it would be next to impossible to get the cabin permitted in its present location. Mr. Frank next brought legal action against the County of Nevada to restrain the County from enforcement of its ordinance and its employees from performing their duties in relation to this property. This action was denied in Superior Court, County of Nevada, on January 27, 2014.

At this time, I would like have Planning Director Brian Foss testify as to the specifics of the no-build zone and Mr. Frank's attempt to obtain a map amendment to change the zoning.

Hearing Officer Baker: Mr. Foss, how do you spell your last name?

Mr. Foss: F O S S

Hearing Officer Baker: Thank you. Proceed.

Mr. Foss: Thank you Mr. Baker. I wanted to provide a little bit of a background on the history of the parcel and as Mr. Hoekstra mentioned, the process in which Mr. Frank attempted to go through to legalize the structure in its current location. The property was created by a final subdivision map that was recorded in 1979, referred to as the Houghton Ranches. It is Lot 27 of that final subdivision map, and on that final map that was recorded, it included a 100-foot setback from Squirrel Creek, as well as a no-build zone that covered a large portion of the approximately 36-acre property. It also included a potential building envelope building area that is located in the northeast corner of the parcel that currently contains the primary residence that was issued a building permit in 2002. The purpose of the 100 foot setback and the no-build zones are to protect what are identified as sensitive resources by the Nevada County General Plan and the Nevada County Zoning Ordinance. Those include water courses, blue line creeks, which Squirrel Creek is, as well as steep slopes. At the time, steep slopes were identified as slopes in excess of 20%. Currently the code has been modified in 2000 and steep slopes are identified as those 30% or more.

I became involved in this case more frequently in early 2012. I visited the site in 2012 with Mr. Frank in June of 2012 and I sent a follow up letter dated June 27, 2012, that stated that the Planning Department would not be able to approve the structure due to its location within steep slopes, its proximity to the Squirrel Creek, the on site, as well as the fact that it's located within a no-build zone as recorded on the final map, and the no-build zone does apply to all structures. It would not allow any structure to be built or permitted anywhere within that zone. It was explained to Mr. Frank that in order to legalize the structure and issue a building permit that the Planning Commission would have to approve a map amendment to remove the no-build zone on

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the parcel as well as to approve two Management Plans, one for potential impact to steep slopes and one for potential impacts to Squirrel Creek. It was explained to Mr. Frank that given the fact that the resources still exist on the site, that it was unlikely and not possible for staff to support recommending approval of the map amendment or the Management Plans, but that Mr. Frank did have the right to apply for those applications, and it was the plan, within the Planning Commission's purview to approve or deny those applications. In June of 2013 the Planning Commission did hold a public hearing in preparation for that hearing, Planning Staff did prepare a Staff Report to the Planning Commission that outlined the requirements for approving a Management Plan and for removing a no-build zone on a recorded map. One of the requirements of approval of a Management Plan, as identified in the zoning ordinance Section L-II 433, is that avoidance of the resource is the preferred method of, in order to protect the resources, and that a Management Planning can only be approved if avoidance is not an option and that avoidance of the resource would reasonably preclude development of the site. In this case there was ample room on the 36 acre parcel to construct the second unit that was outside of the no-build zone, the 100 foot setback from the creek, and the area that contains 30% slopes. Included in the Staff Report to the Planning Commission were the Management Plans that the applicant had prepared by the required professionals, a Biologist for the preparation of a Management Plan for the impacts to, within 100 feet of the creek, as well as an Engineer for potential impacts to steep slopes. The Planning Commission had all of this information before them, Staff's recommendations, and after holding a public hearing and hearing testimony from Staff and the applicant, the Planning Commission did deny both Management Plans and the amendment to the recorded map due to inconsistencies with the current code rules and regulations in place in today's zoning ordinance. There was a ten-day appeal period on that decision to the Board of Supervisors. An appeal was not filed within that time frame.

I wanted to make it clear that we had met many times with Mr. Frank over 2012 and early 2013 to explain that staff would not be supporting the applications to the Planning Commission but it was his right to make his case to the Planning Commission and the Planning Commission upheld staff's determinations of denial of all three applications.

And with that, that would conclude my testimony. I'd be happy to answer any questions you have now or later in the proceedings.

Hearing Officer Baker: Thank you. I'm fine.

Ms. Chapman: If I can, just for a matter of clarification?

Hearing Officer Baker: Yes.

Ms. Chapman: Mr. Foss, to your knowledge, is the cabin located within 100 feet of the creek?

Mr. Foss: Yes.

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Ms. Chapman: OK. And, to your knowledge, is the cabin located within the no-build zone on this property?

Mr. Foss: Yes.

Ms. Chapman: Thank you.

Hearing Officer Baker: You indicated that there, or the denial was based upon the fact that there is ample room on the parcel outside of the no-build zone, no-build zone?

Mr. Foss: Correct. I say that was one of the main reasons it was denied.

Hearing Officer Baker: Ample room to build a structure?

Mr. Foss: Correct.

Hearing Officer Baker: Thank you.

Mr. Foss: Thank you.

Mr. Hoekstra: Mr. Baker, I would also like to have Building Official Craig Griesbach testify as to the issues resulting from structures built without the benefits of building permits.

Hearing Officer Baker: Thank you. How do I spell your last name sir?

Mr. Griesbach: G R I E S B A C H

Hearing Officer Baker: Thank you. You may proceed.

Mr. Griesbach: Quick history on the permit records for this property, there's only been two permits issued in the history of this property. One in November of 2000, one in November of 2000 for an electrical AG pole and that's been finalized and a permit issued in July of 2002 for a two story single family dwelling that was finalized in 2004. I have personally never been on site, but based on the pictures and the documentation that I have reviewed through other departments in the County, it is clear that a building permit would be required for this structure. That is based on Section 105.1 in the California Building Code and California Residential Code as adopted by the State and the County of Nevada. The main intent for building permits being required is to protect the fire, life, safety and sanitation of the building occupants, as well as the property owners and the neighboring community. It's really through plan review and inspection that we verify that these meet the minimum standards of the State and also of the County. We have not completed any of that with this structure.

Um, I don't think there's anything else, um. That basically concludes my testimony. It's, it's pretty short and sweet. If you have any questions, I will be more than happy to answer them.

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Hearing Officer Baker: The Building Code, 105

Mr. Griesbach: 105.1 in the California Building Code and the California Residential Code.

Hearing Officer Baker: That's both Building Code

Mr. Griesbach: Both

Hearing Officer Baker: and Residential Code.

Mr. Griesbach: Yep.

Hearing Officer Baker: Same number, 105.1

Mr. Griesbach: Yes.

Hearing Officer Baker: Thank you.

Ms. Chapman: If I may, briefly?

Hearing Officer Baker: Yes.

Ms. Chapman: In your professional opinion, does the cabin that we've been discussing today present a danger to an occupant's health and safety?

Mr. Griesbach: We have not inspected or reviewed any plans or related to this structure so there's no way of knowing. The only way we can determine that is through inspections and plan review.

Ms. Chapman: OK. And an unpermitted septic system, does that perm, does that pose a threat to the public's health and safety?

Mr. Griesbach: Correct.

Ms. Chapman: Thank you.

Hearing Officer Baker: Thank you.

Mr. Hoekstra: Mr. Baker, in conclusion, the County has attempted, since September of 2011 to resolve the Code Compliance issue on Mr. Frank's property by encouraging voluntary compliance on Mr. Frank's part. The illegal cabin still remains on Mr. Frank's property in a designated no-build zone. The cabin is located down a steep hillside with no access for fire or emergency personnel should the need arise. The septic system is unpermitted and has not been inspected to insure its safety or if there is a danger of contamination to the adjacent Squirrel Creek. The structure itself is also unpermitted and has not been inspected to ensure that it was built correctly and to code. In July of 2014 I was directed by my supervisor, Gregory Shaffer, to

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begin nuisance abatement proceedings on the property. The Code Compliance Department of the County of Nevada is recommending the approval and direction from the Hearing Officer for today's abatement hearing to remove the illegal cabin located at 20047 Wildwood West Drive in Penn Valley. Code Compliance is also recommending the abandonment of the existing septic system for the illegal cabin with a permit issued by the Nevada County Environmental Health Department. Code Compliance is further recommending the approval of all submitted costs resulting from the abatement process.

Thank you for your time, Mr. Baker.

Hearing Officer Baker: Thank you. Are there any further questions from the County, or for the County? Would you like to present your case?

Mr. Frank: And the public's gonna speak after me, is that the idea?

Hearing Officer Baker: Yes, Mr. Frank. I want you to present your, make your presentation and following that, introduce those individuals who wish to speak on this subject.

Mr. Frank: Alright, thank you.

Mr. McLeran: Mr. Frank, if I just may interject, you've submitted a number of exhibits

Mr. Frank: Yes.

Mr. McLeran: I believe that you were asking to have marked.

Mr. Frank: Yes.

Mr. McLeran: Madam Clerk, do we want to mark these at this time, or would you prefer to mark them as Mr. Frank requests throughout his presentation?

Clerk Price: I think we can mark them all now efficiently.

Mr. McLeran: Mr. Frank, we're just gonna need a few minutes in order to do that.

Mr. Frank: That'll be fine.

Clerk Price: Which order would you like them marked in?

Mr. Frank: OK. Well the

Mr. Shea: Go up and show her.

Mr. Frank: OK.

Mr. Shea: Go up and show her.

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Ms. Chapman: If we may for the record, the County has not received any exhibits from the appellant.

Hearing Officer Baker: Mr. Frank, do you have copies of these exhibits?

Mr. Frank: Yeah, they have the copies.

Clerk Price: I have the four and I'm marking them now.

Ms. Chapman: Thank you.

Mr. McLeran: Mr. Frank and Counsel, do you mind approaching for just a minute? We just want to make sure that it's clear.

Clerk Price: Thank you. Exhibits have been marked. Owners' Exhibit A is a photograph and a series of Property Documents. Owners' Exhibit B is a letter to the Property Owner from the Penn Valley Fire Protection District. And Owner Exhibit C is a drawing of the property.

Hearing Officer Baker: You said a drawing of the property?

Clerk Price: Yes.

Hearing Officer Baker: Thank you. Mr. Frank you may proceed.

Mr. Frank: Alright, thank you. I would begin by saying this, I'm trying to get something here that has already been prejudice against us publicly in the Union and the Penn Valley Courier by the CEO wherein he came out with two false statements and everybody climbs aboard this thing and gets behind him and they start writing letters to the editor. The thing it is is that the Planning Department, CDA is very well aware of the CEO's position on this case now. And so, trying to find justice with the Planning Department now, and CDA is interesting. It's an interesting situation, and I don't see anything coming out of this that is fair. I would say this, that Planning and Code Enforcement, they're saying that, well Planning, Brian Foss says that the Management Plan, and this and that, whatever, was not acceptable. I'm thinkin', there wasn't one, there was not one negative part of that plan, which is in the, it is on the last part of this Exhibit A, the Management Plan that was done by Tina Constella of Constella Environmental Consulting. Now, Planning, Brian Foss said this is what you can do. And I'm thinkin' ok well if the Management Plan didn't cover, only covered five points, and they said well the rest of it is just, you know, it's just impossible to do something. That was not in the Management Plan. Everything was possible in the Management Plan. And so how can a person present something that is a, on a scale from 1 to 10, a 10, and Planning says, this won't fly. It's, it's unbelievable. Especially when you consider all the variances of the other properties that have been given to the other properties along the creek, including a three bedroom, two bath house that belongs to the Estens which is, you can see that in the map that is not only in here, in this, in Exhibit A, but you'll take a look

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Hearing Officer Baker: Mr. Frank

Mr. Frank: Yeah

Hearing Officer Baker: I'm sorry to interrupt, but are you indicating that the proposed, your proposed Management Plan is included in this Exhibit A?

Mr. Frank: Yes it is. Yeah, it, it's, it's towards the back, it's almost to the very back, it's right there, to the very back, it looks like this.

Hearing Officer Baker: OK, thank you.

Mr. Frank: Yeah. And so, anyway, this is one of the things that they said that, you know, well this is what you can do to, you know, try to put it together to where, you know, we would consider it. They're gonna consider everything and I'm paying thousands of dollars doing this and, and basically, I didn't get my change back either, from that one. But, I was hoping that somewhere down the line this could all be resolved. Now, I spoke with Robert Toby about his house that he has that's also on the map that is, that you'll be getting later. He said yes, he said, I'm on a floodplain and I built, and the house got a final in 2002. He says I paid FEMA \$1,200 a month. I don't understand why Planning is so emphatic about my situation when I am basically 100 feet from the high watermark and Robert Toby is 50 feet from the water. I just can't understand it because I feel like there is something more going on here. I don't know what it is, but when you have the CEO coming out saying false statements then you must ask yourself there's something

Ms. Chapman: Your Honor, we would object on the grounds of relevance.

Hearing Officer Baker: I'd have to concur with that. I don't, besides the fact this is hearsay, I've not seen any statements, you haven't told me who the CEO is who's making these statements or what their relevance is.

Mr. Frank: OK. It's in this.

Hearing Officer Baker: OK. I don't understand the relevance of the statements in a newspaper. What's the relevance to your property?

Mrs. Catherine Frank: It harms our right to get a building when people see that oh the CEO don't want 'em to do something and he was at a separate meeting defending 19 people that had complaints against the Building Department.

Hearing Officer Baker: So is it your contention that

Mrs. Frank: Then they came after us with the cabin 7 years later after it's been up.

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Hearing Officer Baker: Is it your contention that the statements made by the CEO persuaded the Planning Commission to decide

Mrs. Frank: Don't know

Hearing Officer Baker: how they decided?

Mrs. Frank: Don't know

Mr. Frank: Well that's one of the problems, yes. That is one of the problems because, you know, that's just the way it is. It's part of the club. That's the way I see it.

Mrs. Frank: They came after us a few weeks later around that time.

Mr. McLeran: Katherine, I'm sorry. Katherine, would you mind coming up to the microphone if you're gonna be testifying, just so we can get this on the record.

Hearing Officer Baker: You're Mrs. Frank?

Mrs. Frank: I'm Mrs. Frank, and the code enforcer comes to our house with an unmarked car. It was like terror. He didn't tell me what he was doing. I had a daughter there that I home school, and I got very protective of my daughter. Now I asked him to leave and I finally did get one card from him, and then he came back 8:00 o'clock the next morning with another guy, in camo, and my daughter's watching this, she was terrorized. He has been fired since then. And this code enforcer here, I don't know his name; he threw the paper on the ground and laughed. I actually called here and said that was the rudest, terriblest thing I've ever seen. My grandfather was a Housing Authority of Eureka. Now he would've probably fired them two. OK, can I use the glasses? And half the things he spoke was not true. And they will come to the surface. The cabin is not on Deer Creek and it's not in a floodplain. It's not a nuisance. A song was written about it and played in Ireland, all over Ireland, even to this day, called "The Cabin". It wasn't rented to the public. We tested it two or three times. It's been inhabited about 10 times in 10 years. We go down there when it, there's too much smoke in the air, cause I'm allergic and my husband's allergic to wood, you know wood smoke when it's burning, you know, in the atmosphere, and it gets really thick. OK? The picture that was taken by Mrs. Brown, we were on our side of the cabin and we own part of the creek and we clipped part of the creek, and she bashes us in the paper about this. I don't know this woman, never met her. She didn't call us and say, don't build that cabin there. Nobody made a complaint for seven years. No neighbors can see our cabin from their properties. There's one little stitch through some trees that when NID drives down, where you can even take a picture from it. It's very hidden. You can't even see it from space, go look. You can't even see it with one of those space things. We sought to have it taken down, even air lifted, removed, taken down. We had three people, including one that is sitting right here that can tell you it is too dangerous to take down. We went for an injunction because of that, not because we were trying to keep it up. We literally tried to take it down.

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Hearing Officer Baker: Mrs. Frank what do you mean by "take it down"?

Mrs. Frank: Take the building down. We were gonna go to the Building Department and ask them if we, you know, because they wanted it down. Want our, you know, this whole building down, and everyone we talked to said it was unsafe. We were in an impasse, and we went to the judge and he was laughing with them, talking with them. It was almost like it was set up that he was gonna say no anyway. I don't know what was happening. And then he said, no I'm not gonna give you an injunction to keep it up even though it's safe to un-tear down. I looked at the code enforcers and the people and the lawyer that's representing them, and I said well, if they come on my property to take it down, whose fault is it if it's dangerous? The judge said, theirs.

Hearing Officer Baker: Mrs. Frank, I have one question for you.

Mrs. Frank: Do you have a question for me? I'm heated. I'm sorry, I'm very heated.

Hearing Officer Baker: I understand. But I'd just like you to answer this question. Actually, two questions. What evidence do you have to support your contention that the cabin is not on a creek? And what evidence do you have that the cabin is not in a floodplain?

Mrs. Frank: They chose the wrong creek. It says in the paper that we were on a floodplain in Deer Creek and we are not on Deer Creek. We are on Squirrel Creek and we have no floodplain on our side because there's five different buildings built on our side. They have the NID on, the Browns have the NID on their side. They can't build, cause they have two waterways, we don't. We have a different situation.

Hearing Officer Baker: My question is what evidence, and I realize, it sounds like there was a change, the wrong name, Deer Creek vs. Squirrel Creek. What evidence do you have to support your contention that the cabin is not in the floodplain of Squirrel Creek?

Mrs. Frank: FEMA has us listed on the wrong place.

Hearing Officer Baker: Have you presented that in the evidence?

Mrs. Frank: We have probably a copy of it. Do you have a copy of it?

Mr. Frank: I don't have a copy of it right now.

Mrs. Frank: I don't have a copy of it right now, but we do.

Mr. Frank: But Planning, Planning knows that it's not in a floodplain.

Mrs. Frank: They know it's not.

Mr. Frank: They know it. They know it.

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Mrs. Frank: They know it's not in a floodplain. We wouldn't have built if it was in a floodplain because I have a Master's, I mean I have a Honorary Master's at Humboldt State on water quality. I am not gonna pollute or damage my water. It's been bio protected. We have a temporary septic with three containers that are experimental. And they can be taken out easily and it's been used 10 times, not every day. And we never used any soap or anything that would hurt, harm the environment. You can see sludge coming down farther up from us where the sewage treatment plant has been allowed for years to allow stuff to, in that creek, and there's green sludge. I can bring you a cup of it. I don't swim in it when I found that out.

Hearing Officer Baker: Do you have any evidence presented in the papers that have been presented to me today to support that statement?

Mr. Frank: Yes, I do.

Mrs. Frank: Yes, we do. And they are rectifying it with the County.

Mr. Frank: What I have in the Exhibit, the newspaper article is in the Exhibit. Yeah, yeah.

Ms. Chapman: Your Honor, if we may. The reasons for the abatement notice are set forth in the County's Exhibit 1. It being in a floodplain is not part of it, and we don't reference Deer Creek. What they're referring to is a newspaper article which we would submit should not be in evidence before you today.

Mr. Shea: The letter of June 14, 2013. Yeah, I'm in agreement, which itemizes the 14 items upon which the denial is based, and floodplain is not among the 14 items.

Hearing Officer Baker: Alright, I, Mrs. Frank mentioned

Mrs. Frank: Do you have any more questions.

Hearing Officer Baker: That's why I asked the question.

Mrs. Frank: I'm sorry, but that was, seemed to be an issue. That's what they kept saying, floodplain, floodplain, many times, with the Building Department and other people. They're not, it's not writing. And we said we're not on that creek.

Hearing Officer Baker: Ok. Thank you.

(inaudible)

Mr. Frank: OK. I'm gonna go back to the situation here when it comes to the abatement. We, sought to find a contractor that would take out the structure. This is one of the contractors, and it's in the Exhibit A. This is from True Log Homes. To Whom It May Concern. This is a letter regarding the disassembly of the D Log Cabin at Chuck Frank's property in Grass Valley. The

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disassembly is cost prohibitive and virtually impossible to disassemble the cabin because of the lag screws that the logs were put together, and they are imbedded in the logs and cannot be taken out without a lot of damage to the logs. The cost of rebuilding this cabin would be 4 to 5 times its original cost and would still have a lot of damage to the logs. Moving the cabin is also extremely difficult and expensive. Well, when it came to trying to find any more persons to remove the cabin, we talked to Montgomery Contractors of Sacramento. To Whom It May Concern. ND Montgomery Contractors have been in the house moving business since 1875. We have moved homes when they did not meet setback requirements or were built partially on someone else's property. We need work, but the site condition at this cabin prevents us from moving the cabin 1200 feet up a hill. The terrain is too steep and rocky. Trees would have to be removed and groundcover would be destroyed. The path of travel would look like a fire went through it. Erosion would be a major problem. Please consider a solution that is less destructive to the environment. Requiring this cabin to be demolished would be an outrage. When you consider all the energy environmental effects to demolish and haul off the debris, no one wins. The greatest building is the one that already exists. Please consider the carbon footprint if this cabin is destroyed. If you have questions, please feel free to contact Steve on his cell or his email. Thank you. Steve Montgomery. And he's out of Sacramento.

So, the thing is, is that we have tried to put this thing together, and we have been unable. So my request would be to leave the structure there, and I could work with the County in engineering whatever it would take to change it over to either a green house or a ag structure, like animal husbandry, to where it won't be removed. Because there's no way that we could put it someplace else on our property. There's no way. First of all, it would be destroyed and the other thing is even if we could, there's not really, the County insists that there's another place to put it, and there's not. It would, it, there's no way to do it. And so, I would say this, that the County has the, or Planning, CDA, they have gone the extra mile with everybody else along that creek, and there's no reason why they couldn't do it with me because, like I said before, the other, the other parcels along the creek that have already existing buildings, if they're not a nuisance.

Ms. Chapman: Your Honor, we would object on the grounds of relevance as also on the grounds of a lack of personal knowledge.

Hearing Officer Baker: I will, I concur that it's, there's, with respect to the other property, there are too many other unknowns whether those properties were permitted, unpermitted, what the details were with respect to whether or not variances were applied for and granted, et cetera, so it's difficult to make a comparison. Mr. Frank, I do have a question for you.

Mr. Frank: Sure

Hearing Officer Baker: You purchase, or you've owned this property since when?

Mr. Frank: About 2002.

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Hearing Officer Baker: And, you built the cabin in question?

Mr. Frank: I built, we built, our first home that we build was our main residence, which we have a final on. This was a secondary unit.

Hearing Officer Baker: And, I believe it's been indicated, but what's, when did you build this secondary unit?

Mr. Frank: 2004.

Hearing Officer Baker: Did you contact the County to advise them or your intention to build that unit?

Mr. Frank: No, I didn't. Because the County didn't see that I had the right to build it there. But the right came later when they approved second dwellings. So, second dwellings came a bit later.

Hearing Officer Baker: Are you saying, first of all, when you said the County didn't see that you had the right to build, did you speak with the County before you built the cabin?

Mr. Shea: Yes or No.

Mr. Frank: Yes, I did.

Hearing Officer Baker: And with whom did you speak?

Mr. Frank: I don't recall.

Hearing Officer Baker: Do you have anything in writing from that communication between you and the County?

Mr. Frank: No.

Hearing Officer Baker: And then you mentioned also that there was, I think you said something about the County approving second dwellings, is that what you said?

Mr. Frank: Yeah.

Hearing Officer Baker: What's, do you have anything in writing to present to me that shows that approval of second dwellings, and specifically second dwellings on your property.

Mr. Frank: I don't have it right now, no. But Planning knows that on Wildwood West Drive, they know that second dwellings were finally approved along there. They know that. And so, that should enter into the equation in my favor. But, I am not even thinking any longer about having it as a dwelling because I think that to try to permit it as, like an outbuilding, is going to fly a lot quicker than a second dwelling. I would have to do a switchback road and everything else, whatever, to make it a second dwelling. It's not really in my interest to make it a second

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dwelling. I would just like to leave it as an outbuilding. That's really my intentions now because there's just too much resistance from the County on this.

Hearing Officer Baker: Thank you. Anything further?

Mr. Frank: Yeah, I did have something further on this. I wanted to explain to you the variance procedure that the County outlines for all buildings. And this, this is something that they never shared with me. See, it's like, I like to get information from the County, but they don't, they only share the things that protect them. Now, here is one of the things that's part of their ordinances. Let's see here, Nevada County Ordinances, Chapter 2, allows for a departure from any provision where there are special circumstances, including the site, shape, topography, location, surroundings, where the literal enforcement of policies are waived when it deprives one of privileges enjoyed by other properties in the vicinity, and this option may be also granted upon demonstration of a hardship based on the peculiarity of the property in relation to other properties in the same zoning district. This is where my property falls. Also, in the County's own words, granting the variance does not adversely affect the public health, safety or welfare, the integrity and character of the district nor the utility and value of the nearby property. The variance is a minimum departure from the requirement of the ordinance necessary to grant relief to the applicant. Now, that's in the County's own words. This is something that they never shared with me. I pay their wages. In the last 10 years, I've paid nearly \$100,000 in property taxes, and I'm paying more now, trying to get this building approved. I pay \$8,000 a year in property taxes and I would say that our public servants here, I would hope that they were appreciative of what I pay because I'm not out to get anybody. That's not the way I work. I am just trying to find justice in this County. And, perhaps today, you know, could be the day that justice would come to the surface. Thank you.

Hearing Officer Baker: Mr. Frank, I do have one other question for you.

Mr. Frank: Yeah.

Hearing Officer Baker: Did you look into and apply for a variance?

Mr. Frank: I did look into it all. I looked into everything with the County, and

Hearing Officer Baker: When did you apply?

Mr. Frank: Well, that was part of the map amendment, that was part of the Management Plan, that was supposed to be all something that would, you know, and I've told them many times, that, you know, well, if I can't keep it as a second dwelling, then let's just do an outbuilding, you know, and

Hearing Officer Baker: Is that included in your application? Your suggestion that, of this becoming an outbuilding?

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Mr. Frank: Yeah, it's all in Exhibit A. It's all in here.

Hearing Officer Baker: Thank you.

Mr. Frank: Thank you.

Mr. Shea: Mr. Baker?

Hearing Officer Baker: Yes, Mr. Shea.

Mr. Shea: Glen Shea, S H E A. If I could direct the Franks' presentation a little bit, it might help speed this along a little bit.

Hearing Officer Baker: That's fine.

Mr. Shea: And, what I'd like to do is I'd like to focus on the 14 points that are raised in the letter of June 14, 2013.

Clerk Price: Sir, I apologize, if you could use the microphone for the record?

Mrs. Frank: You can sit here.

Mr. Shea: Sure. The podiums are taller where I practice.

Hearing Officer Baker: Mr. Shea, do I have a copy of this June 13, 2013 letter?

Mr. Shea: Well, you sure do your honor. It's in their binder.

Hearing Officer Baker: In

Mr. Shea: In the County's binder.

Hearing Officer Baker: the County's binder? (Static) up, what Section?

Mr. Shea: I'm looking. It's at Section 6, and if you want the page number, I can count them out.

Hearing Officer Baker: If you have it, that'd be great.

Ms. Chapman: For the record your honor, what's being referred to is the Notice of Denial of Amended Final Map and Management Plan, not the Nuisance Abatement Notice itself.

Hearing Officer Baker: Alright.

Mr. Shea: It's page 22.

Hearing Officer Baker: Ok, page 22 begins with the Management Plan for construction within steep slopes greater than 30%. And then

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Mr. Shea: It might be the page before that, the start date of June 14th.

Hearing Officer Baker: I do see something that's after that, that's dated June 14, 2013.

Mr. Shea: That's the document that I'm referencing.

Hearing Officer Baker: Ok, proceed. Thank you.

Mr. Shea: And it's my understanding, but if I need to be corrected by the County, I invite that correction, that there's 14 items identified in that letter as setting forth the criteria or the factors by which, for which the final map, or the Amended Final Map and Management Plan was denied. It's also my understanding that those are the reasons for the abatement. And, if I can just direct that to the County because they're more familiar with their procedures than any of us are.

Ms. Chapman: They're actually distinct. Yeah, the reasons that are set forth here specifically are for the reason for the denial of the Amended Final Map and Management Plan. The reasons for the nuisance are different.

Mr. Shea: So that I understand, the only reasons for the ma, for the mitigation or the, this hearing, the Nuisance Abatement Hearing, are not set forth on the letter of June 14, but are only set forth in the Notice of Abatement Hearing. Is that correct?

Ms. Chapman: I'm not sure if any of that was referred to in here, but they are two totally different processes and systems, so the County was not intending to give notice of a nuisance with this Notice of Denial of Amended Final Map and Management Plan.

Mr. Shea: So, so that I understand then, for purposes of this hearing, then this document of June 14, 2013, is irrelevant for purposes of this hearing. Correct?

Ms. Chapman: Yes. Yeah.

Mr. Shea: I just want to make sure I understood what is relevant and irrelevant. For purposes of your ruling, I apologize for taking a minute here, I hadn't seen many of these things prior to this. And again, this is directed to the County because I'm really confused, and that is earlier, in your testimony by the County, and I don't care who it was, there was a document behind item 2, which is entitled Charles Frank Case History, OK, and it's upon which, I'm sorry, I don't recall your name, but your testimony was based

Ms. Chapman: Mr. Hoekstra, for the record.

Mr. Shea: Yeah, and I apologize for not remembering. Because the basis of this hearing is solely contained within the notice, then this Exhibit 2 is irrelevant to this hearing, correct?

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Ms. Chapman: Let's see. From the County's position, it is relevant because it provides the history of the County's contact with the appellant, and their attempts to resolve the nuisance, and their contact with Mr. Frank prior to issuing a notice and numerous inspections which give personal knowledge of the existence of a nuisance and then again, the County's efforts to try and handle this matter without actually issuing the Notice to Abate a Nuisance.

Mr. Shea: I'm really confused, even more, because I don't know, I, I, I don't understand why the efforts going back to 2011 are rela, are, in fact, part of the abatement, the notice.

Ms. Chapman: It

Mr. Shea: But that's ok

Ms. Chapman: demonstrates the existence of a nuisance that's been in existence since 2011.

Mr. Shea: Ok, that's ok. It's, also my understanding that at least the first, oh, I guess it's 2 1/2 pages, contain entries by someone who's not here, not an employee, and isn't prepared to be cross examined or examined at all as to the accuracy or the content of that

Ms. Chapman: Well, that certainly is an objection that could have been made when the witness was testifying, but understanding there is a belated objection, I think the witness can explain where he derived that information from.

Mr. Shea: OK. (pause) And. (pause) I, I. (pause) Well, I'm looking at Exhibit 3 right now, and that's the letter from the County dated September 15, 2011. And, the reason that I'm concerned, and again I'm just asking for your help because I can't testify as to the content or meaning of this letter, and that's why I need the, you know, I solicit the input and clarification from the County, which is the only people who can testify as to meaning and intent of that letter. But as of Se, it appears to me that as of September 15, 2011, Mr. Bonet?

Mr. Hoekstra: Yes.

Mr. Shea: Ok, who is, and at that time was the Code Enforcement Officer, had inspected the property as the letter indicates, and that the only violations on the property appear to be the violations that have been confirmed on the property are as follows: That the building, that the cabin was built without permits. Undisputed.

Mr. Shea: Plumbing and electrical installed to and in the cabin without permits. Undisputed.

Mr. Shea: Unapproved septic system installed without permits. Undisputed.

Mr. Shea: The balance of the letter are, all, are all items that could be corrected. Is that a fair statement?

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Ms. Chapman: I believe that what we're trying to do now is characterize evidence that's before the Hearing Officer, which is not appropriate. We can discuss exactly what's in the letter. Mr. Hoekstra, are you sufficiently familiar with this document to discuss it.

Mr. Hoekstra: Yes.

Ms. Chapman: Ok.

Mr. Shea: What does that letter mean? If it means something different than what I was characterizing.

Mr. Hoekstra: This letter is our initial warning letter, notice we send out to properties that are in violation of specific codes. It was checked as being an unlawful structure, which it is because it's built in a no-build zone. Permits required, which they were because the building was built without permits totally, and,

Mr. Shea: Excuse me, excuse me, if might interrupt you?

Mr. Hoekstra: Yes.

Mr. Shea: Ok. You just used a term right then that I don't see in this letter. Ok, and that is an unlawful structure. This letter doesn't say that, does it? Is that term used here?

Hearing Officer Baker: The letter speaks for itself.

Ms. Chapman: Yeah.

Mr. Shea: And, and I'm not disputing that. I just want to make sure that his testimony is consistent with the letter, which has been introduced into evidence. And now he's supplementing the content of the written document, so, I'm not disagreeing with you, I just want to make sure that I understand.

Hearing Officer Baker: I understand.

Mr. Shea: We understand.

Ms. Chapman: To, yeah, to clarify for the record.

Hearing Officer Baker: Yeah, the letter speaks for itself.

Ms. Chapman: Yeah, to clarify for the record, what the witness is referring to is the warning notice, which is attached to the correspondence face, and the record will reflect by reading that letter that it does actually state unlawful structure.

Hearing Officer Baker: Thank you.

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Ms. Chapman: On the warning notice itself. Just so we have a clear record, may the witness finish testifying about what the warning letter states?

Mr. Shea: MmHm.

Hearing Officer Baker: Certainly.

Ms. Chapman: Go ahead.

Mr. Hoekstra: The warning letter and the, the letter and warning notice are sent together as companion pieces to each other. So it was the unlawful structure, the permits required, the second dwelling and the sewage disposal were the four issues that were noted by the Code Compliance Officer when he went out there and did the inspection and then sent the letter.

Ms. Chapman: Thank you.

Hearing Officer Baker: Thank you.

Mr. Shea: And, so I'm not overlooking anything in this letter, there's no other page which talks about no-build zone or slopes or environmental stuff. Is that correct?

Ms. Chapman: Again, I believe the record speaks for itself.

Hearing Officer Baker: Correct.

Mr. Shea: I just want to make sure I'm not missing a page. I would, with your indulgence Mr. Baker, like to go back to the letter of June 13.

Hearing Officer Baker: Refresh my recollection as far as the location of that.

Mr. Shea: I believe it is page 21 or 22, June 14, of Section 6. It's the purple divider about mid-way through.

Hearing Officer Baker: June 14, 2013.

Mr. Shea: Yeah.

Hearing Officer Baker: Notice of Denial?

Mr. Shea: Yeah.

Hearing Officer Baker: Yeah.

Mr. Shea: Yeah, that's it. Is there anybody from the County right now who has personal knowledge as to the content of the, the content and the facts set forth in that letter? It was signed by someone from the County Board of Supervisors, but I don't see anybody here.

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Ms. Chapman: Are you asking an authentication questions, or are you asking for somebody to testify about what happened when the Management Plan was denied, which?

Mr. Shea: I believe there were factual inaccuracies within the letter that I want to examine someone as to those factual inaccuracies.

Ms. Chapman: Ok, you haven't subpoenaed any witnesses. And we haven't put any witnesses on pertaining to that other than to discuss the fact that the Management Plan as well as the Map Amendment was presented to the Planning Commission, and it was denied by the Planning Commission. That is the reason those documents were submitted and that is the total of our evidence on that issue.

Mr. Shea: Yeah, I understand. So you're offering the document, you're offering the document, but not the document for the truth of the matter contained therein as so it can be subject to a hearsay exemption and really not part of the County's case, correct?

Ms. Chapman: I, sorry, you're speaking faster than me, which I didn't think was possible, and the other issue is I'm not certain what the nature of the objection is to our evidence.

Mr. Shea: My objection is to the content of the letter, that you don't have a witness who can competently testify as to the accuracy of the facts recited in the letter, correct?

Ms. Chapman: We are not submitting it to offer proof of the information that's submitted in to the letter, it's merely to show the process that was followed.

Mr. Shea: Great. So, it's the process, not the content, correct?

Ms. Chapman: Yes.

Mr. Shea: OK.

Hearing Officer Baker: Counsel, did you subpoena anyone to address the content of the letter?

Mr. Shea: Didn't think I had to, no, I did not. Pardon my nonchalance. Didn't know the County was going to try to offer an otherwise inadmissible document.

Ms. Chapman: We would object to that characterization. That's completely inappropriate and unprofessional.

Hearing Officer Baker: I should also point out that my job, as the Hearing Officer here, is to not address discovery issues and evidence issues the same way as they would be addressed by a Judge in a Courtroom. I try, and I will continue to try to consider all evidence presented with a wide scope, as much as possible, within reason.

Mr. Shea: Let me focus on things

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Hearing Officer Baker: And if things are too relevant, if things are repetitive, then, then I cut people off.

Mr. Shea: That's fine. Let me, let me focus on the two points in the letter which we contend are factually inaccurate, ok?

Ms. Chapman: We would object on the grounds that we have not submitted the letter for the subject matter that is in, we merely submitted the letter, as well as live witness testimony today, to discuss the process that was afforded to the appellant.

Mr. Shea: Look, what can we clarify. Has anybody testified that this prop, that this structure was within 100 feet of Squirrel Creek?

Ms. Chapman: They testified and no cross examination was given to the, was made of the witness. You had the opportunity to, yes.

Mr. Shea: That's fine. Do you, want evidence on that point?

Hearing Officer Baker: It's, if you want to present evidence, succinctly, I'll accept it.

Mr. Shea: OK, and by the way I'll mention the second aspect, and that is, I believe there's been testimony that the structure is on a slope in excess of 30%? Or 20%, it really doesn't matter. And, I'll authenticate and introduce the document through Mr. Frank. Is this even marked? What exhibit?

Clerk Price: It's Exhibit C.

Mr. Shea: Yeah, it should be marked as C and introduced, and it's a topographical survey that was prepared by California Survey Company, California Licensed Surveyor, and it depicts the location of the cabin topographically on, and I'm just gonna kind of characterize it as 95% on totally flat land or at least within a one foot contour.

Ms. Chapman: Your Honor, we would object to the appellant's counsel authenticating as well as testifying about a document. The document speaks for itself to the extent it can be considered at all.

Mr. Shea: That's fine.

Hearing Officer Baker: It does speak for itself. I'd just like, what I requested is succinct presentation if you were going to say something about 100 feet from Squirrel Creek.

Mr. Shea: Yeah, that, that's the second one. And it's also within the County's Exhibit 1, looks like a map the County submitted. It's of, it's not a parcel map, like the County Recorded Parcel Maps. This one. OK? And on that document it shows a hundred foot setback from the water?

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Mr. Frank: Probably the center of the creek.

Mr. Shea: Yes, from the center of the creek.

Mr. Frank: Probably. Or the hundred year flood, one or the other.

Mr. Shea: That's the County, the hundred foot setback. I only have one question to make sure that I understand this map and that Your Honor, let me call you Your Honor, understands this map. Mr. Frank, have you looked at this map? Do you know the location of your cabin in relationship to that hundred foot setback?

Mr. Frank: Yeah.

Mr. Shea: Yeah, are you within or outside that hundred foot setback?

Mr. Frank: I'm outside of it.

Mr. Shea: OK.

Ms. Chapman: Mr. Frank, do you, Mr. Frank, do you have any evidence or any documentation to support your contention?

Mr. Frank: Right here.

Ms. Chapman: And what is that?

Mr. Shea: Oh, Exhibit C, it's a survey done by a California Licensed Surveyor.

Ms. Chapman: And do you have an, do you have that witness present to talk about what they prepared, how they prepared it, and what information is reflected in that?

Mr. Frank: No, I do not.

Ms. Chapman: Then we would object to the admission of that Exhibit into evidence.

Mr. Shea: Then with respect to the hundred foot setback, I'll just make reference to your exhibit.

Ms. Chapman: Right, but what we're still asking, and we have an answer to it, so there's no need to further ask that question, is whether there's any documentary evidence to show where Mr. Frank's residence is in respect to that map.

Hearing Officer Baker: I will accept the, this map, as evidence, but I will consider the weight based upon whatever the evidence that's presented there, including the information concerning who prepared that map, as far as the extent to which I will consider that evidence.

Mr. Shea: Yeah, (inaudible), the map. I don't know which the map is.

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Hearing Officer Baker: Well I'm ref, everything, the map submitted by the County and the map submitted by Mr. Frank.

Mr. Shea: I didn't take good notes. Was there any testimony here about fire?

Ms. Chapman: Your Honor, we are supposed to be taking testimony from witnesses. I don't believe that this is a proper line of questioning to ask the County to now provide witnesses to respond to questions.

Hearing Officer Baker: Mr., I think that Mr. Shea, on behalf of the Franks, may ask questions of County Officials.

Ms. Chapman: Yes, during cross-examination and the time for that has come and gone. We don't have any witnesses testifying at this time.

Hearing Officer Baker: It has, I appreciate that. I'm gonna let, give him some leeway because this is, again, this isn't, the rules of evidence don't completely apply here. But within a limited scope.

Mr. Shea: Yeah.

Ms. Chapman: Then, we would ask Mr. Shea to identify the witness he wants to ask questions to.

Hearing Officer Baker: Can you do that?

Mr. Shea: I don't have any questions if the issue of fire is not before you.

Hearing Officer Baker: Can you identify the witness to whom you want to direct your question?

Mr. Shea: There's five that have testified. And, my question to all five is, has anybody testified that fire is a reason that this thing is a nuisance? That's a yes or no, I, I don't know, I don't remember. I don't keep that close notes.

Hearing Officer Baker: My notes, somewhere here I recall writing down the word fire.

Ms. Chapman: And we would submit that Your Honor, the evidence that the appellant has submitted actually discusses fire and sets forth the fact that the cabin where it is located is a fire danger. I believe that that's their Exhibit B. It's a note from somebody in the fire industry.

Mr. Shea: MmHm.

Hearing Officer Baker: I also think that Mr. Griesbach, how do I pronounce your name correctly.

Ms. Chapman: Yes, and we can discuss that as well, but for the record, there is a letter that the appellant submitted from the Penn Valley Fire Protection District in which they specifically say there is no road access to this building and therefore the Fire District is unable to provide Fire,

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Life Safety, or Rescue protection services in an adequate and timely fashion to the structure as it currently exists. And it goes on to state the fire concern. This is the evidence that's been submitted by the appellant. So we would submit to you that there is no tri-able issue of fact over whether there's a fire danger presented by this property.

Hearing Officer Baker: Thank you.

Mr. Shea: I was looking at the bottom half. So, the Frank's raised fire, but the County did not.

Ms. Chapman: I'm not gonna restate the evidence for you sir.

Hearing Officer Baker: The evidence speaks for itself and was presented by, by your client.

Mr. Shea: Ok.

Hearing Officer Baker: Mrs. Frank, Mr. Shea is presently

Mrs. Frank: She didn't read the rest of it though.

Mr. Shea: No, the whole letter is before him.

Hearing Officer Baker: The whole letter is before me.

Mr. Shea: Yeah, including the second half, so

Mrs. Frank: Oh, ok.

Mr. Shea: It's not just what she says.

Mrs. Frank: Oh, ok.

Mr. Shea: The, package I got from the County appears to be incomplete. And I'm looking at Section 6, and my package goes from page 1 to 3 to 5 to 7 to 9 to 11 to 14, 16, 17, 18, 20, I got 21, 22, no 23.

Ms. Chapman: I apologize, obviously it was a two-sided copy, and we only made single-sided. We can certainly amend that exhibit.

Hearing Officer Baker: (inaudible)

Mr. Shea: So half the pages are missing.

Hearing Officer Baker: (inaudible)

Ms. Chapman: Yeah, we probably had two-sided copies that were run single-side. We can correct that.

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Hearing Officer Baker: (inaudible)

Ms. Chapman: Yes.

Mr. Shea: I'd like an opportunity to examine those and to examine the witnesses as to those alternate pages as well because it's not part of the package.

Hearing Officer Baker: (inaudible)

Ms. Chapman: Let me, let me find out. This is the Nevada County Planning Commission Staff Report, for the record. Identified as County's Exhibit 1 under Subsection 6. This is a matter of public record. We should be able to obtain it from website. And again, this would be submitted merely to show the process that was followed when the appellant sought permission to amend the map as well as to submit a Management Plan. The process, we're not submitting it for the substance, for the facts that are in here, but to demonstrate that a process was provided to him, and it was denied by the Planning Commission.

Hearing Officer Baker: Is it necessary (inaudible)

Ms. Chapman: I don't think so, but let me check with my client if I may.

Hearing Officer Baker: (inaudible)

Ms. Chapman: Let me find out for certain. For clarity of the record, we'll go ahead and, we can copy that right now, with your permission, and we'll get copies to everyone.

Hearing Officer Baker: All right. (inaudible)

Mr. Shea: I would miss, I would be misleading you if I told you until I see what they have.

Hearing Officer Baker: (inaudible)

Mr. Shea: 20 minutes.

Hearing Officer Baker: I would suggest (inaudible) a 5-minute recess.

Ms. Chapman: Certainly. Thank you.

(Recess)

Hearing Officer Baker: Let's get back on the record.

Ms. Chapman: Thank you, Your Honor, I believe we've submitted the corrected copies of the County's Exhibit 1, Subsection 6, that should include the even pages as well. We apologize for the oversight.

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Hearing Officer Baker: Thank you. So, I have odd and even now?

Ms. Chapman: Yes.

Hearing Officer Baker: So, everything that should be part of Section 6 is now being submitted?

Ms. Chapman: Yes, and again, that's just the Planning Commission or the staff report for the Planning Commission.

Hearing Officer Baker: I understand. And it's been shared with Mr. Shea?

Ms. Chapman: Yes.

Mr. Shea: Got it.

Hearing Officer Baker: Ok. Thank you. Proceed.

Mr. Shea: So still, at least, the stapled portion of Exhibit 6 is being offered for the purpose of showing compliance or the procedure rather than the truth of the content, correct?

Ms. Chapman: Yes, we're not here to re-litigate what happened before the Planning Commission. Correct.

Mr. Shea: Ok. That's true for Exhibit 7 as well? It's the lis pendens.

Ms. Chapman: Correct.

Mr. Shea: It's gonna be true for Exhibit 8, it's the Court Proceeding? You're not contending that there's any type of res judicata?

Ms. Chapman: For the purpose of the Nuisance Abatement action, no.

Mr. Shea: Correct?

Ms. Chapman: Correct.

Mr. Shea: The same is also true for Tab 9? It's a bunch of procedural stuff it looks like.

Hearing Officer Baker: What is your question, Counsel?

Mr. Shea: That it's not being offered for the truth of the content, but only for proof that a procedure had gone through.

Ms. Chapman: This one is being offered for the content. It specifically says Abatement Order, July 9, 2014. As to the property

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Mr. Shea: How about the balance of the pages behind that? I don't know what this thing is called, Report of Inspection?

Ms. Chapman: Yes, and that was prepared by the witness who's prepared to testify today and has testified today, Code Compliance Officer Nick Hoekstra.

Mr. Shea: So, that's being offered for the truth of the content?

Ms. Chapman: Yes.

Hearing Officer Baker: Counsel, we have some other witnesses here.

Mr. Shea: Should I?

Hearing Officer Baker: It might be more time efficient if we have those witnesses present whatever

Mr. Shea: That'd be great.

Hearing Officer Baker: They want to present. And then, if you have further questions, you can complete that

Mr. Shea: That'd be great. Thanks.

Hearing Officer Baker: After they're done. That way, I'd like to think we can be done with this before 5 pm today.

Hearing Officer Baker: Sir?

Mr. Navickis: My name is Edward Navickis. Chuck Frank asked me to testify to give an overview.

Hearing Officer Baker: Mr. Navickis, how do I spell your last name?

Mr. Navickis: N A V I C K I S

Hearing Officer Baker: Proceed.

Mr. Navickis: I'm a general engineering contractor, also I am licensed to build houses and to move houses. Now, I, in 1983, I contracted with Houghton Development to purchase a parcel that was non-buildable, that you could not build a house on. I contracted with them and said, look, if I can make this buildable, I will buy this. So, they agreed. I went to the County, asked what their reservations were, and

Ms. Chapman: Your Honor, we would object on the grounds of relevance.

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Hearing Officer Baker: Before, what I'm gonna do is I'd like to hear a little more about what he has to say before I determine whether or not it's relevant. Can you tell me, you said this was 1983?

Mr. Navickis: Yes.

Hearing Officer Baker: Alright.

Mr. Navickis: Essentially, I was in the same position he is. I had a no

Hearing Officer Baker: Who is?

Mr. Navickis: Chuck Frank. I had a no build situation. I went, enquired as to what it took to make this buildable. Basically it had to do with easements and steep ground around an area that was reasonably flat. I got the easements from neighbors and I designed and built a road that was County road compliant. They gave me, then they changed the designation to be a buildable lot. And, by the way, this is adjacent to his property. He invited me recently down,

Hearing Officer Baker: Who?

Mr. Navickis: Chuck Frank invited me to come and look at the house as far as moving it intact. I did. It does not appear at all financially feasible to move it intact. And taking it apart would probably be, destroy it. I think Chuck, at this point, is a little bit remissent in that he maybe should have applied for an outbuilding and not a residence earlier in this process because an outbuilding on this, in this area, which is basically, he had a small flat area, in a no-build area, but he built a very small structure on this small flat area, and the impact is possibly not significant.

Ms. Chapman: Objection on the grounds of lacks foundation, also an improper opinion from a lay witness.

Mr. Navickis: It is my opinion that there is, this, the earth there is, has, is characterized by a low erosion potential.

Hearing Officer Baker: I've over, I'm overruling the objection, subject to your further testimony.

Mr. Navickis: He's on a, he's on a, on China Ditch, which was built in 1860, in fact it runs through my property. And, the question is, should, there's a lot of energy being spent on this, examining this problem. And the problem really isn't that large. There's a question of can, since I think Chuck is willing to just say, please let me, leave it there as an outbuilding. It does no harm. We need, no fire trucks approach it. As a residence, you do have to bring a fire truck within 50 feet of the structure as a, that's a code requirement, there's none on outbuildings. If he removes his septic system, then that removes any possibility of that kind of environmental degradation. I think this kinda got off on the wrong foot and that he would be quite willing, if he

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could, if this matter could be reconsidered as a variance for an outbuilding. He doesn't have many choices other than destroying it, and, and also carrying, he walks to the property. When he dismantles this he has to hand carry this out, the materials that it's made from. That is my overview. I believe there is, also when I looked at the location in conjunction to Squirrel Creek, I do not believe that it is in any way subject to flooding.

Hearing Officer Baker: Subject to what?

Mr. Navickis: Excuse me?

Hearing Officer Baker: I didn't hear what you just said.

Mr. Navickis: I don't, flooding.

Hearing Officer Baker: Flooding.

Mr. Navickis: I don't think that Deer Creek, or Squirrel Creek, will, at a hundred year flood or greater, will come up to the point of where his cabin is.

Hearing Officer Baker: What is your authority? I know you're a licensed builder and mover. What is your authority with respect to flood issues?

Mr. Navickis: I've had, I've had to do hydraulic engineering on projects that I

Hearing Officer Baker: Are you a licensed hydraulic engineer?

Mr. Navickis: No, I'm not. I'm not. It's my opinion, and OK

Hearing Officer Baker: Based upon?

Mr. Navickis: Based upon my judgment from experiences I've had in the past.

Hearing Officer Baker: Ok.

Mr. Navickis: That is all I have to say. I think there's, this is, we're, it's just so much energy for not a very large problem, and since Chuck Frank is willing to go to this, maybe the sensible thing is to reconsider this first as an outbuilding in a no-build area.

Hearing Officer Baker: Thank you, Mr. Navickis.

Mr. Navickis: Thank you.

Mr. Shea: I will

Hearing Officer Baker: Would you like to proceed, or can we go with the other witness, the other witnesses?

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Mr. Shea: I have only one question.

Hearing Officer Baker: Proceed.

Mr. Shea: The issue of flood came up, and it's not in the staff report or in the notices accompanying the abatement, I don't see where flooding is an issue, and move that that be stricken. It's not here.

Ms. Chapman: For the second time today, flooding was brought up by the appellant in reference to a newspaper article, not in regard to the notice of the abatement of a nuisance.

Mr. Shea: So it's only been brought up under the context that it's not an issue.

Ms. Chapman: I'm not characterizing it; I'm stating that the evidence was brought in by the appellant.

Mr. Shea: I don't have any other questions at this time. Then,

Hearing Officer Baker: Thank you. I believe we have two or three other witnesses who indicated at the beginning that they want to testify.

Mr. Clark: I know time's running late. My name is Calvin Clark, and I am a realtor in the area, and this is a concern perhaps to me and the realtors. I do bring announcements and things before the Board of Realtors quite often, and we've noticed the disclosure process being a little bit of a difficult one with nonconforming and pre-existing conditions. My background is a general building contractor since 1989 and a real estate agent since 1990. I've had a home inspection business and a plastering and general building contracting business in the Bay Area since 1988. Mr. Franks contacted me to perhaps give some supportive solution language to his case. I've done some special witnessing and testifying of, and working with Counties and with Cities, in trying to mitigate and offset the impacts of such nonconforming buildings, one of which, I did sell a 5-acre parcel out on the back side on Wolf Creek, and the gentleman that I sold the property to was a contractor and he built a property on the creek. And, that wasn't the problem, he took his skiploader and wiped out the blackberry bushes, and the Planning Department back in 2001 in Nevada County sent him a letter which is not evidence or anything, but it was just an unfortunate situation that he received this letter that said, you can offset and mitigate the impacts of removing these blackberry bushes one of two ways. You can hire an engineer and have it surveyed and evaluated and replanted; or you can buy 2 acres and donate it to the Nevada County Land Trust. Now, I believe that we're all here trying to create a solution. That's where I come from, and I think that Mr. Franks is entitled to having his opportunities created for him to, where he, of course we know, he is a little bit stubborn in maybe going through the permit process, perhaps he thought he could go ahead and get a permit and make this thing happen later on as an as-built, and certainly the environmental impacts are a significant, of im, significant import. My comment of conclusion is that, I hope that, the County would provide something that

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would both help Mr. Franks and also help our disclosure process as Board of Realtors to understand the conditions by which the County operates, and certainly the time spent here has been quite belabored and we have exhausted, I think in so many pieces of paper and so many opinions, whereas, it might have been simpler if the County would have said, look, you can't use it for that, you can try this, and you can go ahead and try and get a permit for this, and that appears, to have been what happened in 2011 with the letter that he received. So, in conclusion, I just hope that there is something, and I concur with the gentleman behind me who's worked in, oh maybe he's left, but the engineer that was here, I concur that his evaluation is accurate, and is, should be considered as a serious, it's a whole economic side of this County is the ability to use your property and to work out and mitigate any impacts or current violations of law. And I think Mr. Franks wants to be a law-abiding citizen. I think the laws need to be perhaps looked at carefully if there are some things that are not consistent with his right to use and have quiet enjoyment on his property. I was wondering about that work nuisance and

Ms. Chapman: Your Honor, we would object on the grounds that this testimony is not relevant to the issue of whether the property that's at issue today is a nuisance and should be abated. For clarification, for the public that's here today, this is not a public hearing before the Board of Supervisors; there may be an opportunity for that in the future. This is for the Hearing Officer to hear testimony relevant to the nuisance abatement proceeding itself.

Hearing Officer Baker: With respect to Mr. Clark's testimony, I think that

Mr. Clark: I've been slammed?

Hearing Officer Baker: No, no, no, what I'm saying is that

Mr. Clark: Ok.

Hearing Officer Baker: I think, and to respond to you, Ms. Chapman, I think that some of his testimony is relevant and some of it is not relevant. I have to sift through it all.

Mr. Clark: Certainly. Thank you.

Hearing Officer Baker: Thank you. Mr. Clark I do have one question for you before you leave. You mentioned that you did think that the County did satisfy their requirement in that you said that the 2011 letter, were you referring to the June 13, 2011 letter?

Mr. Clark: I was referring to the conversations I had with Mr. Franks about his approaching to get a permit and was denied getting a permit and perhaps that's his opinion. For this building, and I think it was brought up earlier.

Hearing Officer Baker: Ok, yeah. Thank you.

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Hearing Officer Baker: Do we have any other witnesses who have been sworn in? Mrs. Frank did you take the oath earlier?

Mrs. Frank: Did I, I don't know that I did.

Hearing Officer Baker: I think you need to, the oath needs to be administered. You have to go to the microphone.

Mrs. Frank: I'm left handed so, Thank you.

Clerk Price: You do, solemnly affirm under penalty of perjury that the evidence you shall give today shall be the truth, the whole truth, and nothing but the truth?

Mrs. Frank: Yes, I will.

Clerk Price: And please state your name.

Mrs. Frank: Catherine Frank.

Clerk Price: Thank you.

Mrs. Frank: Thank you. I don't know if this pertains to it, but by coming after this four, 16 by 20 building, we have lost about \$5,000,000 in sales. We, my husband sells log homes, my brother chose not to buy a hundred acre piece and build a log home on it because he thinks that the Building Department is just a mess. I have so many friends that said I will never build in Nevada County. This issue has just skyrocketed, and I am so private. I have heard people say they want it on the news, they want this, with save the cabin, on and on, I mean, I'm not lying, it's just, I want to be left alone. I don't want this to become a huge issue. I just want the building to stay or not to stay, and to find a solution, and I am not against anyone here. And I forgive anyone too. Thank you.

Hearing Officer Baker: Thank you. Are there any other witnesses that wish to testify?

Mrs. Brown: Yeah.

Hearing Officer Baker: Right there.

Mrs. Brown: Excuse me. OK. My name is Diane Brown. I have a letter and a

Mr. Shea: Excuse me, do you want to sit down?

Hearing Officer Baker: It might be better to

Mrs. Brown: In just a minute.

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Hearing Officer Baker: Can you, whether you stand or sit, just be a little closer to the microphone. Thank you.

Mrs. Brown: My name is Diane Brown, and I'd like to submit a letter from my husband and I, and I have an attachment, it's a little parcel map, copy of one, and a picture of our property.

Hearing Officer Baker: Ms. Brown, do you have 3 additional copies of that letter?

Mrs. Brown: I just have the one.

Hearing Officer Baker: Can we make arrangements to get copies?

Mr. McLeran: Yes. Ms. Brown, if you wouldn't mind approaching.

Mrs. Brown: Thank you. Ok. My name is Diane Brown and my husband is Charles Brown, sitting next to me. We live across Squirrel Creek from the Franks. The boundary of our properties that are together is the middle of Squirrel Creek. Part of our property is jugged out to the other side of the creek and comes back down to the middle. That part of our property encompasses a swimming hole and creek. From that swimming hole, I should mention we bought this property 34 years ago, in large part because of the creek and swimming hole, and the advantage of having the privacy of the non-build area around it. Now, due to this log cabin bein' there, we've lost our privacy. The log cabin looks right over that part of our property. That is an issue to us, and this bein' a nuisance hearing, that's how it's a nuisance to us. It's also a nuisance in the fact that our property values have been reduced because of this. Anyone to look at our property, oh, we have, you know, there's a swimming hole in the creek, but, there's a structure that does not belong to us that looks over this. And we've had two real estate people here who have said property values and we need to all be lenient and look at the other person's point of view. Well, I guess that's true, and maybe the two real estate people need to think, now how would this be if I was in that position? If my neighbor next to me built a two story structure overlooking some of my property, would that be an advantage to me? Or would it be an advantage to them? Also, this cabin was rented out to the public for several years. The Frank's had a website, it depicted the picture of the creek in it, and it was rented out to people from outside, inside and outside the area. When they say this is not on the website anymore; however, I looked today, and on TrailsAway it's there. A couple more clicks I could find the owner of the property, and maybe make a phone call.

Hearing Officer Baker: I'm sorry to interrupt, you said on TrailsAway? Is that a website?

Mrs. Brown: On, let's see, Trails.com.

Hearing Officer Baker: Thank you.

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Mrs. Brown: And that switches it over to HomeAway. It was listed on many, many websites for a vacation rental in Penn Valley. I don't know if the Franks at that time had any liability insurance at the time. We're talking about the road and the water and their bringing up fire danger also. A fire truck, no, could not get down there, and he may have pipes going down there, whatever, but I do know his, and he may have a good well, but I know his neighbor well is dry. An adjacent neighbor well is dry, so how far that water protection goes, I don't know. Let's see, where else can we go. Oh, back to the rental of the property, Mr. Frank says he pays, it sounds like a huge amount of money to me, for property taxes. But, I'm sure for many years, if he had a vacation rental, he must have had deductions for a rental property, and depreciation, and all this kind of stuff, so I don't know, and I don't know of transient taxes have been paid to the County or if his property value was upgraded because of this structure being there all that time. Let's see, what else do I need to say? Ok, now they say their initial reason was to escape smoke for health reasons. The King fire has just gone through here; the smoke was all over this County, including down to the creek. Now if the cabin was for the purpose to go away from it, the smoke was down there and we did not see anyone in the cabin when we went down. So there's, and then if it's for smoke, then would they, and wood stoves, would they not need to be there from November to March? I mean, all our neighbors, and I know across on their road, those people have wood stoves. I don't know if they do. So, that's my question with those health reason for smoke. But anyway, and let's see, what else do I need to say here? Oh, fire danger. Someone brought that up. They do have a cooking stove in there. It's listed on the website. There has been a barbeque sitting out on that wooden deck, in front of the wooden cabin for years. I don't know what people are down there. We've seen, I did at one time, see people walking down the road. Now the road is treacherous, as I say, to drive that road, for someone to slip, it would be a tragedy. But, I could see a group of people walking down. We can see them coming down, and a little bit later I see them, like at a 90 degree angle, at which the NID goes this way and then there's Squirrel Creek Falls. And it was the same people, and the only way they could get there, or the only way they could get there as fast as they did, was come up through our private property. So, that was a nuisance to us also, or maybe still is, I, you know, I don't know. So that is our, one other point I do need to make, Mr. Frank keeps referring to the letter to the editor, Mr. Haffey had written a, on opinion page, a letter just explaining Code Enforcement and, I'm getting dry, Mr. Frank's case because Mr. Frank had spoke at an earlier meeting, and it was not brought up that Mr. Frank had so many violations going on. Mr. Frank writes in to the letter to the editor probably 10 times as much as anyone else. He has his own little editorial thing going in another newspaper where he always gives his opinion. So, to me that is like, it doesn't matter. And it doesn't matter who it's from.

Oh, let's see, the other point I wanted to make is that we'd like to see the structure completely removed. We don't want to see it turned into a greenhouse, or a storage house, or anything like that. And as far as all these issues, the 14 or however many issues, the septic, the road, the water, the fire, the, anything that there is, all these issues, to me are a moot point. It's a no-build zone.

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The no-build zone was attempted to be changed, the zoning for Mr. Frank to allow that building, and that was turned down. So anything else, he can fix anything else that's there, and it's still illegal, and it still needs to be removed, cause it's a no-build zone. The other two individuals who did build on the creek there, they're in a completely different situation. They went through the process, and they did it through the County and with permits. I don't know if they are impacting a neighbor. As far as us, as far as property values and privacy, I have not been on their property, but we are being affected that way. When you see the picture, the photograph I brought in, you can see where the swimming hole is, and the cabin is right here. So for us to bring guests down or grandchildren or anything, the cabin is right there. And I'm going to end this. Mrs. Frank made a comment that she doesn't know me and something about my letter to the editor talking about that they are hypocritical, they built their house with a permit, going through all the rules, doing everything they should, but yet they've gone and done this with this cabin. Mrs. Frank is a real estate agent and on her website she lists that she has honesty and integrity.

Mrs. Frank: I'm the wrong Catherine Frank.

Mrs. Brown: And I think this is

Mrs. Frank: You are saying, I am not a real estate person.

Mrs. Brown: Oh, you're not?

Mrs. Frank: You have that wrong. No, because she is a nice lady.

Mrs. Brown: OK, my apologies then, my apologies.

Mrs. Frank: Yeah, don't even bring her name up.

Mrs. Brown: My apologies on that. I didn't know that.

Hearing Officer Baker: That's fine.

Mrs. Brown: But I just feel like, this whole thing is not honest. It's not honest, it was done in the shadows, and at that, and even that one time when the Code people came down to take a picture of Mr. Frank's cabin, he was out there and he was pulling out, and he was hiding in the bushes. And they know it's wrong, and I can, and Mr. Frank writes in several newspaper articles about the government takeover, and they're trying to take our property, and all this kind of stuff, but yet he does something completely illegal, does not follow the laws, but he wants us to say, Oh, it's ok. It's ok, we'll give you amnesty. We feel sorry for you, you have your health problems, you this that and the other. I just, this is America. There's a reason for these rules and it's for all of our protections. And we all have what, we all have things we want, but we have to keep in mind our neighbor. Our neighbor and how it affects other people, not just take away from others to get what you want. And, I guess that's all I need to say. Thank you.

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Ms. Chapman: Ms. Brown, if I may? May I ask one question of the witness?

Hearing Officer Baker: You may.

Ms. Chapman: Ms. Brown, you have mentioned a swimming hole that you use with your grandchildren, is that correct?

Mrs. Brown: MmHm.

Ms. Chapman: Are you at all concerned about seepage of sewage from the unpermitted septic system on the Frank's property?

Mrs. Brown: We are upstream from them.

Ms. Chapman: Ok.

Mrs. Brown: Ok.

Ms. Chapman: Do you have any concerns, or have you any reason to be concerned about seepage of sewage from the unpermitted septic system on their property?

Mrs. Brown: I would, yes, I would, because we do join in the middle of the creek. Now were we to draw, walk all the way down the creek and, you know, the kids be playing down that way or be, you know, straight acrossed from them. I don't know. I don't know, but it would be a concern.

Ms. Chapman: Ok, thank you. No further questions.

Hearing Officer Baker: Thank you Mrs. Brown.

Mrs. Brown: Umhuh.

Clerk Price: I do have the letter now.

Hearing Officer Baker: Yes.

Clerk Price: Marked as Diane Brown Letter.

Hearing Officer Baker: Mrs. Brown, since you're still here, since, and I just received this letter, I just want to confirm, is this, there's a photograph that appears to be part of the creek. Is that the swimming hole that you were referring to?

Mrs. Brown: Yes, it is.

Hearing Officer Baker: And is that the cabin that's depicted at beyond the swimming hole there?

Mrs. Brown: Yes.

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Hearing Officer Baker: Thank you. I see some pointing out here. Are there any other witnesses that wish to testify?

Mr. Cullins: My name is William Cullins. I'm a retired fire captain out of the Bay Area, and

Hearing Officer Baker: Mr. Cullins, how do I spell your last name?

Mr. Cullins: C U L L I N S

Hearing Officer Baker: Thank you.

Mr. Cullins: And I have the adjacent property to the Brown's, to the south. The, and I also was on the, was a Fish and Wildlife Commissioner for Nevada County. And so, I'm familiar to, you know, with fire situations, but what we're lookin' at down there, and in all of the County basically, is what we call, through the ISO, Insurance Service Office, is a Class 10, which is the worst of the worst for fire. And the way that, the last time I looked at that building when I looked across there, the fuel capacity there, going from light fuels to moderate fuels to heavy fuels is in, very intense. The slope is intense, and it's around that structure, and God only knows if it ever caught fire, it would take out everything goin' that slope and up on our side as well, and will probably take out our homes before they could get a handle on it. So, the other issue was that, with the Fish and Wildlife, the warden came out and looked at that, and he was a little distraught over that situation with the water way and where that structure was located. So, and he seemed to think that it's approximately; I'm sayin' approximately, 50 feet off of the creek. Now, like I said, I think the bottom line is, where do we come up and say that you have a right to build when you can't build in this County? There's certain restrictions and that was given to me when I purchased my property, the Brown's had it, there's restrictions on where you can build and where you can't build. And yet, this was just shut down and the person that built it built it, without any regards to anyone else or the environment. That's all I have to say. Thank you.

Hearing Officer Baker: Thank you. One question for you?

Mr. Cullins: Yes sir.

Hearing Officer Baker: You said that you are a retired fire captain?

Mr. Cullins: Yes.

Hearing Officer Baker: How long were you a fire captain?

Mr. Cullins: About 27 years.

Hearing Officer Baker: Where?

Mr. Cullins: Down in Marin County.

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Hearing Officer Baker: And you were associated with the Fish and Wildlife Commission?

Mr. Cullins: I was a Fish and Wildlife Commissioner for Nevada County; I retired from that position a couple of years ago.

Hearing Officer Baker: And how long were you a Fish and Wildlife Commissioner?

Mr. Cullins: About 2 years.

Hearing Officer Baker: Thank you.

Mr. Cullins: You're welcome. And, one more thing, I just want to say thank you for the County. I think they've done a wonderful job as far as their work. They're just trying to, Code Enforcement is such that, if you look at Code Enforcement, they're just asking for the basics when it comes to Code Enforcement, you know, building a structure. And yet, people complain and say, oh we shouldn't have this and they try to circumvent the system, and that's not right. But that's my own perspective. Thank you.

Hearing Officer Baker: Thank you. Are there other witnesses who wish to testify? Mrs. Franks, I know you've raised your hand; Before I go to you, I want to see if there's anyone else. Have we covered everyone?

Ms. Chapman: Your Honor, we do have one rebuttal witness after the Public Testimony is closed.

Hearing Officer Baker: Yes, what I'll do is, what I'm gonna, my procedure here is gonna allow for the rebuttal witness, and then I'll allow Mrs. Frank to say what she wants to say.

Mr. Frank: As part of the rebuttal?

Hearing Officer Baker: No, for your side of it. We're gonna have this rebuttal witness first, and then we'll do you, and then we'll be done. Yes, ma'am.

Ms. Chapman: We would call the Planning Director, Brian Foss. Mr. Foss, based on your position with the County and your experience, is there any structure that could be permitted where this cabin is currently located on the Frank's property, that could be permitted and approved by the County?

Mr. Foss: No. The no-build zone precludes any structure regardless of use or type.

Ms. Chapman: Ok. Thank you. That's all.

Hearing Officer Baker: May I ask a question? What is the purpose of the no-build zone?

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Mr. Foss: In this circumstance, it's to protect the steep slopes and the creek that runs through the property.

Hearing Officer Baker: To protect the steep slopes and creek from what?

Mr. Foss: From construction, from development.

Hearing Officer Baker: Well, I guess my question, maybe you can't answer this, but why do you want to protect the steep slopes and creek from construction and development at that location?

Mr. Foss: For environmental protection. Impacts on steep slopes cause erosion. Impacts to the creek can infect the flora and the fauna, as well as water quality.

Hearing Officer Baker: We heard testimony just a moment ago about fire danger. Is that factor with respect to the no-build zone determination?

Mr. Foss: Yes, in regards to steep slopes, as fire can travel quicker on steeper slopes.

Hearing Officer Baker: Thank you.

Ms. Chapman: One follow-up question, if I may?

Hearing Officer Baker: Yes.

Ms. Chapman: Who made the decision that this would be a no-build zone?

Mr. Foss: That was placed on the map as, when the map was approved by Nevada County, and I believe at that time it was called the architectural review committee or the development review committee. It could have been the Board of Supervisors. I'm just not familiar with the name of the decision-maker at that time.

Ms. Chapman: Ok. And is generally that type of a decision something that would be reviewed by the Governing Body here, the Board of Supervisors?

Mr. Foss: Correct. That's a discretionary decision.

Ms. Chapman: Thank you.

Hearing Officer Baker: When was that placed on the map?

Mr. Foss: To my knowledge the map was submitted in 1977 and recorded in 1979. Officially when it was recorded in 1979 is when it took effect.

Hearing Officer Baker: Thank you.

Mr. Shea: I have a question for him, if I might?

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Hearing Officer Baker: Yes sir.

Mr. Shea: You testified that the no-build zone was established because of slope, correct?

Ms. Chapman: Objection, misstates testimony.

Mr. Foss: That was one of the things I mentioned.

Mr. Shea: And the other one was?

Mr. Foss: Was the creek.

Ms. Chapman: There were number reasons that have already been testified to and that are on the record.

Hearing Officer Baker: He indicated erosion, flora, and danger to flora and fauna.

Mr. Shea: Yep.

Hearing Officer Baker: And also discussed fire danger.

Mr. Shea: Yeah, Ok. Are you familiar with the CC&Rs for the Houghton Ranch?

Mr. Foss: No.

Mr. Shea: Never read 'em?

Mr. Foss: No.

Ms. Chapman: Objection, Your Honor, this line of questioning is beyond the scope of our rebuttal.

Mr. Shea: Oh, no it's not. He's, testified that reason for the no-build zone had to do with fire, slope and flora and fauna. I'll represent to you and I'll give you the CC&Rs, that's not why the, that's not what the CC&Rs say.

Ms. Chapman: Your Honor it's inappropriate for Appellant's Counsel to be testifying in this circumstance.

Mr. Shea: No, I'll give 'em to ya.

Hearing Officer Baker: He's not testifying.

Ms. Chapman: He's offering his

Hearing Officer Baker: He's cross examining and he's indicating and it sounds like he's offering a document.

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Mr. Foss: We don't enforce the CC&Rs. We have no purview over CC&Rs. So, it is irrelevant to what the Planning Department does, what the CC&Rs state.

Hearing Officer Baker: Were you involved in the creation of these particular CC&Rs?

Mr. Foss: No.

Mr. Shea: Is it true or false that the map is submitted by the property owner?

Ms. Chapman: Objection, vague and ambiguous.

Mr. Shea: Well, I want to know whether the stuff that's written on here was submitted by the owner.

Ms. Chapman: We don't know what you're referring to.

Mr. Shea: I'm looking at the Houghton Ranch Final Map.

Ms. Chapman: And how is this relevant to our rebuttal?

Mr. Shea: Because the conditions on the map are the same conditions as in the CC&Rs, and the reason that that set back or the no-build zone, the reason specified in the CC&Rs has nothin' to do with fire and has nothin' to do with flora, has nothin' to do with what you testified about.

Ms. Chapman: Your honor, this witness has testified he's not involved in the CC&Rs or their creation, so continuing to question this witness about the CC&Rs is irrelevant and improper.

Hearing Officer Baker: I concur. If you want to submit that document or those documents for me to consider, I will accept that. But if he doesn't have any

Mr. Shea: He's got them. He had them. Oh.

Hearing Officer Baker: participation in the creation of those documents, then there's no need to question him further.

Mr. Frank: They are in Exhibit A for you.

Mr. Shea: Yeah, OK, I didn't know this.

Hearing Officer Baker: It's already there?

Mr. Frank: Yeah. Yeah. Exhibit A. Fine.

Hearing Officer Baker: Ok, so it's submitted?

Mr. Frank: Yeah.

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Hearing Officer Baker: Now, I see another hand raised. Sir, what is your name and do you want to testify?

Mr. Tidwell: My name is John Tidwell and I'm the Chairman of the Houghton Ranch Homeowner's Association.

Clerk Price: I'm sorry, if you could come to the microphone for the record please?

Mr. Tidwell: I have not been sworn.

Hearing Officer Baker: Then we'll have to get you sworn in first, please.

Clerk Price: Thank you. You do solemnly affirm under penalty of perjury that the evidence you shall give today shall be the truth, the whole truth and nothing but the truth?

Mr. Tidwell: I do.

Clerk Price: Thank you.

Hearing Officer Baker: State your name and spell your last name please.

Mr. Tidwell: John Tidwell. T I D W E L L

Hearing Officer Baker: Thank you. Proceed.

Mr. Tidwell: First, on the point on the CC&Rs, the CC&Rs are a moot point. They self-expired in 10 years. So, it isn't relevant to anything. The main point is the no build. Everybody in that area has respected the no-build zone. We bought our property and it was clearly indicated on the property that it's a no-build zone. This is a blatant attempt to ignore what the other 45 homeowners in the Association respected and considered when they bought their property. Thank you.

Hearing Officer Baker: Thank you. I thought I saw another hand. Are there other witnesses who wanted to testify?

Clerk Price: Thank you. You do solemnly affirm under penalty of perjury that the evidence you shall give today shall be the truth, the whole truth, and nothing but the truth?

Mr. Brown: I do.

Hearing Officer Baker: Please state your name and spell your last name.

Mr. Brown: Charles Brown. B R O W N. I want to go back to Ed Navickis. I'm sorry that he left so soon. But I work with Ed. I met him in 1983 when he moved up there. But what he neglected to say was that he did work with the County. He had no access to that property and that whole 26, I don't know, 12 acres was a no-build zone. He worked with the County for 6 to maybe 8

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years before he got approval. But he did. He tried to, he worked with the County, and the County worked with him, to make that a buildable lot. Mr. Frank hadn't tried to work with the County until after the fact. Got a lot to say, but probably shouldn't say it here. But it's, it has affected our property value and our privacy down there. And we can see that cabin all along our property. The question regarding the septic system, we are adjacent property in the center of the creek with the Frank, for I think, about 13 or 1400 feet which is all downstream of his septic tank. This is all adjacent property right here.

Hearing Officer Baker: Sir, try to speak into the microphone while you're pointing.

Mr. Brown: Well, I don't know how far that is, but I think it's about 1500 feet that my property is adjacent to Mr. Frank's. And all that 1000 - 1500 feet is downstream from his septic system that he has installed up there. And also, another thing that wasn't mentioned was, I don't know where he gets all his water down through this 2" pipe because that's, there ain't a lot of water up there, on our property either. But he also has an electrical submersible pump in Squirrel Creek.

Mrs. Frank: That's not ours, that's

Mr. Brown: That's not your pump? Where'd it come from?

Mrs. Frank: It's between the hill

Mr. Brown: There is a submersible pump just below Mr. Frank's second residence. I don't like callin' it a cabin, it's a residence. And they have rented it out, and it's still for rent.

Mr. Frank: It's not either.

Mrs. Frank: It's not for rent.

Hearing Officer Baker: He's allowed to make his statement. I'm gonna allow you a rebuttal, and then we're gonna be done.

Mr. Brown: Ok. I wanted to clarify that thing with Ed Navickis, that he worked with the County for 6 to 8 years and got his project completed. The Franks are workin' with the County after the fact. Ed Navickis went heads up with the County I know for 6 years before he got approval, but he got it done. What else? Oh, I can remove lag bolts if that cabin is lag bolted together. You know, I can take lag bolts out. But they brought that thing down there, and he can drive a truck down that hill on that steep grade. They drive a truck, they have a parking lot, and I don't care if they got to take it out one log at a time and one piece of plywood at a time. I personally want it out of there. And thanks for the County. I think they did a good job with their presentation.

Hearing Officer Baker: Thank you, Mr. Brown. Have we exhausted all prospective witnesses?

Ms. Chapman: Yes.

Verbatim Transcript
October 16 Nuisance Abatement Hearing
Charles and Catherine Frank

Hearing Officer Baker: Does the County have any other rebuttal?

Ms. Chapman: No.

Hearing Officer Baker: Mr. Shea or Ms. or Mr. Frank, did you want to provide some rebuttal testimony?

Mrs. Frank: I just wanted to share, they're, keep saying it was rented and it's still rented. Well we have a letter from a lawyer to the County that takes taxes, you know the tax board? Saying we would not rent our building and, cause they thought it was rented, we were gonna test run it and rent it to people, like, you know, and do a site, so we did a site, but we took that off, so if there's something showing on there, it hasn't been done for 5 years. We did a test run for it a couple years, and the other people that stayed there were some friends of ours, not rented. We didn't, you know, we've had a Pastor stay there, and he could verify it, he stayed 4 days and then left to work in another church. And we've had only a few friends and family members, and I have never seen anyone from their side swim in the creek except for a couple young people once even before our cabin went up. Nobody swims in that hole. I never see it, I hear people come down the road on their side and we can't stop someone going down to the creek from our side because there's no signs that says No Trespassing. And we have a S-quin right of way, so the Houghton Ranch allows people to go on that creek any time, so a lot of people that have been down there, I can hear anyone that goes into that pond, has not mainly been from our side, it's been from their side, you know. And I've seen burns on their side and all kinds of stuff going on that's just normal things. And I can't control who's coming on that property, only the few guests that we had a few times.

Hearing Officer Baker: Ma'am, one question for you. Would you sit down at the microphone? Thank you. With respect to the website, how long have you had that website?

Mrs. Frank: We only had it a short time, and we asked them to remove it.

Hearing Officer Baker: What's a short time?

Mrs. Frank: And what was the site, Chuck?

Hearing Officer Baker: No, what's, what do you mean by short time?

Mr. Shea: How long? When did you have it on there?

Hearing Officer Baker: From when to when?

Mr. Frank: Over 3 years ago.

Mrs. Frank: Over 3 years ago, it was like 4 years ago, and we, what was the site called? And we had it for like one year we paid for the site, and then we asked them to remove it.

Verbatim Transcript
October 16 Nuisance Abatement Hearing
Charles and Catherine Frank

Hearing Officer Baker: And was it removed?

Mrs. Frank: Yes, it should have been.

Mr. Frank: No, it was removed.

Mrs. Frank: What was it called?

Mr. Frank: Home Away.

Mrs. Brown: It was called Home Away.

Mrs. Frank: It was called Home Away. And we only had one site, so if other sites put us on there, we didn't have that. We had one site. And we were test running it, and we called the tax board and everything, and

Hearing Officer Baker: You test ran it for what reason?

Mrs. Frank: Cause we were thinking about, when we talked to the Building Department to get it okayed for a dwelling, but then they said no, and so we thought, well, ok, maybe it'll be an outbuilding.

Hearing Officer Baker: Can you tell me the year that you test run, ran this website?

Mrs. Frank: Do you remember the year, Chuck?

Mr. Frank: It could have been Jan, let's see.

Mrs. Frank: Like 2006, I think, and we had someone from Ireland. I can even count on my five fingers who the guests were that paid. And so we talked to the tax board and they said you have to, you know, pay this fee, and so we talked to them and we had a lawyer send a letter that we would not run any kind of dwelling there.

Hearing Officer Baker: Did you include that letter in your evidence?

Mrs. Frank: We do have the letter, but it's not in our evidence. But we will submit it to you, 3 letters of it, if you want that. Does it make any difference? But I'm just saying, integrity here, I'm not gonna do something like they said.

Hearing Officer Baker: Well, I'll accept the letter in the next, if you don't have it, I'll accept it in the next 2 days, if you provide copies for everyone.

Mrs. Frank: And I had not seen anyone swim for 3 years before we, my husband decided to put that building up. There was nobody going down there. So, when they said they were, you know, cousins and families and, I never saw it. And I am protected; they should have called me and said, you know, I don't want my little private area on my side disturbed. They could've

Verbatim Transcript
October 16 Nuisance Abatement Hearing
Charles and Catherine Frank

contacted me. The first stick that went up, and say, hey, you know, this is real private for us too, and we could've reasoned together. seven years later someone makes a complaint?

Hearing Officer Baker: Thank you. Mr. Brown, did you want to say one more thing?

Mr. Brown: One quickie.

Hearing Officer Baker: One quickie, and then I think we can

Mr. Brown: I would venture the website (inaudible)

Hearing Officer Baker: Come sit down at the table, at the microphone please.

Mr. Brown: I would venture the website was up in 2011 with a video posting of an interview with Mr. Frank on the front deck overlooking my property and offering up swimming, paddle-boating, gold mining and hiking at the same time my property is shown on the website. And it wasn't no 2004 or 05, it was more like 2011. And there were bar charts, monthly charts, with availability and non-availability on the calendar. That's all. Thank you.

Hearing Officer Baker: Thank you. Mrs. Brown, you're going to be our last witness.

Mrs. Brown: I'll stand up for this.

Hearing Officer Baker: Just be close to the microphone.

Mrs. Brown: And, like if you go on tripadvisor or something, on their website, there were reviews from people who had stayed there, and the dates were there. And there was, oh 4 or 5 of them. And as far as Mrs. Frank not seeing anybody in the swimming hole, well, do you stand out on your back deck, or are you in the cabin watching or, you know, you have, happen to be there or not be there? I mean, I don't know, you know? I mean, we swim in the swimming hole, not as much as we have in the past, but does that make any difference? Whether we're there or we're not there. Your cabin is there all the time. So, thank you. Thank you for the County also.

Hearing Officer Baker: Thank you. The matter is submitted. Mr. Frank, do you want to say something?

Mr. Frank: Sure. Trying to make this building acceptable to a couple of people here that are against it. There are many people for it. You, in the exhibits that I have shared with you, you have plenty of signatures of the people that are voting to keep the cabin where it is. Anyway, everybody shares the creek, and the thing is, is that we have neighbors that come down from Wildwood West Drive to share the creek. The kayakers come down there. From where I don't know. The thing is, that the issue is not who's in the water and who's not. That's not the issue here. The issue is, it seems to me that the issue is, for the neighbors across the creek from me, the issue is fire. They are worried about fire. Now, I have to say that the Penn Valley Fire District,

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October 16 Nuisance Abatement Hearing
Charles and Catherine Frank

he's a new fire chief, and this is what he had to say about an outbuilding that it could be converted to. Let's just say in the potential that there's no electricity. Ok, that takes care of one thing. The, ok, here's the other thing. Let's just say it's a green house. I am a landscaper. I have been a landscaper and I do installations and designs, and I've done irrigation for 21 years. My wife and I have grown plants for years. And I'm interested in putting a greenhouse together, and I've been wanting to do this for quite a few years. So, what option do I have to keep that building? Turn it into a green house. Now, what did the fire chief have to say about that today? This is a letter dated October 16th, he said this, Mr. Frank has asked me if the Fire Department will support his action to classify the

Ms. Chapman: Your Honor?

Mr. Frank: building as a

Ms. Chapman: We would, we would object, the document speaks for itself. This evidence is also cumulative and does not go to whether there is a nuisance existing on the property.

Hearing Officer Baker: Mr. Frank, I can read, and I have read this part of the letter.

Mr. Frank: I know but, they need to know.

Hearing Officer Baker: It's in the evidence.

Mr. Frank: They need to know. They don't have a copy of it.

Hearing Officer Baker: Well, that's true, but technically, as far as this hearing is concerned, they really don't need to know. I mean, they can hear this, but what's important is I need to know, and I have this piece of paper in front of me.

Mr. Frank: Ok, you need to know. Ok, you need to know. So, along these lines is this, here is a key point. There has never been one incident which ever constituted an immediate threat to the public health or safety which has been caused by us. Not one. There's no proof of anybody that there's sewage coming from our septic system going into the creek. There's no proof of it and the County hasn't proved it. And as far as fire, we've never had a fire. The barbeque thing has been removed. It isn't even there anymore. It's like, so, the thing is, is that, in the County's own words, if they say that they use the words, in a situation has it ever constituted an immediate threat to the public safe and, health and safety and welfare? Never did. It never has. That's the issue. It's always the issue, it's fire, it's sewage, it's this, it's that. It has never happened.

Hearing Officer Baker: It's never happened?

Mr. Frank: It's never happened. No. Nothing. So, I rest my case on that.

Hearing Officer Baker: Thank you. The matter is submitted.

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October 16 Nuisance Abatement Hearing
Charles and Catherine Frank

Ms. Chapman: May I have brief closing? Very, very brief?

Hearing Officer Baker: You may.

Ms. Chapman: Thank you. The undisputed evidence before you today demonstrates that there is a public nuisance on this property. It is undisputed that the entire structure is unpermitted, including the septic system that is near the creek. It is also undisputed that the appellant went through the process and wasn't afforded a process to try and get the no-building zone and his property permitted the way that he wanted to operate it. He had that process available to him, he used it. He was denied that, and he never appealed to the Board of Supervisors. There has been due process afforded to the appellant. The undisputed evidence demonstrates that this property is a nuisance to the public in general and certainly to the neighbors who have testified today. The evidence also demonstrates that the County has, to its credit, worked for over 3 years with the appellant to try and resolve this situation, and they have made no progress towards abating this nuisance. They have had plenty of time to abate this nuisance, and they simply refuse to. And the evidence today also demonstrates that this nuisance can be abated, it will be expensive and it's undesirable as we stated in our first witness' testimony, this is an action that we take seriously. But simply because it's expensive and undesirable, does not mean it cannot be abated. There is no evidence to demonstrate that this nuisance itself cannot and should not be abated. Finally, with respect to a housekeeping matter, we would submit objections to the Appellants' Exhibit A. There's numerous reasons for the objections, hearsay, lack of personal knowledge, improperly authenticated, improper lay witness opinion, but we understand that the technical rules of evidence don't apply, but we do want to raise those objections for the record.

Hearing Officer Baker: I'll accept the objections, share them with the other side, and I will consider all evidence submitted for the weight that I consider them to have, each item to have.

Ms. Chapman: Thank you.

Hearing Officer Baker: Anything further? Any closing?

Mr. Shea: Yeah, very brief also, first we'd like to thank you and your patience today. We'd also like to thank the County for the efforts that you've gone through in the past couple of years, and we really look forward to working with you while we're awaiting a ruling from the Administrative Judge because we're confident, we're hopeful and confident that, with your help and input, we can resolve this thing before a decision even comes down.

Hearing Officer Baker: That's it?

Mr. Shea: Submitted.

Hearing Officer Baker: Ok. Thank you. As I had indicated at the outset, I will, I'm working on a 30 day timeline. I would encourage you to attempt to discuss this before I come down with my

Verbatim Transcript
October 16 Nuisance Abatement Hearing
Charles and Catherine Frank

decision, but given the volume of documents I have to review and everything, I'm not gonna wait until the last minute. That's it.

Ms. Chapman: Thank you.

Hearing Officer Baker: Thank you.

End MP3

####

I, DONNA LANDI, Clerk of the Board, Nevada County Board of Supervisors, State of California, do hereby certify that the foregoing is a true and correct verbatim transcript of the Administrative Hearing held October 16, 2014. IN WITNESS WHEREOF, I hereunto affix my hand and official seal of said Board this 21st day of January, 2015.

DONNA LANDI
Clerk of the Board
Nevada County Board of Supervisors

BY: Barbara Price

Barbara Price, Deputy Clerk

RECEIVED

DEC 19 2014

December 19, 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

cc: BOB
Brian Foss
Scott McLeran
Alison B. G.
Steve DeCamp

Brian Foss, Planning Director
NEVADA COUNTY OF CALIFORNIA
Planning
GOVERNMENT CORPORATION
950 Maidu Avenue, Suite 200, Nevada City CA
Nevada City, CA 95959-8617

Dear Mr. Foss:

Please be advised that I am not agreeing to the legality of the deposit that has been required to go forward with the appeal that was noted in the BOARD OF SUPERVISORS letter on December 3, 2014.

However, for now, I will be paying the \$1,000.00 deposit which NEVADA COUNTY declares that is due in order to process the appeal, even though I am under no obligation to do so.

Sincerely,



Without Prejudice UCC 1-308 (old 1-207).
Charles Frank

cc: Scott McLeran, NEVADA COUNTY COUNSEL ATTORNEY

RECEIVED

DEC 19 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

Board of Supervisors

COUNTY OF NEVADA
STATE OF CALIFORNIA
BOARD OF SUPERVISORS



Chair Nathan H. Beason, 1st District
Vice Chair Ed Scofield, 2nd District
Terry Lamphier, 3rd District
Wm. "Hank" Weston, 4th District
Richard Anderson, 5th District
Donna Landi, Clerk of the Board

December 5, 2014

Charles and Kathryn Frank
20047 Wildwood West Drive
Penn Valley CA 95946

Re: Appeal of the November 21, 2014 Hearing Officer's Final Decision and Order of
Abatement Order

Dear Mr. and Mrs. Frank:

This letter advises you that Glen Shea, Esq. has informed this office that he no longer represents you in the referenced matter. We will not provide any further communications to his office.

Thank you.

Respectfully,

A handwritten signature in cursive script that reads "Donna Landi".

DONNA LANDI
Clerk of the Board

DL:bp

cc: Stephen Baker, Hearing Officer
Stephen DeCamp, Community Development Agency Director
Gregory Shaffer, Code Compliance Program Manager
Nicholas Hockstra, Code Compliance Officer
Scott McLeran, Nevada County Counsel Attorney
Katy Jacobs, Deputy County Counsel
Sheri Chapman, Assistant County Counsel
Craig Griesbach, Building Official

Barbara Price

From: Scott McLeran
Sent: Wednesday, December 03, 2014 4:45 PM
To: Barbara Price
Cc: Donna Landi
Subject: RE: Appeal of Abatement Order from November 17, 2014

Yes. Remove him from the list and keep his response in the file (I assume Mr. Frank also receives notice). I also recommend notifying Mr. Frank by email that you have received the notification from Mr. Shea. Thanks.

Scott A. McLeran
Deputy County Counsel

This communication is intended solely for the use & benefit of the intended addressee(s). It may contain privileged and/or confidential information. If this message is received in error by anyone other than the intended recipient(s), please delete this communication from all records and advise the sender via electronic mail of your receipt and deletion of this communication.

From: Barbara Price
Sent: Wednesday, December 03, 2014 4:33 PM
To: Scott McLeran
Cc: Donna Landi
Subject: FW: Appeal of Abatement Order from November 17, 2014

Should I just remove him from the service list? Any other action required? Thanks

Barbara

From: Glen C. Shea [<mailto:gshea@gshealaw.com>]
Sent: Wednesday, December 03, 2014 4:16 PM
To: Barbara Price
Cc: 'gateway@saber.net'
Subject: RE: Appeal of Abatement Order from November 17, 2014

Ms. Price
Please be advised that I am no longer representing Mr. Frank in this matter. Thanks.
Glen Shea

From: Barbara Price [<mailto:Barbara.Price@co.nevada.ca.us>]
Sent: Wednesday, December 03, 2014 11:15 AM
To: sbaker@diamondbaker.com; Glen C. Shea; Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Sheri Chapman; Brian Foss; Craig Griesbach
Cc: Donna Landi; kelly@diamondbaker.com
Subject: Appeal of Abatement Order from November 17, 2014

A copy of the letter sent to the property owners is attached for your information. Please call if you have any questions. Thank you.

COUNTY OF NEVADA
STATE OF CALIFORNIA
BOARD OF SUPERVISORS



Chair Nathan D. Benson, 1st District
Vice Chair Ed Scofield, 2nd District
Terry Lamplier, 3rd District
Wm. "Hank" Weston, 4th District
Richard Anderson, 5th District
Donna Landi, Clerk of the Board

December 3, 2014

Charles and Kathryn Frank
20047 Wildwood West Drive
Penn Valley CA 95946

Re: Appeal of the November 21, 2014 Hearing Officer's Final Decision and Order of Abatement Order

Dear Mr. and Mrs. Frank:

Please be advised that your appeal of the November 17, 2014 Hearing Officer's Decision and Order of Abatement Order has been timely filed.

Pursuant to Nevada County Land Use and Development Code L-II 5.22 E4b, please provide this office with \$1000 as a deposit for transcribing the oral proceedings before the Hearing Officer (3-hour meeting will take approximately 12 hours to transcribe @ \$65.96 per hour) and the estimated cost of duplicating seven copies of the administrative record (approximately 250 pages @ 10 cents a page x 7). The deposit is due within fifteen days of this notice (on or before December 19, 2014) and the balance, if any, is due upon request. If a refund is owed, you will be refunded. If additional money is due after the Administrative Record is prepared, you will be billed.

Once the deposit is received, the Administrative Record will be prepared and given to the Board. The Board has 90 days from receipt of the Administrative Record to decide the appeal. The Board shall base its decision to either adopt, reject, or modify the decision of the Hearing Officer solely on the Administrative Record and Decision prepared by the Hearing Officer.

Respectfully,

DONNA LANDI
Clerk of the Board

DL:bp

cc: Stephen Baker, Hearing Officer
Glen Shea, Attorney for Mr. and Mrs. Frank
Gregory Shaffer, Code Compliance Program Manager
Nicholas Hocksira, Code Compliance Officer
Scott McLeran, Nevada County Counsel Attorney
Katy Jacobs, Deputy County Counsel
Sheri Chapman, Assistant County Counsel
Brian Foss, Planning Director
Craig Griesbach, Building Official

950 Maidu Avenue, Suite 200, Nevada City CA 95959-8617
phone: 530.265.1480 | fax: 530.265.9836 | toll free: 888.785.1480 | email: bdosupervisors@co.nevada.ca.us
website: <http://www.mynevadacounty.com/uc/bos>

Barbara Price

From: Glen C. Shea <gshea@gshealaw.com>
Sent: Wednesday, December 03, 2014 4:16 PM
To: Barbara Price
Cc: 'gateway@saber.net'
Subject: RE: Appeal of Abatement Order from November 17, 2014

Ms. Price

Please be advised that I am no longer representing Mr. Frank in this matter. Thanks.

Glen Shea

From: Barbara Price [<mailto:Barbara.Price@co.nevada.ca.us>]
Sent: Wednesday, December 03, 2014 11:15 AM
To: sbaker@diamondbaker.com; Glen C. Shea; Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Sheri Chapman; Brian Foss; Craig Griesbach
Cc: Donna Landi; kelly@diamondbaker.com
Subject: Appeal of Abatement Order from November 17, 2014

A copy of the letter sent to the property owners is attached for your information. Please call if you have any questions.
Thank you.

Barbara Price

Board Clerk II
Nevada County Board of Supervisors
950 Maidu Avenue, Ste. 200
Nevada City, CA 95959
(530) 265-1480

- a. Delivers a written appeal to the Clerk of the Board of Supervisors within the ten (10) calendar day appeal period; and
 - b. Within fifteen (15) days of being notified by the Clerk of the Board of Supervisors, the appellant shall deposit with the Clerk of the Board an amount of money equal to the estimated cost of transcribing the oral proceedings before the Hearing Officer and the cost of duplicating seven copies of the administrative record, including all exhibits introduced at the hearing. The appellant shall be responsible for the cost of the appeal and record; provided, however, that: (i) if the appellant is not the owner of the property, and the Board upholds the appeal and finds that a zoning violation exists, the costs of the appeal shall be paid by the property owner; and (ii) if the appellant is the owner of the property and the Board upholds the appeal and finds that no violation exists, then the costs of the appeal shall be borne by the County.
5. In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal based solely on the administrative record and decision prepared by the Hearing Officer. The Board shall review the record and then adopt, reject or modify the decision of the Hearing Officer.
 6. In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal within ninety (90) days after receipt of the administrative record. Notice of the Board's decision shall be mailed to the property owner and those persons receiving notice pursuant to subsection A.
 7. If a final decision of the Hearing Officer or the Board of Supervisors finds that a violation exists, the owner of the property shall be responsible for paying all of the County's administrative abatement costs, including, but not limited to, those cost items set forth in the notice required by subsection 1. Costs of abatement shall become a lien against the property as is authorized by the Government Code and the following paragraph:

The final decision shall also order that abatement costs that have been incurred to date shall be assessed against the property as provided by Government Code Section 25845(b) and that an abatement lien will be recorded as is authorized by Government Code Section 25845(c). The notice of abatement lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which abatement of the nuisance was ordered by the Hearing Officer or the Board of Supervisors, describe the real property subject to the lien, set forth the amount of the abatement costs incurred to date and, if applicable, the date upon which the abatement was complete. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional abatement costs will be incurred in the future. It is the intent of the Board of Supervisors that abatement costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all abatement costs have been incurred and the abatement is complete, the CDA shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.
 8. Decisions of the hearing officer or Board of Supervisors shall order abatement within a time certain. The order may be recorded by the CDA. In the event of such recordation and in the further event that the violation is corrected, a notice of such correction shall be recorded. The Director of CDA is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process. The County may, in its discretion commence a judicial action to enjoin a violation of this chapter without the necessity of first going through the administrative procedures set forth herein.
- F. **Recovery of Unpaid Costs** As set forth in Section 5.22.E of this Article, the County may recover the administrative and physical costs of abatement and reasonable attorney fees. If, however, the property owner(s) responsible for the nuisance fails to pay the costs of abatement and attorney fees upon de-

NOTICE OF APPEAL

NOV 21 2014

FROM HEARING OFFICER DECISION

NEVADA COUNTY
BOARD OF SUPERVISORS

Land Use and Development Code L-II 5.22 Property Maintenance

TO: CLERK OF THE BOARD OF SUPERVISORS
NEVADA COUNTY BOARD OF SUPERVISORS

A. Name and Address of Appellant:

CHARLES W. FRANK
Name

20047 WILDWOOD WEST DR.
Address

PENN Valley CA. 95946

530-432-3619
Phone

B. Date of Decision: NOVEMBER 17, 2014
Please **attach** a copy of the Hearing Officer's Decision.

C. Please describe all reasons why you are appealing the Hearing Officer's Decision. (Attachment)

D. This Appeal must be **received** by the Clerk of the Board of Supervisors within **ten (10) calendar days** of the Hearing Officer's decision. The Appeal shall be mailed, or personally delivered to:

Clerk of the Board of Supervisors
County of Nevada
Eric Rood Administrative Center
950 Maidu Avenue, Suite #200
Nevada City, CA 95959-8617

I/We, the undersigned, hereby appeal the Hearing Officer's 11-17-14 decision.
Date of Decision

DATED: Nov 21, 2014

Charles W. Frank
(Signature of Appellant)

Email all notices through my email address at: gateway@saber.net

X
Yes No

100-12-200-11

NOV 17 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

BEFORE THE HEARING OFFICER OF THE COUNTY OF NEVADA
STATE OF CALIFORNIA

In the Matter of the Abatement Order)
Dated July 9, 2014 to Property Owner Charles)
And Kathryn Frank, Affecting Property)
Located at 20047 Wildwood West Drive, Penn)
Valley, California, APN 50-400-07.)
)
)

FINAL DECISION AND ORDER OF
HEARING OFFICER

The above-captioned matter came on for hearing before Hearing Officer Stephen C. Baker (hereinafter "HO") on October 16, 2014 at 2:00 p.m. in the chamber of the Nevada County Board of Supervisors, County Administration Center, 950 Maidu Ave., Nevada City, CA 95959. The parties were advised by the hearing officer of their rights and the procedures to be followed. Witnesses were sworn.

An Abatement Order detailing code violations was issued by Steven L. DeCamp, Director of the Community Development Agency on July 10, 2014 concerning property located at 20047 Wildwood West Drive, Penn Valley, California 95946. Notice to Abate Nuisance pursuant to Land Use & Development Code Section L-11 5.22 of the County of Nevada was served by certified mail on July 11, 2014 on property owners. The notice was also later posted on or about August 20, 2014 and this hearing was scheduled.

An opening statement was made by the property owner. A response to the opening statement was made by the county. Testimony and documentary evidence were received from the Code Compliance Officers. Testimony and documentary evidence were received from the property owners. Testimony was also received from interested parties. All witnesses were sworn. The hearing was recorded electronically.

1 At the outset of the hearing, Attorney Glen Shea, representing the property owners,
2 requested a continuance of the hearing so that the parties could look for a cost effective solution.
3 Attorney Sheri Chapman for the county objected to the continuance on the grounds that the
4 request is untimely. The request for continuance was denied, though the parties were encouraged
5 to discuss resolution in the 30 days prior to issuance of a decision.

6 Following the presentation of testimony and evidence, the hearing was then deemed
7 closed effective October 16, 2014 at 5:00 p.m.

8 As explained in more detail below, the hearing officer has determined that a public
9 nuisance exists on the subject property, and that the Code Compliance Division of Nevada
10 County may properly under law abate said nuisance, in each and all of its elements.

11 **Issue: Whether the Determination of the Existence of Public Nuisance Conforms to Law**
12 **and Is Supported By Substantial Evidence**

13 Section L-II 5.22 of the Nevada County Code provides that the purpose of this Section of
14 the Nevada County Codes is to establish an administrative procedure to remove conditions of
15 property hereinafter described and declared to be public nuisances which have a blighting
16 influence on properties in the vicinity and or are detrimental to the health, safety and welfare of
17 the residents of the County. This Section further provides that the hearing officer shall review
18 the Community Development Director's determination ordering cessation of the alleged public
19 nuisance to determine whether such decision confirms to law and is supported by substantial
20 evidence.
21

22 **Definition of Public Nuisance**

23 Section L-II 5.22 of the Nevada County Code declares, in pertinent part, the following
24 conditions to be a public nuisance:

- 25 1. Any nuisance heretofore or hereafter defined as a nuisance by any ordinance of the
26 County of Nevada, Section of the Nevada County Code, Section of any adopted
27 uniform code, resolution of the Board of Supervisors, or statutes of California.

2. Any condition of property which would materially hamper and interfere with the prevention or suppression of fire upon the premises or which may be detrimental to the health, safety and welfare of persons in the vicinity.

The purpose of Section L-II 5.22 is to establish an administrative procedure to remove conditions of property described and declared to be a public nuisance which have a blighting influence on properties in the vicinity and or are detrimental to the health, safety and welfare of the residents of the County.

Discussion of Facts

1. Property Owner Possessed Real Property Subject to Restrictions

Charles W. and Katherine C. Frank have been the owners of the parcel in question since 2002. The parcel in question is 36.64 acres and is zoned Ag-X. The subdivision map of the Houghton Ranches, recorded in 1979 according to county Planning Director Brian Foss, identifies on the subject property, Lot 27, a 100 foot setback along Squirrel Creek, a "no building area" and, in the northeast corner of the property, a "potential building area". The "no building area" appears to encompass the majority of the property, except for the referenced "potential building area." A copy of the subdivision map is included in evidence presented by the owner. The map was approved by the county in 1979.

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2 Mr. Frank testified he built the subject cabin in 2004. He claimed that he spoke to the
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8 **and Welfare of Community**

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11 Management Plan as not in keeping with the purpose and intent of several Resource
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8 In sum, Mr. and Mrs. Frank became owners of real property in Nevada County,
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7 The Union newspaper article presented by Mr. Frank dated August 24, 2013, while it
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9 subject property is a nuisance and therefore is not considered.

10 Mr. Frank made reference to other properties in the area. Mr. Frank testified that the county
11 approved the building of second dwellings on Wildwood West Drive. However, he produced no
12 written documentation substantiating this allegation. Further, what the county may or may not
13 have approved with respect to other properties is not relevant to the issue of whether a nuisance
14 exists on Mr. Frank's property by virtue of his having constructed an unpermitted cabin and
15 septic system in a no build area within 100 feet of a creek. Real property is unique. What may
16 have been found to be appropriate by the county on one parcel does not mean that the same facts
17 apply to another parcel.

18 The topographical map prepared by licensed land surveyor Stephen Hein and presented
19 by Mr. Frank as exhibit C depicts the subject cabin as partially on land with a slope in excess of
20 30% and, according to the map's own scale (1" = 10'), depicts the subject cabin as being within
21 less than 90 feet from the high water mark of the stream.

22 Property owner Kathryn Frank testified that the cabin is not within a flood plain of the
23 creek. However, no credible documentary evidence was presented to support this allegation.
24 the map purportedly depicting a floodplain, submitted by Mr. Frank following the hearing, does
25 not assist in addressing the subject issue. Most significantly, whether the cabin is or is not in a
26 flood plain is not why abatement is being sought by the county.

1 The Management Plan or Construction Within Steep Slopes Greater Than 30 Percent,
2 prepared by Tina Costella, may have been pertinent to the property owners' application for
3 management plan and amendment. It does not substantially support any contention that the
4 subject cabin is not a nuisance.

5 The U.S. Fish & Wildlife Service report regarding federal endangered and threatened
6 species is not relevant to the issue before the hearing officer.

7 The Houghton Ranches maps and the Declaration of Protective Covenants, Houghton
8 Ranches does not support any contention that the subject cabin is not a nuisance.

9 The letter from Penn Valley Fire Protection District Fire Chief Don Wagner is persuasive
10 for the finding that the Fire District is unable to provide fire, life safety or rescue protection
11 services in an adequate and timely fashion to the structure, which is identified as a habitable
12 building.

13 The letter from S.R. Burzynski, M.D. in which Dr. Burzynski states that Mr. Charles W.
14 Frank was advised to avoid exposure to fire smoke is not relevant.

15 The letter from attorney Mark Alcorn, submitted by Mr. Frank following the hearing,
16 does not assist in addressing the subject issue.

17 Mr. Frank's presentation regarding Nevada County variance procedure is not relevant.
18 Mr. Frank had formally applied for an amended map and management plans and had been
19 denied. He elected not to appeal. The issue of variance procedure is not before the hearing
20 officer.

21 The letter in support of Mr. and Mrs. Frank signed by six people (apparently multiple
22 copies of the same letter signed by different individuals) is not persuasive. This letter references
23 the 9th Circuit federal appellate court case of *Crown Point Dev. Inc. v. City of Sun Valley*, 506 F.
24 3d 851 (9th Cir. 2007). The reference to this case does not assist in determining the issue of
25 whether the subject unpermitted cabin constitutes a nuisance. The facts of the matter at hand are
26 easily distinguished from the cited case. *Crown Point* involves an allegation by a developer that
27 a city's actions in denying a permit for a fourth phase of residential development was so

1 irrational that it violated fundamental due process of law guaranteed by the 14th Amendment; "...
2 nor shall any state deprive any person of life, liberty or property without due process of law."

3 The case at bar presents a vastly different situation. Mr. and Mrs. Frank essentially
4 became owner of a parcel of real property, the vast majority of which was already designated "no
5 build". When Mr. and Mrs. Frank obtained this parcel, they did not acquire a right to build in
6 the "no build" zone. The county's actions seeking removal of the subject cabin are not intended
7 to deprive Mr. and Mrs. Frank of any property rights. Rather, as presented by the county, the
8 designation of "no build" is rationally related to fire, health and safety issues, as is the
9 requirement of obtaining permits. The Franks acquired in 2002 a parcel which did not allow
10 them to build in certain areas. Thus, the county's actions cannot deprive the Franks of that
11 which they do not possess and which they did not acquire: the right to build in the "no build"
12 area.

13 **7. Evidence Presented Regarding Abatement**

14 The letter from Jim Maushak of True Log Homes is not persuasive. The possibility that
15 the unpermitted cabin might be required to be removed should have been considered before it
16 was constructed.

17 The letter from Steve Montgomery of N.D. Montgomery Contractors, Inc. is persuasive
18 in suggesting that an attempt to move the cabin would cause significant environmental damage.
19 The letter is also persuasive regarding the need to consider the carbon footprint. However, the
20 letter is not persuasive in suggesting the cabin should remain. This hearing officer considers the
21 potential outrage caused by an order demolishing the cabin to be outweighed by the outrage
22 caused by the property owners' wanton disregard of the law in construction of the unpermitted
23 cabin and septic system.

24 **8. Public Testimony**

25 The testimony of Edward Navickis regarding his experience is not relevant and not
26 persuasive. Mr. Navickis' statement that the structure be reconsidered as an outbuilding is
27 appreciated but not relevant to the nuisance issue before the hearing officer.

1 The testimony of Calvin Clark is not supportive of the Frank's as to the issue before the
2 hearing officer.

3 The testimony of Kathryn Frank does not provide additional evidence supportive of the
4 Frank's as to the issue before the hearing officer.

5 The testimony of Diane Brown and the letter she submitted are supportive of the county
6 in expressing as a neighbor that the location of the cabin in a "no build zone" is a health and
7 safety concern and that the rules are intended for the protection of the community. Mrs. Brown
8 is also supportive of the county by contending the subject cabin has a blighting influence on the
9 neighboring community.

10 The testimony of William Cullins is supportive of the county. Mr. Cullins is an owner of
11 property adjacent to Diane Brown, a retired fire captain with 27 years of service in Marin County
12 and a former fish and wildlife commissioner with Nevada County. Mr. Cullins identified the
13 location of the subject cabin as a Class 10 fire danger. Mr. Cullins described this as the
14 "worst of the worst" in terms of fire danger.

15 The testimony of John Tidwell is supportive of the county in indicating the other
16 neighbors respected the "no-build zone".

17 The testimony of Charles Brown in supporting the need to work with the county and in
18 expressing concern about the cabin septic system is supportive of the county. Mr. Brown is also
19 supportive of the county by contending the subject cabin has a blighting influence on the
20 neighboring community.

21 Request to Work With County to Convert Cabin to Outbuilding

22 Mr. Frank requested that he be allowed to work the Nevada County to convert the subject
23 cabin to an outbuilding. However, the issue of conversion of this structure to a structure that
24 would satisfy county requirements is not before the hearing officer. Moreover, at no time during
25 the hearing did the county indicate any interest in the request. Further, it is uncontested that the
26 location of the subject structure is in a "no build" zone and within 100 feet of a stream.

1 Regardless of the character of the unpermitted structure, it still would be in a location where any
2 structure is not permitted.

3 Findings and Conclusions

4 There is substantial evidence to support the finding and conclusion that conditions on the
5 property located at 20047 Wildwood West Drive, Penn Valley, California 95946 constitute a
6 public nuisance, pursuant to LUDC Section L-II 5.22. Said property is detrimental to the health,
7 safety and welfare of the residents of the county. Specifically the construction of the
8 unpermitted cabin in the "no build" area or zone has created a fire danger and a danger to the
9 health, safety and welfare of the residents of the county.

10 Order of Abatement

11 Based on the foregoing findings and conclusions, the following Order of Abatement is
12 hereby made:

13 The property owner is hereby ordered to abate the nuisance by removal of the subject
14 cabin in its entirety. In addition, the property owner is hereby ordered to formally abandon the
15 existing septic system for the subject cabin with a permit issued by the Nevada County
16 Environmental Health Department. Said removal and abandonment shall be completed in such a
17 manner as to minimize all detrimental environmental effects. Completion of the abatement of
18 the nuisance on the property shall be completed within 90 days from November 17, 2014.

19 The Code Compliance Division thereafter is authorized to enter the property to inspect
20 and abate any remaining violations that may exist and to take any other actions necessary to
21 correct violations and abate this nuisance on the property.

22 After such abatement is conducted, the Code Compliance Division is directed to recover
23 all costs incurred related to this matter, pursuant to code. The Code Compliance Division is
24 entitled to reimbursement of costs of its abatement actions to date in the amount of \$2,722.31,
25 plus hearing costs and such further abatement costs as may be reasonably incurred and charged
26 to the Property Owner as provided by California Government Code Section 25845.
27

1 If the total costs as described above are unpaid ten days after demand for payment is
2 made, an abatement lien may be assessed against the subject property in the same manner as
3 taxes shall be recorded, as authorized by California Government Code §25845 (c) .

4 This Decision and Order shall be deemed final and all time periods specified herein or for
5 appeal by law shall run from November 17, 2014. The parties and interested persons have ten
6 (10) days from November 17, 2014, in which to file their appeal by delivering a notice of appeal
7 to the Board of Supervisors.

8 THIS DECISION AND ORDER IS MADE THIS 14TH day of November, 2014.

9
10 By Stephen C. Baker
11 Stephen C. Baker, Hearing Officer
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Here are the reasons why I am appealing the Hearing Officer's Decision.

Charles W. Frank APN 50-400-07

One of my main objections is that the hearing officer stated in his decision that I didn't have certain supporting documents to back up my defense or those that would support my equal protection issue. I most certainly did and I even had the testimony of Edward Navickus who declared that his property which is adjacent to mine, actually fell within the same and exact zoning classification as mine and was given a variance from a "no build zone" to a "build zone." What more does a person need to do to prove that adjacent properties need to be treated fairly. Do we need an act of Congress?

Here are the rest of my concerns when it comes to why I am appealing the decision. Shown below is a list of various issues that the hearing officer sidestepped in making his many points of irrelevancy. There were other issues too but this is a sample.

1. See Steve Montgomery's letter explaining in his own words why the cabin should not be removed. This was clear and to the point.
2. See the letter from Jim Maushak of True Log Homes who has been in the log home business for nearly 40 years and see how he explains that the task of dismantling the logs as not even feasible because of how the logs were screwed together. The only way to remove it would be to burn the structure.
3. The untruths of major witnesses were not considered by the hearing officer even though this was brought to his attention. False statements were made by two major persons including CEO Haffey.
4. The issue of blight as being part of the county's nuisance argument was addressed by the hearing officer while nothing of the kind has ever existed on the property. The term in this instance is used broadly which routinely includes any number of undesirable possibilities. True blight may include an unsafe structure, illegal dumping, true evidence of pollution, contamination, and/or hazardous waste that may affect the community and the vicinity or also be a "direct threat" to the health, safety, and welfare of the people. There is no direct threat and nothing of the kind has ever been shown to be true. The county relies on the word "potential" in every case when anything is possible on any property no matter what the zoning. There is no evidence or proof of contamination and no samples have ever been taken by the county because there are none to be found. The only sample that would show any probable evidence of blight, by Nevada County's definition, would be the pollution that enters Squirrel Creek which regularly comes down from the sewage treatment facility in Penn Valley near Gateway Park. Consequently, that sewage will eventually be rerouted to the sewage treatment facility which was built for Lake Wildwood residents.
5. There was an obvious bias by the hearing officer while he fully sided while leaning towards the county while fairness and equal protections with regard to similar properties in the same vicinity were purposely disregarded. It is the same tactic that planning has used all along. Those four properties which are along the creek and near or next to my property are documented as having major variances to conform, while at the same time they were also given finals by the building department. The equal protection issue is now a prominent argument with regard my property which was never addressed by the hearing officer.

NOV 17 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

BEFORE THE HEARING OFFICER OF THE COUNTY OF NEVADA
STATE OF CALIFORNIA

In the Matter of the Abatement Order)
Dated July 9, 2014 to Property Owner Charles) **FINAL DECISION AND ORDER OF**
And Kathryn Frank, Affecting Property) **HEARING OFFICER**
Located at 20047 Wildwood West Drive, Penn)
Valley, California, APN 50-400-07.)

The above-captioned matter came on for hearing before Hearing Officer Stephen C. Baker (hereinafter "HO") on October 16, 2014 at 2:00 p.m. in the chamber of the Nevada County Board of Supervisors, County Administration Center, 950 Main Ave., Nevada City, CA 95959. The parties were advised by the hearing officer of their rights and the procedures to be followed. Witnesses were sworn.

An Abatement Order detailing code violations was issued by Steven L. DeCamp, Director of the Community Development Agency on July 10, 2014 concerning property located at 20047 Wildwood West Drive, Penn Valley, California 95946. Notice to Abate Nuisance pursuant to Land Use & Development Code Section L-11 5.22 of the County of Nevada was served by certified mail on July 11, 2014 on property owners. The notice was also later posted on or about August 20, 2014 and this hearing was scheduled.

An opening statement was made by the property owner. A response to the opening statement was made by the county. Testimony and documentary evidence were received from the Code Compliance Officers. Testimony and documentary evidence were received from the property owners. Testimony was also received from interested parties. All witnesses were sworn. The hearing was recorded electronically.

1 At the outset of the hearing, Attorney Glen Shea, representing the property owners,
2 requested a continuance of the hearing so that the parties could look for a cost effective solution.
3 Attorney Sheri Chapman for the county objected to the continuance on the grounds that the
4 request is untimely. The request for continuance was denied, though the parties were encouraged
5 to discuss resolution in the 30 days prior to issuance of a decision.

6 Following the presentation of testimony and evidence, the hearing was then deemed
7 closed effective October 16, 2014 at 5:00 p.m.

8 As explained in more detail below, the hearing officer has determined that a public
9 nuisance exists on the subject property, and that the Code Compliance Division of Nevada
10 County may properly under law abate said nuisance, in each and all of its elements.

11 **Issue: Whether the Determination of the Existence of Public Nuisance Conforms to Law**
12 **and Is Supported By Substantial Evidence**

13 Section L-II 5.22 of the Nevada County Code provides that the purpose of this Section of
14 the Nevada County Codes is to establish an administrative procedure to remove conditions of
15 property hereinafter described and declared to be public nuisances which have a blighting
16 influence on properties in the vicinity and or are detrimental to the health, safety and welfare of
17 the residents of the County. This Section further provides that the hearing officer shall review
18 the Community Development Director's determination ordering cessation of the alleged public
19 nuisance to determine whether such decision conforms to law and is supported by substantial
20 evidence.
21

22 **Definition of Public Nuisance**

23 Section L-II 5.22 of the Nevada County Code declares, in pertinent part, the following
24 conditions to be a public nuisance:

- 25 1. Any nuisance heretofore or hereafter defined as a nuisance by any ordinance of the
26 County of Nevada, Section of the Nevada County Code, Section of any adopted
27 uniform code, resolution of the Board of Supervisors, or statutes of California.

2. Any condition of property which would materially hamper and interfere with the prevention or suppression of fire upon the premises or which may be detrimental to the health, safety and welfare of persons in the vicinity.

The purpose of Section L-II 5.22 is to establish an administrative procedure to remove conditions of property described and declared to be a public nuisance which have a blighting influence on properties in the vicinity and or are detrimental to the health, safety and welfare of the residents of the County.

Discussion of Facts

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Charles W. and Katherine C. Frank have been the owners of the parcel in question since at 2002. The parcel in question is 36.64 acres and is zoned Ag-X. The subdivision map of the Houghton Ranches, recorded in 1979 according to county Planning Director Brian Foss, identifies on the subject property, Lot 27, a 100 foot setback along Squirrel Creek, a "no building area" and, in the northeast corner of the property, a "potential building area". The "no building area" appears to encompass the majority of the property, except for the referenced "potential building area." A copy of the subdivision map is included in evidence presented by the owner. The map was approved by the county in 1979.

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14 exists on Mr. Frank's property by virtue of his having constructed an unpermitted cabin and
15 septic system in a no build area within 100 feet of a creek. Real property is unique. What may
16 have been found to be appropriate by the county on one parcel does not mean that the same facts
17 apply to another parcel.

18 The topographical map prepared by licensed land surveyor Stephen Hein and presented
19 by Mr. Frank as exhibit C depicts the subject cabin as partially on land with a slope in excess of
20 30% and, according to the map's own scale (1" = 10'), depicts the subject cabin as being within
21 less than 90 feet from the high water mark of the stream.

22 Property owner Kathryn Frank testified that the cabin is not within a flood plain of the
23 creek. However, no credible documentary evidence was presented to support this allegation.
24 the map purportedly depicting a floodplain, submitted by Mr. Frank following the hearing, does
25 not assist in addressing the subject issue. Most significantly, whether the cabin is or is not in a
26 flood plain is not why abatement is being sought by the county.

1 The Management Plan or Construction Within Steep Slopes Greater Than 30 Percent,
2 prepared by Tina Costella, may have been pertinent to the property owners' application for
3 management plan and amendment. It does not substantially support any contention that the
4 subject cabin is not a nuisance.

5 The U.S. Fish & Wildlife Service report regarding federal endangered and threatened
6 species is not relevant to the issue before the hearing officer.

7 The Houghton Ranches maps and the Declaration of Protective Covenants, Houghton
8 Ranches does not support any contention that the subject cabin is not a nuisance.

9 The letter from Penn Valley Fire Protection District Fire Chief Don Wagner is persuasive
10 for the finding that the Fire District is unable to provide fire, life safety or rescue protection
11 services in an adequate and timely fashion to the structure, which is identified as a habitable
12 building.

13 The letter from S.R. Burzynski, M.D. in which Dr. Burzynski states that Mr. Charles W.
14 Frank was advised to avoid exposure to fire smoke is not relevant.

15 The letter from attorney Mark Alcorn, submitted by Mr. Frank following the hearing,
16 does not assist in addressing the subject issue.

17 Mr. Frank's presentation regarding Nevada County variance procedure is not relevant.
18 Mr. Frank had formally applied for an amended map and management plans and had been
19 denied. He elected not to appeal. The issue of variance procedure is not before the hearing
20 officer.

21 The letter in support of Mr. and Mrs. Frank signed by six people (apparently multiple
22 copies of the same letter signed by different individuals) is not persuasive. This letter references
23 the 9th Circuit federal appellate court case of *Crown Point Dev. Inc. v. City of Sun Valley*, 506 F.
24 3d 851 (9th Cir. 2007). The reference to this case does not assist in determining the issue of
25 whether the subject unpermitted cabin constitutes a nuisance. The facts of the matter at hand are
26 easily distinguished from the cited case. *Crown Point* involves an allegation by a developer that
27 a city's actions in denying a permit for a fourth phase of residential development was so

1 irrational that it violated fundamental due process of law guaranteed by the 14th Amendment; "...
2 nor shall any state deprive any person of life, liberty or property without due process of law."

3 The case at bar presents a vastly different situation. Mr. and Mrs. Frank essentially
4 became owner of a parcel of real property, the vast majority of which was already designated "no
5 build" When Mr. and Mrs. Frank obtained this parcel, they did not acquire a right to build in
6 the "no build" zone. The county's actions seeking removal of the subject cabin are not intended
7 to deprive Mr. and Mrs. Frank of any property rights. Rather, as presented by the county, the
8 designation of "no build" is rationally related to fire, health and safety issues, as is the
9 requirement of obtaining permits. The Franks acquired in 2002 a parcel which did not allow
10 them to build in certain areas. Thus, the county's actions cannot deprive the Franks of that
11 which they do not possess and which they did not acquire: the right to build in the "no build"
12 area.

13 **7. Evidence Presented Regarding Abatement**

14 The letter from Jim Maushak of True Log Homes is not persuasive. The possibility that
15 the unpermitted cabin might be required to be removed should have been considered before it
16 was constructed.

17 The letter from Steve Montgomery of N.D. Montgomery Contractors, Inc. is persuasive
18 in suggesting that an attempt to move the cabin would cause significant environmental damage.
19 The letter is also persuasive regarding the need to consider the carbon footprint. However, the
20 letter is not persuasive in suggesting the cabin should remain. This hearing officer considers the
21 potential outrage caused by an order demolishing the cabin to be outweighed by the outrage
22 caused by the property owners' wanton disregard of the law in construction of the unpermitted
23 cabin and septic system.

24 **8. Public Testimony**

25 The testimony of Edward Navickis regarding his experience is not relevant and not
26 persuasive. Mr. Navickis' statement that the structure be reconsidered as an outbuilding is
27 appreciated but not relevant to the nuisance issue before the hearing officer.

1 The testimony of Calvin Clark is not supportive of the Frank's as to the issue before the
2 hearing officer.

3 The testimony of Kathryn Frank does not provide additional evidence supportive of the
4 Frank's as to the issue before the hearing officer.

5 The testimony of Diane Brown and the letter she submitted are supportive of the county
6 in expressing as a neighbor that the location of the cabin in a "no build zone" is a health and
7 safety concern and that the rules are intended for the protection of the community. Mrs. Brown
8 is also supportive of the county by contending the subject cabin has a blighting influence on the
9 neighboring community.

10 The testimony of William Cullins is supportive of the county. Mr. Cullins is an owner of
11 property adjacent to Diane Brown, a retired fire captain with 27 years of service in Marin County
12 and a former fish and wildlife commissioner with Nevada County. Mr. Cullins identified the
13 location of the subject cabin as a Class 10 fire danger. Mr. Cullins described this as the
14 "worst of the worst" in terms of fire danger.

15 The testimony of John Tidwell is supportive of the county in indicating the other
16 neighbors respected the "no-build zone".

17 The testimony of Charles Brown in supporting the need to work with the county and in
18 expressing concern about the cabin septic system is supportive of the county. Mr. Brown is also
19 supportive of the county by contending the subject cabin has a blighting influence on the
20 neighboring community.

21 **Request to Work With County to Convert Cabin to Outbuilding**

22 Mr. Frank requested that he be allowed to work the Nevada County to convert the subject
23 cabin to an outbuilding. However, the issue of conversion of this structure to a structure that
24 would satisfy county requirements is not before the hearing officer. Moreover, at no time during
25 the hearing did the county indicate any interest in the request. Further, it is uncontested that the
26 location of the subject structure is in a "no build" zone and within 100 feet of a stream.

1 Regardless of the character of the unpermitted structure, it still would be in a location where any
2 structure is not permitted.

3 Findings and Conclusions

4 There is substantial evidence to support the finding and conclusion that conditions on the
5 property located at 20047 Wildwood West Drive, Penn Valley, California 95946 constitute a
6 public nuisance, pursuant to LUDC Section L-II 5.22. Said property is detrimental to the health,
7 safety and welfare of the residents of the county. Specifically the construction of the
8 unpermitted cabin in the "no build" area or zone has created a fire danger and a danger to the
9 health, safety and welfare of the residents of the county.

10 Order of Abatement

11 Based on the foregoing findings and conclusions, the following Order of Abatement is
12 hereby made:

13 The property owner is hereby ordered to abate the nuisance by removal of the subject
14 cabin in its entirety. In addition, the property owner is hereby ordered to formally abandon the
15 existing septic system for the subject cabin with a permit issued by the Nevada County
16 Environmental Health Department. Said removal and abandonment shall be completed in such a
17 manner as to minimize all detrimental environmental effects. Completion of the abatement of
18 the nuisance on the property shall be completed within 90 days from November 17, 2014.

19 The Code Compliance Division thereafter is authorized to enter the property to inspect
20 and abate any remaining violations that may exist and to take any other actions necessary to
21 correct violations and abate this nuisance on the property.

22 After such abatement is conducted, the Code Compliance Division is directed to recover
23 all costs incurred related to this matter, pursuant to code. The Code Compliance Division is
24 entitled to reimbursement of costs of its abatement actions to date in the amount of \$2,722.31,
25 plus hearing costs and such further abatement costs as may be reasonably incurred and charged
26 to the Property Owner as provided by California Government Code Section 25845.
27

1 If the total costs as described above are unpaid ten days after demand for payment is
2 made, an abatement lien may be assessed against the subject property in the same manner as
3 taxes shall be recorded, as authorized by California Government Code §25845 (c) .

4 This Decision and Order shall be deemed final and all time periods specified herein or for
5 appeal by law shall run from November 17, 2014. The parties and interested persons have ten
6 (10) days from November 17, 2014, in which to file their appeal by delivering a notice of appeal
7 to the Board of Supervisors.

8 THIS DECISION AND ORDER IS MADE THIS 14TH day of November, 2014.

9
10 By Stephen C. Baker

11 Stephen C. Baker, Hearing Officer
12
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27

CERTIFICATE OF MAILING

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the Abatement Order; my business address is: Clerk of the Board of Supervisors, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California 95959-8617.

I served the enclosed documents:

Final Decision and Order of Hearing Officer

On the following persons via First Class US Mail on November 17, 2014:

Charles and Kathryn Frank, 20047 Wildwood West Drive, Penn Valley CA 95946

I placed such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of Nevada County for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing.

On the following persons via email on November 18, 2014:

Nevada County Code Compliance Program Manager Gregory Shaffer
Nevada County Code Compliance Officer Nicholas Hockstra
Nevada County Counsel Scott McLeran
Nevada County Counsel Katy Jacobs
Nevada County Planning Director Brian Foss
Nevada County Building Official Craig Griesbach
Nevada County Clerk of the Board Donna Landi

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

11-17-14
Date

Barbara Price
Barbara Price

7009 3410 0001 7811 7474

U.S. Postal Service
CERTIFIED MAIL - RECEIPT
 (Domestic Mail Only. Postage and Fees Required)
 PSN 9596 Wildwood West Drive, Penn Valley, CA 95946

308

Postage & Fees

Certified Fee

Return Receipt Fee
 (Endorsement Required)

Restricted Delivery Fee
 (Endorsement Required)

Total Postage & Fees **6.98**

Send to
 Street, Apt. R
 or PO Box No.
 City, State, ZIP

**CHARLES AND KATHRYN FRANK
 20047 WILDWOOD WEST DRIVE
 PENN VALLEY CA 95946**

SENDER: COMPLETE THIS SECTION

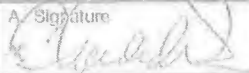
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**CHARLES AND KATHRYN FRANK
 20047 WILDWOOD WEST DRIVE
 PENN VALLEY CA 95946**

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature  ☐ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7009 3410 0001 7811 7474

Barbara Price

From: Barbara Price
Sent: Tuesday, November 18, 2014 9:36 AM
To: Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Brian Foss; Craig Griesbach; Donna Landi
Subject: Final Decision and Order of Hearing Officer
Attachments: Decision - Frank.pdf

Decision from the Hearing on October 16, 2014 is attached for your information.

Barbara Price

Board Clerk II
Nevada County Board of Supervisors
950 Maidu Avenue, Ste. 200
Nevada City, CA 95959
(530) 265-1480

Donna Landi

From: Donna Landi
Sent: Tuesday, November 18, 2014 2:53 PM
To: Sheri Chapman; Glen Shea (gshea@gshealaw.com)
Subject: FW: Final Decision and Order of Hearing Officer
Attachments: Decision - Frank.pdf

Decision from the hearing on October 16, 2014 is attached for your information.

Donna Landi

Clerk of the Board
County of Nevada

950 Maidu Avenue, Suite 200

Nevada City, CA 95959

Office: 530.265.1480 Fax: 530.265.9836

Website: <http://www.nynevadacounty.com/nc/bos/coh>

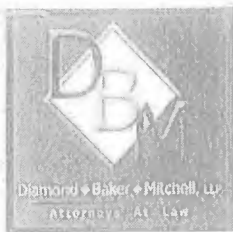


From: Barbara Price
Sent: Tuesday, November 18, 2014 9:36 AM
To: Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Brian Foss; Craig Griesbach; Donna Landi
Subject: Final Decision and Order of Hearing Officer

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Barbara Price

Board Clerk II
Nevada County Board of Supervisors
950 Maidu Avenue, Ste. 200
Nevada City, CA 95959
(530) 265-1480



Kelly McKinley
Paralegal

Kelly@DiamondBaker.com

November 14, 2014

RECEIVED

NOV 17 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

Donna Landi
Clerk of the Board
950 Maidu Avenue, Suite 200
Nevada City, Ca 95959

Re: Abatement Order Dated July 9, 2014

Dear Ms. Landi,

Enclosed please find Mr. Baker's Final Decision and Order of hearing Officer in regard to the above matter.

Should you have any questions or concerns regarding the enclosed, please feel free to contact us.

Thanks.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Kelly McKinley', is written over a horizontal line.

Kelly McKinley, Paralegal to
Craig A. Diamond

/kam
Enclosure



149 Crown Point Court, Suite B
GRASS VALLEY, CA 95945

Forwarding and Address Correction Requested

\$0.90
US POSTAGE
FIRST-CLASS
952S0006087122
95945



RECEIVED

SEP 17 2014

CLERK OF THE BOARD
COUNTY OF CLATSOP

Donna Landi
Clerk of the Board
950 Maidu Avenue, Suite 200
Nevada City, Ca 95959

Barbara Price

From: Barbara Price
Sent: Monday, November 17, 2014 2:42 PM
To: Scott McLeran
Subject: RE: Frankd Decision

Yes, he left his card with me.

Glen Shea
(916) 782-5500
gshea@gshealaw.com
2390 Professional Drive
Roseville 95661

From: Scott McLeran
Sent: Monday, November 17, 2014 2:40 PM
To: Barbara Price
Subject: Frankd Decision

Barbara,

I didn't get the full name of Mr. Frank's attorney, Which I believe is stated in the decision. Would you mind finding his name for me? Thanks.

Scott A. McLeran
Deputy County Counsel

This communication is intended solely for the use & benefit of the intended addressee(s). It may contain privileged and/or confidential information. If this message is received in error by anyone other than the intended recipient(s), please delete this communication from all records and advise the sender via electronic mail of your receipt and deletion of this communication.

LAW OFFICES OF GLEN C. SHEA
REAL ESTATE AND BUSINESS
TRANSACTIONS AND LITIGATION

GLEN C. SHEA
ATTORNEY AT LAW

2390 Professional Drive
Roseville, California 95661

(916) 782-5500
gshea@gshealaw.com

COUNTY OF NEVADA
STATE OF CALIFORNIA
BOARD OF SUPERVISORS



Chair Nathan H. Benson, 1st District
Vice Chair Ed Scofield, 2nd District
Terry Lamphier, 3rd District
Wm. "Hank" Weston, 4th District
Richard Anderson, 5th District
Donna Landi, Clerk of the Board

October 21, 2014

Stephen Baker, Esq.
Diamond Baker Mitchell, LLP
149 Crown Point Court
Suite B
Grass Valley CA 95945

Re: Nuisance Abatement Hearing of October 16, 2014

Mr. Baker:

Enclosed is the CD containing the audio recording of the referenced hearing. Please call if you have any questions or need any further information regarding the hearing. Thank you.

Barbara Price
Deputy Clerk

Cc: County Counsel

950 Maidu Avenue, Suite 200, Nevada City CA 95959-8617
phone: 530.265.1480 | fax: 530.265.9836 | toll free: 888.785.1480 | email: bdofsupervisors@co.nevada.ca.us
website: <http://www.mynevadacounty.com/nc/bos>

RECEIVED

OCT 21 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

This is my request for an
audio recording of the
hearing that took place on
Oct 16th 2014 @ 2:00 P.m. -

Chuck Frank

Phone 432-3619

OFFICIAL RECEIPT
COUNTY of NEVADA

608491

RECEIVED
FROM

DATE

20

ADDRESS

DOLLARS \$

FOR

AMOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	
AMT PAID		CHECK	
BALANCE DUE		MONEY ORDER	
		ETC	

DEPARTMENT

BY

Barbara Price

From: Scott McLeran
Sent: Tuesday, October 14, 2014 5:06 PM
To: Donna Landi; Barbara Price
Subject: FW: [CanonSend] - Attached Image
Attachments: 3999_001.pdf

FYI.

Scott A. McLeran
Deputy County Counsel

This communication is intended solely for the use & benefit of the intended addressee(s). It may contain privileged and/or confidential information. If this message is received in error by anyone other than the intended recipient(s), please delete this communication from all records and advise the sender via electronic mail of your receipt and deletion of this communication.

From: Scott McLeran
Sent: Tuesday, September 30, 2014 11:09 AM
To: 'gateway@saber.net'
Subject: FW: [CanonSend] - Attached Image

Chuck,

Per your request, please see the attached notice.

Scott A. McLeran
Deputy County Counsel

This communication is intended solely for the use & benefit of the intended addressee(s). It may contain privileged and/or confidential information. If this message is received in error by anyone other than the intended recipient(s), please delete this communication from all records and advise the sender via electronic mail of your receipt and deletion of this communication.

From: Barbara Price
Sent: Tuesday, September 30, 2014 10:06 AM
To: Scott McLeran
Subject: FW: [CanonSend] - Attached Image

From: Barbara Price [<mailto:Barbara.Price@co.nevada.ca.us>]
Sent: Tuesday, September 30, 2014 10:06 AM
To: Barbara Price
Subject: [CanonSend] - Attached Image

Barbara Price

Subject: FW: PLEASE REPLY ASAP - Setting Charles Frank's nuisance abatement hearing date -
Thur. 10/16/14 - 2 p.m.

Start: Thu 10/16/2014 2:00 PM

End: Thu 10/16/2014 5:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Gregory Shaffer

Please check to see if the Chambers is available. Also, check to see if Julie or Lelia are available. Thanks.

-----Original Appointment-----

From: Gregory Shaffer

Sent: Monday, September 15, 2014 9:00 AM

To: Gregory Shaffer; Nick Hoekstra; Craig Griesbach; Brian Foss; Katy Jacobs; Donna Landi

Subject: PLEASE REPLY ASAP - Setting Charles Frank's nuisance abatement hearing date - Thur. 10/16/14 - 2 p.m.

When: Thursday, October 16, 2014 2:00 PM-5:00 PM (UTC-08:00) Pacific Time (US & Canada).

Where:

PLEASE REPLY ASAP - Setting Charles Frank's nuisance abatement hearing date - Thur. 10/16/14 - 2 p.m.

9/15/14

All:

We are in the process of setting a date for the nuisance abatement hearing for Charles Frank.

The first step is to see when required County staff and the BOS chambers are available and then to keep our finger crossed and hope that the hearing officer, Steve Baker, is available.

Steve and I have talked and agree the given the history and nature of this case that it is important that Katy Jacobs - County Counsel, Brian Foss - Planning Director and Craig Griesbach - Building Official, are able to attend.

Attending from the County will be:

Gregory Shaffer - Code Compliance Program Manager

Nick Hoekstra - Assigned Code Compliance Officer

Katy Jacobs - County Counsel

Brian Foss - Planning Director

Craig Griesbach - Building Official

Clerk - Clerk of the Boards Office

Starting with the week of October 13th, it looks like:

Thursday, October 16, 2014 at 2 p.m. is one of the few times we are all available.

Please confirm you are available and I'll give Donna the okay to move forward at her end in scheduling a clerk and the Board chambers as well as the hearing officer.

Thanks,

Gregory

P.S. If you are not available your calendar showed that you were. Please update your calendar and I'll locate another date.

COUNTY OF NEVADA
ABATEMENT ORDER OF July 9, 2014
AS TO THE PROPERTY LOCATED AT
20047 WILDWOOD WEST DRIVE, PENN VALLEY, CA.

TO: Charles and Kathryn Frank
20047 Wildwood West Drive
Penn Valley CA 95946

FROM: Steven L. DeCamp, Director
Community Development Agency ("CDA") of the County of Nevada

PLEASE BE ADVISED: PURSUANT TO the authority vested in me by Section L-II 5.22 of the Land Use and Development Code of Nevada County (copy attached), I DO HEREBY DETERMINE that a public nuisance exists at the property identified above, which is Assessor Parcel No. 50-400-07, ("the Property"). This determination is based the attached Report of Inspection ("ROI") dated July 8, 2014, provided to me by Code Compliance Officer Nick Hoekstra and after review and approval of the Program Manager of the Code Compliance Division of CDA.

My determination of public nuisances is intended to authorize the Code Compliance Division to proceed with a nuisance abatement proceeding as described in Section L-II 5.22. This proceeding will protect your rights while the County seeks authorization for its employees, officers, and agents to enter the Property and conduct the necessary abatement activities under lawful authority.

Abatement activities include, but are not limited to, clean-up, repair, securing of structures against unlawful use, demolition, removal of solid waste, and other actions reasonably necessary to correct violations and abate nuisances on the Property. The total cost incurred by the County for these activities will be imposed upon you as an abatement charge. If the charge is unpaid, it may become a lien on the Property and/or an assessment on the tax bill for the Property. The total cost imposed may also include the County's administrative and legal costs from July 9, 2014, through to completion of abatement.

After thirty or more days, the Code Compliance Division will send you (as the responsible parties) a Notice of Abatement, which will also be posted on or near the Property. This Notice will show the time and date for the administrative hearing at which the County will seek authority to enter and conduct abatement. You may contact the Code Compliance Division (see letterhead on the ROI) if you have any questions, suggestions, or preferred hearing dates.

Dated: July 10, 2014


Steven L. DeCamp, Director of CDA



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY**

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9854 <http://www.mynevadacounty.com>

Planning Department Environmental Health Building Department Sanitation Department Dept. of Public Works Agricultural Commissioner

Steven L. DeCamp, Community Development Agency Director

MEMO

TO: Steven DeCamp, Director,
Community Development Agency

FROM: Nicholas Hockstra, Code Compliance Officer
Code Compliance Division

RE: REPORT OF INSPECTION - Frank property, 20047 Wildwood West Drive, Penn
Valley, CA 95946 (APN 50-400-07)

DATE: July 8, 2014

This Report of Inspection follows a site visit by me on July 8, 2014. The purpose of the inspection was to ascertain the condition of the property as to presence or absence of violations of County-adopted Codes, which constitute a public nuisance.

This Report includes background information relative to previous inspections of this property. There have been five inspections including the most recent, completed on July 8, 2014. There has been no substantial progress toward compliance, which would require permits to be obtained or demolition of the illegal residence, (cabin).

SUMMARY:

Charles & Kathryn Frank – owners of record as joint tenants.
20047 Wildwood West Drive
Penn Valley CA
APN: 50-400-07
Acres: 36.64
Zoned: AG-X

- Current case opened August 29, 2011, stemming from a complaint alleging, unpermitted cabin and septic. The cabin was also alleged as being used for commercial purposes, as a rental cabin. The cabin was also built in an area of the property that is designated as a "No Build Zone".

- There have been five site inspections between the date the case was opened, in August of 2011, to the current date of July 8 2014.
- Property owner issued three separate Administrative Citations from August of 2013 to November of 2013.
 - Unlawful Structure – 2009 IPMC 108.1.4
 - Sewage Disposal – LUDC L-VI 1.4
- Property owner applied for a Management Plan and Map Amendment in March of 2013.
 - The Planning Commission heard the applications and subsequently denied them in June of 2013.
 - The property owner also paid for and received a Planners Consultation to find out the feasibility of getting the cabin permitted at its present location. He met with Planner Tod Herman. The property owner was told that it would be “next to impossible” to get the cabin permitted in its present location.
- Property owner brought legal action against the County of Nevada to restrain the County from enforcement of its ordinances and its employees from performing their duties, in relation to his property. This action was denied in Superior Court, County of Nevada, on January 27, 2014.
- Inspections leading to this report:
 - 09/08/11: CCO Bohnet attempted to inspect the property, was denied permission by property owners wife.
 - 09/09/11: CCO's Bohnet and Choate inspected the cabin from a neighboring property. Observed someone apparently removing plumbing from under the cabin. CCO's responded to the property and were again denied inspection by the property owner's wife.
 - 09/12/11: Property owner agreed to an inspection on this date by CCO's Bohnet and Parker. Property owner had a contractor with him at this time.
 - 11/08/11: CCO Bohnet met with the property owner, on the property, to look at a potential site to relocate the cabin. A suitable site was located, on the North/Central portion of the property.
 - 07/08/14: CCO Hoekstra and CCPM Shaffer inspected the cabin from a neighboring property. The purpose of this inspection was to confirm that the illegal cabin remains on the property and to obtain photographs showing this. Photos and CCO observations confirmed the cabin is still there.

REPORT OF CONDITIONS:

The property continues to be a public nuisance. The unpermitted cabin is still located on the property, in a designated “No Build Zone”. Mr. Frank was issued a third citation for the code violations in November of 2013. Since that time no response or progress toward compliance has been forthcoming.

VIOLATIONS NOTED:

This is not an exhaustive list of violations.

1. Unlawful Structure, 2012 International Property Maintenance Code, Section 108.1.4, (An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered, or occupied, contrary to law).
2. Sewage Disposal, County of Nevada Land Use and Development Code, Section L-VI, 1.4. (A sewage system shall be constructed, operated, and maintained in compliance with all requirements of the permit allowing its installation and operation and so as not to permit sewage to rise to the ground surface or to discharge sewage onto the ground or into the groundwater or surface water).

PHOTOGRAPHS:

I have attached 8 photographs showing the illegal cabin and septic system, on Mr. Franks property

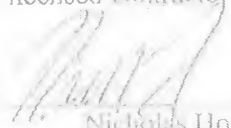
CONCLUSION:

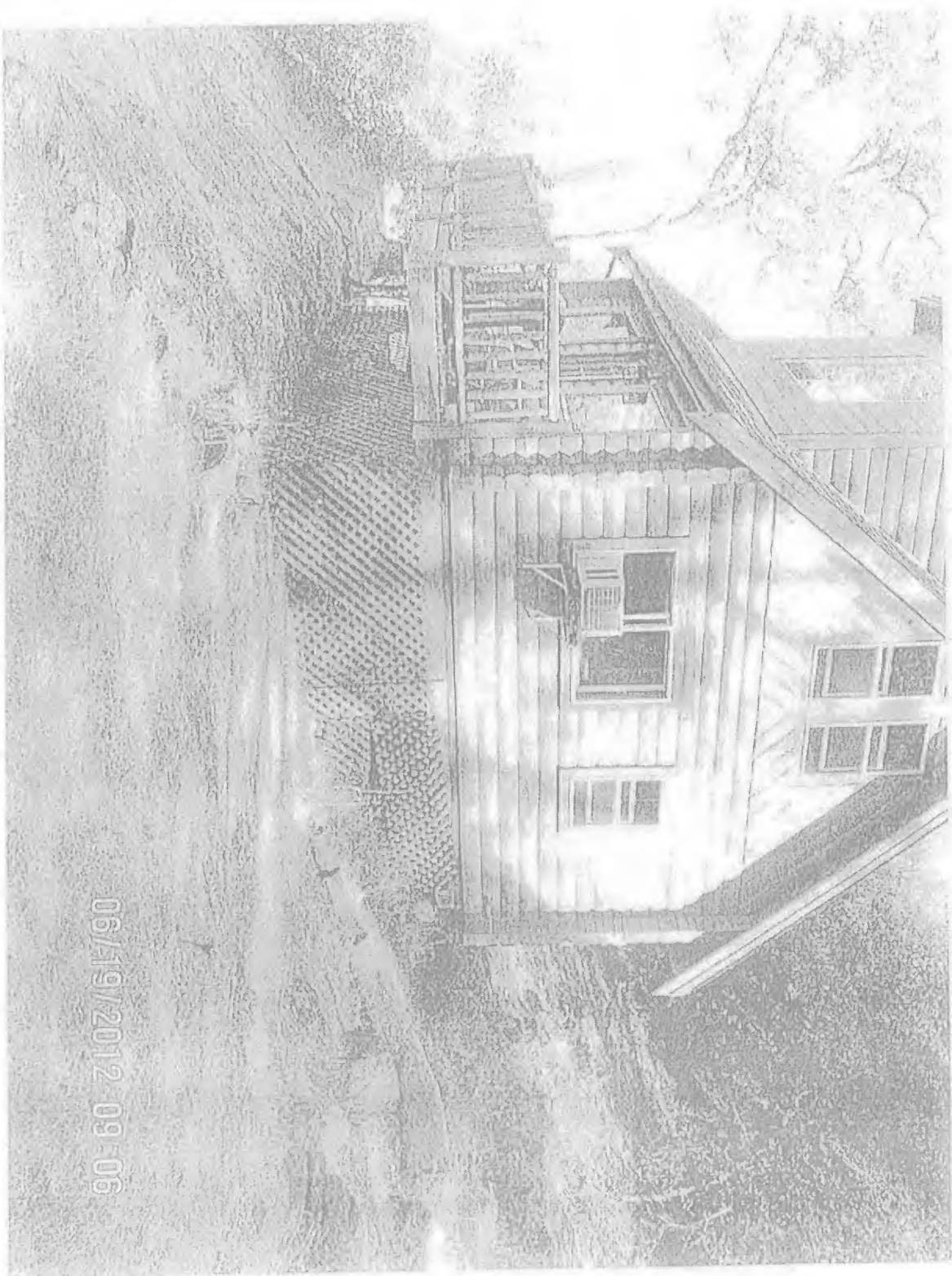
The responsible parties for this property have taken no action to correct the violations and abate the public nuisance. This code case was opened in August of 2011 and it is now July of 2014. This will be a three year period, next month, (August-2014). The cabin remains in the same location where it was originally built, by the property owners. The last verifiable conversation with Mr. Frank was in July of 2013, when he told Planning Director, Brian Foss, that he was having trouble finding a contractor to demo the cabin.

I believe that timely abatement can only be achieved by County intervention. The County should have the violations abated and charge the cost to the responsible parties. The means of abatement would be for the County to hire a licensed contractor to demo and remove the illegal structure, (cabin).

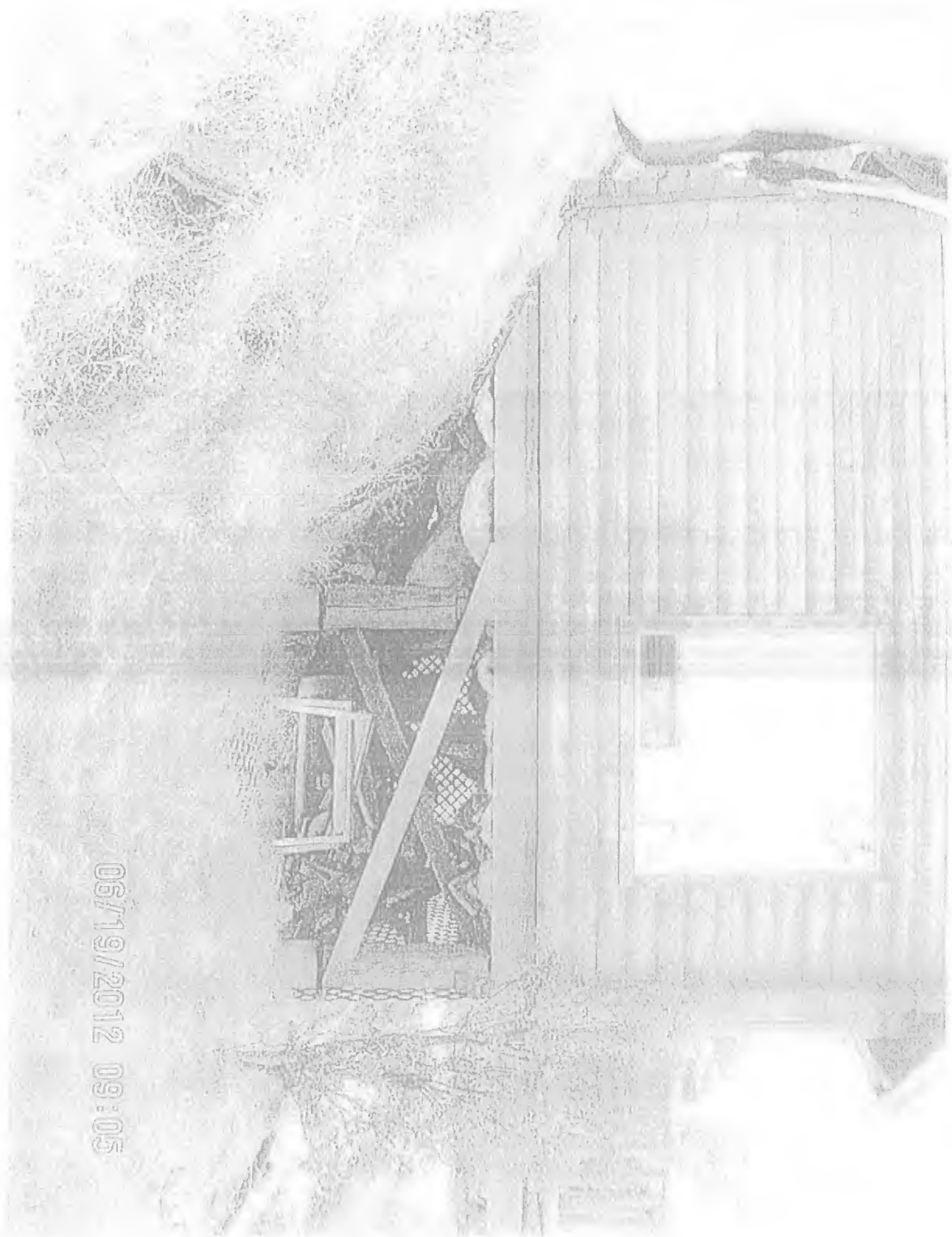
Dated: July 8, 2014

Signed:


Nicholas Hoekstra
Code Compliance Officer



06/19/2012 09:06





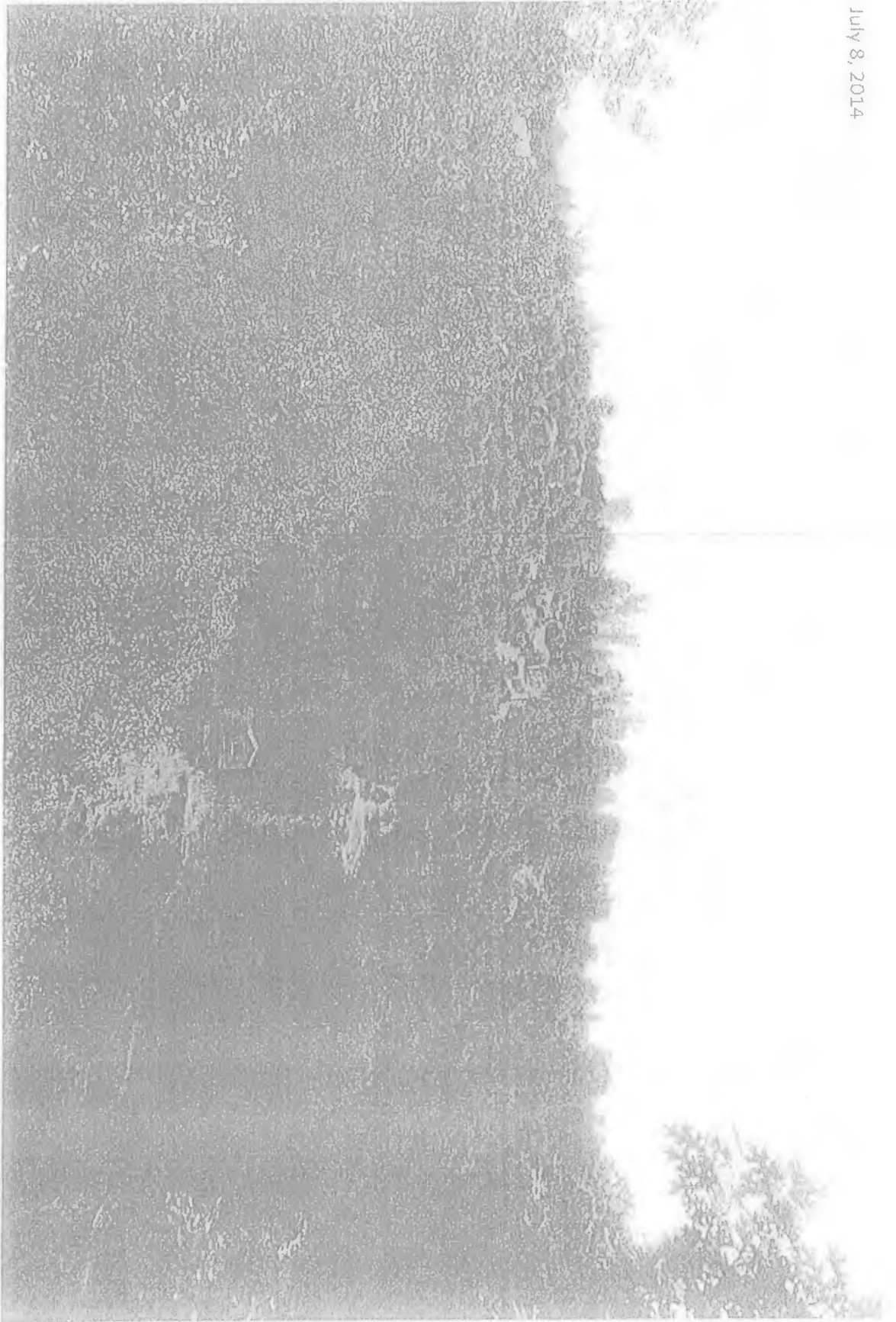


09/09/2011 09:48

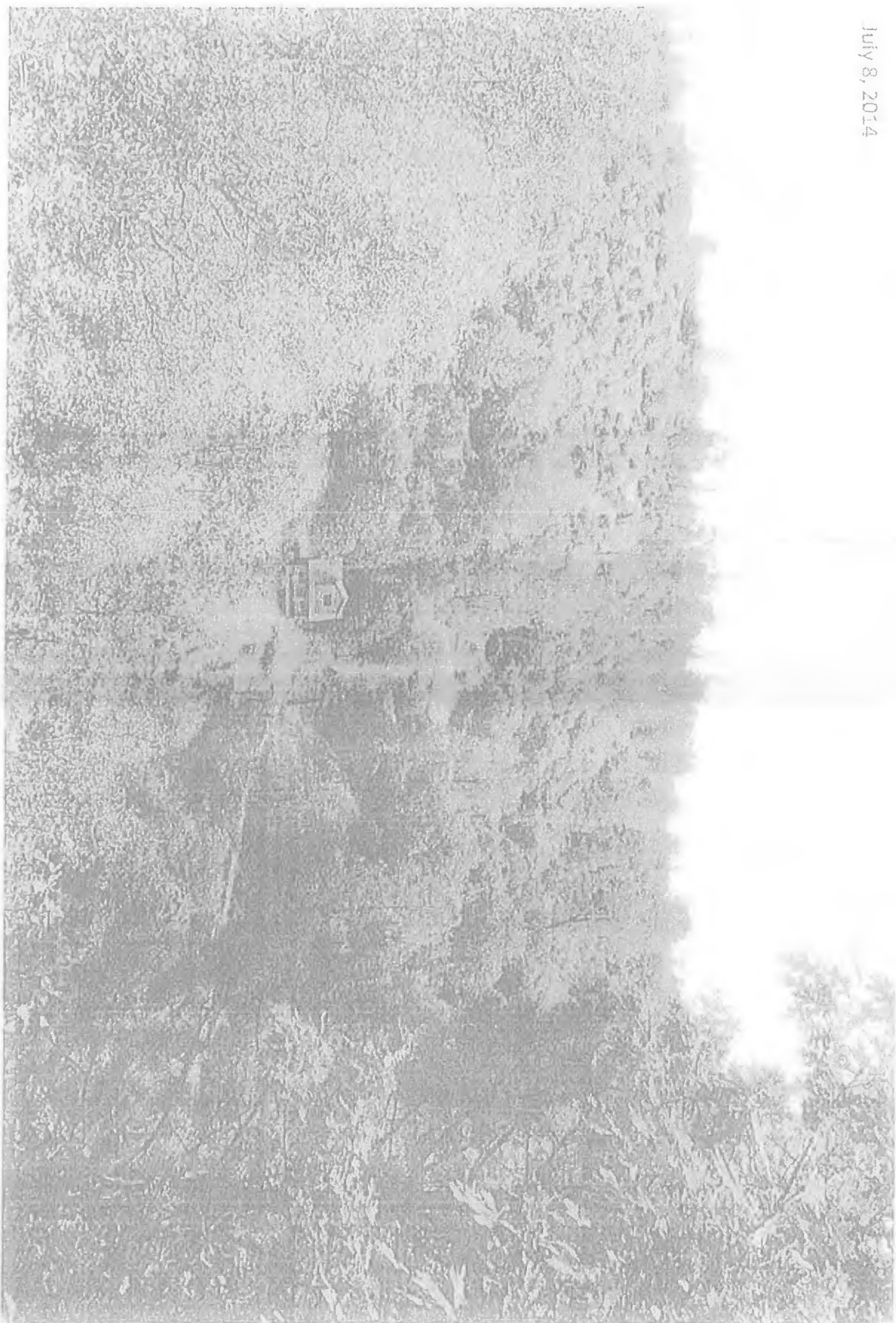




July 8, 2014



July 8, 2014



David J. Ruderman
DRuderman@chwlaw.us
(530) 798-2417

Colantuono, Highsmith & Whatley, PC
11364 Pleasant Valley Road
Penn Valley, CA 95946-9000
Main: (530) 432-7357
FAX: (530) 432-7356
WWW.CHWLAW.US

September 10, 2014

RECEIVED

SEP 11 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

U.S. MAIL

Donna Landi
Clerk of the Board
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Re: Frank Property, 20047 Wildwood West Drive, Penn Valley, CA
(APN 50-400-07)

Dear Ms. Landi:

I received a request that I recuse myself from acting as the hearing officer for the nuisance abatement hearing regarding the above-mentioned property. After reviewing the alleged bases for recusal, I find no reason to recuse myself from this matter. Nevertheless, to resolve any concern the appellant may have, I am amenable to allowing another hearing panel member assigned to serve as the hearing officer for this matter.

The appellant cites two reasons for recusal: (1) I work in a law firm that regularly represents public agencies; and (2) I live in Penn Valley.

First, that I am versed in matters related to public law in my employment by Colantuono, Highsmith & Whatley, PC does not disqualify me from acting as a hearing officer. (See *Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 790 [administrative law officer's practice of law at firm representing individual farm workers did not disqualify him from serving as hearing officer of Agricultural Labor Relations Board].) In fact, my background in the relevant area of law qualifies me to preside over nuisance abatement hearings.

Donna Landi

September 10, 2014

Page 2

Second, as a factual matter, I do not live or own property in Penn Valley. Even if I did, simply residing in Penn Valley would not result in a conflict of interest unless I owned property that was located sufficiently close to the subject property that it would have a material effect on my property. For example, the Fair Political Practices Commission's rule of thumb on material interests in property is property ownership within 500 feet from the property that is the subject of the governmental decision. (Cal. Code Regs. tit. 2, § 18705.2(a)(11).) That is not the case here.

I have found no personal or financial interest in the nuisance abatement hearing referenced above. I understand that rule 11 of the Uniform Nevada County Property Maintenance Hearing Procedures implies that I must make a decision on the request for recusal. Although, for the reasons discussed above, I would deny the request for recusal, I am amenable to having this matter transferred to another hearing panel member.

Please contact me with any questions or concerns.

Sincerely,



David J. Ruderman

DJR:AAL

c: Greg Shaffer, Code Compliance Program Manager
Steven DeCamp, Director, Community Development Agency
Jamie Hogenson, Deputy County Counsel
Scott McLeran, Deputy County Counsel
Charles and Kathryn Frank

Colantuono, Highsmith & Whatley, PC
11364 Pleasant Valley Road
Perris Valley, CA 95946-9000



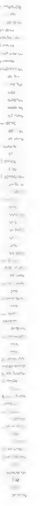
RECEIVED

SEP 11 2014

Donna Landi
Clerk of the Board
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

NEVADA COUNTY
BOARD OF SUPERVISORS

9595959595



Nevada County, Community Development Agency

Code Compliance Division

Case # CE11-090001

RECEIVED

OCT 16 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

County Exhibit

Nuisance Abatement Hearing

Thursday, October 16, 2014, 2:00pm

Board of Supervisors Office, 950 Maidu Ave, Nevada City CA

Charles & Kathryn Frank

20047 Wildwood West Drive

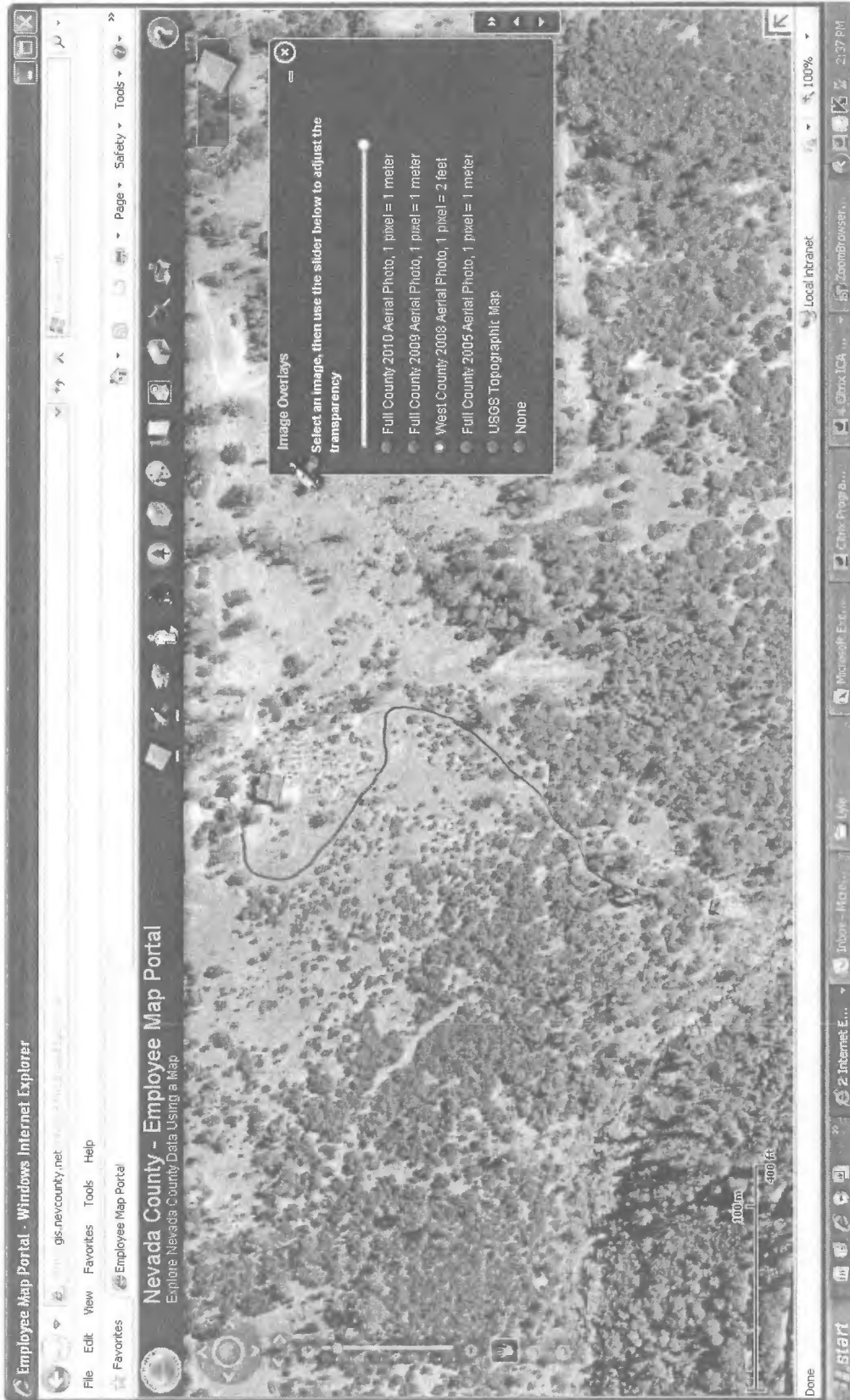
Penn Valley CA 95946

APN (50-400-07), Property Zone -- AG-X, 36.64 Acres

Table of Contents

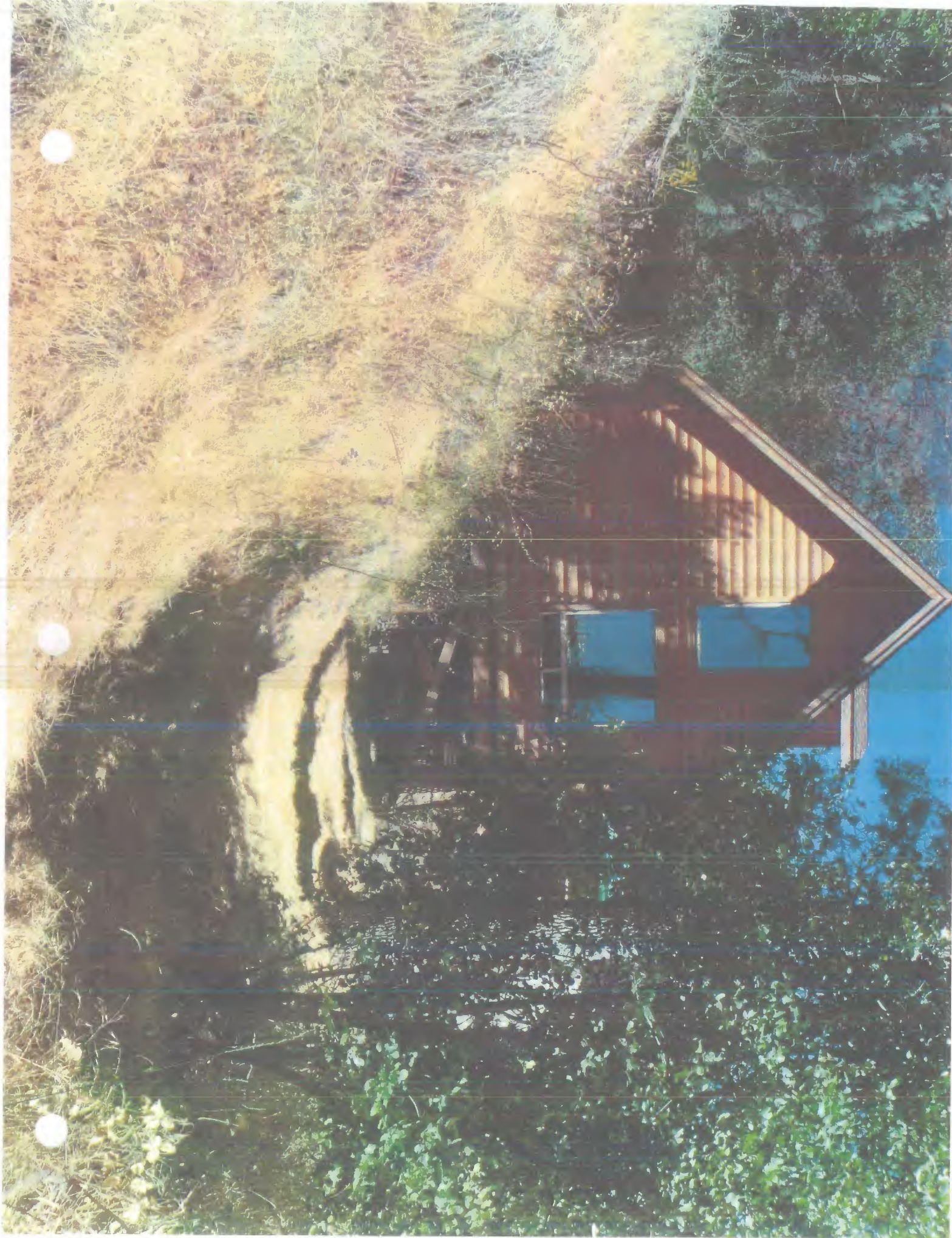
1. Maps and Photos
2. Case History
3. First Letter (Warning Notice of Code Violation)
4. Second Letter (Citation warning Notice
5. County of Nevada, Fire Marshal Letter
6. Planning Commission, Staff Report and Decision
7. Notice of Pendency
8. Superior Court of the State of California, Denial of Restraining Order
9. Abatement Order, Report of Inspection Notice, Notice to Abate Nuisance
10. Billing Statement
11. Recommendations





10/16/2014 10:14







08/19/2014 10:09





08/19/2014 10:11

Midway W.D. Penn Valley CA 95545 USA

© 2014 Google

Google e

Imagery Date: 5/2/2013 39°13'12.59" N 121°13'27.84" W elev 1194 ft eye alt

1988



20047 Wildwood W Dr, Penn Valley, CA 95946, US

© 2014 Google

Google

Imagery Date: 5/2/2013 39°13'13.47" N 121°13'31.70" W elev 1182 ft eye alt

1998

Charles Frank Case History

20047 Wildwood West Dr.
APN: (50-400-07-000)

The following case history entries are by former Code Compliance Officer Lyle Bohnet:

08/29/11 Complaint received, filed by a public citizen – Unpermitted cabin.

09/01/11 Case assigned to Code Enforcement Officer Lyle Bohnet.

09/07/11 Office research – found internet advertising for vacation rental and a YouTube video with Mr. Frank discussing the construction of the cabin.

09/08/11 First attempted inspection – Mrs. Frank home, pleasant conversation, will have husband call. Once I was back at the office I found that the YouTube video had been removed from the Internet. I contacted a neighbor to get access to view the cabin from their property the next day, access was granted.

09/09/11 Code Enforcement Officer Rob Choate and I inspected from the neighbor's property. We observed someone down at the cabin and it appeared that they were removing plumbing from underneath the cabin. We drove to the property and made contact again with Mrs. Frank. This time she was not cordial. We asked about inspecting and she denied an inspection. The denial was not real clear so we questioned her a second time to make sure that we understood her correctly. She stated very clearly that we could not inspect and went on to state that we were trespassing. At this point we left the property.

09/12/11 Mr. Frank agreed to an inspection. At the inspection were Code Enforcement Officer Shari Parker, myself, Mr. Frank and Mike Thompson of MRT Construction.

09/13/11 Mr. Frank came into office to meet with myself and Planner Larkyn Feiler. Mr. Frank alluded to the fact that he wanted us to just ignore the codes.

09/15/11 Mr. Frank was back in to meet with myself and Larkyn. He paid for a Planner Consultation so that he could find out the feasibility of getting the cabin permitted in its present location. While we were talking Mr. Frank stated that he was aware of the 'no build area' and that he had talked to the County a number of years back and was told that a second dwelling unit could not be permitted, (this was due to the dead end road standards in place at that time). He also very plainly stated that he "built the cabin anyways." A letter and Warning Notice of Code Violation were handed to Mr. Frank at the front counter. The compliance date for applying for permits was set for, 10/31/11.

10-21-11 Mr. Frank was in and had his Planner Consultation with Tod Herman. He was told it would be next to impossible to get the cabin permitted in its present location. The process to attempt to allow the cabin to remain was explained to him.

11/08/11 I met with Mr. Frank at his property, as a customer service, to look at a potential site to relocate the cabin. There is an area that would likely work in the north central portion of the property. An updated letter and a Citation Warning Notice were sent with a revised compliance timeline of December 7, 2011.

11/29/11 I received an email from Mr. Frank on 11/19/11. I was out of the office for two weeks for medical leave and after I returned I sent an email reply to Mr. Frank answering his questions and advising Mr. Frank how to proceed.

12/05/11 We received a letter from an attorney that Mr. Frank retained. In our initial response we stated that enforcement actions would be put on hold until we looked into his concerns that he raised in the letter. This started a six month exchange back and forth with the attorney. During this time there were new timelines set and there were enforcement stays put in place. Also during this time Mr. Frank had the Fire Planner out to the property and he concurred that the cabin would not be able to be permitted due to the steep slope. There was also a meeting with the attorney, County Counsel, Mr. Shaffer, Mr. Foss and me.

01/11/12 Letter was received from the Nevada County Fire Marshall to Mr. Frank stating that they were unable to support the cabin being in its current location.

06/11/12 Mr. Frank severed his contract with the attorney.

06/19/12 Brian Foss and I inspected the property with Mr. Frank.

06/27/12 After making the site inspection and reviewing the site plan that Mr. Frank had supplied, Brian Foss sent Mr. Frank a letter stating that the location could not be approved. The letter also stated that of course Mr. Frank still had the right to apply.

07/09/12 Mr. Frank replied to Brian that he understood the County's position. However he stated that he still wanted to apply for a variance.

08/03/12 I sent a letter and Citation Warning Notice with an updated timeline for compliance. That date was August 31, 2012.

08/06/12 Starting around this date Mr. Frank started working directly with Brian Foss on applying for a Management Plan and Map Amendment application. Enforcement was put on hold while Mr. Frank worked on these. He made progress but at times it was very slow progress, to the point that Brian considered having us restart enforcement timelines. During this time Mr. Frank did keep in contact with Brian and kept Brian updated on his progress.

03/26/13 Mr. Frank applied for a Management Plan and Map Amendment

06/13/13 The Planning Commission heard the applications and denied them.

07/01/13 I sent a letter and current Citation Warning Notice to Mr. Frank with and compliance date of July 31, 2013, to obtain demolition permits for the structure and illegal septic.

07/30/13 Brian spoke with Mr. Frank who stated that he was having trouble finding a contractor to do the demolition work. Brian gave him one final time extension, an additional three weeks with an expiration date of August 23, 2013.

08/02/13 I sent and updated Citation Warning Notice with August 23, 2013, as the date by which he needed to obtain the permits.

The following case history entry is by former Code Compliance Officer Rob Choate:

09/30/13 A review of the file showed that compliance has not been met as required by CEO Bohnet's last correspondence. Administrative Citation A-484 was issued for two second level counts by Code Enforcement Officer Rob Choate as Mr. Bohnet has left employment with Nevada County.

The following case history entries are by current Code Compliance Officer Nick Hoekstra:

01/07/14 Notification from Nevada County Superior Court that Mr. Franks request for a Temporary Restraining Order against the County of Nevada was denied.

07/1/14 New fiscal year, (2014-15) - I am the new Code compliance Officer assigned to this case, (Nick Hoekstra) I was advised by CCPM Shaffer to start nuisance abatement proceedings on this code case, due to non-compliance on the part of the property owner, (Charles Frank).

07/08/14 Responded to neighboring property to observe and photograph the illegal cabin on Mr. Frank's property. The cabin is still there as of this date, (7-8-14).

07/10/14 Responded to the Frank property to post copies of Abatement Order and Report of Inspection on the property. Property owners refused to accept postings from me. I laid them on

the ground adjacent to where Mr. Frank was standing. Mr. Frank stated, "They might blow away".

08/19/14 Responded to neighboring property to observe and photograph the illegal cabin on Mr. Franks property. The cabin is still there as of this date, (8-19-14). Site visit was done to check on cabins status due to posting of "Notice to Abate Nuisance", which will occur on tomorrows date, (8-20-14).

08/20/14 Responded to the Frank property to post a copy of the "Notice to Abate Nuisance". Notice was posted on a fence at the entrance to Mr. Frank's property.



COUNTY OF NEVADA

COMMUNITY DEVELOPMENT AGENCY

950 MAIDU AVENUE NEVADA CITY, CA 95959-8617

PHONE (530) 265-1222 FAX (530) 265-9854 www.mynevadacounty.com/cda

Steven DeCamp
CDA Director

Jory Stewart
Planning Director

Gregory Shaffer
Program Manager
(530) 470-2549

Shari Parker
Code Enforcement Officer
(530) 265-7085

Rob Croate
Code Enforcement Officer
(530) 265-7029

Lyle Bohnet
Code Enforcement Officer
(530) 470-2746

September 15, 2011

Charles & Katherine Frank
20047 Wildwood West Dr.
Penn Valley, Ca. 95946

Re: Unpermitted cabin at: 20047 Wildwood West Dr. APN # 50-400-07-000

Dear Mr. & Mrs. Frank,

This letter is a follow up to the inspection of your property on Monday, September 12, 2011, and our meeting here at the office Tuesday, September 13, 2011. I do want to convey my appreciation for your cooperation during the inspection and your willingness to meet right away to begin the process of bringing the property into compliance.

The violations that have been confirmed on the property are as follows:

1. Cabin built without permits.
2. Plumbing and electrical installed to and in cabin without permits.
3. Un-approved septic system installed without permits.

The actions that are required to correct the violations are as follows:

Obtain all required permits for the structure, electrical wiring, plumbing and septic. The specific development and building requirements will come from the Planning, Building and Environmental Health departments.

OR

Completely remove the cabin, all electrical wiring, all plumbing and properly destroy and abandon the septic, (Environmental Health permit and inspection required).

Please be advised, it is the policy of Nevada County Code Compliance to work with property owners to achieve voluntary compliance whenever violations are identified. Per standard Department policy I have enclosed a Warning Notice of Code Violation. If I can be of any assistance to you in resolving this matter please do not hesitate to contact me.

Sincerely,



Lyle Bohnet
Code Enforcement Officer
County of Nevada
(530) 470-2746
lyle.bohnet@co.nevada.ca.us



COUNTY OF NEVADA

COMMUNITY DEVELOPMENT AGENCY

950 MAIDU AVENUE NEVADA CITY, CA 95959-8617

PHONE (530) 265-1222 FAX (530) 265-9854 www.mynevadacounty.com/cda

Steven DeCamp
CDA Director

Jory Stewart
Planning Director

Gregory Shaffer
Program Manager
(530) 470-2549

Shari Parker
Code Enforcement Officer
(530) 265-7065

Rob Cneate
Code Enforcement Officer
(530) 265-7029

Lyle Bohnet
Code Enforcement Officer
(530) 470-2746

WARNING NOTICE OF CODE VIOLATION

The property at: 3007 1/2 Highway 101 N. NV APN: 020-002-07-000
has been found to be in violation of State, County and/or other Code(s) as follows:

- ☐ 2009 IPMC, Section 108.1.4 Unlawful Structure
- ☐ 2009 IPMC, Section 301.3 Vacant Structures and Land
- ☐ 2010 CBC Chapter 1, Section 105.1: Permits Required
- ☐ General Code, Section G-IV 8.1: Solid Waste
- ☐ LUDC, Section L-II 3.11: Home Businesses
- ☐ LUDC, Section L-II 3.15: Recreational Vehicle Use and Temporary Occupancies
- ☒ LUDC, Section L-II 3.19: Second Dwellings
- ☐ LUDC, Section L-II 5.20: Inoperable Vehicles
- ☐ LUDC, Section L-V 19.3: Grading, Permit Required
- ☒ LUDC, Section L-VI, 1.4 and/or L-VI, 1.5: Sewage Disposal
- ☐ Other: _____
- ☐ Other: _____
- ☐ Other: _____

You are directed to correct all listed violations prior to: October 31, 2011

PENALTY FOR FAILURE TO COMPLY

If any violations still exist after the date listed above, enforcement action(s) may follow. The remedies listed below are not exclusive, and are in addition to any other remedy or penalty provided by law. Conviction on a citation for a violation for any of the above listed code provisions is punishable by:

- **Administrative Citation:** Mandatory fine of \$100 for the first offense, \$250 for the second and \$500 for the third and subsequent violations within a 12-month period.
- **Infraction Citation:** Mandatory fine of up to \$100 for the first offense, \$500 for the second, and \$1,000 for the third and subsequent violations within a 12-month period, plus penalty assessments.
- **Misdemeanor Citation:** Shall be punishable by a fine not to exceed \$1,000 per violation, plus penalty assessments or by imprisonment in the County jail for a term not to exceed six months, or by both.

Under the Code, each day any violation continues constitutes a separate offense and you can be cited for multiple day violations.

Sign: [Signature] Print: Shari Parker Phone: 265-7065
Code Enforcement Officer, County of Nevada

Owner/Tenant: [Signature]

Address: 3007 1/2 Highway 101 N.

City: Nevada City, CA

☒ Posted
☒ Mailed
Date: <u>9-25-11</u>



COUNTY OF NEVADA

COMMUNITY DEVELOPMENT AGENCY

950 MAIDU AVENUE NEVADA CITY, CA 95959-8617

PHONE (530) 265-1222 FAX (530) 265-9854 www.mynevadacounty.com/cda

Steven DeCamp
CDA Director

Jory Stewart
Planning Director

Gregory Shaffer
Program Manager
(530) 470-2549

Shari Parker
Code Enforcement Officer
(530) 265-7085

Ros Choate
Code Enforcement Officer
(530) 265-7029

Lyle Bohret
Code Enforcement Officer
(530) 470-2746

November 8, 2011

Charles Frank
20047 Wildwood West Dr.
Penn Valley, Ca. 95946

Re: Unpermitted cabin at: 20047 Wildwood West Dr. APN # 50-400-07-000

Dear Mr. Frank,

I am writing to advise you as to where the process goes from here, now that you have the information on what it would take to attempt to legalize the cabin. I must advise you that, no matter which way you decide to proceed, you must start the process no later than December 7, 2011. What this means is, if you are going to attempt to get the County Codes changed and the Recorded Map amended, those applications must be filed by December 7, 2011. If you decide that you are going to remove the cabin then the disassembly must be started by December 7, 2011. Two permits will be required for the removal, a septic abandonment and a demolition permit for the structure itself. These are required so that verification can be done to ensure that everything is completed properly and to code. You will have 90 days to have the removal completed. As I have already advised you, it is the policy of Nevada County Code Compliance to work with property owners to achieve voluntary compliance whenever violations are identified. I have enclosed a Citation Warning Notice and an Inspection Fee Notice. If I can be of any assistance to you in resolving this matter please do not hesitate to contact me. I will e-mail you the permit fee estimates. I believe moving the cabin, to the area on your property that we looked at today would, be your most viable option in my opinion. I can also have permit fee estimates done for you as to what it would take to legally permit the cabin in that location.

Sincerely,

Lyle Bohret
Code Enforcement Officer
County of Nevada
(530) 470-2746
lyle.bohret@co.nevada.ca.us



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
950 MAIDU AVENUE NEVADA CITY, CA 95959-8617
PHONE (530) 265-1222 FAX (530) 265-9854 www.mynevadacounty.com/cda

Steven DeCamp
CDA Director

Jory Stewart
Planning Director

Gregory Shaffer
Program Manager
(530) 470-2549

Shari Parker
Code Enforcement Officer
Fax (530) 265-7085

Rob Choate
Code Enforcement Officer
(530) 265-7029

Lyle Bohnet
Code Enforcement Officer
(530) 470-2746

CITATION WARNING NOTICE

The property at: 2007 Highland Blvd. A, APN: 20-143-0100
has been found to be in violation of State, County and/or other Code(s) as follows:

- ☒ 2009 IPCM, Section 108.1.4 Unlawful Structure
- ☒ 2009 IPCM, Section 301.3 Vacant Structures and Land
- ☒ 2010 CBC Chapter 1, Section 105.1: Permits Required
- ☒ General Code, Section G-IV 8.1: Solid Waste
- ☒ LUDC, Section L-II 3.11: Home Businesses
- ☒ LUDC, Section L-II 3.15: Recreational Vehicle Use and Temporary Occupancies
- ☒ LUDC, Section L-II 3.19: Second Dwellings
- ☒ LUDC, Section L-II 5.20: Inoperable Vehicles
- ☒ LUDC, Section L-V 19.3: Grading, Permit Required
- ☒ LUDC, Section L-VI, 1.4 and/or L-VI, 1.5: Sewage Disposal
- ☐ Other: _____
- ☐ Other: _____
- ☐ Other: _____

You are directed to begin process of compliance as stated in the
accompanying letter by Dec. 7, 2011.
correct all listed violations prior to _____

PENALTY FOR FAILURE TO COMPLY

If any violations still exist after the date listed above, enforcement action(s) may follow. The remedies listed below are not exclusive, and are in addition to any other remedy or penalty provided by law. Conviction on a citation for a violation for any of the above listed code provisions is punishable by:

- **Administrative Citation:** Mandatory fine of \$100 for the first offense, \$250 for the second and \$500 for the third and subsequent violations within a 12-month period.
- **Infraction Citation:** Mandatory fine of up to \$100 for the first offense, \$500 for the second, and \$1,000 for the third and subsequent violations within a 12-month period, plus penalty assessments.
- **Misdemeanor Citation:** Shall be punishable by a fine not to exceed \$1,000 per violation, plus penalty assessments, or by imprisonment in the County jail for a term not to exceed six months, or by both.

Under the Code, each day any violation continues constitutes a separate offense and you can be cited for multiple day violations.

Sign: [Signature] Print: Lyle Bohnet
Code Enforcement Officer, County of Nevada

Phone: 265-7029

Owner/Tenant: Charles Bohnet

Address: 2007 Highland Blvd. A

City: Nevada City, CA 95959

☐ Posted

☐ Mailed

Date: 11/14/11

NOTICE INSPECTION FEE

INSPECTION FEE WARNING:

The County's preferred method of achieving compliance is to encourage property owners to voluntarily correct the violation(s) on their properties. If at the time of the inspection following the signing/mailling/posting of this notice the violation(s) have been corrected, the case on your property will be closed and no further action taken. If, however, at the time of the inspection following the signing/mailling/posting of this notice the violation(s) are found to still exist you will be charged an inspection fee of \$103.34 for that inspection as well as an additional \$103.34 for each subsequent inspection of the property--up to and including the final inspection. Additionally, you may be cited for continued violations. If the citation(s) is upheld upon appeal, you may also be held liable for the excess administrative time relating to your case and citation at the same rate of \$103.34 per hour. This fee has been approved via a resolution adopted by the Nevada County Board of Supervisors.

APN (or address):

Name of Property Owner/Responsible Party:

Signature of Property Owner/Responsible Party*:

* = Code Enforcement Officer's Signature (to be used if notice is mailed or posted at property or if Property Owner/Responsible Party refuses to sign this notice)

Date:

Green copy: To Code File

Blue copy: To Property Owner/Responsible Party

h:\ce\binder\forms\templates\fees - inspection fee warning - new and existing cases.doc

152

COUNTY OF NEVADA
OFFICE OF THE
FIRE MARSHAL
Eric Rood Administration Building
950 Maidu Avenue
Nevada City, CA 95959
(530) 265-1714, FAX#: (530) 265-9851

January 11, 2012

Chuck Frank
20047 Wildwood West Dr
Penn Valley, CA 95946

Mr. Frank

I appreciated the opportunity to meet with you at your property last week. I have provided written comments with regard to Second Dwelling Unit Ordinance. I would also like to thank you for your candidness regarding the construction of the dwelling and its intended use. The Nevada County Fire Marshal comments are below.

This office cannot support the second dwelling in its current location. The dwellings placement is in conflict with **Defensible Space Nevada County Ord. L-II 4.3.18 C 2** Maintenance of vegetation clearance around structures shall meet the minimum requirements of Public Resources Code Section 4291. Structures shall have a maintained fuel reduction zone by removing and clearing away all brush, flammable vegetation or combustible growth no less than 100 feet from structures or to the property line, whichever is closer. Such clearing does not apply to individual isolated trees, ornamental shrubbery or similar plants, which are used for ground cover unless such vegetation forms a means of rapidly transmitting fire from ground vegetation to canopy trees.

Water and Roads access, Public Resource Code 4290, Title 14 CCR 1273 and California Fire Code 2007: 901, 902 and 1208.

CAL FIRE California Department of Forestry and Fire Protection has classified this area as High or Very High Fire Severity Zone (FHSZ) effective January 1, 2008

Driveway Standard Sec. L-XVI 3.2

The driveway shall be constructed within 50 feet of the nearest point of dwelling within the building envelope.

- o Surface, bridges and culverts capable of supporting a 40,000-pound vehicle.
- o 10-foot minimum surface width.
- o 15-foot minimum vertical clearance.
- o 50-foot minimum curve radius from the centerline.
- o 10 foot minimum vegetation modification each side of driveway.
- o Driveways in excess of 400 feet, a turnaround or hammerhead T shall be required.
- o Turnaround: The terminus bulb shall have a minimum 40-foot radius.

- 3 Hammerhead T: The long axis shall be a minimum of 60 feet and the leg shall be a minimum of 40 feet.

Roads, Nevada County Ord. L-XVII 4.3

All roads serving this project shall meet the minimum requirements of a Fire Standard Access Road. In no case shall the grade exceed 16% slope. For driveway portions in excess of 16% up to the maximum 20%, the surface must be paved with minimum 2" of A.C.

A 10' Wildland fire fuel modification area shall be provided on both sides of the road. This area shall be maintained in a fire safe condition at all times, including removal of brush, 20' spacing between trees and limbing of all tree branches to not less than 6' off the ground. Vertical clearance, over the driving surface shall be not less than 15'.

Certification of Compliance, by a licensed Civil Engineer shall be provided to the Nevada County Fire Marshal's Office prior to map recordation

I look forward to our continued effort to serve the residents of Nevada County.

Sincerely,

Brad Harris
Unit Chief

Mike DiMaggio
Fire Protection Planner

NEVADA COUNTY PLANNING COMMISSION
STAFF REPORT

APPLICANT: Charles Frank

HEARING DATE: May 23, 2013

OWNER: Charles Frank Trustee etal

FILE NOS: AM13-002 & MGT13-004

PROJECT: Combined applications proposing: 1) an Amended Final Map proposing to modify the supplemental map information in order to remove the "No Build" area recorded with Lot 27 of Houghton Ranches (Subdivision Book 6, Page 24); and 2) a Management Plan for the construction within slopes in excess of 30 percent and a Management Plan for the biological resource impacts within the 100-foot non-disturbance buffers from a watercourse. Both applications are intended to remedy an unpermitted second dwelling.

LOCATION: 20047 Wildwood West Drive, Penn Valley

ASSESSOR PARCEL NO.: 50-400-07

PROJECT PLANNER: Tod Herman, Senior Planner

General Plan: RUR-5
Region/Center: Penn Valley
Zoning: AG-X
Flood Map: FEMA Panel #0625 Zone X
ZDM No.: 3
Parcel Size: 36.64 acres
Date Filed: March 26, 2013

Water: Well
Sewage: On-site Septic
Fire: Penn Valley
Schools: Pleasant Valley/NJUHS
Recreation: Western Gateway
Sup. Dist.: IV
Receipt No.: 61000019561

Prev. File Nos.: PC11-008

ATTACHMENTS

1. Pages 1, 2 and 5 of the Recorded Houghton Ranches Final Map
2. Planning Department June 27, 2012 Correspondence to the Applicant
3. Vicinity, Zoning, and Public Notice Map
4. Proposed Experimental Septic Design
5. Management Plan for Steep Slope Impacts
6. Management Plan for Biological Impacts

STAFF RECOMMENDATIONS:

1. Amended Map: Denial
2. Management Plans: Denial

Project Site Description

The Houghton Ranches subdivision is situated approximately one mile west of the Highway 20/Pleasant Valley Road intersection in western Nevada County. The subject Lot is accessed via private driveway easement from the south side of Wildwood West Drive approximately 0.9 miles west of Pleasant Valley Road (see Attachment 3).

Lot 27 is one of the larger lots in the Houghton Ranches subdivision, situated in its northeast corner. The home site is located at the highest point of the property, at approximately 1,500 feet in elevation and on slopes that are less than 20%. The south facing lot is comprised of an open mixed chaparral habitat with some Ponderosa Pine interspersed through the site among open areas of annual grasslands and rock outcroppings. Whiteleaf Manzanita, buckbrush, and a few stands of Scotch broom make up the understory across the property with a few scattered black oak and scrub oak trees mixed throughout. The southern boundary of the lot is defined by Squirrel Creek, some 320 feet below the highpoint of the property.

Within the 36.64-acre site, there are approximately 10.82-acres of land that contain slopes that are less than 30%.

Proposed Project

The project proposes to amend the supplemental information recorded on Lot 27 of the Final Map and "change the map designation from a 'No Building Area' to a 'Build Zone' for a second unit." A management plan is also being submitted to allow for construction within steep slopes greater than 30% and within 100-feet of a perennial stream.

STAFF COMMENT:

There are four issues with this application: 1) the conflict with the recorded notes on the Final Map; 2) the conflict with the established site development standards of the Zoning Code; 3) the continued use of the "experimental septic system;" and 4) fire access issues. Staff will address each of these components individually below.

Conflict with the Notes of the Final Map

Section L-II 4.1.4.E of the Land Use and Development Code's Zoning Regulations states that "No use of the property shall be allowed, nor shall any subdivisions to property be allowed, which would conflict with any note attached to any map or record of survey which was recorded in the official records in order to create a division of real property..." Effectively, this provides that notes on recorded maps can be used to trump the otherwise applicable development standards set forth in the Code.

Lot 27 has three specific notes attached to it per the recorded Final Map: a specific 100-foot setback from Squirrel Creek, a specific "Potential Building Area," and a broad "No Building Area" that encumbers everything between the prior two notes. The cabin structure, its physical access, and its septic system, all of which were constructed without any permits, violate all three of these recorded notes.

In prior correspondence with the applicant, staff noted it could only support the modification of the note to allow for a greater building envelope showing potential development within those areas that are less than a 30% slope. However, doing so would not help to resolve the current location of the cabin structure, its access, or the septic system.

extent possible. Finally, for those unavoidable impacts, the Management Plan shall then propose mitigation to restore or resolve those impacts. Before any Management Plan can be approved, findings are required to support that decision. *Section L-II 4.3.13.C.3.b* lists the required findings necessary for approving Management Plans associated with encroachment into steep slopes. The required findings for these Management Plans include: that the plan will provide preservation of the natural topographic character of the slope; that the plan will provide preservation of the aesthetic quality of the slope and its native vegetation; that other development alternatives to developing on the steep slopes or near the watercourse are infeasible; that minimization of the disturbance of the steep slopes has been achieved to the greatest extent possible; and that water quality problems created by sedimentation and excessive vegetation removal are minimized. As discussed above, there are other potential building areas on the northeastern portions of this parcel (in excess of 10 acres) that would avoid all impacts to the steep slopes but the Management Plan avoids any discussion of those viable options.

Attachment 5, prepared by Precision Design & Drafting, Inc., contains an Assessment of Unpermitted Log Cabin and Road Access Drainage that was prepared by a registered engineer. This document points out a number of deficiencies with both the structure (relative to the Building Code) and with the erosion that is occurring within the access road/path down to the cabin site. While the assessment provides recommendations to minimize those current erosion issues, it does not acknowledge or justify the issue that the cabin is constructed in a sensitive area that is not permitted for development. Attachment 6, prepared by Costella Environmental Consulting, does address the vegetation loss on the steep slopes but does not address the potential impacts of the improvements (cabin, driveway, and septic system) on the 100-foot buffer zone from Squirrel Creek.

Section L-II 4.3.17 of the Zoning Regulations defines and provides the setbacks for Watercourses, Wetlands, and Riparian Areas. (There is no Floodplain established for this portion of Squirrel Creek.) Squirrel Creek requires a 100-foot setback from the high water mark. It appears the cabin is situated approximately 100-feet from the visible water body of the photo (which was taken during the dry summer months) and likely well within the 100-foot setback from the high water mark. The experimental septic system is likely also within this setback.

Both portions of this Management Plan appear to only address the existing development and propose ways to minimize the existing and on-going erosion impacts, but neither portion of the Management Plan addresses the rationale for picking this one location over the feasibility of any other building site alternatives on the property. This is not in keeping with the required approach to all Management Plans as set forth in *Section L-II 4.3*.

Continued Use of the Experimental Septic System

Section L-VI 1.3.P of the Nevada County Sewage Disposal Regulations defines Sewage as "blackwater, graywater, and/or any liquid contaminated with materials thereof." Further, *Section L-VI 1.4.A* of the Sewage Regulations states that "it shall be unlawful for any person... to treat or dispose of sewage in any manner other than by a sewer, septic tank and leaching system, centralized sewage disposal system, public sewer system or other method of sewage disposal meeting the standards set forth in this Chapter and the Sewage Disposal Regulations." *Section L-VI 1.5* establishes that a Septic System Permit is required for the installation of all such systems, and *Section L-VI 1.9* establishes the specific soils testing requirements for the required soils testing report.

The system in use by this cabin structure was never permitted. Attachment 5 contains the applicant's description of what was installed to treat the cabin's sewage requirements. The Nevada County Department of Environmental Health advises that this system does not conform

Section L-XVI 3.2.C.9 requires roadside vegetation clearance shall be provided for a distance of 10 feet on each side of the driveway. The majority of the driveway does not conform to this requirement and dense brush exists directly adjacent to, and over the top of the driveway.

The Nevada County Fire Marshal does not support the second dwelling in its current location. As noted above, there is no Petition for Exceptions proposed for the driveway standards. *Section L-XVI 3.4.A* of the Fire Safety Regulations sets forth the required findings necessary to approve any such petition, had one been proposed. These findings include that the exception is necessary for the preservation of a property right; the exception would not be injurious to other local properties; the exception would not be a special privilege; and that the exception would propose an alternative that meets the same practical effect of the required provision. As noted above, there are a number of Code violations with the current location of the cabin structure, its septic system, and its driveway access. Further, there appears to be other areas where this cabin could have been constructed in conformance with the note on the recorded Final Map, and that do not require any exceptions to alterations to the Land Use and Development Code. The issue came forward as a result of a Code Complaint, so the use has already impacted a neighboring property. As such, the County Fire Marshal notes that he could not support any Exceptions to the cabin's driveway.

General Plan and Zoning Consistency

For the various reasons identified above, staff cannot find that the proposed Map Amendment and Management Plan would be in keeping with the purpose and intent of several Resource Conservation Policies within the Nevada County General Plan. General Plan Policy 1.17 specifically identifies the list of sensitive resources with which the County is to protect in order to preserve our unique character, including steep slopes, areas with high erosion potential, areas subject to high fire hazards, and riparian corridors. The cabin structure does not conform with a number of established code requirements that were adopted pursuant to this Policy. General Plan Policy 6.9 requires the use of development standards for project design, grading and construction in sensitive areas to protect those resources, minimize any disturbance, and maintain the consistency of the natural land forms. No grading permit was obtained for this structure and to sustain the structure in its current location would necessitate additional grading on steep slopes in order to prolong its existence in this location. General Plan Policy 11.6 requires the County to continue to enforce its regulations concerning the installation and operation of private sanitary waste disposal systems in order to protect both surface and ground water quality. This building does not utilize an approved septic system and such a system could not be approved in the immediate vicinity of the cabin site. General Plan Policy 12.1 requires the enforcement of the grading ordinance for erosion control. This project did not comply with any grading permits before it was constructed.

Staff has already outlined the inconsistencies with several of the required Zoning Regulations and the Sewage Disposal Regulations.

Environmental Impacts

Under Public Resources Code Section 21080(b)(5), projects which a public agency rejects or disapproves are exempt from the California Environmental Quality Act. As previously noted, we had informed the applicant that staff was not going to support this application and therefore we did not collect any filing fees to prepare an Initial Study.

- D. That the proposed map amendment would affect the ability to make the required findings for subdivision approval as set forth in the Nevada County Subdivision Ordinance;
 - E. There are no changes in the circumstances since the recordation of Final Map FM77-036 that would otherwise permit the approval of development of a residence and driveway on slopes in excess of 30%, or within 100-feet of a perennial stream, or for the installation of a sewage disposal system within 100-feet of a perennial stream; and
 - F. That the ~~current note on the recorded map~~ was applicable to this parcel prior to its purchase and development by this applicant and that the second unit could have been constructed within the Potential Building Area without any additional burden on the present fee owner of the property.
- II. Deny the Management Plan (MGT13-004) for the erosion control work associated with constructing an existing cabin and its partial access on slopes in excess of 30%, and for construction of the cabin and its sewage disposal system within the 100-foot buffer zone of a perennial stream based on the following findings:
- A. That the proposed development does not ensure the preservation of the natural and topographic character of the slopes in the vicinity of the cabin and its access will remain stabilized as substantial signs of erosion are visible and further work is and will remain required to constantly address the maintenance of the slope;
 - B. That the aesthetic quality of the slope will be jeopardized due to the greater erosion potential and the vegetation removal required for the fuel modification zones around the structure and the access road that would need to be constantly maintained;
 - C. That alternatives to this building location are feasible and are available to this 36.64-acre parcel, including the 3.44-acre "Potential Building Area" which is outside the 100-foot watercourse setback and outside of any 30% slopes as shown on the recorded Final Map;
 - D. That disturbance to the steep slopes and the 100-foot watercourse setbacks could be avoided altogether had the structure been properly located pursuant to the approved "Potential Building Area" as shown on the recorded Final Map;
 - E. That water quality problems may result from the sedimentation associated with the noted erosion and that the sewage disposal system is not designed in accordance with the requirements of the Nevada County Land Use and Development Code;
 - F. That the watercourse setback encroachment does not conform with the applicable standards set forth in the Zoning Code in that there is substantial area on this 36.64-acre site to avoid the impact to this resource;
 - G. That although the cabin was already constructed at the time the consultants were hired to prepare the Management Plan, the Management Plan contains some erroneous statements such as the date the cabin was constructed (dry season of 2012) and that the cabin is using a Minimum Useable Sewage Disposal System (MUSDA) for its sewage disposal requirements;

NEVADA CITY ENGINEERING

496951 778

WINNER'S CERTIFICATE

The undersigned being the only persons representing any record title interest in the herein subdivided lands do hereby consent to the preparation and recording of the final map of "BOUGHTON RANCHES" and offer for dedication and do hereby dedicate to the County of Nevada the following:

1. For any and all public uses, all that portion of these certain strips of land shown and designated as "Highway Easement", "Rail Easement", "Bell Line" and "China Canal" situated within the boundaries of this subdivision. Including acceptance of said land by the County of Nevada, the above referenced roads will remain private and for the exclusive use of the property owners in this subdivision to be owned and controlled by the property owners' association of said subdivision, except as further limited by deed conveyance.
2. Rights of way encroachments for water, gas, sewer and drainage pipes, conduits and ditches, and for poles and overhead and underground wires and conduits, for electric and telephone services, together with all appurtenances thereto on, over, under and across those strips of land lying 8 feet on each side of all side and end lot lines of each lot, and on, over, under and across those strips of land shown and designated as "Public Utility Easements" ("PUE"), and on, over, under, and across those strips of land of a width of 10 feet lying adjacent and parallel to each line of public and/or private roads, situated within the boundaries of the subdivision, and on, over, under and across those strips of land of a width of 15 feet lying adjacent and parallel to all lot lines which form the entire boundaries of this subdivision, excepting those exterior lines which are common to real lines of public and/or private roads, together with the right to trim and/or remove only necessary trees, limbs, or brush.
3. Rights of way for stone easements together with all appurtenances thereto, on, over, under and across those certain strips of land shown and designated as "Stone Easements" ("SE").
4. For ingress and egress on, over, and across those certain strips of land shown and designated as "Access Easements" ("AE") together with the right to trim and/or remove only necessary trees, limbs, or brush.
5. "Emergency Access Easement" ("EAE") for any and all emergency purposes including but not limited to fire protection.
6. "No Access Easement" ("NAE") for the purposes of denying access to and from a roadway when access is undesirable or a more suitable access exists.
7. "Temporary Easement" ("TE") to provide a turn-around area with a through connection to grade.

By: Carl E. Houghton

INTER-COUNTY TITLE COMPANY, a California Corporation, as trustee under Deeds of Trust recorded in Book 931, Page 294 and Book 931, Page 299, re-records in Book 924, Page 409, Official Records, Nevada County, California.

STATE OF CALIFORNIA }
COUNTY OF NEVADA }

On this _____ day of _____, 1919, before me, _____, a Notary Public in and for said County and State, appearing Herman Day, remissiosnary and sworn personally, appeared Carl E. Thompson, known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this _____ day and year in this certificate first above written.

200

STATE OF CALIFORNIA }
COUNTY OF NUBA } 95

On this 11th day of December 1979, before me, Carl H. Lee, a Notary Public in and for said County and State residing therein duly commissioned and sworn, personally appeared Dr. Gerald and Gale Corvett known to me to be the Victims of said murder Secretary respectively of Little China Club, a California Corporation, the corporation had recalled for within its premises and also known to me to be the persons who recalled it on behalf of the corporation. These named and they acknowledged to me that said corporation recalled the name of William Wallace. I have furnished my hand and official seal this day and year in this certificate first above written.

Bulky Waste in and for red Candy and Slate
My commission expires July 1, 1923

SURVEYOR'S CERTIFICATE:

The final map of "BOUGHON RANCHES" represents a survey which is true and correct as shown, made by me or under my direction in conformity with the requirements of the SAB DIVISION, MAP ACT and local ordinances in August, 1976 and the monumenting one of the characters was across the positions as shown are sufficient to make the survey true and correct.

Kenneth E. Baker
 Kenneth E. Baker LS 3959

COUNTY SURVEYOR'S CERTIFICATE:

This first map has been examined by me, and the subdivision as shown is substantially the same as it appears on the tentative map and my approved planlets thereof, and provisions of the SUBDIVISION MAP ACT and any local ordinances applicable to the issue of the approval of the tentative map have been complied with, and I am satisfied that this final map is technically correct this 15th day of August, 1978.

Terrance L. Lowry RCF 13398
County Surveyor

STATE OF CALIFORNIA } ss
COUNTY OF NEVADA }

This is to certify that the BOARD of SUPERVISORS of the County of Merced, State of California, by a motion adopted at a meeting held on the _____ day of _____, 1979, do approve for filling this copy of "HIGHEST BIDDERS" consisting of 7 sheets and accepted for any and all public use the following: (a) item 1 for PUE purposes only (b) item 2 - except drainage pipes, conduits and ditches (c) item 3 - except acceptance of the following (a) item 1 - except for PUE purposes (b) item 2 - drainage pipes, conduits and ditches (c) item 3. Rejected item 4. All provisions of the SUPERVISORS' MAP ACT and local ordinances have been complied with regarding deposits this _____ day of _____, 1979.

Chairman of the Board

COUNTY TAX COLLECTOR'S CERTIFICATE

I, MARCELA J. CASPOM, the official compiling administrator for the County of Nevada, State of California, do hereby certify that according to the records in my office, there are no liens for capital taxes or special assessments reflected as liens against the lands owned by the person, except taxes or assessments collected due and payable, but constituting a lien is _____ day of _____ 1979.

COUNTY RECORDER'S CERTIFICATE:

I, Melba Poliqua, hereby certify that Wasteville certificate no. 11111111 filed with this office, and that this plat map was accepted for record, and recorded in Book No. 1 Subdivisions of Parcels Document # 11111111 August 27, 1979, at 4:13

27095
BASIS OF CLAIMS:
Feb 27, 00
Mellie J. Pollock
County Recorder, Merced County, California
By [Signature]

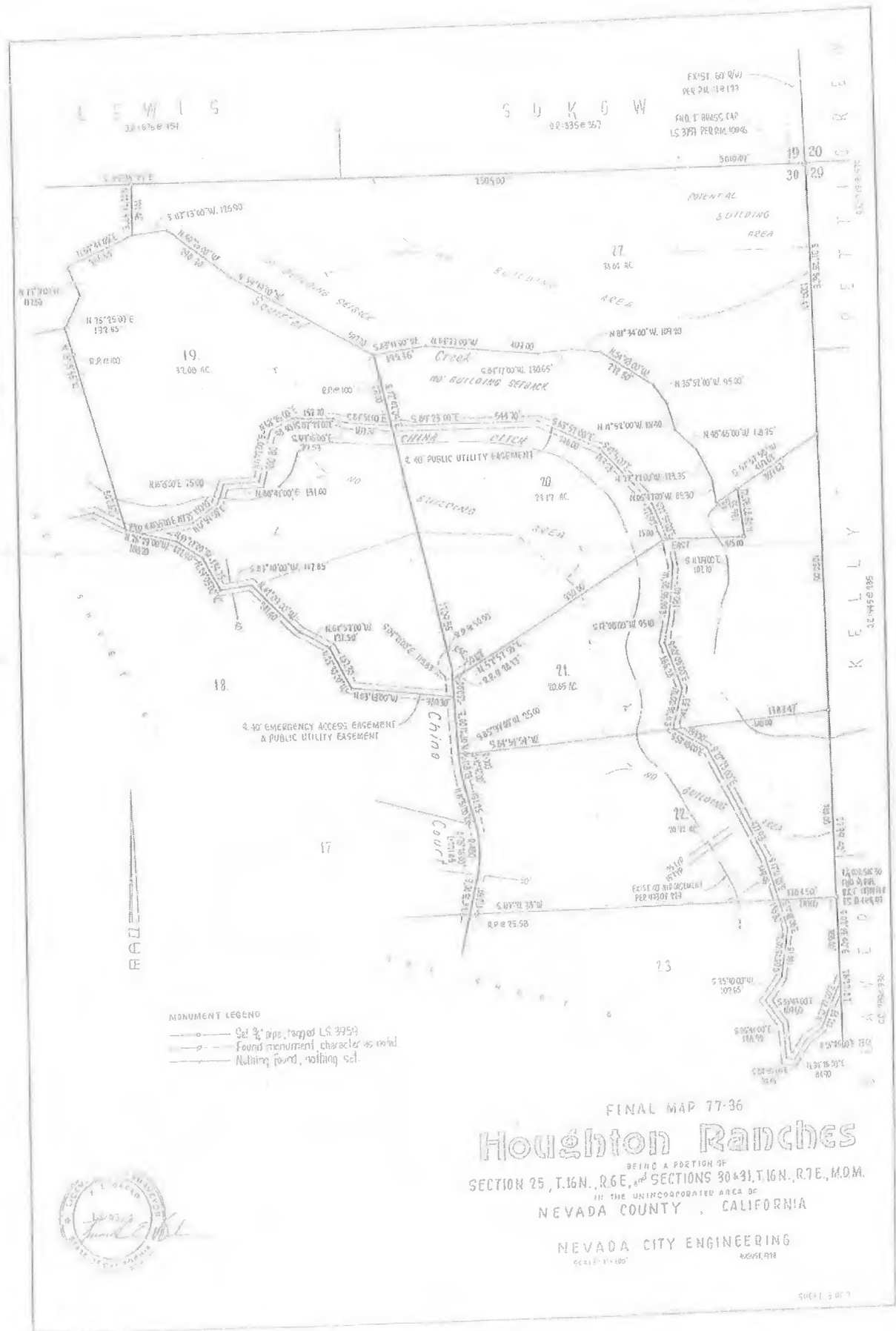
All bearings in this record are based upon monuments found along the railway line of the subject property as established in Parcel Maps 10 & 208.

SUBDIVISION ACRES:

The gross area of land contained within the boundaries of this subdivision is 819.63 acres, more or less. The area of land contained within the lots numbered 1 to 49, inclusive is 819.63 acres, more or less.

NOTES

- [illegible]





COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9851 <http://mynevadaacounty.com>

Steven L. DeCamp
Community Development Agency Director

Brian Foss
Interim Planning Director

June 27, 2012

Mr. Charles Frank
20047 Wildwood West Dr.
Penn Valley, CA 95946

RE: Site Visit and Inspection of Structure

Dear Mr. Frank:

Thank you for your time on Tuesday, June 19, 2012, to show me and Code Enforcement Officer Lyle Bohnet the structure constructed near Squirrel Creek on your property at 20047 Wildwood West Drive. As you are aware the structure was constructed without the benefit of a permit and the location of the structure is in question in light of the County's zoning ordinance regulations.

After seeing the structure and its location I re-reviewed the County's site development standards contained in the Zoning Ordinance pertaining to steep slopes and water courses. The Ordinance prohibits construction on slopes in excess of 30% and within 100 feet of a watercourse. While a portion of the structure is located on an old, filled in canal that is relatively level, the remainder of the structure encroaches into areas defined as steep slopes (30%+) and alterations to the slope did occur in order to accommodate the structure.

The Ordinance only allows limited development on 30%+ slopes through approval of a Management Plan if alternatives to development on steep slopes are not feasible. The property contains undeveloped areas that are less than 30% in slope and the property has an existing primary dwelling on less than 30% slopes. Given these circumstances a Management Plan for the existing structure could not be approved because the findings required for approval by the Ordinance cannot be made. Furthermore, the access to the structure is steep and a road/driveway could not be constructed on less than 30% slopes and would require significant grading and engineering. These activities would also require a Management Plan that could not be approved given the topography of the site and the fact that the property contains other alternative areas less than 30% slopes. Access to the structure is needed regardless of the use of the structure (residential or storage) for Fire Department access in case of emergency.

Additionally, the Zoning Ordinance prohibits development within 100 feet (measured horizontally) of a water course, i.e. Squirrel Creek. The structure is located within the setback and can only be permitted if there were no other alternative on the property for a structure. As discussed above, other locations on the 36 acre property exist that could accommodate the structure. Therefore, a permit could not be issued for a structure in this location.

CHARLES FRANK ETAL
AM13-002 & MGT13-004



Experimental Septic System.

The main septic system which is used for the toilet water is comprised of 3ea, 40 gallon inline settling tanks and a leach line and leach field installed on flat ground within the abandoned China ditch. The ditch which was filled in through erosion in the last 130 years or so since the gold rush, has a loam composition which was created by years of decomposed oak leaves, wood pieces, and natural grasses. The drainage in the ditch is more than adequate for the septic system is now used rarely by my family and I. Last year there were only about three occasions that the septic system was even used. Since the cabin was built, regular septic treatments have been used. There never has ever been a problem with the system.

The gray water which is connected to the shower and the sinks is a separate system that also runs into the China ditch. Neither system has ever posed any danger to the environment.

PRECISION DESIGN
&
Drafting, INC.

11768 Atwood Rd, Suite 20
Auburn, CA 95603
Tel: (530) 823-6546

Chuck Frank
20047 Wildwood West Dr.
Penn Valley, CA 95946

Subj: Assessment of un-permitted Log Cabin and Road Access Drainage
20047 Wildwood West Dr., Penn Valley, CA 95946

January 24, 2013

Dear Chuck,

Overview: On Dec 11, 2012 we performed an inspection and observed the condition of the subject log cabin and road access from the primary residence to the log cabin.

The subject structure is a two story log cabin with light wood framing for interior walls. Plans of the structure were not available at the time of the inspection. The structural integrity of the log cabins pole and pier foundation was the primary matter of concern. Pictures of the structure can be seen below in photos 1-3.

The road access was a rocky road with excessive erosion. Pictures of this road access can be seen below in photos 4 & 6.

Photo 1: Subject Two-Story Log Cabin



Photo 2: Southeast Corner of Living Room

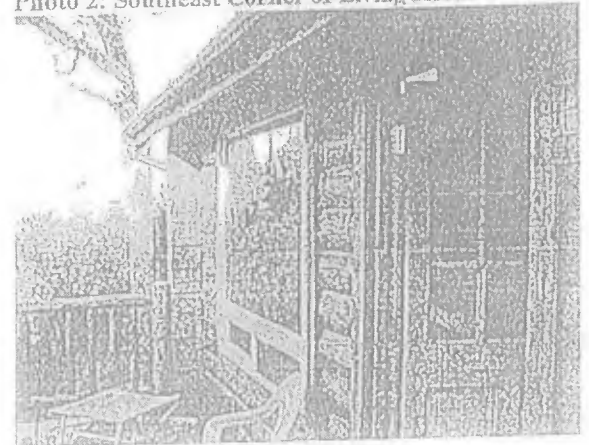


Photo 3: Lateral Bracing of Foundation Poles

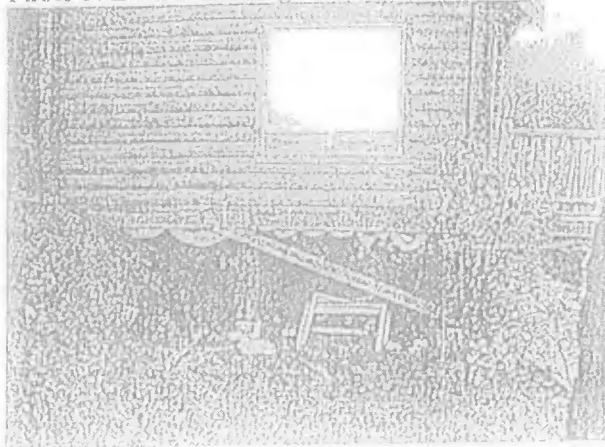
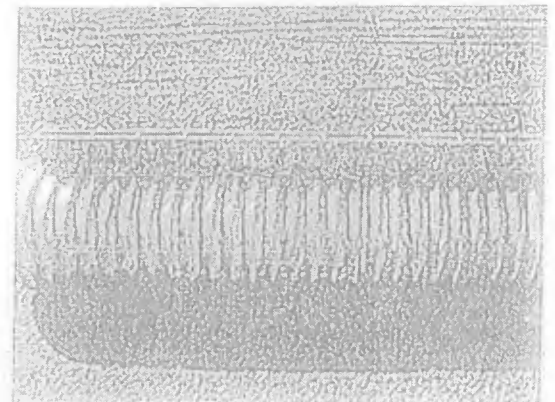
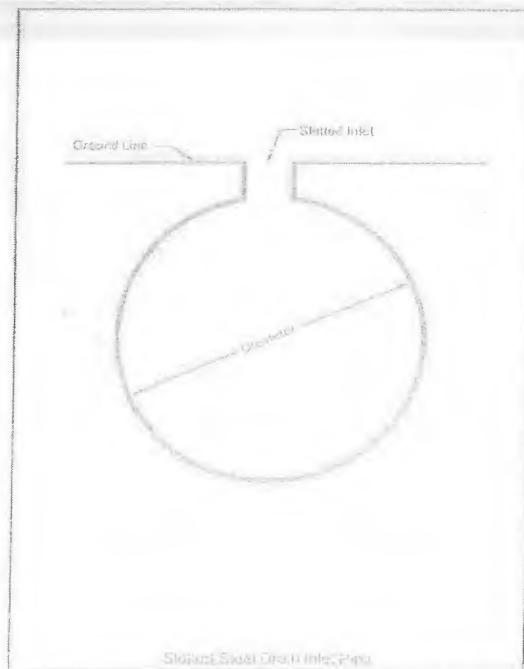
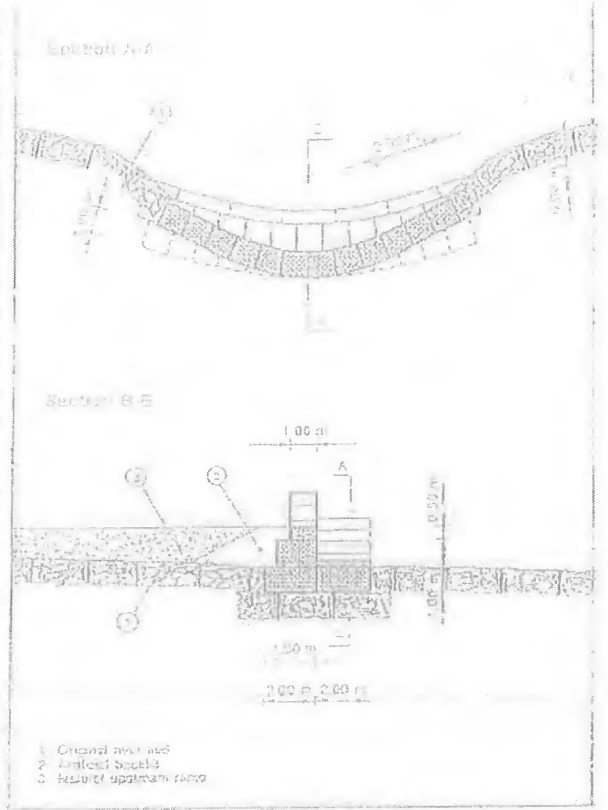
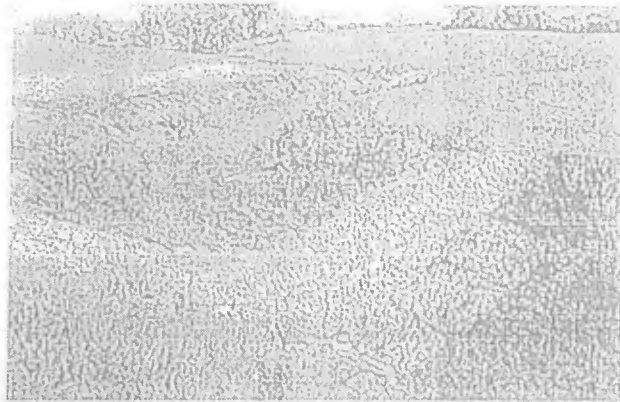
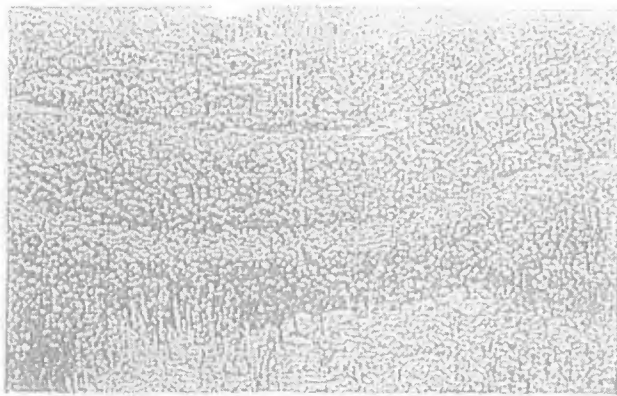
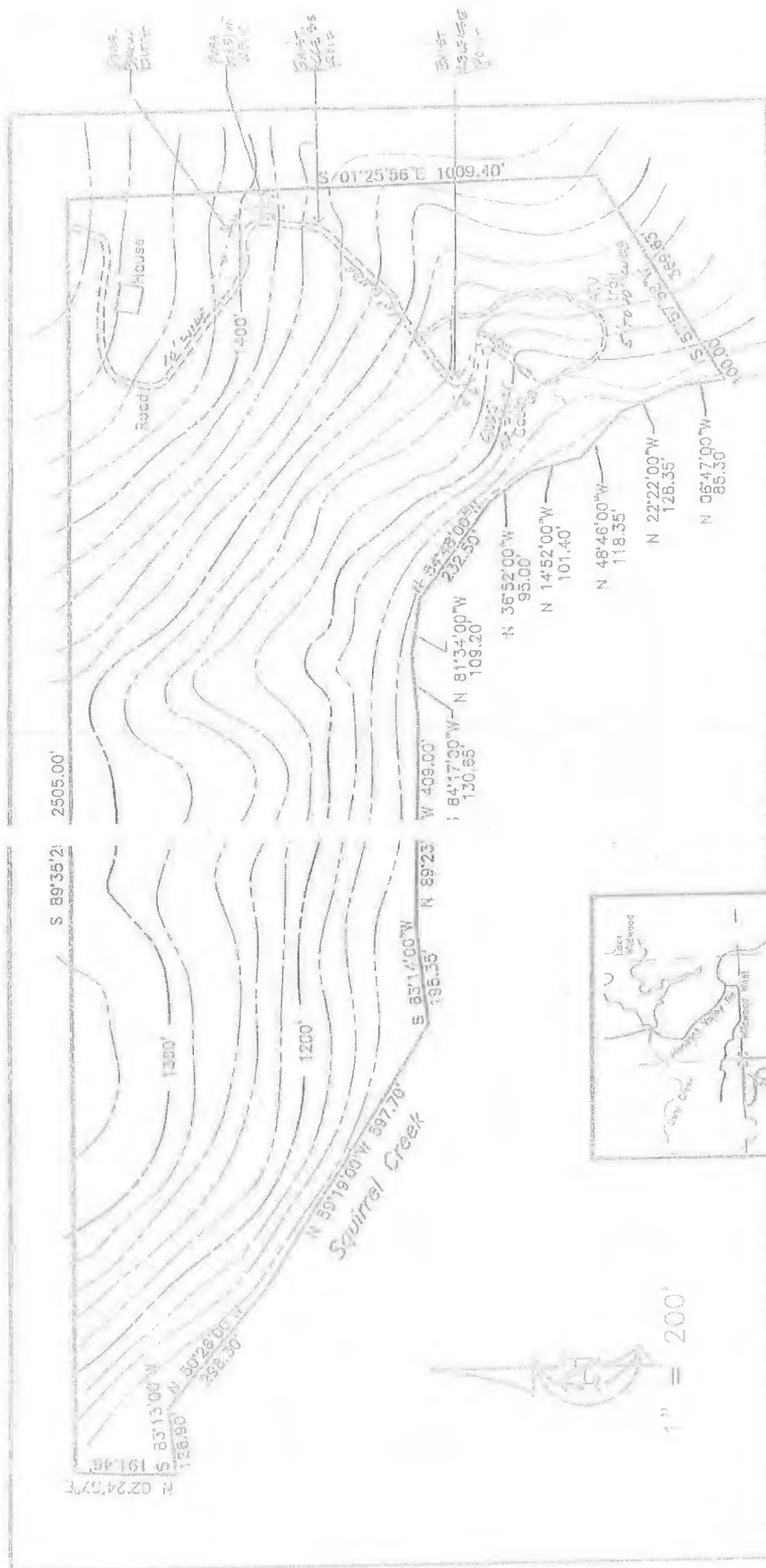


Photo 4: Location of Increased Drainage Flows



-18- ATTACHMENT 5 165



[illegible]

533

August 1934

A portion of the N.E. $\frac{1}{4}$ of
Sec. 30 T.18N. R.7E. 11008211
in the unincorporated territory of
NEVADA COUNTY, CALIFORNIA
August, 1912. Scale: 1" = 200'
Contour Interval = 25'
CALIFORNIA SURVEY COMPANY
(INCORPORATED)

18 2011-20 of 70 N.E. 10

502 30 7.16N P 7E 602227

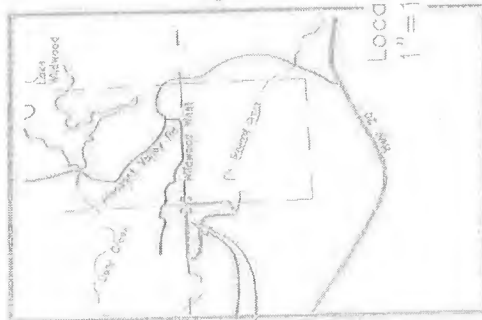
is the unincorporated territory of NEVADA COUNTY, CALIFORNIA.

Aug 2012 Sec 1" 200'

Contour line is 25'

BAIRDOPRIA STEVE COMPANY

09 301 2773 66 51

Location
1" = 1 mil

© 2000 The McGraw-Hill Companies

200

MANAGEMENT PLAN FOR CONSTRUCTION
WITHIN STEEP SLOPES GREATER THAN 30 PERCENT

FRANK PROPERTY
20047 WILDWOOD WEST DRIVE
NEVADA COUNTY, CA
APN 50-400-07.

December 19, 2012

Prepared for:
Chuck Frank
20047 Wildwood West Drive
Penn Valley, CA 95946

Prepared by:
Tina Costella
Costella Environmental Consulting
P.O. Box 215
Nevada City, CA 95959

The primary construction activities included the following components:

- A gravity-fed cable system, 125 long, was constructed to convey, viz. "air-lift" building materials to the construction site.
- Foundation piers, 10-in all, were laid approximately 4-feet underground, extending upward to 1-foot above ground.
- The foundation is 16 feet x 20 feet, the same as the cabin dimensions, and the cabin footage is approximately 320 square feet.
- The Minimum Usable Sewage Disposal Area (MUSDA) is 5 feet wide x 50 feet long and also is within the leveled area of the ditch. There are 3-40 gallon septic tanks included in this system.
- Gray water is dispersed through a pipe into the same leach field used by the septic system.

Project Location

The project is located at 20047 Wildwood West Drive in Penn Valley, CA 95946, approximately 1.7 air miles northwest from the intersection of Highway 20 and Pleasant Valley Road. The specific location is Section 19, Township 16 North, Range 7 East, M.D.M., located on the Rough and Ready USGS quadrangle map. Elevation at the north end of the property is $\pm 1,300$ feet and the south boundary is $\pm 1,200$ feet above mean sea level (MSL). Appendix B includes the topographic and parcel maps of the Frank property and the specific location.

EXISTING CONDITIONS

Environmental Setting

The study area is situated on a dry, south facing slope in an open mixed chaparral habitat with some Ponderosa Pine (*Pinus ponderosa*) interspersed throughout the site and open areas of annual grasslands throughout, with some rock outcroppings. The manzanita chaparral is composed of a few scattered black oak (*Quercus kelloggii*), scrub oak (*Q. berberidifolia*), sticky whiteleaf manzanita (*Arctostaphylos viscida* ssp. *viscida*), buckbrush (*Ceanothus cuneatus* var. *cuneatus*), and a few patches of Scotch broom (*Cytisus scoparius*). Annual grasslands are dominated by non-native grasses of brome (*Bromus* spp.), barley (*Hordeum* spp.), and Italian ryegrass (*Lolium multiflorum*). Appendix C provides a Biological Resources Map of the parcel.

The study area is located in the Squirrel Creek watershed, the total land mass of the watershed is 6,705 acres. The general topography of the property is characterized by moderate to steep slopes; elevations range from $\pm 1,300$ feet above mean sea level (MSL) along the northern boundary and $\pm 1,200$ along the southern boundary adjacent to Squirrel Creek.



Fuel Modification on a Steep Slope

The property owner has maintained fuel reduction around the cabin site, and continuation of this effort should be required as additional mitigation. The specific fuel reduction models required by the ordinance are included below for the ongoing vegetation maintenance of the site. Within these parameters there are no protected resources, i.e. wetlands, landmark oaks or landmark oak groves that are impacted by routine vegetation management.

According to the Nevada County LUDC - Chapter II - Zoning Regulations, Section L-II 4.3.13, C.5, fuel modification shall be provided and maintained around all structures developed on steep slopes, as follows:

Fuel Models		
1-3 *	Grasses	100'
4-6 *	Brush	200'
8-13	Timber	200'

*Northern Forest Fire Lab Fuel Models Code

The above fuel model code numbers designate the following:

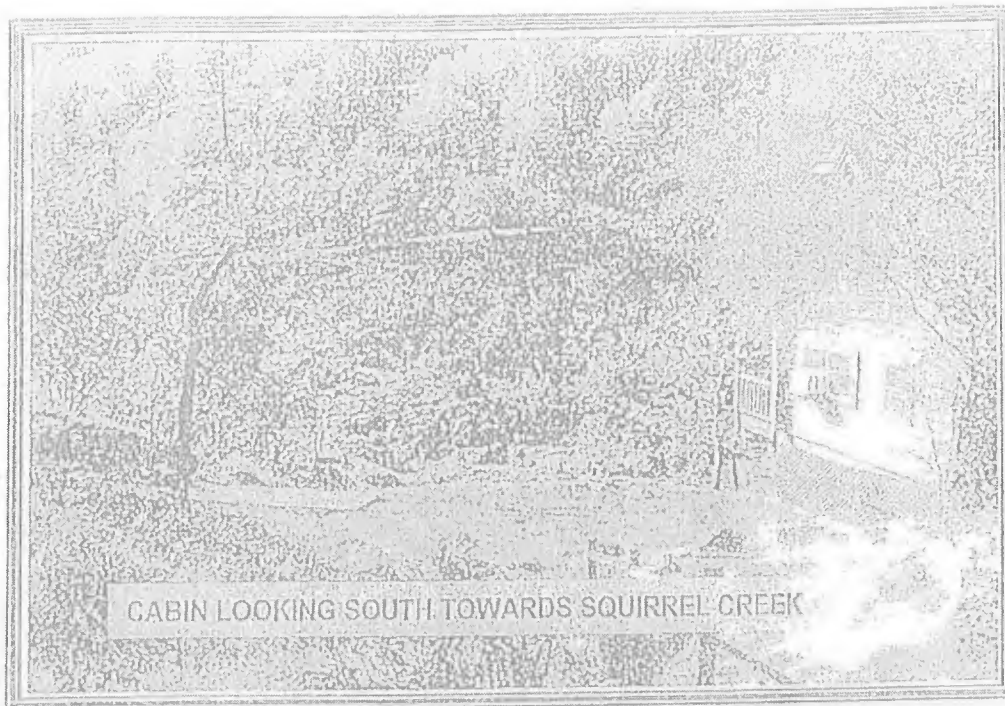
- 1- Short grass (1 foot)
- 2- Timber (grass and understory)
- 3- Tall grass (2.5 feet)
- 4- Chaparral (6 feet)
- 5- Brush (2 feet)
- 6- Dormant brush, hardwood slash
- 7- Southern rough
- 8- Closed timber litter
- 9- Hardwood litter
- 10- Timber (litter and understory)
- 11- Light logging slash
- 12- Medium logging slash
- 13- Heavy logging slash

CONCLUSION

This concludes the required Management Report for this project and satisfies the requirements of relevant Nevada County ordinances, subject to the pending evaluation by the geotechnical engineer, as noted above. Please feel free to contact me if you have any questions regarding any of the findings in this report.



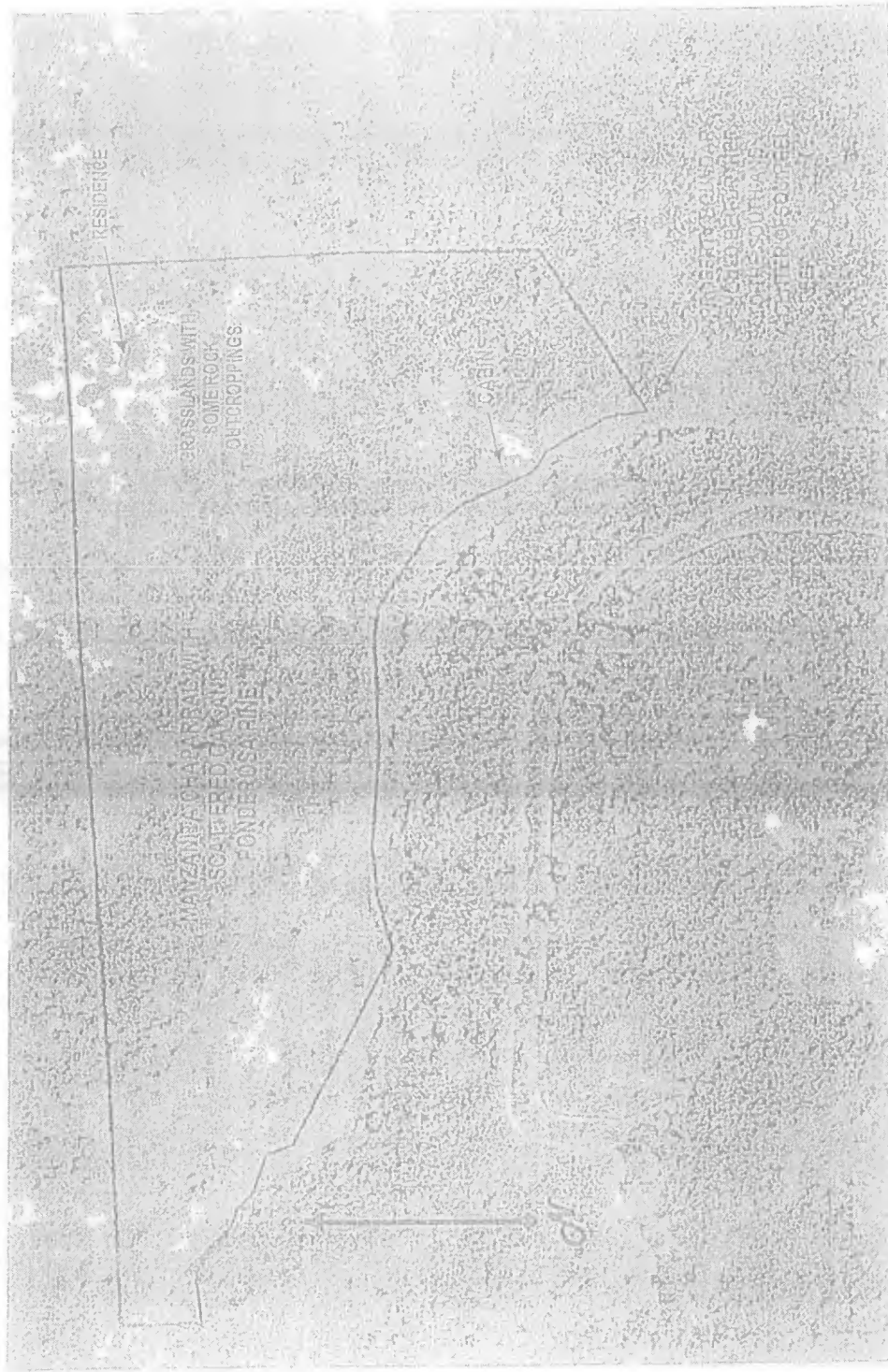
Appendix B. Site Photographs



COSTELLA ENVIRONMENTAL CONSULTING
P.O. Box 215, Nevada City, CA 95959
(530) 265-6969
E-mail: fcostella@netlinker.com

SITE: FRANK PROPERTY
ITEM: Site Photos
DATE: November 2012 Plate: 1 of 2

Appendix C. Biological Resources Map
Frank Property



Clarkia biloba ssp. brandegeae

Brandegee's clarkia

Element Code: PDONA05053

Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G4G5T4	CNPS List: 4.2
State: None	State: S4	

Habitat Associations
General: CHAPARRAL, CISMONTANE WOODLAND, LOWER MONTANE CONIFEROUS FOREST.
Micro: OFTEN IN ROADCUTS. 75-915 M.

Occurrence No. 79	Map Index: 73127	EO Index: 74058	Dates Last Seen
Occ Rank: Good			Element: 2008-06-03
Origin: Natural/Native occurrence			Site: 2008-06-03
Presence: Presumed Extant			
Trend: Unknown			Record Last Updated: 2008-12-10

Quad Summary: Rough And Ready (39°21'22"/542B)

County Summary: Nevada

Lat/Long: 39.17876° / -121.15736°
UTM: Zone-10 N4338231 E659160
Mapping Precision: SPECIFIC
Symbol Type: POLYGON
Area: 4.0 acres

Township: 15N
Range: 07E
Section: 02 Qtr: SE
Meridian: M
Elevation: 1,700 ft

Location: S OF CLEAR CREEK, APPROXIMATELY 1.9 AIR MILE OF INDIAN SPRINGS

Location Detail: MAPPED BY CNDDB AS 3 POLYGONS IN THE SE 1/4 OF SECTION 2 ACCORDING TO A 2008 HOSTLER & FISHER MAP. ONE POLYGON IS LOCATED JUST SE OF THE PEAK NAMED "1659" AND THE OTHER 2 POLYGONS ARE JUST SE OF PEAK "1768."

Ecological: ON OR NEAR ROADCUTS ON N-FACING SLOPES IN OPENINGS WITHIN THE TREE CANOPY. HERBACEOUS AND SHRUB SPP GROWING W/ BRANDEGEE'S CLARKIA INCLUDE BROMUS DIANDRUS, JENSIA RAMMII, B. HORDEACEUS, TOXICODENDRON DIVERSILOBUM, AESCULUS CALIFORNICA, ETC.

Threat: POTENTIAL RESIDENTIAL DEVELOPMENT.

General: 2,460 PLANTS SEEN IN 2008.

Owner/Manager: PVT

California Department of Fish and Game
Natural Diversity Database
Full Report for Selected Elements
Frank Property
Rough & Ready Quad (542B)
December 2012

Laterallus jamaicensis coturniculus

California black rail

Element Code: ABNME03041

Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G4T1	CDFG Status:
State: Threatened	State: S1	

Habitat Associations

General: INHABITS FRESHWATER MARSHES, WET MEADOWS & SHALLOW MARGINS OF SALTWATER MARSHES BORDERING LARGER BAYS.

Micro: NEEDS WATER DEPTHS OF ABOUT 1 INCH THAT DOES NOT FLUCTUATE DURING THE YEAR & DENSE VEGETATION FOR NESTING HABITAT.

Occurrence No. 263 Map Index: 76675 EO Index: 77621 Dates Last Seen

Occ Rank: Unknown

Element: XXXX-XX-XX

Origin: Natural/Native occurrence

Site: XXXX-XX-XX

Presence: Presumed Extant

Trend: Unknown

Record Last Updated: 2009-09-23

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39.14578° / -121.14362°

Township: 15N

UTM: Zone-10 N4334595 E660422

Range: 07E

Mapping Precision: NON-SPECIFIC

Section: 13 Qtr: SE

Symbol Type: POINT

Meridian: M

Radius: 2/5 mile

Elevation: 1,700 ft

Location: VICINITY OF MCCOURTNEY RD AT CHAMPAGNE LN, ABOUT 6.6 MI SW OF GRASS VALLEY (PO).

Location Detail: MAPPED BY GEOREFERENCING FIGURE 2 IN RICHMOND 2008. WITHIN THE CORE SURVEY AREA.

Ecological: SURVEY MARSHES GENERALLY SMALL, GENTLY SLOPED, DENSELY VEGETATED & HIGHLY FRAGMENTED (SURROUNDED BY UNSUITABLE HABITAT). WATER SOURCES PRIMARILY FROM IRRIGATION DITCHES. OCCURRENCE REPRESENTS PART OF A METAPOPULATION IN THE SIERRA FOOTHILLS

Threat:

General: CA BLACK RAILS DETECTED BY RICHMOND ET AL AT 1 SITE DURING AT LEAST 1 PHASE OF CALL-PLAYBACK SURVEYS IN 1994-2006. PART OF A YEAR-ROUND RESIDENT BREEDING POPULATION IN THE SIERRA FOOTHILLS, DISCONTINUOUS WITH THE SF BAY-DELTA POPULATION.

Owner/Manager: UNKNOWN

U.S. Fish & Wildlife Service

Sacramento Fish & Wildlife Office

Federal Endangered and Threatened Species that Occur in
or may be Affected by Projects in the Counties and/or
U.S.G.S. 7 1/2 Minute Quads you requested

Document Number: 121217021434

Database Last Updated: September 18, 2011

Quad Lists

Listed Species

Invertebrates

- *Desmocerus californicus dimorphus*
 - valley elderberry longhorn beetle (T)

Fish

- *Hypomesus transpacificus*
 - delta smelt (T)
- *Oncorhynchus mykiss*
 - Central Valley steelhead (T) (NMFS)
- *Oncorhynchus tshawytscha*
 - Central Valley spring-run chinook salmon (T) (NMFS)
 - winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

- *Rana draytonii*
 - California red-legged frog (T)

Quads Containing Listed, Proposed or Candidate Species:

ROUGH AND READY (542B)

County Lists



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9851 mynevadacounty.com

Steven L. DeCamp
Community Development Agency Director

Brian Foss
Planning Director

June 14, 2013

NOTICE OF DENIAL OF AMENDED FINAL MAP
and MANAGEMENT PLAN

Charles Frank
20047 Wildwood West Dr.,
Penn Valley, CA 95946

FILE NO: AM13-002; MGT13-004
AP#: 50-400-07

You are hereby notified that the Nevada County Planning Commission, at a regular meeting held on June 13, 2013, after a public hearing, did duly consider your application filed on March 26, 2013, proposing an Amended Final Map proposing to modify the supplemental map information in order to remove the "No Build" area recorded with Lot 27 of Houghton Ranches (Subdivision Book 6, Page 24); and 2) a Management Plan for the construction within slopes in excess of 30 percent and a Management Plan for the biological resource impacts within the 100-foot non-disturbance buffer from a watercourse. Both applications were intended to remedy an unpermitted second dwelling. The property is located at 20047 Wildwood Drive, Penn Valley. A legal description of the property is on file in the Planning Department, 950 Maidu Avenue, Suite 170, Nevada City, California.

After said hearing, and the evidence submitted, the Nevada County Planning Commission does hereby notify you that your application for an Amended Final Map and Management Plans are denied, based on the following findings:

The proposed Map Amendment (AM13-002), proposing to modify the "No Building Area" shown for Lot 27 of Houghton Ranches to a "Building Area," was denied based on the following findings set forth in Section L-IV 2.18 of the Nevada County Subdivision Ordinance:

- A. That the proposed amendment will not have a cumulatively minor impact on the recorded subdivision as the specific portions of the recorded "No Building Area" that were subsequently developed without the benefit of a building permit do in fact contain sensitive resources that are protected by the development standards set forth in the Nevada County Zoning Regulations including Steep Slopes (in excess of 30%), a Perennial Watercourse and potential Riparian Areas associated with Squirrel Creek, and with the Driveway Design standards set forth in the Nevada County Fire Safe Regulations;
- B. That the proposed amendment does not conform to the provisions of Government Code Section 66474(a) and (b) in that the proposed amendment is not consistent with the Nevada County General Plan Policies that protect its identified sensitive resources, including General Plan Policy 1.17 which identifies the list of sensitive resources with which the County is to protect in order to preserve our unique character, including steep slopes, areas with high erosion potential, areas subject to high fire hazards, and riparian corridors, Policy 6.9 which requires the use of development standards for project design, grading and construction in sensitive areas to protect those resources, minimize any disturbance, and maintain the consistency of the natural land forms, Policy 11.6 which requires the County to continue to

enforce its regulations concerning the installation and operation of private sanitary waste disposal systems in order to protect both surface and ground water quality, and Policy 12.1 requires the enforcement of the grading ordinance for erosion control;

- C. That the proposed map amendment does not conform to the provisions of Government Code Section 66474(c) in that the site of the existing cabin structure is not physically suitable for development, and Section 66474(e) in that the amendment will likely result in environmental damage including fish and wildlife habitat, and Section 66474(f) that the septic system in the steep slopes and proximity to Squirrel Creek could likely result in public health impacts;
- D. That the proposed map amendment would affect the ability to make the required findings for subdivision approval as set forth in the Nevada County Subdivision Ordinance;
- E. There are no changes in the circumstances since the recordation of Final Map FM77-036 that would otherwise permit the approval of development of a residence and driveway on slopes in excess of 30%, or within 100-feet of a perennial stream, or for the installation of a sewage disposal system within 100-feet of a perennial stream; and
- F. That the current note on the recorded map was applicable to this parcel prior to its purchase and development by this applicant and that the second unit could have been constructed within the Potential Building Area without any additional burden on the present fee owner of the property.

The Management Plan (MGT13-004) for the erosion control work associated with constructing an existing cabin and its partial access on slopes in excess of 30%, and for construction of the cabin and its sewage disposal system within the 100-foot buffer zone of a perennial stream was denied based on the following findings:

- A. That the proposed development does not ensure the preservation of the natural and topographic character of the slopes in the vicinity of the cabin and its access will remain stabilized as substantial signs of erosion are visible and further work is and will remain required to constantly address the maintenance of the slope;
- B. That the aesthetic quality of the slope will be jeopardized due to the greater erosion potential and the vegetation removal required for the fuel modification zones around the structure and the access road that would need to be constantly maintained;
- C. That alternatives to this building location are feasible and are available to this 36.64-acre parcel, including the 3.44-acre "Potential Building Area" which is outside the 100-foot watercourse setback and outside of any 30% slopes as shown on the recorded Final Map;
- D. That disturbance to the steep slopes and the 100-foot watercourse setbacks could be avoided altogether had the structure been properly located pursuant to the approved "Potential Building Area" as shown on the recorded Final Map;
- E. That water quality problems may result from the sedimentation associated with the noted erosion and that the sewage disposal system is not designed in accordance with the requirements of the Nevada County Land Use and Development Code;
- F. That the watercourse setback encroachment does not conform with the applicable standards set forth in the Zoning Code in that there is substantial area on this 36.64-acre site to avoid the impact to this resource;
- G. That although the cabin was already constructed at the time the consultants were hired to prepare the Management Plan, the Management Plan contains some erroneous statements

such as the date the cabin was constructed (dry season of 2012) and that the cabin is using a Minimum Useable Sewage Disposal System (MUSDA) for its sewage disposal requirements; and

- H. That there is no physical evidence that was provided to the Planning Commission that warrants a physical hardship on the land that would otherwise prohibit the relocation of the cabin unit to a conforming locations consistent with the recorded final map.

Please be advised that if you are dissatisfied with this decision, you may file an appeal within 10 days from the date of the Nevada County Planning Commission's action (deadline for appeal: June 24, 2013, by 5:00 p.m.). Any appeal must be submitted on the proper form and subject to a fee which is available from the Clerk to the Board of Supervisors, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California 95959.

NEVADA COUNTY PLANNING COMMISSION
BRIAN FOSS, EX-OFFICIO SECRETARY

By: _____

Janet Hayes

Clerk to the Planning Commission

BF: jh

cc: Nevada County Fire Protection Planner

PROOF OF SERVICE BY MAIL

(Code of Civil Procedure Sections 1013a and 2015.5)

I am a resident of the United States and of the State of California, County of Nevada; I am over the age of eighteen years and not a party to the within action; my business address is:

ERIC ROOD ADMINISTRATIVE CENTER
950 Maidu Avenue, Suite 170
Nevada City, California 95959-8617

I am readily familiar with the Nevada County Planning Department's business practice for the collection and processing of correspondence for mailing with the United States Postal Service. The within documents will be deposited with the United States Mail on June 17, 2013, in the ordinary course of business.

The name(s) and address(s) of the person(s) served as shown on the envelope(s) are as follows:

Charles Frank
20047 Wildwood West Dr.
Penn Valley, CA 95946

The foregoing person(s) were served with a denial letter for a Parcel Map, File # AM13-002, placing same for collection and mailing on June 17, 2013, at Nevada City, California, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 17, 2013, at Nevada City, California.


Signature

CERTIFICATE OF SERVICE

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the within action, my business address is: 950 Maidu Avenue, Nevada City, CA 95959.

On November 14, 2013, I served the attached NOTICE OF PENDENCY OF ADMINISTRATIVE PROCEEDING on the parties to this action by placing said copy in a sealed envelope, addressed as follows:

Charles Frank Trste ETAL
20047 Wildwood West Dr., Penn Valley, CA 95946

I placed each such envelope, to be supplied with postage thereon fully prepaid for Certified Mail, Article No. 70093410000178112912 for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of the Nevada County Code Compliance Department for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 14th day of November, 2013 at Nevada City, California.


Jennifer Purvis, Code Compliance Office Assistant II

CERTIFICATE OF SERVICE

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 950 Maidu Avenue, Nevada City, CA 95959.

On November 21, 2013 served the attached NOTICE OF PENDENCY OF ADMINISTRATIVE PROCEEDING on the parties to this action by placing said copy in a sealed envelope, addressed as follows:

Charles Frank Trste ETAL
20047 Wildwood West Dr., Penn Valley, CA 95946

I placed each such envelope, to be supplied with postage thereon fully prepaid for first class mail for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of the Nevada County Code Compliance Department for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 20th day of November, 2013 at Nevada City, California.


Jennifer Purvis, Code Compliance Office Assistant II

RECORDING REQUESTED BY:
NEVADA COUNTY CODE COMPLIANCE
AND WHEN RECORDED MAIL TO:

NAME: County of Nevada
Code Compliance Division

ADDRESS: 950 Maidu Ave

CITY, STATE & ZIP: Nevada City CA 95959

COPY
Nevada County Recorder
Gregory J. Diaz
Document#: 20130038441
Thursday November 14 2013, at 08:09:13 AM

Paid:
Recorded By: AB

2
NF

SPACE ABOVE THIS LINE FOR RECORDER USE ONLY

COMMUNITY DEVELOPMENT AGENCY, CODE COMPLIANCE DIVISION OF THE COUNTY OF
NEVADA

In the matter of the public nuisance or
other Nevada County Municipal
Code violations on the property of:

Case#: CE11090001

Charles Frank Trste ETAL
20047 Wildwood West Dr.
Penn Valley, CA 95946

And Does I through X,
Owners

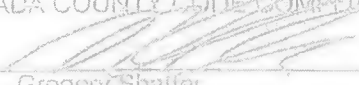
**NOTICE OF PENDENCY OF
ADMINISTRATIVE PROCEEDINGS**

NOTICE is hereby given to all persons pursuant to the County of Nevada Municipal Code and/or International Property Maintenance Code and/or California Building Code and/or the California Residential Code adopted by the County of Nevada that administrative proceedings have been commenced with respect to the structure(s) and/or land located upon the following real property in the County of Nevada:

ADDRESS: 20047 Wildwood West Drive, Penn Valley, CA 95946
PARCEL #: 50-400-07-000
LEGAL DESCRIPTION: LOT 27 HOUGHTON RANCHES 6/24

VIOLATION(S): 2009 International Property Maintenance Code 108.1.4 - Unlawful Structure and Land Use and Development Code L-VI 1.4 - Sewage Disposal that such proceedings are based upon the noncompliance of such structure(s) and/or land with the requirements of the Municipal Code; that every owner of said real property waives his right to a hearing on such proceedings unless he/she makes a proper request in form and within the time prescribed by the Code cited; and that failure to comply with the lawful orders of the Code Compliance Program Manager and/or authorized agents of the County of Nevada heretofore and hereafter issued relative to the above matter may result in demolition of the offending structure(s), abatement of the public nuisance, or other available legal remedies and assessment of cost, expenses, and administrative cost thereof to the property heretofore described as a tax and special assessment lien on such property; that any purchaser, his/her heir or assigns acquiring said property subsequent to the recording of the Notice with the County recorder shall have such interest subject and subordinate to said tax and assessment lien.

NEVADA COUNTY CODE COMPLIANCE DEPARTMENT

BY: 
Gregory Shaffer

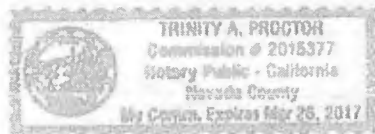
TITLE: Code Compliance Program Manager DATE: 11/13/2013

STATE OF CALIFORNIA }
COUNTY OF NEVADA } SS

On this 13 day of November, 2013, before me, Trinity Proctor, a Notary Public, personally appeared Gregory Shaffer, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal



A handwritten signature in cursive script, appearing to read "Trinity A. Proctor", written over a horizontal line.



Gregory J. Diaz,
Recorder
950 Maidu Avenue
Nevada City, CA 95959
530-265-1221

Nevada County Transaction #: 87139
Receipt #: 84378
Cashier Date: 11/14/2013 8:09:15 AM (AB)

87139

Print Date:
11/14/2013 8:09:23
AM

Customer Information	Transaction Information	Payment Summary
(CON) COUNTY OF NEVADA 950 MAIDU AVE NEVADA CITY, CA 95959	Date Received: 11/14/2013 Source Code: Over The Counter Q Code: Over The Counter Return Code: INTER OFFICE Trans Type: Recording Agent Ref Num:	Total Fees \$.00 Total Payments \$.00

1 Payments



NOCHARGE

1 Recorded Items



(420) Notice of Pendency of Admin
Proceedings

CFN: 20130030441 Date: 11/14/2013 8:09:13 AM
From: To:

0 Search Items

0 Miscellaneous Items

1 OFFICE OF THE COUNTY COUNSEL
2 Alison A. Barratt-Green, County Counsel (148360)
3 Scott A. McLeran, Deputy County Counsel (256263)
4 950 Maidu Avenue, Suite 240
5 Nevada City, CA 95959
6 Tel: (530) 265-1319 Fax: (530) 265-9840
7 Attorneys for Defendant

JAN 30 2014 28
Superior Court of the
State of California
County of Nevada

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF NEVADA

11 CHUCK FRANK and KATHERINE FRANK,

Case No.: CU13-079981

12 Plaintiffs,

NOTICE OF ENTRY OF ORDER

13 vs.

14 COUNTY OF NEVADA COMMUNITY
15 DEVELOPMENT AGENCY and DOES 1-20,

16 Defendants.
17

18
19 To Plaintiffs, Names:

20 NOTICE IS HEREBY GIVEN that on January 27, 2014, the Court entered its Order
21 After Hearing on Defendant County of Nevada Community Development Agency's Demurrer to
22 Complaint, a copy of which is attached hereto.

23
24 Dated: January 29, 2014

25 OFFICE OF THE COUNTY COUNSEL
26 Alison A. Barratt-Green, County Counsel

27 By:

28 Scott A. McLeran, Deputy County Counsel
29 Attorneys for Nevada County Defendants
30
31
32

Case No. CU13-079981
NOTICE OF ENTRY OF ORDER

CERTIFICATE OF SERVICE

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the within action; my business address is: Office of the County Counsel, Eric Rood Administration Center, 950 Malibu Avenue, Nevada City, California 95959-8617.

On January 30, 2014, I served the attached: **NOTICE OF ENTRY OF ORDER**, on the parties to this action by placing said copy in a sealed envelope, addressed as follows:

Chuck Frank
Katherine Frank
20047 Wildwood West Drive
Penn Valley, CA 95946

XX (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of the Nevada County Counsel for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

(BY OVERNIGHT DELIVERY) I served a copy of the within document by Federal Express overnight delivery by placing said copies in the envelopes and delivering said envelopes to the appropriate drop off box in Nevada City, California.

(BY PERSONAL SERVICE) I served a copy of the within document by personally delivering copies to the person as listed above.

(BY FACSIMILE) I caused such document to be transmitted by facsimile machine to the number indicated after the address(es) noted above and the transmission was reported as complete and without error.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 30th day of January, 2014, at Nevada City, California.


Cindy Hunt

1 OFFICE OF THE COUNTY COUNSEL
2 Alison A. Barratt-Green, County Counsel (148360)
3 Scott A. McLeran, Deputy County Counsel (256263)
4 950 Magda Avenue, Suite 240
5 Nevada City, CA 95959
6 Tel: (530) 265-1319 Fax: (530) 265-9840
7 Attorneys for Defendant

FILED
JAN 27 2014
Superior Court of the
State of California
County of Nevada

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF NEVADA

10
11 CHUCK FRANK and KATHERINE FRANK.

Case No.: CUI3-079981

12 Plaintiffs,

13 vs.

14 COUNTY OF NEVADA COMMUNITY
15 DEVELOPMENT AGENCY and DOES 1-20,

16 Defendants.

ORDER AFTER HEARING ON
DEFENDANT COUNTY OF NEVADA
COMMUNITY DEVELOPMENT
AGENCY'S DEMURRER TO
COMPLAINT

Date: January 3, 2013
Time: 10:00 a.m.
Dept: VI

Honorable Sean P. Dowling

17
18
19
20
21 On January 2, 2014, the Court issued its tentative ruling on Defendant's Demurrer to
22 Complaint. No hearing having been requested, the Court adopts its previously issued tentative
23 ruling as follows:

24 Defendant's Demurrer to the Complaint is sustained without leave to amend.

25 The elements generally applicable to a request for injunctive relief are as follows: (1) a
26 balancing of the hardships (i.e., plaintiffs are likely to suffer more injury from denying of the
27 injunction than defendants are likely to suffer from granting); and (2) a reasonable probability
28 that plaintiffs will prevail on the merits. *Baypoint Mortg. Corp. v. Crest Premium Real Estate*
29 *etc. Trust* (1985) 168 Cal.App.3d 818, 824, 214; *Vega v. JPMorgan Chase Bank, N.A.* (F.D. Cal.
30 2009) 654 F.Supp.2d 1104. See also generally *Bernhardt*, Cal. Mortgage and Deed of Trust
31 Practice (Cont. Ed. Bar 4th ed. 2009) §§7.22-7.34, 7.63-7.66
32

ORDER AFTER HEARING ON DEMURRER TO COMPLAINT

Case No. CUI3-079981

1 In the present case, Plaintiffs have failed to demonstrate a reasonable probability that they
2 will prevail on the merits. First, Plaintiffs have not alleged wrongful conduct on the part of
3 Defendant. The Complaint itself admits that the structure is not permitted and that the County
4 has acted pursuant to its Land Use Codes to commence enforcement proceedings. Moreover,
5 Plaintiffs have failed to allege an irreparable injury. Vague assertions relating to health and
6 smoke do not demonstrate irreparable injury.

7 Additionally, Plaintiffs cannot obtain injunctive relief against the county to prevent the
8 legal enforcement of its ordinances or to enjoin its employees from performing their duties.
9 There is a general rule against enjoining public officers or agencies from performing their duties.
10 *Tahoe Keys Prop. Owners Assoc. v. State Water Resources Control Bd.* (1994) 23 Cal.App 4th
11 1459, 1471.

12 The burden is on the complainant to show the court that a pleading can be amended
13 successfully, in order to obtain an order allowing leave to amend. *McKenney v. Purepac*
14 *Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 78; *Weil & Brown*, Cal. Prac. Guide: Civ. Pro.
15 Before Trial (The Rutter Group 2010), ¶7.130 (citing *Goodman v. Kennedy* (1976) 18 Cal 3d
16 335, 349). Because Plaintiff has failed to show the court that the pleading can be amended
17 successfully, leave to amend is denied.

18
19 IT IS SO ORDERED

20
21 DATED: JAN 27 2014

22
23
24 Honorable Sean P. Dowling
Judge of the Superior Court

25 APPROVED AS TO FORM:

26
27 Chuck Frank

28
29 Katherine Frank
30
31
32

Postage		
Certified Fee		
Return Receipt Fee (Certification Required)		
Registered Delivery Fee (Certification Required)		
Total Postage & Fees		

CHARLES & KATHRYN FRANK

20047 WILLOWood WEST DR
PEN VALLEY, CA 95946

COUNTY OF NEVADA
ABATEMENT ORDER OF July 9, 2014
AS TO THE PROPERTY LOCATED AT
20047 WILDWOOD WEST DRIVE, PENN VALLEY, CA.

TO: Charles and Kathryn Frank
20047 Wildwood West Drive
Penn Valley CA 95946

FROM: Steven L. DeCamp, Director
Community Development Agency ("CDA") of the County of Nevada

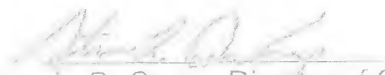
PLEASE BE ADVISED: PURSUANT TO the authority vested in me by Section L-II 5.22 of the Land Use and Development Code of Nevada County (copy attached), I DO HEREBY DETERMINE that a public nuisance exists at the property identified above, which is Assessor Parcel No. 50-400-07, ("the Property"). This determination is based the attached Report of Inspection ("ROI") dated July 8, 2014, provided to me by Code Compliance Officer Nick Hoekstra and after review and approval of the Program Manager of the Code Compliance Division of CDA.

My determination of public nuisances is intended to authorize the Code Compliance Division to proceed with a nuisance abatement proceeding as described in Section L-II 5.22. This proceeding will protect your rights while the County seeks authorization for its employees, officers, and agents to enter the Property and conduct the necessary abatement activities under lawful authority.

Abatement activities include, but are not limited to, clean-up, repair, securing of structures against unlawful use, demolition, removal of solid waste, and other actions reasonably necessary to correct violations and abate nuisances on the Property. The total cost incurred by the County for these activities will be imposed upon you as an abatement charge. If the charge is unpaid, it may become a lien on the Property and/or an assessment on the tax bill for the Property. The total cost imposed may also include the County's administrative and legal costs from July 9, 2014, through to completion of abatement.

After thirty or more days, the Code Compliance Division will send you (as the responsible parties) a Notice of Abatement, which will also be posted on or near the Property. This Notice will show the time and date for the administrative hearing at which the County will seek authority to enter and conduct abatement. You may contact the Code Compliance Division (see letterhead on the ROI) if you have any questions, suggestions, or preferred hearing dates.

Dated: July 10, 2014


Steven L. DeCamp, Director of CDA



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9854 <http://www.mynevadacounty.com>

Planning Department Environmental Health Building Department Sanitation Department Dept. of Public Works Agricultural Commissioner

Steven L. DeCamp, Community Development Agency Director

MEMO

TO: Steven DeCamp, Director,
Community Development Agency

FROM: Nicholas Hoekstra, Code Compliance Officer
Code Compliance Division

RE: REPORT OF INSPECTION - Frank property, 20047 Wildwood West Drive, Penn
Valley, CA 95946 (APN 50-400-07)

DATE: July 8, 2014

This Report of Inspection follows a site visit by me on July 8, 2014. The purpose of the inspection was to ascertain the condition of the property as to presence or absence of violations of County-adopted Codes, which constitute a public nuisance.

This Report includes background information relative to previous inspections of this property. There have been five inspections including the most recent, completed on July 8, 2014. There has been no substantial progress toward compliance, which would require permits to be obtained or demolition of the illegal residence, (cabin).

SUMMARY:

Charles & Kathryn Frank – owners of record as joint tenants.
20047 Wildwood West Drive
Penn Valley CA
APN: 50-400-07
Acres: 36.64
Zoned: AG-X

- Current case opened August 29, 2011, stemming from a complaint alleging, unpermitted cabin and septic. The cabin was also alleged as being used for commercial purposes, as a rental cabin. The cabin was also built in an area of the property that is designated as a "No Build Zone".

- There have been five site inspections between the date the case was opened, in August of 2011, to the current date of July 8, 2014.
- Property owner issued three separate Administrative Citations from August of 2013 to November of 2013.
 - Unlawful Structure – 2009 IPC 108.1.4
 - Sewage Disposal – LUDC L-V11.4
- Property owner applied for a Management Plan and Map Amendment in March of 2013.
 - The Planning Commission heard the applications and subsequently denied them in June of 2013.
 - The property owner also paid for and received a Planners Consultation to find out the feasibility of getting the cabin permitted at its present location. He met with Planner Tod Herman. The property owner was told that it would be “next to impossible” to get the cabin permitted in its present location.
- Property owner brought legal action against the County of Nevada to restrain the County from enforcement of its ordinances and its employees from performing their duties, in relation to his property. This action was denied in Superior Court, County of Nevada, on January 27, 2014.
- Inspections leading to this report:
 - 09/08/11: CCO Bohnet attempted to inspect the property, was denied permission by property owners wife.
 - 09/09/11: CCO's Bohnet and Choate inspected the cabin from a neighboring property. Observed someone apparently removing plumbing from under the cabin. CCO's responded to the property and were again denied inspection by the property owner's wife.
 - 09/12/11: Property owner agreed to an inspection on this date by CCO's Bohnet and Parker. Property owner had a contractor with him at this time.
 - 11/08/11: CCO Bohnet met with the property owner, on the property, to look at a potential site to relocate the cabin. A suitable site was located, on the North/Central portion of the property.
 - 07/08/14: CCO Hoekstra and CCPM Shaffer inspected the cabin from a neighboring property. The purpose of this inspection was to confirm that the illegal cabin remains on the property and to obtain photographs showing this. Photos and CCO observations confirmed the cabin is still there.

REPORT OF CONDITIONS

The property continues to be a public nuisance. The unpermitted cabin is still located on the property, in a designated “No Build Zone”. Mr. Frank was issued a third citation for the code violations in November of 2013. Since that time no response or progress toward compliance has been forthcoming.

VIOLATIONS NOTED:

This is not an exhaustive list of violations.

1. Unlawful Structure, 2012 International Property Maintenance Code, Section 108.1.4, (An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered, or occupied, contrary to law).
2. Sewage Disposal, County of Nevada Land Use and Development Code, Section L-VI, 1.4. (A sewage system shall be constructed, operated, and maintained in compliance with all requirements of the permit allowing its installation and operation and so as not to permit sewage to rise to the ground surface or to discharge sewage onto the ground or into the groundwater or surface water).

PHOTOGRAPHS.

I have attached 8 photographs showing the illegal cabin and septic system, on Mr. Franks property.

CONCLUSION.

The responsible parties for this property have taken no action to correct the violations and abate the public nuisance. This code case was opened in August of 2011 and it is now July of 2014. This will be a three year period, next month, (August-2014). The cabin remains in the same location where it was originally built, by the property owners. The last verifiable conversation with Mr. Frank was in July of 2013, when he told Planning Director, Brian Foss, that he was having trouble finding a contractor to demo the cabin.

I believe that timely abatement can only be achieved by County intervention. The County should have the violations abated and charge the cost to the responsible parties. The means of abatement would be for the County to hire a licensed contractor to demo and remove the illegal structure, (cabin).

Dated: July 8, 2014

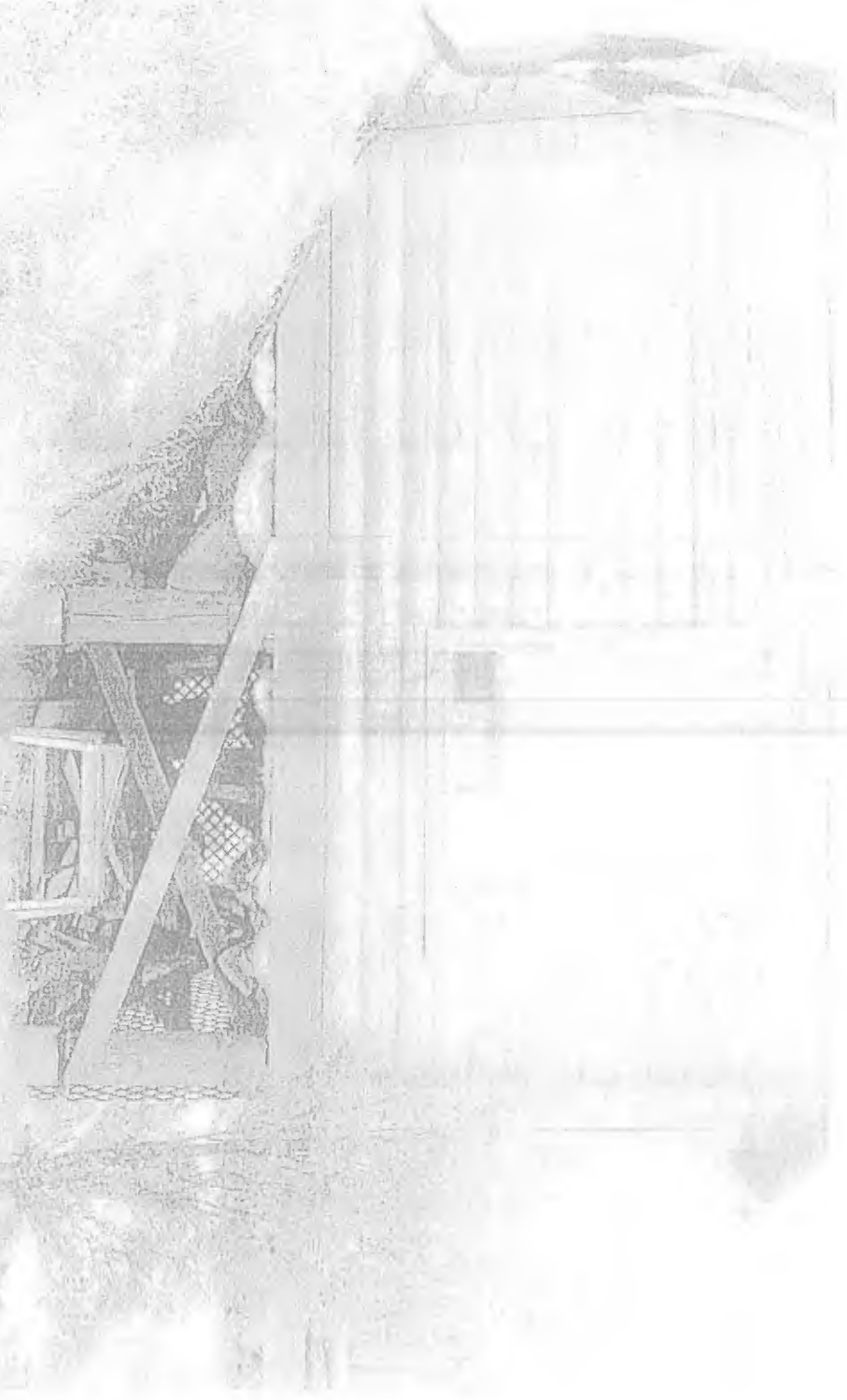
Signed: 

Nicholas Hoekstra
Code Compliance Officer



06/19/2012 09:06

06/19/2012 09:05





09/09/2011 09:54



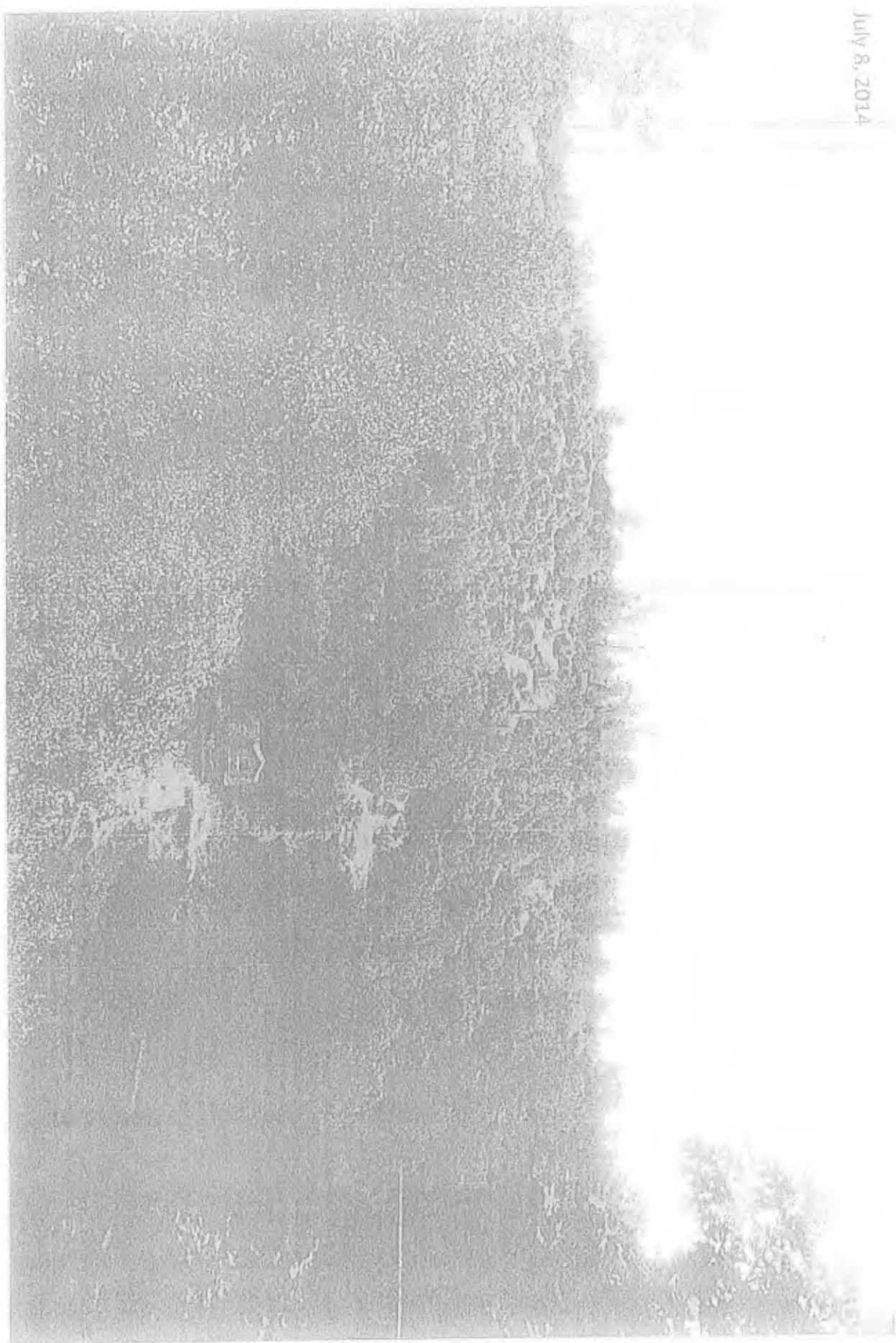
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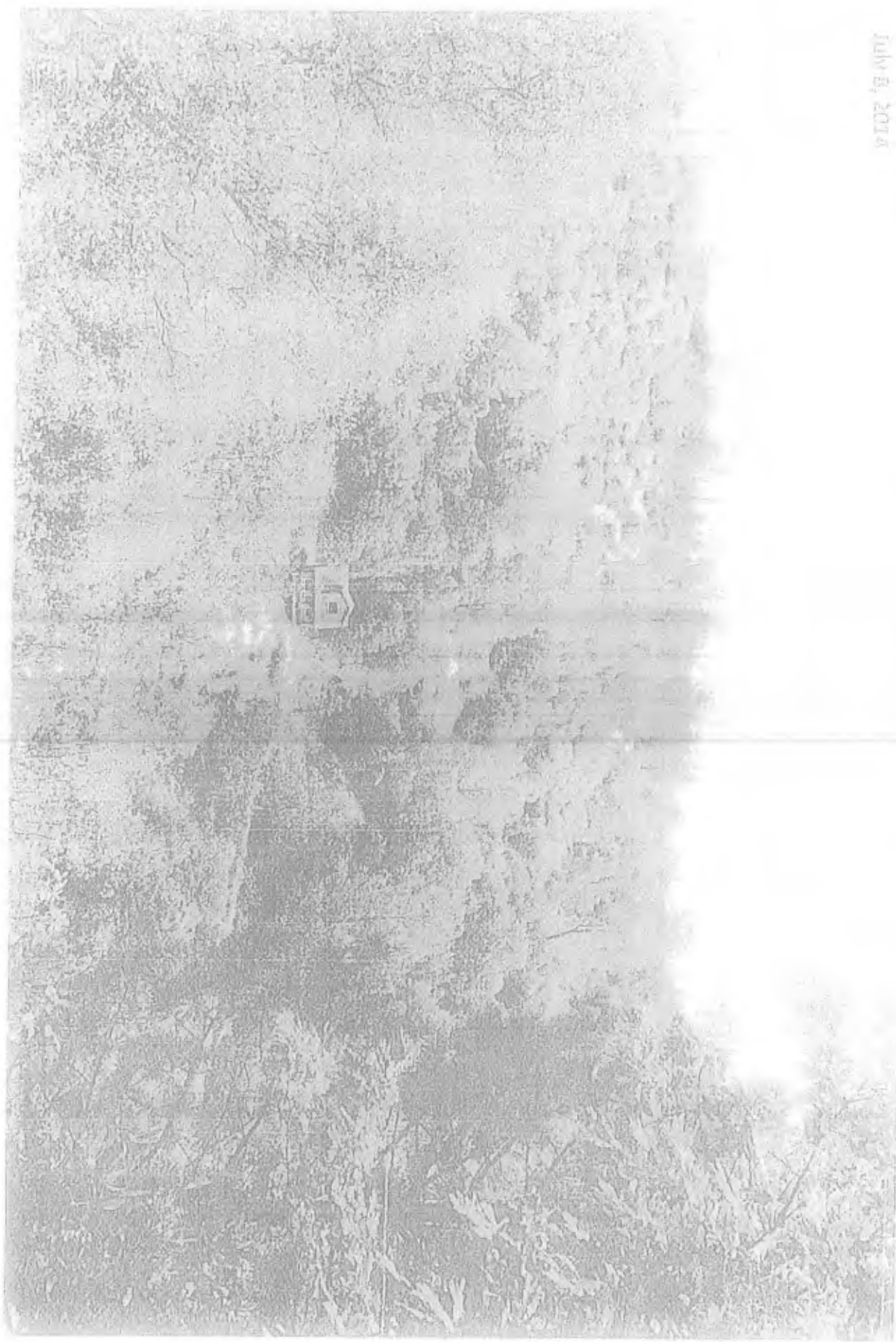


09/08/2011 10:35

July 8, 2014



July 8, 2014



200

NOTICE TO ABATE NUISANCE

Nevada County Land Use and Development Code Section L-II 5.22

The owners and occupants of real property described on the latest equalized Nevada County tax roll as A.P.N. 30-400-07, and having a street address of 20047 Wildwood West Drive, are hereby notified to appear before a hearing officer of the County of Nevada at the Nevada County Board of Supervisors Chambers, First Floor, Eric Rood Administrative Center, 950 Maiden Avenue, Nevada City, California 95959 on October 16, 2014, at 2:00 p.m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Nevada County Land Use and Development Code Section L-II 5.22 B.

After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the hearing officer, the cost of prior time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from the decision of the hearing officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, and the cost of securing expert and other witnesses may become a lien against the subject property and also assessed against the property in the same manner as taxes. The abatement lien to be recorded shall have the same force and effect as an abstract of judgment that is recorded pursuant to a money judgment obtained in a court of law.

If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that after an initial showing by the Code Enforcement Officer, you will have the burden of proving that no public nuisance exists on your property. In this connection, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a public nuisance as defined in the Nevada County Code. Copies of LUDC Sec. L-II 5.22 and uniform hearing procedures relating to abatement hearings are enclosed to assist you in the preparation of your presentation.

The original and three copies of any documents you wish to be included in the packet provided to the Hearing Officer must be provided to the Clerk of the Board 7 days prior to the scheduled hearing. If you wish to present evidence at the hearing, you must provide the original and three copies at that time.

A finding that a public nuisance exists on the property may result in an administrative decision ordering the abatement of uses on your property which are found to be a public nuisance. If the hearing officer finds that your property is in violation of the Nevada County Code, the County will contend that you are bound by such finding at any subsequent judicial action to enforce the abatement.

Important! Read This Notice Carefully. Failure To Appear And Respond At The Time Set Forth In This Notice Will Likely Result In Administrative Abatement And Termination Of Uses Of Your Property Which The CDA Director Contends Are In Violation Of The Nevada County Land Use and Development Code.

Printed

Donna Landi, Clerk of the Board

Nebraska County LUDC L-II 5.22
Nevada County Resolution 29352
Certificate of Abatement

CERTIFICATE OF MAILING

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the Abatement Order; my business address is Clerk of the Board of Supervisors, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California 95959-8617.

On September 22, 2014 I served the enclosed:

Notice to Abate Nuisance
Board of Supervisors Resolution 99-058
Nevada County LUDC L-II 5.22

On the following persons via First Class US Mail on September 22, 2014:

Charles and Kathryn Frank, 20047 Wildwood West Drive, Penn Valley CA 95946
Steven Baker, Esq., Diamond Baker Mitchell, LLP
149 Crown Point Court, Ste. B, Grass Valley CA 95945

I placed such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of Nevada County for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing.

On the following persons via email on September 23, 2014:

Nevada County Code Compliance Program Manager Gregory Shaffer
Nevada County Code Compliance Officer Nicholas Hockstra
Nevada County Counsel Scott McLeran
Nevada County Counsel Katy Francis
Nevada County Planning Director Brian Foss
Nevada County Building Official Craig Griesbach
Nevada County Clerk of the Board Donna Landi

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

Date

Barbara Price



RESOLUTION APPROVING HEARING OFFICER AND
UNIFORM HEARING PROCEDURES FOR THE
CONDUCT OF PROPERTY MAINTENANCE HEARINGS

WHEREAS, on August 11, 1998, the Board of Supervisors adopted Ordinance No. 1981 to authorize a hearing officer to hear property maintenance hearings; and

WHEREAS, it is necessary and desirable to establish a uniform procedure for the conduct of property maintenance hearings; and

WHEREAS, it is necessary and desirable to empower the hearing officer to issue subpoenas, to receive evidence, to administer oaths and to rule on questions of law and the admissibility of evidence;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Nevada hereby adopts the uniform hearing procedures attached to this resolution as Exhibit A and empowers hearing officers to be designated by this Board to exercise the power and responsibilities set forth in such procedures.

BE IT FURTHER RESOLVED, that the following named individual is duly qualified to hear and conduct proceedings pursuant to the provisions of Ordinance No. 1981 and the uniform hearing procedures established by this resolution:

David H. Smith, Jr.

Properly Maintenance hearings shall be heard by a Hearing Officer. Such Hearing Officer shall be a member of the California Bar admitted to practice for at least five years prior to appointment as is required by Government Code section 27724.

2. Powers of Hearing Officers

Hearing Officers shall have those powers set forth in sections 27721 and 27722 of the Government Code including the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to administer subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and power to prepare a record of the proceedings.

3. Continuances/Subpoenas

All requests for either continuances or issuance of subpoenas shall be made in writing to the hearing Officer no later than ten (10) days prior to the scheduled hearing date. Failure to comply with this provision shall be deemed a waiver of any right to request either a continuance or the issuance of subpoenas.

4. Fairness of Hearings

Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

5. Evidentiary Rules

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make inadmissible the admission of such evidence over objections in civil actions before a court of competent jurisdiction. Unreliable, repetitious or irrelevant evidence shall be excluded at the discretion of the hearing Officer.

The Hearing Officer shall ordinarily proceed in the following order when conducting Property Maintenance hearings:

- (a) The Hearing Officer, in advance of the hearing, shall provide a summary of the procedure for abatement of public nuisances as adopted by Nevada and codified in Article 40 of Chapter 11 of the Land Use & Development Code, including entitlement to notice and opportunity to be heard, rules for conduct of the hearing, and appeal rights.
- (b) County staff's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, an account of enforcement costs relating to the property, and a recommended decision.
- (c) A presentation by or on behalf of the property owner shall next proceed.
- (d) Tenants or other occupants of the subject property shall speak third.
- (e) Individuals owning property immediately contiguous to the subject property shall speak fourth.
- (f) Other interested parties shall speak fifth.
- (g) The property owner shall be entitled to rebuttal.

After all of the testimony is taken, the Hearing Officer shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Board of Supervisors. During the course of the hearing, the Hearing Officer may question any witness and may, through the Hearing Officer, allow cross-examination if he or she deems it in the interest of justice to do so.

- (h) Each speaker shall approach the microphone and give his or her full name and address for the record.
- (i) Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Hearing Officer may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for the

presentations of County staff and the property owner and at least three minutes shall be allowed for all other speakers. Speakers shall, at the discretion of the Hearing Officer, be allowed to speak for longer than established limits if that speaker represents a group of individuals, the remainder of which chooses not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitations upon the length of written statements.

(6) Subject to the Hearing Officer's right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.

(7) Witnesses shall be sworn and subject to cross-examination by the Hearing Officer.

Section 2.2.3. Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Hearing Officer, any interested party may submit written evidence or argument. Any party desiring to submit written evidence shall provide three (3) copies of each document. One copy each shall be provided to the Hearing Officer and opposing party and one copy shall be made available for public review. In the event the Hearing Officer concludes the hearing and continues the decision to another time, the Hearing Officer may, in his or her discretion, set a deadline for submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Hearing Officer during the period of a continuance or after the public hearing has been closed.

Section 2.2.4. Site Visits

Whenever the Hearing Officer deems it necessary to take a field trip to view the site in question, the Hearing Officer may conduct a site visit. Unless the site visit is tape recorded, the Hearing Officer shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit the Hearing Officer shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

Section 2.2.5. Record Keeping

The Hearing Officer shall maintain a record of all proceedings. It is the duty of the Hearing Officer to keep a record of all proceedings, including the testimony of all witnesses, the arguments of all parties, and the conclusions of the Hearing Officer. The record shall be maintained in a permanent form and shall be available for public review. The record shall be maintained in a permanent form and shall be available for public review.

court reporter shall provide a copy of the reported written transcript for the Hearing Officer at no charge to the County.

4. RECUSAL OF HEARING OFFICER

At the time the Property Maintenance hearing is noticed, the name of the Hearing Officer responsible for the conduct of the hearing shall be included in such notice. Within five days from the date such notice is published, posted or mailed, any individual desiring to recuse such Hearing Officer on the basis of an alleged conflict of interest shall notify the Community Development Agency specifically setting forth the factual basis for the alleged conflict. Failure to notify the Community Development Agency of the requested recusal of a Hearing Officer within the five day period shall be deemed a waiver of any right to recuse such Hearing Officer at the time of the Property Maintenance appeal hearing. In the event the Hearing Officer denies that a conflict of interest exists the Board of Supervisors shall hear evidence, consider the matter, and render a decision regarding whether a conflict of interest exists.

5. BOARD OF SUPERVISORS

Within thirty (30) calendar days of the conclusion of the Property Maintenance hearing, the Hearing Officer shall render a written decision, including any findings or conclusions required for that decision. If a nuisance is found to exist the decision shall order the property owner to abate such within a time certain and, if such is not accomplished, shall authorize the Community Development Agency to cause such abatement to occur thereafter. The decision and the record shall be submitted to the clerk of the local body on whose behalf the hearing was held and shall give notice of the decision as provided for in the Nevada County Land Use and Development Code. Said notice of decision shall include notification of the right and procedure to appeal the decision of the Hearing Officer to the Board of Supervisors and of the last date upon which such an appeal can be made pursuant to LVDC Sec. L-11 40.5.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this 5th day of January, 1999, by and between the COUNTY OF NEVADA a political subdivision of the State of California (hereinafter referred to as "County"), acting by and through the Community Development Agency, and CATHERINE HARRIS (Tax ID No. 89-007-4876) (hereinafter referred to as "Contractor"),

WITNESSETH:

In consideration of the mutual promises set out below, Contractor and County agree as follows.

1. (A) The services to be performed, (B) the time within which said services are to be performed, (C) the amount of compensation, and (D) the schedule for payment of such compensation shall be as specified in Exhibit "A", attached hereto and by this reference incorporated herein.
2. GENERAL PROVISIONS. The general provisions set forth in Exhibit "B" are part of this Agreement. Any inconsistency between said general provision and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.
3. DESIGNATED REPRESENTATIVES. The Community Development Agency Director is the representative of the County and will administer this Agreement for the County. Catherine Harris is the authorized representative for Contractor. Changes in designated representatives shall occur only by advance written notice to the other party.
4. EXHIBITS. All exhibits referred to herein are attached hereto and by this reference incorporated herein. Exhibits include:

Exhibit "A" - Services and Payment
Exhibit "B" - General Provisions

5. AGREEMENT DATE. The Agreement Date is: January 5, 1999

SCOPE OF SERVICES AND DUTIES

The services to be provided by Contractor and the scope of Contractor's duties include the following:

1. Unless disqualified by reason of a conflict of interest or otherwise, Contractor shall provide hearing officer services as assigned by the County before, during, and after such hearings as may be scheduled by the County for the purpose of adjudicating property maintenance disputes and issuing a decision related thereto. The specific nature of such services to be performed for any particular matter assigned shall be determined by the Contractor.
2. All hearing officer services rendered by Contractor shall be performed in accordance with the provisions of Article 40 of Chapter 11 of the Land Use and Development Code of the County of Nevada, the Uniform Nevada County Property Maintenance Hearing Procedures and any other administrative procedures adopted by the County with regard thereto.
3. Contractor's performance with regard to any particular code enforcement matter assigned to him or her for hearing shall be deemed complete upon delivery of Contractor's decision for that matter to the Clerk of the Board of Supervisors within thirty (30) days after the hearing is closed by the Contractor.
4. Contractor shall perform such other services relating to the discharge of the hearing officer function contemplated by this Agreement as County and Contractor may orally agree to be reasonably necessary to Contractor's performance of the hearing officer function described herein.

TIME SERVICES RENDERED:

The term of this contract shall be January 5, 1999 through July 5, 2001.

MANNER SERVICES ARE TO BE PERFORMED:

As an independent contractor, Contractor shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. County shall not control the manner of performance.

FACILITIES FURNISHED BY COUNTY:

The County shall furnish the following facilities and services to the Contractor:

1. A suitable place at which hearings conducted by Contractor shall be held.
2. A certified shorthand reporter to record hearings, in those instances when the County determines such a record is desirable in lieu of a mere tape recording.
3. A suitable tape recorder, microphones, tapes and related equipment and energy appropriate to the recording of hearings in those instances when the County determines not to use a shorthand reporter for that purpose.
4. The County shall advise Contractor, at the time a hearing is assigned, whether or not a shorthand reporter will be used to make a record of that hearing.

E. PAYMENT:

County shall pay Contractor as follows:

1. Base Contract Fee: County shall pay Contractor a contract fee not to exceed one hundred twenty-five dollars (\$125.00) per hour, for all time expended in the performance of Contractor's duties as specified herein. Contractor shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. County shall pay Contractor within thirty (30) days of receipt of request for payment from the Contractor.
2. Mileage: County shall reimburse Contractor for travel by private vehicle only for site inspections necessary to perform the Contractor's duties as required by this Agreement. Reimbursement shall be paid for travel between the Nevada County Administration Center and inspection site(s) at the standard mileage rate allowed by the County to reimburse County staff. At the time of this Agreement, that rate is thirty-two and one-half cents (0.325) per mile. If the mileage rate should change during the contract period, Contractor shall be paid at that new rate, but in no event shall the reimbursement be less than \$0.325 per mile.
3. Per Diem: County shall not pay Contractor for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the County representative and then County shall pay Contractor per diem rates in effect on the date of invoice upon presentation of invoices.

Copy and Postage: County shall reimburse Contractor for copying of all documents necessary to perform the services relating to the discharge of the hearing officer function contemplated by this Agreement at a rate not exceeding the actual cost of such copying. County shall reimburse Contractor for postage paid to mail all documents necessary to perform the services relating to the discharge of the hearing officer function contemplated by this Agreement at the current rate for first class delivery established by the U.S. Postal Service.

Audio Tapes Required: Services performed by Contractor and not authorized in this Agreement shall not be paid for by County. Payment for additional services shall be made to Contractor by County if, and only if, this Agreement is amended by both parties in advance of performing additional services.

EXHIBIT "B"

GENERAL PROVISIONS

1. Acceptance by County of the work performed under this Agreement does not operate as a release of said Contractor from responsibility for the work performed. Contractor understands and agrees that the scope of the work to be performed under this Agreement can and shall be performed in a manner compatible with the standards of Contractor's occupation or profession.
2. It is expressly understood that in the performances of the services herein the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County. This Agreement shall not be construed as an agreement for employment. Contractor shall be solely liable and responsible to pay all required taxes and other obligations, including but not limited to, withholding and Social Security.
3. Contractor shall provide County with timely advice of all significant developments arising during performance of its services hereunder, orally or in writing, as Contractor deems appropriate.

Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Contractor's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

It is recognized by the parties hereto that a substantial inducement to County for entering into this Agreement was and is the reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor without prior written approval of County, and this agreement contemplates the services of contractor as the primary provider of the services called for to be performed. Except as otherwise provided in this section, Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of County. Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of Contractor, as may be allowed by this Agreement (hereinafter referred to as the "Secondary Parties"), shall comply with each term and condition of this Agreement. Furthermore, Contractor shall be responsible for the Secondary Parties acts and satisfactory performance of the terms and conditions of this Agreement.

Contractor shall maintain books, records, documents and other evidence directly pertinent to all work under this Agreement in accordance with accepted professional practice and accounting procedures for a minimum period of four (4) years after termination of the Agreement. County, or any of its authorized representatives, shall have access to such books, records, documents and other evidence for purposes of inspection, audit and copying.

Prior to rendering services provided by the terms and conditions of this Agreement, Contractor or its subcontractor shall acquire and maintain during the term of this Agreement, insurance coverage, through and with an insurer acceptable to County, naming the County and any related agency governed by the Board of Supervisors which is letting the contract or for whom the services under the contract are being provided, and County's, or related agency's, officials, employees, and volunteers as additional insured, (hereinafter referred to as "the insurance"). The limits of insurance herein shall not limit the liability of the Contractor hereunder.

Contractor shall provide automobile liability coverage including non-owned and hired automobile liability in the amount of \$500,000. Said policy shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis. The County shall be named as an additional insured on the automobile liability policy. The insurer shall supply a certificate of insurance with endorsement signed by the insurer evidencing such insurance to County prior to commencement of work, and said certificate with endorsement shall provide for ten (10) days advance notice to County of any termination or reduction in coverage.

Failure to provide and maintain the insurance required by this contract will constitute a material breach of the agreement. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

7. Contractor shall maintain appropriate licenses throughout the life of this Agreement. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

8. Contractor and any permitted subcontractor shall not discriminate against any individual based on race, color, religion, nationality, sex, age or condition of disability.

9. If litigation or administrative hearings ensue which pertain to the subject matter of Contractor's services hereunder, Contractor upon request agrees to testify thereat at a reasonable and customary fee.

10. Contractor warrants and covenants that Contractor presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the

Contractor shall comply with the provisions of this Agreement, in violation of any applicable state, local or federal law. Contractor further warrants that no officer or employee of the County has influenced or participated in a decision to award this contract which has or may confer on contractor a benefit in which such employee or officer may have an interest, pecuniary or otherwise. In the event that any conflict of interest or violation of this section should nevertheless hereafter arise, Contractor shall promptly notify County of the existence of such conflict of interest or violation so that the County may determine whether to terminate this Agreement.

11. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Contractor. In the event County gives notice of termination, Contractor shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

- a. Contractor shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- b. County shall pay Contractor the reasonable value of services rendered by Contractor to the date of termination pursuant to this Agreement not to exceed the amount documented by Contractor and approved by County as work accomplished to date; provided, however, County shall not in any manner be liable for lost profits which might have been made by Contractor had Contractor completed the services required by this Agreement. In this regard, Contractor shall furnish to County such financial information as, in the judgment of the County, is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of the County shall be final. The foregoing is cumulative and does not affect any right or remedy which County may have at law or equity.

Contractor may terminate its services under this Agreement upon thirty (30) working days written notice to the County, without liability for damages, if Contractor is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by County, provided that Contractor has first provided County with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the County may cure the alleged breach.

This Agreement, together with its specific references, exhibits and attachments, constitutes all of the agreements, understanding, representations, conditions,

any modification or waiver made by any party between the 1st and 30th days. Unless so modified, any such modification shall be void for any reason, including any reason of law.

No modification or waiver of any provisions of this Agreement or its effect shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition and for the specific instance for which given.

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

12. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

13. In any action at law or in equity, including an action for declaratory relief, brought to enforce or interpret provisions of this Agreement, each party shall bear its own costs, including attorney's fees.

14. Unless otherwise expressly waived in writing by the parties hereto, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Nevada. This Agreement and all matters relating to it, shall be governed by the law of the State of California.

15. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions of the California Tort Claims Act, Division 3.6 of the Government Code, are not waived by County and shall apply to any claim against County arising out of any acts or conduct under the terms and conditions of this Agreement.

16. If Contractor is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation. In accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation or board or commission of said public agency, and that this Agreement is binding upon said corporation in accordance with its terms. If Contractor is a corporation, Contractor shall, within ninety (90) days after execution of this Agreement, deliver to County a certified copy of a resolution of the board of directors of said corporation authorizing or ratifying the execution of this Agreement.

20. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within ten (10) days of the date of notice, then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

21. This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

22. County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

23. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

To County: COMMUNITY DEVELOPMENT AGENCY
Eric Rood Administration Center
950 Main Avenue
Nevada City, CA 95959

To Contractor: CATHERINE HARRIS
980 Ninth Street, Suite 1600
Sacramento, CA 95814-2736

Each party shall provide the other with telephone and written notice of any change of address as soon as practicable.

purpose. The purpose of this Section is to establish an administrative procedure to remove conditions of property hereinafter described and declared to be public nuisances which have a negative influence on properties in the vicinity and/or are detrimental to the health, safety and welfare of the residents of this County.

1. Consider Creating Public Nuisance. The following condition is hereby declared to be a public nuisance:

1. Any nuisance heretofore or hereafter defined as a nuisance by any ordinance of the County of Nevada, Section of the Nevada County Code, Section of any adopted Uniform Code, resolution of the Board of Supervisors, or statutes of the State of California.

Any condition of property which would materially hamper and interfere with the prevention or suppression of fire upon the premises or which may be detrimental to the health, safety and welfare of persons in the vicinity.

Exception: No agricultural activity, agricultural processing activity, operation, or facility or appurtenances thereof as such is defined in California Civil Code Section 3492.5, is subject to this Section.

2. Director of Community Development Agency. The Director of the Community Development Agency (CDA) is hereby designated to enforce this Chapter. Whenever a public nuisance as defined herein is subject to exist within the unincorporated limits of the County of Nevada, the Director of CDA may direct such actions that may be necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter. The Director of CDA may appoint and delegate the duties of such officers, agents, and employees as the Director deems necessary.

3. Duty to Abate. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist within the unincorporated limits of the County of Nevada. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within this jurisdiction to remove, abate, and prevent the reoccurrence of the public nuisance upon such land.

4. Procedure for Abating Public Nuisances Generally.

1. Wherever the Director of CDA determines that a public nuisance may exist the Director or his or her designee may order the public nuisance to be abated. If the condition(s) continue the Director of CDA may set the matter for hearing. If the matter is set for hearing, the Director shall post the property upon which the public nuisance exists and shall mail notices to those persons known to be in possession of the property and to persons shown on the last equalized county tax roll to be the owners of the property at least 10 days prior to the hearing. Both the mailed and posted notice shall be in substantially the following form.

Notice to Abate Nuisance

The owner(s) and occupants of real property described on the latest equalized Nevada County tax roll as A.P. No. _____ and having a street address of _____ is (are) hereby notified to appear before the hearing officer of the County of Nevada at (insert place), on _____ 19__ at the hour of _____ o'clock _____ m. to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Nevada County Ordinance Code. After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the hearing, court, the cost of order(s) and expenses associated with bringing the matter to hearing, the cost associated with appeals from the decision of the hearing officer, the cost of judicially enforcing the ordinance, the cost of labor and material necessary to physically abate the violation, and the cost of removing septic and water witnesses may become a lien against the subject property and also assessed against the property in the same manner as taxes. The statement lien to be recorded shall have the same force and effect as an abstract of judgment that is recorded pursuant to a money judgment obtained in a court of law, if you fail to appear at the hearing or if you fail to satisfy your debt or

2/1/00

present any evidence or point out the alleged hearing. The County will proceed in order judicial proceedings to enforce an order of abatement. That you have waived all rights to assert such defenses or such points. In preparing for such hearing, you should be aware that after an initial showing by the Code Enforcement Officer you will have the burden of proving that no public nuisance exists on your property. In this connection, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not public nuisance as defined in the Nevada County Code. Copies of the ordinances and uniform hearing procedures relating to abatement hearings are enclosed to assist you in the preparation of your presentation.

A finding that a public nuisance exists on the property may result in an administrative decision ordering the abatement of uses on your property which are found to be a public nuisance. If the hearing officer finds that your property is in violation of the Nevada County Code, the County will contend that you are bound by such finding and any subsequent judicial action to enforce the abatement.

Important: Read This Notice Carefully. Failure To Appear And Respond At The Time Set Forth In This Notice Will Likely Result In Administrative Abatement And Termination Of Uses Of Your Property Which The CDA Director Considers Are In Violation Of The Nevada County Ordinance Code.

Dated:

Nevada County Community Development Agency Director

By:

Enclosure: Property Nuisance Ordinance, Uniform Hearing Procedures.

2. At the time and place set for the hearing, the hearing officer shall review the CDA Director's determination ordering cessation of the alleged public nuisance to determine whether such decision conforms to law and is supported by substantial evidence. The hearing officer shall hear testimony and receive written or documentary evidence relating to the alleged violation. Additional procedural rules may be adopted by resolution of the Board of Supervisors. The hearing officer shall tape record the hearing and shall preserve all photographs and other documentary evidence introduced at the time of the hearing. Within 30 days after the hearing is closed, the hearing officer shall render his or her decision relating to the existence or nonexistence of the alleged public nuisance. The decision shall include a statement of the costs incurred by the County in abating the violation, if a violation is found to exist and shall also include a demand that administrative costs of abatement incurred to date be paid to the County within 10 days. The decision shall contain findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail, to the owner of the parcel that is subject to the hearing, any occupant(s) of such parcel and the appellant.
3. The decision of the hearing officer shall be final. The hearing officer shall notify the clerk of the Board of Supervisors of his or her decision, the date upon which the decision became final and the last date upon which an appeal may be made. If the Board of Supervisors does not receive an appeal within ten (10) calendar days of receipt of the hearing officer's decision, it shall be deemed to have ratified and adopted the hearing officer's decision. If it is the decision of the hearing officer that a public nuisance exists, the owner of the property shall be responsible for paying all of the County's administrative abatement costs, including, but not limited to, those cost items set forth in the above ordinance at subsection 3.
4. Within the ten (10) calendar day period permitted in subsection C, the owner or occupant of the property, the Director of CDA or any other interested person may appeal the decision of the Hearing Officer to the Nevada County Board of Supervisors if such individual or entity does all of the following:

- c. Deliver a written appeal to the Clerk of the Board of Supervisors within the set (10) calendar day appeal period, and
 - d. Within fifteen (15) days of being notified by the Clerk of the Board of Supervisors, the appellant shall deposit with the Clerk of the Board an amount of money equal to the estimated cost of transcribing the oral proceedings before the Hearing Officer and the cost of duplicating seven copies of the administrative record, including all exhibits introduced at the hearing. The appellant shall be responsible for the cost of the appeal and record, provided, however, that (i) if the appellant is not the owner of the property, and the Board upholds the appeal and finds that a zoning violation exists, the costs of the appeal shall be paid by the property owner, and (ii) if the appellant is the owner of the property and the Board upholds the appeal and finds that no violation exists, then the costs of the appeal shall be borne by the County.
 5. In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal based solely on the administrative record and decision prepared by the Hearing Officer. The Board shall review the record and then adopt, reject or modify the decision of the Hearing Officer.
 6. In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal within ninety (90) days after receipt of the administrative record. Notice of the Board's decision shall be mailed to the property owner and those persons receiving notice pursuant to subsection A.
 7. If a final decision of the Hearing Officer or the Board of Supervisors finds that a violation exists, the owner of the property shall be responsible for paying all of the County's administrative abatement costs, including, but not limited to, those cost items set forth in the notice required by subsection 4. Costs of abatement shall become a lien against the property as is authorized by the Government Code and the following paragraph:

The final decision shall also order that abatement costs that have been incurred to date shall be assessed against the property as provided by Government Code Section 25845(b) and that an abatement lien will be recorded as is authorized by Government Code Section 25845(c). The notice of abatement lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which abatement of the nuisance was ordered by the Hearing Officer or the Board of Supervisors, describe the real property subject to the lien, set forth the amount of the abatement costs incurred to date and, if applicable, the date upon which the abatement was complete. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional abatement costs will be incurred in the future. It is the intent of the Board of Supervisors that abatement costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all abatement costs have been incurred and the abatement is complete, the CDA shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.
 8. Decisions of the Hearing Officer or Board of Supervisors shall order abatement within a time certain. The order may be recorded by the CDA. In the event of such recordation and in the further event that the violation is corrected, a notice of such correction shall be recorded. The Director of CDA is authorized to prepare and record a notice of correction. Correction of the violator shall not excuse the property owner's liability for costs incurred during the administrative abatement process. The County may, in its discretion, commence a judicial action to enjoin a violation of this chapter without the necessity of first going through the administrative procedures set forth herein.
- Recovery of Judgment Costs.** As set forth in Section 5.22 E of this Article, the County may recover the administrative and physical costs of abatement and reasonable attorney fees (i) however the property owner(s) responsible for the nuisance fails to pay the costs of abatement and attorney fees upon the

passed by the Board, the County may proceed in such manner as it may deem proper to enforce the same.

1. **Computation of Costs.** Code Compliance Officials shall keep an itemized account, including all of the administrative and physical expenses incurred in abating any nuisance arising under this Article. Upon completing the abatement of a nuisance, Code Compliance Officials shall file an itemized account, including a description of the real property on which the building or structure is or was located, the name and address of the owner(s) of record as it appears on the most recent assessor's roll, and the possessors of the property.
2. **Special Assessment Against the Parcel.** If the record owner(s) of the affected parcel does not pay the County's costs for abating a nuisance under this Article within forty-five (45) calendar days after notice of a written demand by the County, the Board of Supervisors may order the costs of abatement to be specially assessed against the parcel. The owner shall have an opportunity to appear and be heard regarding the proposed action. The special assessment will be collected in the same manner and at the same time as County taxes, and will be subject to all laws applicable to the levy, collection, and enforcement of County taxes. In case of delinquency, the special assessment will be subject to the same penalties, including delinquency sale, as are ordinary county taxes.
3. **Recordation of Notice of Abatement Lien.**
 - a. If a special assessment is ordered, pursuant to paragraph (2) above, the Board of Supervisors may also order that a notice of abatement lien be recorded. The abatement lien shall include at least the following information: identity of the record owner(s) or possessor(s), the date the Board of Supervisors ordered the abatement, the date the abatement was completed, a description of the real property subject to the lien, and the total costs of abatement.
 - b. If an abatement lien is not recorded on the affected parcel, and the parcel is later sold to a bona fide purchaser for value, or a lien on a bona fide encumbrancer for value has been created and attaches to the affected parcel, prior to the delinquent date for the first installment of County taxes, then the abatement costs shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.
 - c. Recording a notice of abatement lien shall have the same effect as recordation of an abstract of money judgment recorded pursuant to Code of Civil Procedure 697.310, et seq. An abatement lien created has the same priority and effect as a judgment lien on real property until the lien is released. The Board of Supervisors may order an abatement lien created under this Section released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.
4. The County may file an action in court to enforce decisions of a hearing officer or the Board of Supervisors to recover civil penalties and costs, and to pursue injunctive or any other lawful remedy. Any second or subsequent civil or criminal judgment rendered against a property owner within a two-year period burdens the property owner to track the costs of the abatement, pursuant to Government Code Section 25645.5.
5. **Conclusive Remedy.** The administrative remedy provided herein shall not be exclusive and may be cumulative to any other remedy provided by law for maintenance of a public nuisance.
6. **Severability Clause.** If any Section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every Section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more Sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

20047 Wildwood West Drive, PV APN 50-400-07 Owner: Frank, Charles & Kathryn

Date	Description	Staff	Hours	Rate	Total
07/07/14	Composed Report of Inspection and Abatement Order	N. Hoekstra	3.00	\$103.34	\$310.02
07/07/14	Received "Lot Book Guarantee" \$75.00 charge	N. Hoekstra	0.00	\$103.34	\$75.00
07/08/14	Site visit to neighboring property for photos	N. Hoekstra	2.00	\$103.34	\$206.68
07/08/14	Site visit to neighboring property for photos, Shaffer	G. Shaffer	2.00	\$103.34	\$206.68
07/10/14	Site visit to property to post A.O. and R.O.I.	N. Hoekstra	1.00	\$103.34	\$103.34
07/10/14	Site visit to property to post A.O. and R.O.I.	G. Shaffer	1.00	\$103.34	\$103.34
07/21/14	Composed "Notice to Abate Nuisance"	N. Hoekstra	2.00	\$103.34	\$206.68
07/31/14	Composed "Letter to H/O" and Letter to Neighbors"	N. Hoekstra	2.00	\$103.34	\$206.68
08/19/14	Site visit to neighboring property for photos, Shaffer	G. Shaffer	1.00	\$106.44	\$106.44
08/19/14	Site visit to neighboring property for photos	N. Hoekstra	1.00	\$106.44	\$106.44
08/20/14	Site visit to post "Notice to Abate Nuisance"	N. Hoekstra	1.00	\$106.44	\$106.44
08/20/14	Site visit to post "Notice to Abate Nuisance" Shaffer	G. Shaffer	1.00	\$106.44	\$106.44
08/20/14	Put Abatement Packet together for Hearing Officer	N. Hoekstra	1.00	\$106.44	\$106.44
08/20/14	Certified Mail Process, Jennifer	J. Purvis	0.25	\$106.44	\$26.61
09/16/14	Case preparation for hearing, Documents to County Counsel	N. Hoekstra	1.00	\$106.44	\$106.44
10/07/14	Mailed Notice of Abatement Hearing to Neighbors	N. Hoekstra	2.00	\$106.44	\$212.88
10/14/14	Hearing preparation	N. Hoekstra	4.00	\$106.44	\$425.76
	TOTAL COSTS TO DATE		25.25		\$2,722.31

\\nasd\com\chick\20047 Wildwood West Drive, PV APN 50-400-07 Owner: Frank, Charles & Kathryn\Frank Time Tracking.xls

Recommendations of Code Compliance Division

The Code Compliance Department of the County of Nevada recommends approval and direction from the Hearing Officer for today's scheduled Nuisance Abatement Hearing, (October 16, 2014), to remove the illegal cabin, located at 20047 Wildwood West Drive, Penn Valley CA, (APN 50-400-07). Code compliance is also recommending the abandonment of the existing septic system, for the illegal cabin, with a permit issued by the Nevada County Environmental Health Department. Code Compliance is further recommending the approval of all submitted costs, resulting from the abatement process.

PENN VALLEY FIRE PROTECTION DISTRICT

Fire Chief

Don Wagner
P.O. Box 180
Penn Valley, CA 95946
(530) 432-2630
Fax (530) 432-4561
dwagner@pennvalleyfire.com

**Directors**

Kurt Grundel, Chairperson
David Farrell, Vice-Chairperson
John Pelonio, Director
Bob Webster, Director
Vacant, Director
dhughes@pennvalleyfire.com

October 16, 2014

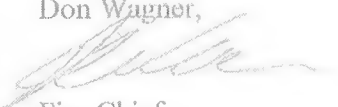
To Mr. Charles Frank
20047 Wildwood Heights Drive
Penn Valley California, 95946

To whom it may concern;

At the request of Mr. Frank I visited the site where there is an outbuilding on the lower portion of the property at 20047 Wildwood Heights Drive back in September. This outbuilding in my opinion is currently a habitable building. However there is no road access to this building and therefore the Fire District is unable to provide fire, life safety or rescue protection services in an adequate and timely fashion to this structure as it currently exists. The concern is that since there are electric utilities and appliances as well as living space in the structure that there are possible ignition sources to start a fire as well as the possibility for medical emergencies with occupants of the structure neither of which can be provided without all-weather road access capable of supporting heavy fire apparatus access year round.

Mr. Frank has asked me if the Fire District will support his action to classify the building as a non-habitable building to be used for storage or possibly a greenhouse. I stated that if the building was converted to a completely non-habitable building and used as a storage shed that eliminated possible ignition sources of fire that I as the Fire Chief, do not have an objection to the building remaining. Our primary focus is that of life safety and preservation of habitable property. Not to say that protection of non-habitable buildings is not of concern, we do not place as high of a priority to those in the event of fire.

Don Wagner,



Fire Chief

PROTECTING OUR COMMUNITY WITH PRIDE

285

RECEIVED

OCT 16 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

Chuck Dand

Regina

October 16, 2014

RECEIVED

OCT 16 2014

Re: Abatement Hearing, 20047 Wildwood West Dr., Penn Valley, CA
(APN 50-400-07)

NEVADA COUNTY
BOARD OF SUPERVISORS

Dianne Brown
Utter

Sir/Madam,

To introduce ourselves and to give our personal opinion of this case, we submit the following.

We, Charles and Dianne Brown, (Parcel #50-400-08), are an adjacent neighbor to the Franks, the majority boundary between us being the center of Squirrel Creek.

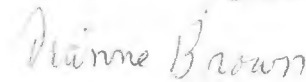
However, a corner boundary of our parcel goes across the creek, then parallel to it, then back down to the center, encompassing a waterfall and substantial swimming hole, which the Franks illegal cabin overlooks. (parcel map and photo attached). The Franks have rented this cabin out to the public.

We bought our parcel 34 years ago in large part because of the creek/swim area and the no build area around it. Due to this illegal structure, **we have lost privacy and enjoyment of our own property, and importantly, loss of property value.**

The Franks admit to prior knowledge of the No Build Zone and permit requirements before they blatantly built their cabin. To note, Chuck Frank sells log homes and Kathy Frank is a local real estate agent who advertises "honesty & integrity" on her website!

The Franks' initial reason for the building was to escape smoke for health reasons. However, during the recent King Fire where smoke infiltrated this county, in fact, right down to the water level of the creek, they were not seen in refuge in the cabin. It is obvious their motive for the cabin is for income and to enhance the value of their property.

We would like to see this structure completely removed (and not used or replaced for any other purpose). It is a NO BUILD ZONE.

Charles and Dianne Brown
11199 China Court
Penn Valley, CA 95946
(530) 432-0391

Attachment

227

October 16, 2014



(These are approx.
boundary lines)

STAFF REPORT

HEARING DATE: May 23, 2013

FILE NOS: AM13-002 & MGT13-004

PROJECT:

LOCATION:

ASSESSOR PARCEL NO.:

PROJECT PLANNER: Tod Herman, Senior Planner

General Plan:

Region/Center:

Zoning:

Flood Map:

ZDM No.:

Parcel Size:

Date Filed:

RUR-5

Penn Valley

AG-X

FEMA Panel #0625 Zone X

5

36.64 acres

March 26, 2013

Water:

Sewage:

Fire:

Schools:

Recreation:

Sup. Dist.:
R. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839,

Receipt No.:

Well

On-site Septic

Penn Valley

Pleasant Valley/NJUHHS

Western Gateway

IV

61000019561

Prev. File Nos.:

ATTACHMENTS

1. Pages 1, 2 and 5 of the Recorded Houghton Ranches Final Map
2. Planning Department June 27, 2012 Correspondence to the Applicant
3. Vicinity, Zoning, and Public Notice Map
4. Proposed Experimental Septic Design
5. Management Plan for Steep Slope Impacts
6. Management Plan for Biological Impacts

STAFF RECOMMENDATIONS:

1. Amended Map: Denial
2. Management Plans: Denial

BACKGROUND:

Houghton Ranches is a 49-lot Final Map (FM77 036) recorded on August 29, 1979. During this time period, recorded maps did not show the applicable "supplemental information" on separate map sheets recorded concurrently with the Final and Parcel Maps as is now required by the Subdivision Map Act. Instead, any applicable "non-title information" was simply mapped atop of the recorded Final Map document. As such, the recorded Houghton Ranches map includes watercourse setbacks and "no build zones" on the actual Final Map document (see Attachment 1).

Lot 27 of Houghton Ranches includes both a 100-foot setback line from Squirrel Creek and a more general "no building area" spanning the majority of the 36.64-acre lot. In 1977, the steep slope standards in effect were different than today's standards and the Code required the protection of all slopes in excess of 20% rather than 30%. The northeast corner of Lot 27 on the recorded map includes 300' x 500' "Potential Building Area" that is approximately 3.44-acres in size.

The only permits issued for the subject property include an electrical permit (for an agricultural pole) issued in 2000 and a single-family residence permit (for a two-story home with an attached garage, open decking, and a driveway) issued in 2002. The permitted residence was constructed within the applicable "Potential Building Area" consistent with the recorded map. Staff could not formally conclude exactly when the cabin structure was built, but it appears to have been constructed sometime between 2006 and 2008 based on the aerial photos available to the County.

On September 7, 2011, in response to a signed code complaint, the Code Compliance Division researched the allegations regarding an unpermitted structure that was built on steep slopes near Squirrel Creek and which was being used as a vacation rental. Staff confirmed there was no permits for the cabin or its septic system, but did discover a website advertising the "Dayspring Cabin" for rent on the subject property. Additionally, a 10-minute YouTube video was found showing details about the cabin.

On September 12, 2011, the cabin was allowed to be inspected by the Code Compliance Division. The inspection revealed the cabin was situated approximately 150-feet beyond the end of the driveway on a steep slope overlooking Squirrel Creek. The 16' by 20' cabin has a kitchen, a bathroom, a living room, and an upstairs sleeping loft. According to the applicant, a septic system was installed that consists of four 40-gallon settling tanks and a single leach line that is situated within the former irrigation canal noted as the "China Ditch." The cabin is situated less than 100-feet from Squirrel Creek and 800 feet south of the existing residence. The cabin appears to be built within an abandoned irrigation ditch and is clearly outside the "Potential Building Area" shown on the recorded map.

As a result of the property research and site inspection, it was determined that staff would not be able to approve an "after-the-fact" building permit because the location of the structure was incompatible with several sections of the Zoning Code. Over the next several months numerous meetings and correspondences were exchanged with the applicant regarding various potential options he could consider, but staff made it clear that it would be extremely unlikely that support would be given to allow the structure to remain in its present location (see Attachment 2). Ultimately, this application was filed to amend the map and allow development in a "No Building Area" on steep slopes within 100-feet of a perennial stream.

Project Site Description

The Houghton Ranches subdivision is situated approximately one mile west of the Highway 20/Pleasant Valley Road intersection in western Nevada County. The subject Lot is accessed via private driveway easement from the south side of Wildwood West Drive approximately 0.9 miles west of Pleasant Valley Road (see Attachment 3).

Lot 27 is one of the larger lots in the Houghton Ranches subdivision, situated in its northeast corner. The home site is located at the highest point of the property, at approximately 1,500 feet in elevation and on slopes that are less than 20%. The south facing lot is comprised of an open mixed chaparral habitat with some Ponderosa Pine interspersed through the site among open areas of annual grasslands and rock outcroppings. Whiteleaf Manzanita, buckbrush, and a few stands of Scotch broom make up the understory across the property with a few scattered black oak and scrub oak trees mixed throughout. The southern boundary of the lot is defined by Squirrel Creek, some 320 feet below the highpoint of the property.

Within the 36.64-acre site, there are approximately 10.82-acres of land that contain slopes that are less than 30%.

Proposed Project

The project proposes to amend the supplemental information recorded on Lot 27 of the Final Map and "change the map designation from a 'No Building Area' to a 'Build Zone' for a second unit." A management plan is also being submitted to allow for construction within steep slopes greater than 30% and within 100-feet of a perennial stream.

STAFF COMMENT:

There are four issues with this application: 1) the conflict with the recorded notes on the Final Map; 2) the conflict with the established site development standards of the Zoning Code; 3) the continued use of the "experimental septic system;" and 4) fire access issues. Staff will address each of these components individually below.

Conflict with the Notes of the Final Map

Section I-II 4.1.4.E of the Land Use and Development Code's Zoning Regulations states that "No use of the property shall be allowed, nor shall any subdivisions to property be allowed, which would conflict with any note attached to any map or record of survey which was recorded in the official records in order to create a division of real property..." Effectively, this provides that notes on recorded maps can be used to trump the otherwise applicable development standards set forth in the Code.

Lot 27 has three specific notes attached to it per the recorded Final Map: a specific 100-foot setback from Squirrel Creek, a specific "Potential Building Area," and a broad "No Building Area" that encumbers everything between the prior two notes. The cabin structure, its physical access, and its septic system, all of which were constructed without any permits, violate all three of these recorded notes.

In prior correspondence with the applicant, staff noted it could only support the modification of the note to allow for a greater building envelope showing potential development within those areas that are less than a 30% slope. However, doing so would not help to resolve the current location of the cabin structure, its access, or the septic system.

Specifically, before the recorded Final Map can be amended, the Nevada County Subdivision Ordinance sets forth specific findings that would be required before the map amendment could be supported. The first such finding requires that the proposed amendment will have a cumulatively minor impact on the recorded subdivision. The two notes are specifically proposed to be removed are intended to protect sensitive resources such as water courses, steep slopes, areas with high erosion potential, and areas of very high fire hazard severity zones. The remaining findings include those set forth in Government Code Section 66474 that note the amendment would be consistent with the Nevada County General Plan and Zoning Codes. There are a number of Policies and Sections identified below that note specific inconsistencies with the County General Plan and Land Use Codes. Additional findings also include that there was a change in circumstances since the recordation of the Final Map that would warrant the amendment to these notes. Other than the change in allowable development on slopes up to 30% (from 20%) most of the standards in effect are actually more stringent and protective of the County's sensitive resources. As all of these findings could not be made or justified, staff cannot support the proposed amendments to the recorded final map.

Conflict with Established Site Development Standards

The Nevada County Zoning Regulations contain several sections that are applicable to residential second unit construction, and to all site development including accessory structures. Those key sections are discussed below.

Section L-II 3.19.1.B of the Zoning Regulations sets forth the various standards for Second Dwelling Units. In addition to mandating that building permits are required for second units, the Standards also require that all water supply and sewage disposal requirements shall be complied with as administered by the Department of Environmental Health.

Section L-II 4.3.13 sets forth the definition of steep slopes and areas with a high erosion hazard. The Code precludes development on steep slopes, but does provide exceptions to those standards in cases where a parcel was created prior to October 12, 1981 (applicable to this property) and where there is no other possible way to avoid encroaching into those steep slopes (which is not applicable to this property). In those cases where an exception is requested, a management plan is first required.

The eastern half of Lot 27, where both the residence and the cabin structures exist, contain the Ahwahnee-Rock outcrop complex soil type. Where slopes exceed 30% the erosion hazard is very high. The applicant is proposing an after-the-fact Management Plan to justify the erosion control methods and sediment control measures that were allegedly installed after completion of the building construction within those steep slopes (see Attachment 5). Normally, this sort of document would apply to the grading permit and should be applied during the time of construction and not after. *Section L-II 4.3.13.C.4* requires that all grading within those steep slopes shall include an evaluation by a registered geotechnical engineer.

It is worth noting that even if the proposed project is denied and the applicant ultimately has to remove the structure from its current location and locate it elsewhere on the property, a demolition permit and Management Plan will ultimately be required for that activity. In that event, some of the applicable recommendations from this plan could be applied to that future Management Plan.

Section L-II 4.3 sets for the applicable Resource Standards for all Management Plans. When considering a Management Plan application, the plan must assess the sensitive resource and then propose methods to ideally avoid any impact to that resource. If full avoidance is not possible, then the Management Plan is required to minimize any impacts on the resource to the fullest

extent possible. Finally, for those unavoidable impacts, the Management Plan shall then propose mitigation to restore or resolve those impacts. Before any Management Plan can be approved, findings are required to support that decision. *Section L-II 4.3.13.C.3.b* lists the required findings necessary for approving Management Plans associated with encroachment into steep slopes. The required findings for these Management Plans include: that the plan will provide preservation of the natural topographic character of the slope; that the plan will provide preservation of the aesthetic quality of the slope and its native vegetation; that other development alternatives to developing on the steep slopes or near the watercourse are infeasible; that minimization of the disturbance of the steep slopes has been achieved to the greatest extent possible; and that water quality problems created by sedimentation and excessive vegetation removal are minimized. As discussed above, there are other potential building areas on the northeastern portions of this parcel (in excess of 10 acres) that would avoid all impacts to the steep slopes but the Management Plan avoids any discussion of those viable options.

Attachment 5, prepared by Precision Design & Drafting, Inc., contains an Assessment of Unpermitted Log Cabin and Road Access Drainage that was prepared by a registered engineer. This document points out a number of deficiencies with both the structure (relative to the Building Code) and with the erosion that is occurring within the access road/path down to the cabin site. While the assessment provides recommendations to minimize those current erosion issues, it does not acknowledge or justify the issue that the cabin is constructed in a sensitive area that is not permitted for development. Attachment 6, prepared by Costella Environmental Consulting, does address the vegetation loss on the steep slopes but does not address the potential impacts of the improvements (cabin, driveway, and septic system) on the 100-foot buffer zone from Squirrel Creek.

Section L-II 4.3.17 of the Zoning Regulations defines and provides the setbacks for Watercourses, Wetlands, and Riparian Areas. (There is no Floodplain established for this portion of Squirrel Creek.) Squirrel Creek requires a 100-foot setback from the high water mark. It appears the cabin is situated approximately 100-feet from the visible water body of the photo (which was taken during the dry summer months) and likely well within the 100-foot setback from the high water mark. The experimental septic system is likely also within this setback.

Both portions of this Management Plan appear to only address the existing development and propose ways to minimize the existing and on-going erosion impacts, but neither portion of the Management Plan addresses the rationale for picking this one location over the feasibility of any other building site alternatives on the property. This is not in keeping with the required approach to all Management Plans as set forth in *Section L-II 4.3*.

Continued Use of the Experimental Septic System

Section L-VI 1.3.P of the Nevada County Sewage Disposal Regulations defines Sewage as "blackwater, graywater, and/or any liquid contaminated with materials thereof." Further, *Section L-VI 1.4.A* of the Sewage Regulations states that "it shall be unlawful for any person... to treat or dispose of sewage in any manner other than by a sewer, septic tank and leaching system, centralized sewage disposal system, public sewer system or other method of sewage disposal meeting the standards set forth in this Chapter and the Sewage Disposal Regulations." *Section L-VI 1.5* establishes that a Septic System Permit is required for the installation of all such systems, and *Section L-VI 1.9* establishes the specific soils testing requirements for the required soils testing report.

The system in use by this cabin structure was never permitted. Attachment 5 contains the applicant's description of what was installed to treat the cabin's sewage requirements. The Nevada County Department of Environmental Health advises that this system does not conform

to the Nevada County Sewage Disposal standards. The installed system and leach field are within the setbacks from Squirrel Creek and the required setbacks from the drainage course. The sewage disposal area is also apparently situated within an historic irrigation ditch that does not contain native (undisturbed) soils. This would likely impact the ability of the effluent disposed within the former ditch to permeate within the native soils. Additionally, the entire system is located within steep slopes that are also not allowed to be used for sewage disposal. Within Attachment 6, the biological portion of the Management Plan incorrectly notes that the septic system is located within a MUSDA. By definition, a MUSDA (Minimum Useable Sewage Disposal Area) is an area that has been previously approved by the Nevada County Department of Environmental Health and recorded on a map which delineates an area that is suitable for a particular type and size of a septic system. No such approval for any septic system has been, or could ever be, approved in this location by Environmental Health.

Even if the cabin could be allowed to remain in its present location, the required sewage disposal system would likely need to be placed several hundred feet toward the north, and further up the hill. However, that type of septic system would require an engineered pumping system with back-flow protection devices.

Conflict with Established Driveway Standards

The Nevada County Fire Safety Regulations contain specific provisions applicable to private driveway construction. Those key sections are discussed below.

Section L-XVI 3.2.A.1 establishes the maximum driveway grade for parcels below 4,000 feet in elevation to be no more than 20% unless a Petition for Exceptions is supported by the County Fire Marshal. Notwithstanding, this same Section provides that in no case shall there be any Exceptions allowed for driveway grades in excess of 25%. The driveway serving the cabin structure has grades ranging from 16 to 40%, with the majority of the slopes in 27 to 32% range. No Petition for a Driveway Exception has been proposed for this parcel.

Section L-XVI 3.2.B.2 provides that driveways in excess of 16.1% shall be engineered with an all-weather surface and capable of supporting a 40,000 pound legally-loaded vehicle. The driveway that was installed down to the cabin site contains large diameter gravel cobbles on top of the graded soils and does not conform to an all-weather drivable surface standard. Further improvements to the driveway would only necessitate an additional impact on the steep slopes.

Section L-XVI 3.2.C.2 establishes that the required driveway shall be constructed to within fifty (50) feet of the nearest point of each dwelling unit. From a plan view, the driveway improvement terminates approximately 150 feet from the cabin structure and a narrow trail averaging a 40% grade in excess of 200 feet is required to access the cabin. In the event of a medical aid evacuation, this would make any extraction of an injured or unconscious victim extremely difficult and time consuming for the emergency responders.

Section L-XVI 3.2.C.3 establishes a required 12-foot width, plus 1-foot shoulders, for all driveway segments in excess of 20%. The existing driveway is only 10-feet in width. Again, additional improvements necessary to widen the driveway would result in further impacts to the steep slopes.

Section L-XVI 3.2.C.7 establishes that all driveways in excess of 800 feet shall provide turnouts no more than four hundred (400) feet apart. The driveway length between the primary residence and the cabin is approximately 1,100 feet in length and thus would require at least a turnaround at the terminus and two interim turnouts in between. The grades at the southern portion of the driveway terminus would not be conducive to the turnaround requirement.

Section L-XVI 3.2.C.9 requires roadside vegetation clearance shall be provided for a distance of 10 feet on each side of the driveway. The majority of the driveway does not conform to this requirement and dense brush exists directly adjacent to, and over the top of the driveway.

The Nevada County Fire Marshal does not support the second dwelling in its current location. As noted above, there is no Petition for Exceptions proposed for the driveway standards. *Section L-XVI 3.4.A* of the Fire Safety Regulations sets for the required findings necessary to approve any such petition, had one been proposed. These findings include that the exception is necessary for the preservation of a property right; the exception would not be injurious to other local properties; the exception would not be a special privilege; and that the exception would propose an alternative that meets the same practical effect of the required provision. As noted above, there are a number of Code violations with the current location of the cabin structure, its septic system, and its driveway access. Further, there appears to be other areas where this cabin could have been constructed in conformance with the note on the recorded Final Map, and that do not require any exceptions to alterations to the Land Use and Development Code. The issue came forward as a result of a Code Complaint, so the use has already impacted a neighboring property. As such, the County Fire Marshal notes that he could not support any Exceptions to the cabin's driveway.

General Plan and Zoning Consistency

For the various reasons identified above, staff cannot find that the proposed Map Amendment and Management Plan would be in keeping with the purpose and intent of several Resource Conservation Policies within the Nevada County General Plan. General Plan Policy 1.17 specifically identifies the list of sensitive resources with which the County is to protect in order to preserve our unique character, including steep slopes, areas with high erosion potential, areas subject to high fire hazards, and riparian corridors. The cabin structure does not conform with a number of established code requirements that were adopted pursuant to this Policy. General Plan Policy 6.9 requires the use of development standards for project design, grading and construction in sensitive areas to protect those resources, minimize any disturbance, and maintain the consistency of the natural land forms. No grading permit was obtained for this structure and to sustain the structure in its current location would necessitate additional grading on steep slopes in order to prolong its existence in this location. General Plan Policy 11.6 requires the County to continue to enforce its regulations concerning the installation and operation of private sanitary waste disposal systems in order to protect both surface and ground water quality. This building does not utilize an approved septic system and such a system could not be approved in the immediate vicinity of the cabin site. General Plan Policy 12.1 requires the enforcement of the grading ordinance for erosion control. This project did not comply with any grading permits before it was constructed.

Staff has already outlined the inconsistencies with several of the required Zoning Regulations and the Sewage Disposal Regulations.

Environmental Impacts

Under Public Resources Code Section 21080(b)(5), projects which a public agency rejects or disapproves are exempt from the California Environmental Quality Act. As previously noted, we had informed the applicant that staff was not going to support this application and therefore we did not collect any filing fees to prepare an Initial Study.

SUMMARY:

As stated above, even if the applicant was successful in removing the "No Build Area" note from this Lot, the existing cabin location would still be inconsistent with multiple provisions of the Nevada County Land Use and Development Code. The property in question has suitable area to allow a residential second unit without needing exceptions to multiple standards within the Code that are intended to minimize the impacts of reasonable development on the environment. Because of the suitable buildable area on this parcel (and its proximity to the access point for this property) the findings for either a Variance or a Management Plan (Attachment 6) could not be supported.

RECOMMENDATION:

Staff recommends the Planning Commission deny this application based on the findings that there is no justification for allowing the exceptions to the various provisions of the Land Use and Development Code and take the following actions:

- I. Deny the proposed Map Amendment (AM13-002), proposing to modify the "No Building Area" shown for Lot 27 of Houghton Ranches to a "Building Area," based on the following findings set forth in Section L-IV 2.18 of the Nevada County Subdivision Ordinance:
 - A. That the proposed amendment will not have a cumulatively minor impact on the recorded subdivision as the specific portions of the recorded "No Building Area" that were subsequently developed without the benefit of a building permit do in fact contain sensitive resources that are protected by the development standards set forth in the Nevada County Zoning Regulations including Steep Slopes (in excess of 30%), a Perennial Watercourse and potential Riparian Areas associated with Squirrel Creek, and with the Driveway Design standards set forth in the Nevada County Fire Safe Regulations;
 - B. That the proposed amendment does not conform to the provisions of Government Code Section 66474(a) and (b) in that the proposed amendment is not consistent with the Nevada County General Plan Policies that protect its identified sensitive resources, including General Plan Policy 1.17 which identifies the list of sensitive resources with which the County is to protect in order to preserve our unique character, including steep slopes, areas with high erosion potential, areas subject to high fire hazards, and riparian corridors, Policy 6.9 which requires the use of development standards for project design, grading and construction in sensitive areas to protect those resources, minimize any disturbance, and maintain the consistency of the natural land forms, Policy 11.6 which requires the County to continue to enforce its regulations concerning the installation and operation of private sanitary waste disposal systems in order to protect both surface and ground water quality, and Policy 12.1 requires the enforcement of the grading ordinance for erosion control;
 - C. That the proposed map amendment does not conform to the provisions of Government Code Section 66474(c) in that the site of the existing cabin structure is not physically suitable for development, and Section 66474(e) in that the amendment will likely result in environmental damage including fish and wildlife habitat, and Section 66474(f) that the septic system in the steep slopes and proximity to Squirrel Creek could likely result in public health impacts;

- D. That the proposed map amendment would affect the ability to make the required findings for subdivision approval as set forth in the Nevada County Subdivision Ordinance;
 - E. There are no changes in the circumstances since the recordation of Final Map FM77-036 that would otherwise permit the approval of development of a residence and driveway on slopes in excess of 30%, or within 100-feet of a perennial stream, or for the installation of a sewage disposal system within 100-feet of a perennial stream; and
 - F. That the current note on the recorded map was applicable to this parcel prior to its purchase and development by this applicant and that the second unit could have been constructed within the Potential Building Area without any additional burden on the present fee owner of the property.
- II. Deny the Management Plan (MGT13-004) for the erosion control work associated with constructing an existing cabin and its partial access on slopes in excess of 30%, and for construction of the cabin and its sewage disposal system within the 100-foot buffer zone of a perennial stream based on the following findings:
- A. That the proposed development does not ensure the preservation of the natural and topographic character of the slopes in the vicinity of the cabin and its access will remain stabilized as substantial signs of erosion are visible and further work is and will remain required to constantly address the maintenance of the slope;
 - B. That the aesthetic quality of the slope will be jeopardized due to the greater erosion potential and the vegetation removal required for the fuel modification zones around the structure and the access road that would need to be constantly maintained;
 - C. That alternatives to this building location are feasible and are available to this 36.64-acre parcel, including the 3.44-acre "Potential Building Area" which is outside the 100-foot watercourse setback and outside of any 30% slopes as shown on the recorded Final Map;
 - D. That disturbance to the steep slopes and the 100-foot watercourse setbacks could be avoided altogether had the structure been properly located pursuant to the approved "Potential Building Area" as shown on the recorded Final Map;
 - E. That water quality problems may result from the sedimentation associated with the noted erosion and that the sewage disposal system is not designed in accordance with the requirements of the Nevada County Land Use and Development Code;
 - F. That the watercourse setback encroachment does not conform with the applicable standards set forth in the Zoning Code in that there is substantial area on this 36.64-acre site to avoid the impact to this resource;
 - G. That although the cabin was already constructed at the time the consultants were hired to prepare the Management Plan, the Management Plan contains some erroneous statements such as the date the cabin was constructed (dry season of 2012) and that the cabin is using a Minimum Useable Sewage Disposal System (MUSDA) for its sewage disposal requirements;

Charles Frank
AM13-002 & MGT13-004

- H. That there is no physical evidence that was provided to the Planning Commission that warrants a physical hardship on the land that would otherwise prohibit the relocation of the cabin unit to a conforming locations consistent with the recorded final map; and

Respectfully submitted,


BRIAN FOSS
Planning Director

FINAL MAP 77-36

Houghton Ranches

BEING A PORTION OF
SECTION 25, T.16N., R.6E., AND SECTIONS 30 & 31, T.16N., R.7E., M.D.M.
IN THE UNINCORPORATED AREA OF
NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING

AUGUST, 1978

OWNER'S CERTIFICATE

The undersigned being the only persons representing any record title interest in the herein subdivided lands do hereby certify to the preparation and recording of this final map of "HOUGHTON RANCHES" and offer for dedication and do hereby dedicate to the County of Nevada the following:

1. For any and all public uses, all that portion of those certain strips of land shown and designated as "Houghton Ranch Road, Bull Valley Drive, Del Will Drive and China Court" situated within the boundaries of this subdivision, (land acceptance of said land by the County of Nevada, the above referenced roads will remain private and for the exclusive use of the property owners in this subdivision to be owned and controlled by the property owners' association of said subdivision, except as further granted by deed conveyance.
2. Rights of way and easements for water, gas, sewer and drainage pipes, conduits and ditches, and for poles and overhead and underground wires, and conduits for electric and telephone services, together with all appurtenances, thereto on, over, under and across those strips of land lying 8 feet on each side of all side and rear lot lines of each lot and on, over, under and across those strips of land shown and designated as "Public Utility Easements" (PUE) and on, over, under, and across those strips of land of a width of 10 feet lying adjacent and parallel to road lines of public and/or private roads, situate within the boundaries of the subdivision, and on, over, under and across those strips of land of a width of 15 feet lying adjacent and parallel to all lot lines which form the exterior boundaries of this subdivision, excepting those exterior lines which are common to road lines of public and/or private roads, together with the right to trim and for remove only necessary trees, limbs or brush.
3. Rights of way for shoe easements together with all appurtenances, thereto on, over, under and across those certain strips of land shown and designated as "Shoe Easements" (S.E.).
4. For ingress and egress on, over, and across those certain strips of land shown and designated as "Access Easements" (A.E.) together with the right to trim and for remove only necessary trees, limbs or brush.
5. "Emergency Access Easement" (E.A.E.) for any and all emergency purposes including but not limited to fire protection.
6. "No Access Easement" (N.A.E.) for the purpose of denying access to a lot from a roadway where access is unnecessary or a more suitable access exists.
7. "Temporary Easement" (T.E.) to provide a turn-around area until a through connection is made.

By Carl E. Houghton

INTER-COUNTY TITLE COMPANY, a California Corporation as trustee, under Deeds of Trust recorded in Book 431, Page 291 and Book 431, Page 299, re-recorded in Book 424, Page 469, Official Records, Nevada County, California.

By [Signature] By [Signature]

STATE OF CALIFORNIA }
COUNTY OF NEVADA }

On this 24 day of August, 1978, before me, Carol M. Lee, a Notary Public in and for said County and State, personally appearing Carl E. Houghton, known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

STATE OF CALIFORNIA }
COUNTY OF NEVADA }

Notary Public in and for said County and State
My commission expires June 25, 1982

On this 24 day of August, 1978, before me, Carol M. Lee, a Notary Public in and for said County and State, personally appearing Carl E. Houghton, known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

By Carol M. Lee
Notary Public in and for said County and State
My commission expires June 25, 1982

SURVEYOR'S CERTIFICATE

This final map of "HOUGHTON RANCHES" represents a survey which is not and cannot be shown, made by me or under my direction in accordance with the requirements of the SUBDIVISION MAP ACT and local ordinances applicable at the time of the approval of the character and occupy the positions as shown on said final map.

[Signature]
Kenneth E. Baker, L.S. 1979

COUNTY SURVEYOR'S CERTIFICATE

This final map has been examined by me, and the subdivision as shown is substantially the same as it appeared on the tentative map and any approved alterations, though not provisions of the SUBDIVISION MAP ACT and any local ordinances applicable at the time of the approval of the tentative map have been complied with, and I am satisfied that this final map is technically correct this 24 day of August, 1978.

[Signature]
Terrance E. Lewis REC 13393
County Surveyor

STATE OF CALIFORNIA }
COUNTY OF NEVADA }

This is to certify that the BOARD OF SUPERVISORS of the County of Nevada, State of California, by a motion adopted at a meeting held on the 24 day of August, 1978, and approved, for filing this map of "HOUGHTON RANCHES" consisting of 7 sheets and accepted for any and all public uses the following: (a) item 1 for PUE purposes only (b) item 2 except drainage pipes, conduits and ditches (c) items 3 & 6, (d) item 4 except acceptance of the following (a) item 1 except for PUE purposes (b) item 2 except drainage pipes, conduits and ditches (c) item 3. Rejected item 4. All provisions of the SUBDIVISION MAP ACT and local ordinances have been complied with regarding deposits, this 24 day of August, 1978.

Chairman of the Board [Signature] Clerk of the Board [Signature]

COUNTY TAX COLLECTOR'S CERTIFICATE

I, MARCELLA J. CARSON, the official tax collector for the County of Nevada, State of California, do hereby certify that according to the records of my office, there are no taxes or special assessments collected or taxes against the lands subdivided herein, except taxes or assessments not yet due and payable, but constituting a lien on the day of August, 1978.

Marcella J. Carson, Nevada County Tax Collector

COUNTY RECORDER'S CERTIFICATE

I, Melba B. Blalock, hereby certify that Marcella J. Carson is the official tax collector for the County of Nevada, State of California, and that this final map was accepted for record, and recorded in Book 424, Page 469, Document 11587, August 22, 1978, at 2:44 PM.

[Signature]
27096
BASIS OF BEARING: Face Map 77-36
Melba B. Blalock
County Recorder, Nevada County, California
[Signature]

All bearings in this record are based upon monuments found along the roadway line of the subject property or established in Parcel Maps 19 & 208.

SUBDIVISION ACREAGE

The gross area of land contained within the boundaries of this subdivision is 85.18 acres, more or less. The area of land contained within the lots numbered 1 to 49, inclusive is 85.18 acres, more or less.

NOTES

1. There is no guarantee that water is available on any lot of this final map.
2. There is no guarantee that sewage can be disposed of on any lot of this final map.
3. The signatures of owners of the easements located in Units 1 through 10 and Unit 11, the 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, have been verified under the provisions of section 11587 (a) of the Subdivision Map Act, and each interest is such that they cannot ripen into fee title, and said signatures are not required by the governing body, the location of those said easements are shown on this map cannot be determined of record.
4. Lot 45 as indicated herein is to be combined with an adjacent parcel.

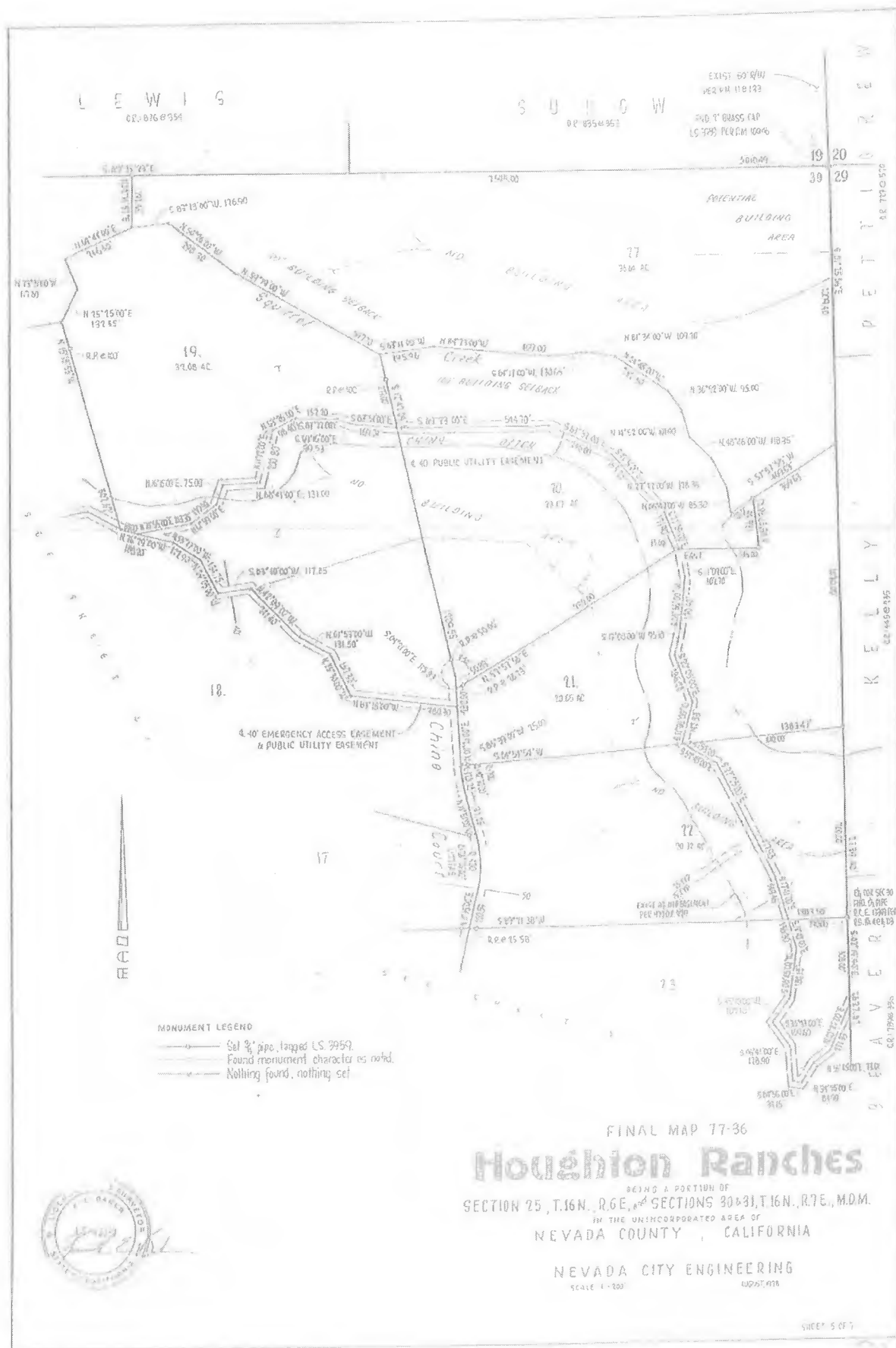
Final? Bl



INDEX OF MAP SHEETS

FINAL MAP 77-36
Houghton Ranches
 BEING A PORTION OF
 SECTION 25, T.16N., R.6E., AND SECTIONS 30 & 31, T.16N., R.7E., M.D.M.
 IN THE UNINCORPORATED AREA OF
 NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING
 SCALE: 1"=600' AUGUST, 1970





COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9851 <http://mynevadacounty.com>

Steven L. DeCamp
Community Development Agency Director

Brian Foss
Interim Planning Director

June 27, 2012

Mr. Charles Frank
20047 Wildwood West Dr.
Penn Valley, CA 95946

RE: Site Visit and Inspection of Structure

Dear Mr. Frank:

Thank you for your time on Tuesday, June 19, 2012, to show me and Code Enforcement Officer Lyle Bohnet the structure constructed near Squirrel Creek on your property at 20047 Wildwood West Drive. As you are aware the structure was constructed without the benefit of a permit and the location of the structure is in question in light of the County's zoning ordinance regulations.

After seeing the structure and its location I re-reviewed the County's site development standards contained in the Zoning Ordinance pertaining to steep slopes and water courses. The Ordinance prohibits construction on slopes in excess of 30% and within 100 feet of a watercourse. While a portion of the structure is located on an old, filled in canal that is relatively level, the remainder of the structure encroaches into areas defined as steep slopes (30%+) and alterations to the slope did occur in order to accommodate the structure.

The Ordinance only allows limited development on 30%+ slopes through approval of a Management Plan if alternatives to development on steep slopes are not feasible. The property contains undeveloped areas that are less than 30% in slope and the property has an existing primary dwelling on less than 30% slopes. Given these circumstances a Management Plan for the existing structure could not be approved because the findings required for approval by the Ordinance cannot be made. Furthermore, the access to the structure is steep and a road/driveway could not be constructed on less than 30% slopes and would require significant grading and engineering. These activities would also require a Management Plan that could not be approved given the topography of the site and the fact that the property contains other alternative areas less than 30% slopes. Access to the structure is needed regardless of the use of the structure (residential or storage) for Fire Department access in case of emergency.

Additionally, the Zoning Ordinance prohibits development within 100 feet (measured horizontally) of a water course, i.e. Squirrel Creek. The structure is located within the setback and can only be permitted if there were no other alternative on the property for a structure. As discussed above, other locations on the 36 acre property exist that could accommodate the structure. Therefore, a permit could not be issued for a structure in this location.

The structure itself is an attractive looking structure and its location is scenic, however, the Zoning Ordinance adopted by the Board of Supervisors contains development standards in order to protect sensitive resources. The County's General Plan does identify steep slopes (30% and greater) and water courses as sensitive resources. The Ordinance requires avoidance of the resources as the first and preferred method of protecting the resources. Encroaching into a resource is only an alternative if no other location is available on the site for construction. The structure is within 30% slopes, within 100 feet of a watercourse, and would require significant grading on steep slopes for an access road. For these reasons the location of the structure cannot be approved by the Planning Department.

You have mentioned that you require a residence at this location for health reasons. Unfortunately, health reasons do not override the Zoning Ordinance standards. It is unfortunate that the location of the structure cannot be approved and that it creates a burden on you to relocate the structure, however, the County is required to enforce the standards and regulations equally in order to protect the resources and the expectations of property owners throughout the County. If you have any questions, please contact me at 530 265-1256.

Sincerely,

COPY

Brian Foss, Interim Planning Director
Nevada County Planning Department

CC: Hank Weston, 4th District Supervisor
Gregory Shaffer, Code Compliance Program manager
Lyle Bohnet, Code Enforcement Officer

Experimental Septic System.

The main septic system which is used for the toilet water is comprised of 3ea, 40 gallon inline settling tanks and a leach line and leach field installed on flat ground within the abandoned China ditch. The ditch which was filled in through erosion in the last 130 years or so since the gold rush, has a loam composition which was created by years of decomposed oak leaves, wood pieces, and natural grasses. The drainage in the ditch is more than adequate for the septic system is now used rarely by my family and I. Last year there were only about three occasions that the septic system was even used. Since the cabin was built, regular septic treatments have been used. There never has ever been a problem with the system.

The gray water which is connected to the shower and the sinks is a separate system that also runs into the China ditch. Neither system has ever posed any danger to the environment.

PRECISION DESIGN



&
Drafting INC.

11768 Atwood Rd, Suite 20
Auburn, CA 95603
Tel: (530) 823-6546

Chuck Frank
20047 Wildwood West Dr.
Penn Valley, CA 95946

Subj: Assessment of un-permitted Log Cabin and Road Access Drainage
20047 Wildwood West Dr., Penn Valley, CA 95946

January 24, 2013

Dear Chuck,

Overview: On Dec 11, 2012 we performed an inspection and observed the condition of the subject log cabin and road access from the primary residence to the log cabin.

The subject structure is a two story log cabin with light wood framing for interior walls. Plans of the structure were not available at the time of the inspection. The structural integrity of the log cabins pole and pier foundation was the primary matter of concern. Pictures of the structure can be seen below in photos 1-3.

The road access was a rocky road with excessive erosion. Pictures of this road access can be seen below in photos 4-6.

Photo 1: Subject Two-Story Log Cabin



Photo 2: Southeast Corner of Living Room



Photo 3: Lateral Bracing of Foundation Poles

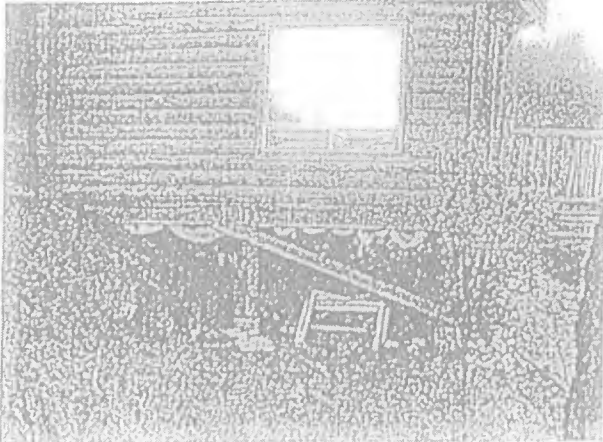


Photo 4: Location of Increased Drainage Flows



2495
ATTACHMENT

Photo 5: Subject Road Access Drainage Rutting

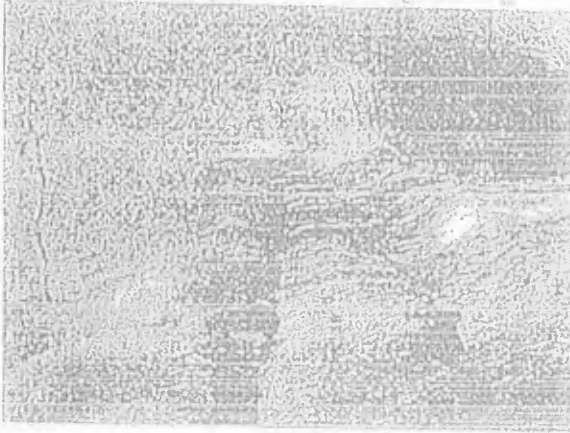
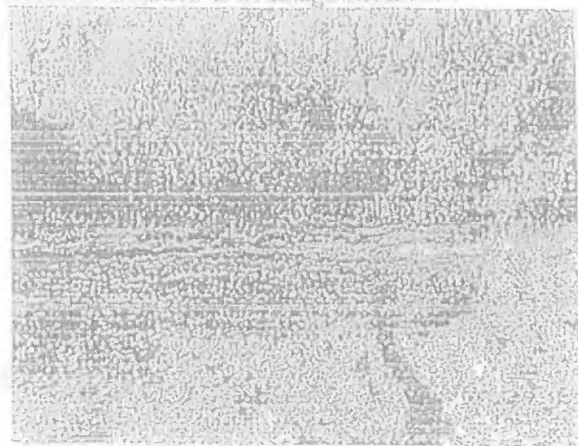


Photo 6: Location of Drainage Sheet Flow



Issues: Upon close inspection of the two-story log cabin there appears to be noticeable settlement at the southeast corner of the living room. The size of the floor piers supporting the poles appear to be inadequate to carry the weight of the structure and without additional support the structure could experience additional settling. Additionally, lateral bracing of the foundation poles does not appear to be capable of resisting 2010 CBC seismic loading and should be reinforced.

The road access from the primary residence above descends abruptly at the 1400' elevation contour and this is where drainage flows begin to reach undesirable velocities resulting in significant erosion (deep rutting). Near the end of the road access at the 1260' elevation, the slope gradient flattens and drainage flows become sheet flow.

Conclusions:

In my professional opinion, the structure does not currently meet 2010 CBC, however, could be re-leveled, adequately supported vertically and laterally to meet current code. Also, the access road is not adequately protected from storm events and without repair will be subject to further erosion based on 2010 CBC storm rates.

Recommendations:

To protect the structure and road from additional damage I recommend the following:

1. **Structure:** Installation of additional pole supports to reduce the weight on the existing piers and provide proper lateral bracing by thru-bolting to existing and new foundation poles to resist seismic loading. Additional engineering calculations will be required to determine proper spacing of pole supports and bracing design.
2. **Access Road:** A new "brow ditch" could be excavated along the 1420' elevation contour in order to capture and redirect the flows to a gabion weir energy dissipation structure prior to being released as sheet flow again, east of the road access. Or, additional "slotted" steel drain pipes could be installed periodically to capture and redirect flow at strategic locations along the road access to help prevent heavy concentrated flows towards the ultimate release point at the 1260' elevation. This would help drainage flows by capturing, redirecting and slowing down the storm water in order to reduce the velocities and to minimize erosion. Additional engineering calculations will be required to determine proper size and spacing of ditches and culverts.

We appreciate the opportunity to be of service in these matters. Please do not hesitate to give us a call if you have any questions.

Sincerely,
Precision Design & Drafting, Inc.

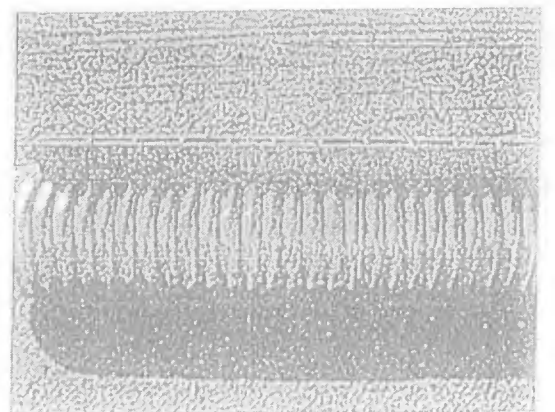
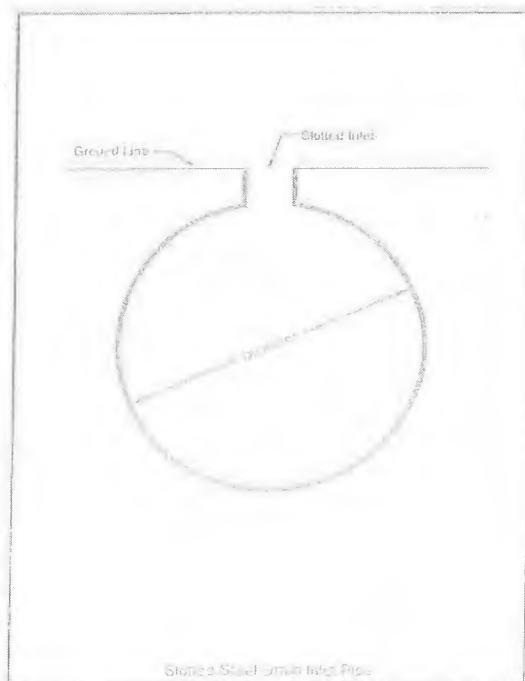
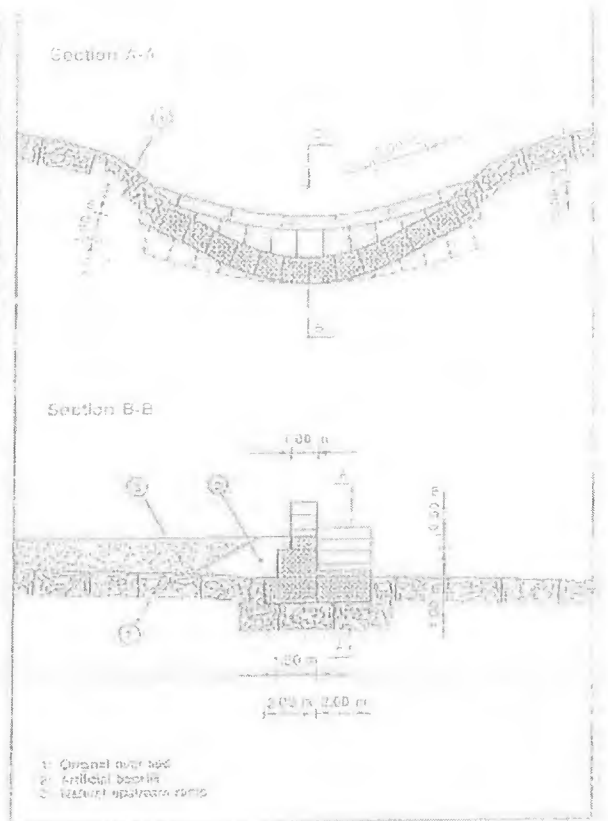
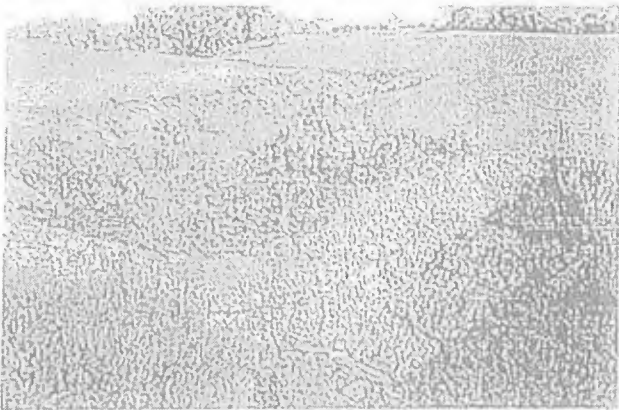
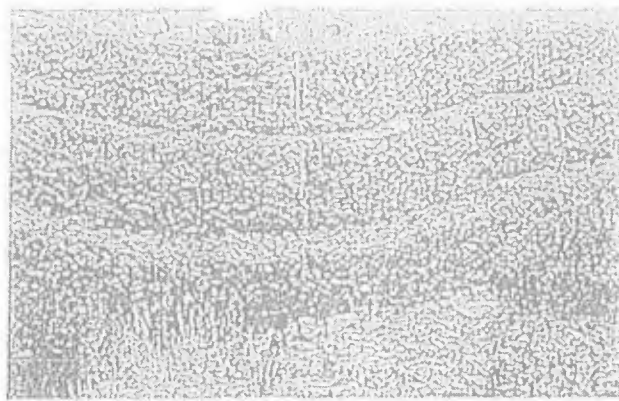
Bret McCumb, PE
Principal Engineer

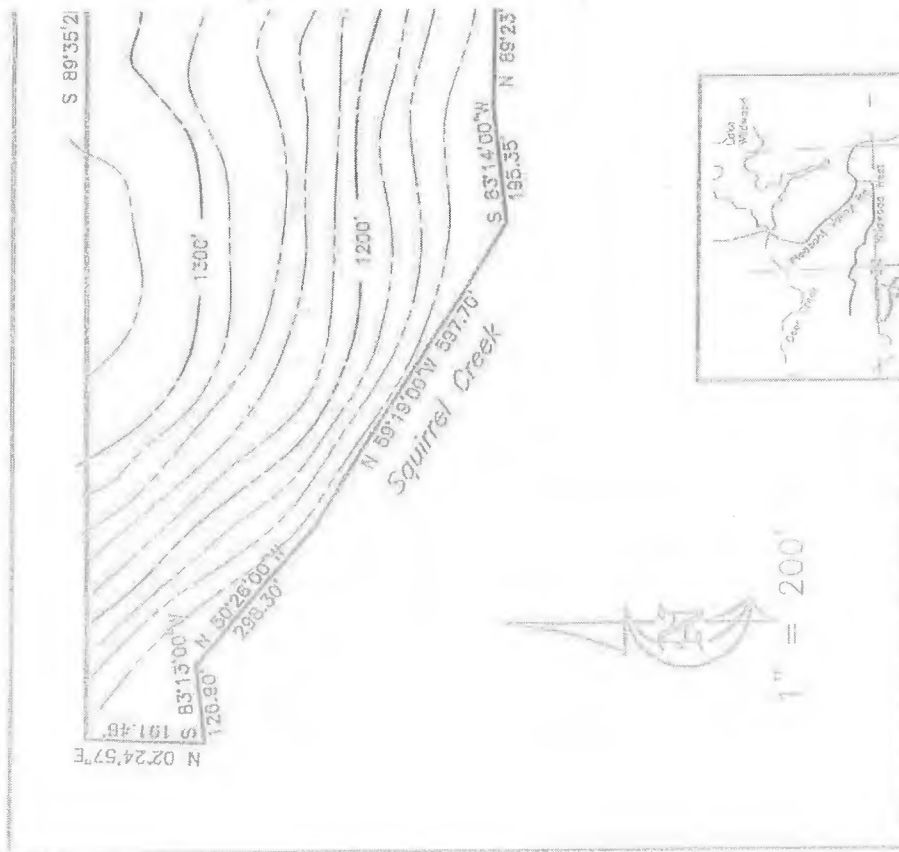
Attachment: 11x17 topographic map



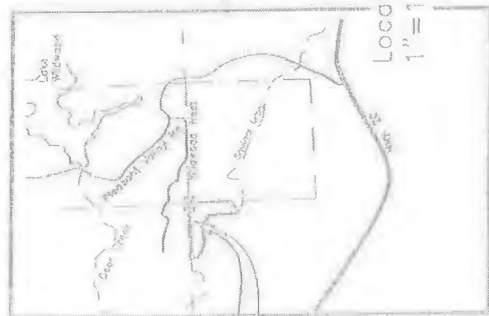
-17-

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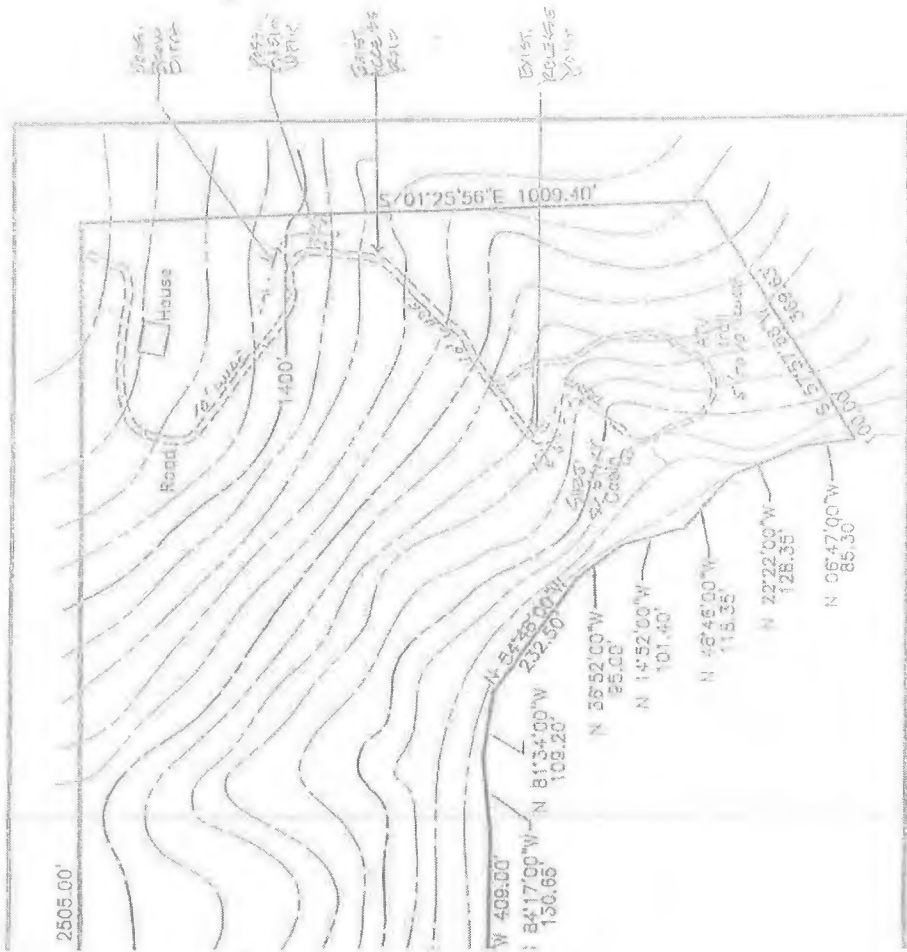




1" = 200'



Location ap
1" = 1 mil



Topographic Map

FOR

Chuck Frank

A portion of the NE 1/4 of
Sec. 30 T.16N. R. 7E. M.28N.
in the unincorporated territory of
NEVADA COUNTY, CALIFORNIA
August, 2012 Scale: 1" = 200'
Contour Interval = 25'
CALIFORNIA SURVEY COMPANY
4300 37th Ave.

MANAGEMENT PLAN FOR CONSTRUCTION
WITHIN STEEP SLOPES GREATER THAN 30 PERCENT

FRANK PROPERTY
20047 WILDWOOD WEST DRIVE
NEVADA COUNTY, CA
APN 50-400-07.

December 19, 2012

Prepared for:
Chuck Frank
20047 Wildwood West Drive
Penn Valley, CA 95946

Prepared by:
Tina Costella
Costella Environmental Consulting
P.O. Box 215
Nevada City, CA 95959

INTRODUCTION

This report addresses the Steep Slope/High Erosion Potential concerns regarding an "after the fact" built cabin that is a "granny house" (not a permanent residence; used primarily for company during the spring, summer and fall) on a 30% or greater slope on the Frank Property pursuant to Nevada County LUDC Ordinance No. 2152, referenced below. Under that ordinance, disturbance within the above-defined area is allowed subject to approval of a Management Plan that provides the following findings can be made:

- 1) That the proposed development ensures the preservation of the natural and topographic character of the slope; and
- 2) The aesthetic quality of the slope is ensured, including the preservation of significant rock outcroppings and native plant materials; and
- 3) That alternatives to development on steep slopes are not feasible; and
- 4) That disturbance of steep slopes is minimized to the greatest extent possible; and
- 5) That water quality problems created by sedimentation and/or excessive vegetation removal are minimized.

This report addresses the findings relative to these concerns and also recommends additional mitigation in accordance with Nevada County Land Use and Development Code (LUDC) - Chapter II - Zoning Regulations, Section L-II 4.3.13 [Ordinance No. 2152]. Under this ordinance, Nevada County requires that a Management Plan be prepared for projects B.1 with steep slopes of (30+) % and/or B.2 high erosion hazard areas, i.e. areas that are determined to have highly-erodible soils based on soils surveys prepared by the U.S. Soil Conservation Service and U.S. Forest Service. (Nevada County 2000. Land Use and Development Code, Chapter II: Zoning Regulations. Effective July 27, 2000).

PROJECT DESIGN

All construction work occurred at the Frank Property during the dry season of 2012. These activities were completed in a timely manner. As described by Mr. Frank and confirmed in my site inspections, the plan ensured that appropriate environmental protection and impact minimization techniques were implemented before, during, and after the construction of the cabin. Photographs of the site are in Appendix A; a site plan with a vicinity map is included in the permit package. The site chosen was a leveled area on an old abandoned ditch, known as China Ditch, that runs parallel to and uphill from Squirrel Creek, a perennial water course. This is the only site within this area where a cabin could be constructed.



The primary construction activities included the following components:

- A gravity-fed cable system, 125 long, was constructed to convey, viz. "air-lift" building materials to the construction site.
- Foundation piers, 10-in all, were laid approximately 4-feet underground, extending upward to 1-foot above ground.
- The foundation is 16 feet x 20 feet, the same as the cabin dimensions, and the cabin footage is approximately 320 square feet.
- The Minimum Usable Sewage Disposal Area (MUSDA) is 5 feet wide x 50 feet long and also is within the leveled area of the ditch. There are 3-40 gallon septic tanks included in this system.
- Gray water is dispersed through a pipe into the same leach field used by the septic system.

Project Location

The project is located at 20047 Wildwood West Drive in Penn Valley, CA 95946, approximately 1.7 air miles northwest from the intersection of Highway 20 and Pleasant Valley Road. The specific location is Section 19, Township 16 North, Range 7 East, M.D.M., located on the Rough and Ready USGS quadrangle map. Elevation at the north end of the property is $\pm 1,300$ feet and the south boundary is $\pm 1,200$ feet above mean sea level (MSL). Appendix B includes the topographic and parcel maps of the Frank property and the specific location.

EXISTING CONDITIONS

Environmental Setting

The study area is situated on a dry, south facing slope in an open mixed chaparral habitat with some Ponderosa Pine (*Pinus ponderosa*) interspersed throughout the site and open areas of annual grasslands throughout, with some rock outcroppings. The manzanita chaparral is composed of a few scattered black oak (*Quercus kelloggii*), scrub oak (*Q. berberidifolia*), sticky whiteleaf manzanita (*Arcotstaphylos viscida* ssp. *viscida*), buckbrush (*Ceanothus cuneatus* var. *cuneatus*), and a few patches of Scotch broom (*Cytisus scoparius*). Annual grasslands are dominated by non-native grasses of brome (*Bromus* spp.), barley (*Hordeum* spp.), and Italian ryegrass (*Lolium multiflorum*). Appendix C provides a Biological Resources Map of the parcel.

The study area is located in the Squirrel Creek watershed; the total land mass of the watershed is 6,705 acres. The general topography of the property is characterized by moderate to steep slopes; elevations range from $\pm 1,300$ feet above mean sea level (MSL) along the northern boundary and $\pm 1,200$ along the southern boundary adjacent to Squirrel Creek.



Soils within the construction site are Auburn-Rock Outcrop Complex, 30 to 50 percent slopes, according the Soil Survey for Nevada County Area, California (Brittan 1993). The Auburn soil in this complex is steep and is on the sides of the more prominent hills and the creek channels and drainageways. About 10 to 25 percent of this complex is Rock outcrop. In places, the soil mapped in this complex is slightly shallower than in Auburn-Rock outcrop complex, 2 to 30 percent slopes. Runoff is medium to rapid; the hazard of erosion is moderate to high.

SPECIAL STATUS SPECIES

Special-status species were considered for this analysis based on field survey results, a review of the California Natural Diversity Database (CNDDB), CNPS literature, database information provided by the U. S. Fish and Wildlife Service (USFWS) (Rough & Ready Quad 7 ½ Minute Quad database last updated September 2012) see Appendix D for these listings. No special status species were observed during the surveys and no further studies are recommended at this time since no suitable habitat for any of the potential species were found within the footprint of the cabin.

DISCUSSION OF IMPACTS AND RECOMMENDED MITIGATION

Impacts to the site were lessened by the construction of a gravity fed cable system to convey, viz. "air-lift" building materials to the construction site. This was an effort to preserve the natural and topographic character of the slope as well as to ensure that only minimal impacts to the native vegetation would occur. In addition, the rock outcroppings throughout the site were not impacted during construction, including the area where placement of the cabin occurred. No trees or other significant vegetation was removed from the construction site. As noted, the cabin was placed along a leveled area that is an abandoned ditch, known as China Ditch. Use of this leveled area aided in the effort not to create disturbance to the steep slope. Any spoils were removed from the construction site, thus avoiding creation of sediment that could find its way into Squirrel Creek, which lies more than 100 feet down-slope from the building site. The landscape surrounding the cabin shows no evidence of erosion, for example the removal of soil, water run-off, sediment, regolith, and/or rock fragments due to the construction at this site.

Geotechnical Engineer Report

According to the Nevada County LUDC - Chapter II - Zoning Regulations, Section L-II 4.3.13, C.3.b.4, all grading within the defined area that requires a grading permit shall include an evaluation by a registered geotechnical engineer. The property owner has contacted an engineer to evaluate the site for structural integrity as required by this section, and that report will be included with the permit package.



FRANK PROPERTY
DECEMBER 2012

Fuel Modification on a Steep Slope

The property owner has maintained fuel reduction around the cabin site, and continuation of this effort should be required as additional mitigation. The specific fuel reduction models required by the ordinance are included below for the ongoing vegetation maintenance of the site. Within these parameters there are no protected resources, i.e. wetlands, landmark oaks or landmark oak groves that are impacted by routine vegetation management.

According to the Nevada County LUDC - Chapter II - Zoning Regulations, Section L-II 4.3.13, C.5, fuel modification shall be provided and maintained around all structures developed on steep slopes, as follows:

Fuel Models		
1-3 *	Grasses	100'
4-6 *	Brush	200'
8-13	Timber	200'

*Northern Forest Fire Lab Fuel Models Code

The above fuel model code numbers designate the following:

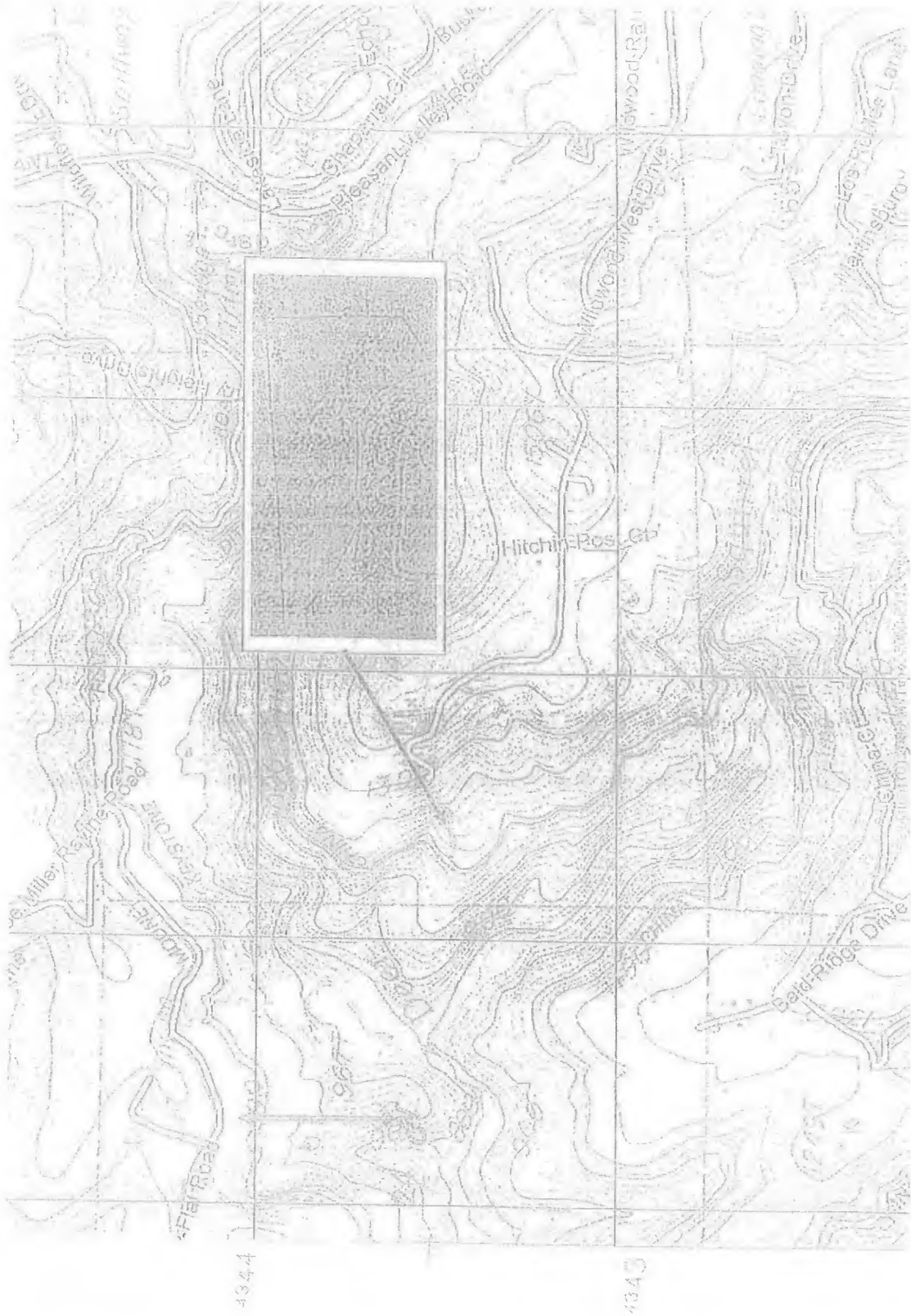
- 1- Short grass (1 foot)
- 2- Timber (grass and understory)
- 3- Tall grass (2.5 feet)
- 4- Chaparral (6 feet)
- 5- Brush (2 feet)
- 6- Dormant brush, hardwood slash
- 7- Southern rough
- 8- Closed timber litter
- 9- Hardwood litter
- 10- Timber (litter and understory)
- 11- Light logging slash
- 12- Medium logging slash
- 13- Heavy logging slash

CONCLUSION

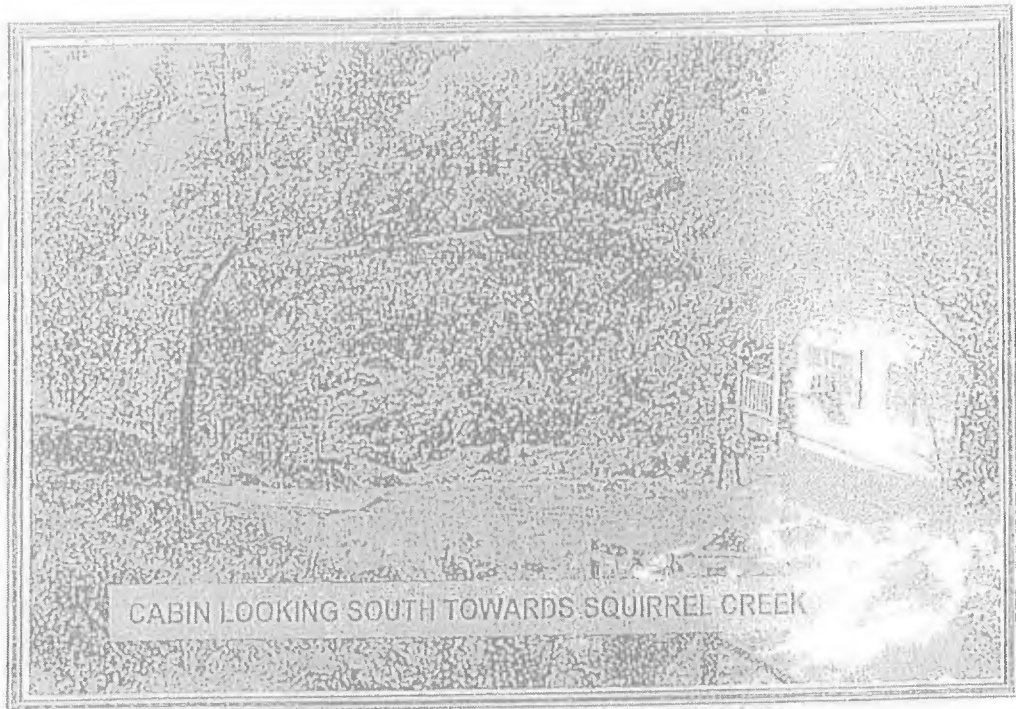
This concludes the required Management Report for this project and satisfies the requirements of relevant Nevada County ordinances, subject to the pending evaluation by the geotechnical engineer, as noted above. Please feel free to contact me if you have any questions regarding any of the findings in this report.



APPENDIX A. TOPOGRAPHIC MAP WITH PARCEL MAP INSERT
FRANK PROPERTY



Appendix B. Site Photographs



COSTELLA ENVIRONMENTAL CONSULTING
P.O. Box 215, Nevada City, CA 95959
(530) 265-6960
E-mail: tcostella@metrair.com

SITE: FRANK PROPERTY
ITEM: Site Photos
DATE: November 2012 Plate: 1 of 2

Appendix A Site Photographs



COSTELLA ENVIRONMENTAL CONSULTING

P.O. Box 215, Nevada City, CA 95959

(530) 265-6969

E-mail: fcostella@netrailer.com

SITE: FRANK PROPERTY

ITEM: Site Photos

DATE: November 2012 PLATE: 2 Of 2

-29

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APPENDIX D. SPECIAL STATUS SPECIES
CALIFORNIA NATURAL DIVERSITY DATA BASE
(CNDDB)

AND

U.S. FISH AND WILDLIFE SERVICE
(USFWS)

Clarkia biloba ssp. brandegeeeae

Brandegee's clarkia

Element Code: PDONA05053

Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G4G5T4	CNPS List: 4.2
State: None	State: S4	

Habitat Associations

General: CHAPARRAL, CISMONTANE WOODLAND, LOWER MONTANE CONIFEROUS FOREST.

Micro: OFTEN IN ROADCUTS. 75-915 M.

Occurrence No. 79	Map Index: 73127	EO Index: 74058	Dates Last Seen
Occ Rank: Good			Element: 2008-06-03
Origin: Natural/Native occurrence			Site: 2008-06-03
Presence: Presumed Extant			
Trend: Unknown			Record Last Updated: 2008-12-10

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39.17876° / -121.15736°	Township: 15N
UTM: Zone-10 N4338231 E659160	Range: 07E
Mapping Precision: SPECIFIC	Section: 02 Qtr: SE
Symbol Type: POLYGON	Meridian: M
Area: 4.0 acres	Elevation: 1,700 ft

Location: S OF CLEAR CREEK, APPROXIMATELY 1.9 AIR MI E OF INDIAN SPRINGS

Location Detail: MAPPED BY CNDDDB AS 3 POLYGONS IN THE SE1/4 OF SECTION 2 ACCORDING TO A 2008 HOSTLER & FISHER MAP. ONE POLYGON IS LOCATED JUST SE OF THE PEAK NAMED "1659" AND THE OTHER 2 POLYGONS ARE JUST SE OF PEAK "1768."

Ecological: ON OR NEAR ROADCUTS ON N-FACING SLOPES IN OPENINGS WITHIN THE TREE CANOPY. HERBACEOUS AND SHRUB SPP GROWING W/ BRANDEGEE'S CLARKIA INCLUDE BROMUS DIANDRUS, JENSIA RAMMII, B. HORDEACEUS, TOXICODENDRON DIVERSILOBUM, AESCULUS CALIFORNICA, ETC.

Threat: POTENTIAL RESIDENTIAL DEVELOPMENT.

General: 2,460 PLANTS SEEN IN 2008.

Owner/Manager: PVT

Laterallus jamaicensis coturniculus

California black rail

Element Code: ABNMF03041

Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G4T1	CDFG Status:
State: Threatened	State: S1	

Habitat Associations

General: INHABITS FRESHWATER MARSHES, WET MEADOWS & SHALLOW MARGINS OF SALTWATER MARSHES BORDERING LARGER BAYS.

Micro: NEEDS WATER DEPTHS OF ABOUT 1 INCH THAT DOES NOT FLUCTUATE DURING THE YEAR & DENSE VEGETATION FOR NESTING HABITAT.

Occurrence No: 262	Map Index: 76674	EQ Index: 77620	Dates Last Seen
Occ Rank: Unknown			Element: XXXX-XX-XX
Origin: Natural/Native occurrence			Site: XXXX-XX-XX
Presence: Presumed Extant			
Trend: Unknown			Record Last Updated: 2009-09-23

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39 17041° / -121.19943°	Township: 15N
UTM: Zone 10 N4337231 E655545	Range: 07E
Mapping Precision: NON-SPECIFIC	Section: 09 Qtr: NE
Symbol Type: POINT	Meridian: M
Radius: 2/5 mile	Elevation: 1,460 ft

Location: VICINITY OF SPENCEVILLE RD ABOUT 0.7 MI SSW OF INTERSECTION WITH INDIAN SPRINGS RD. ABOUT 8 MI WSW OF GRASS VALLEY (PO).

Location Detail: MAPPED BY GEOREFERENCING FIGURE 2 IN RICHMOND 2008. WITHIN THE CORE SURVEY AREA.

Ecological: SURVEY MARSHES GENERALLY SMALL, GENTLY SLOPED, DENSELY VEGETATED & HIGHLY FRAGMENTED (SURROUNDED BY UNSUITABLE HABITAT). WATER SOURCES PRIMARILY FROM IRRIGATION DITCHES. OCCURRENCE REPRESENTS PART OF A METAPOPULATION IN THE SIERRA FOOTHILLS

Threat:

General: CA BLACK RAIL S DETECTED BY RICHMOND ET AL AT 1 SITE DURING AT LEAST 1 PHASE OF CALL-PLAYBACK SURVEYS IN 1994-2006. PART OF A YEAR-ROUND RESIDENT BREEDING POPULATION IN THE SIERRA FOOTHILLS, DISCONTINUOUS WITH THE SF BAY-DELTA POPULATION.

Owner/Manager: UNKNOWN

<i>Lathyrus sulphureus</i> var. <i>argillaceus</i>		
dubious pea		
Element Code: PDFAB25101		
Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G1G2	CNPS List: 3
State: None	State: S1S2	
Habitat Associations		
General: CISMONTANE WOODLAND, LOWER MONTANE CONIFEROUS FOREST, UPPER MONTANE CONIFEROUS FOREST		
Micro: 150-305M.		
Occurrence No. 5	Map Index: 79241	EO Index: 80221
Dates Last Seen		

Occ Rank: Good
Origin: Natural/Native occurrence
Presence: Presumed Extant
Trend: Unknown
Record Last Updated: 2010-07-08

Quad Summary: Rough And Ready (3912122/542B)
County Summary: Nevada

Lat/Long: 39.13769° / -121.13063°	Township: 15N
UTM: Zone-10 N4333720 E661563	Range: 08E
Mapping Precision: SPECIFIC	Section: 19 Qtr: N
Symbol Type: POLYGON	Meridian: M
Area: 2.0 acres	Elevation: 1,600 ft

Location: NORTHEAST OF SWAN 1301 DAM, ABOUT 0.7 AIR MILES NORTHWEST OF PINE HILL
Location Detail: N COLONY: SOUTH SIDE OF NEWELL PLACE ~0.15 MI NE FROM INTERSECTION WITH WOODLAKE RD. S COLONY: 12781 WOODLAKE RD, 1.2 MI FROM INTERSECTION WITH MCCOURTNEY RD. MAPPED BY CNDDB IN THE N 1/2 OF SECTION 19 ACCORDING TO 2001 HANES MAPS.
Ecological: BLUE OAK WOODLAND AND CHAPARRAL ASSOCIATED WITH LATHYRUS SULPHUREUS, ANNUAL GRASSES, SYMPHORICARPOS SP., RANUNCULUS SP., VICIA SP., CHLOROGALUM SP., TOXICODENDRON DIVERSILOBUM, ERODIUM SP., AESCULUS CALIFORNICA, CEANOTHUS CUNEATUS, ETC.
Threat: N COLONY: THREATENED BY ROAD MAINTENANCE AND CLEARING FOR FIRE PROTECTION. S COLONY USED AS A NATURE TRAIL.
General: 2001: 1 PLANT OBSERVED IN N COLONY (OCC RANK POOR), 17+ IN S COLONY (OCC RANK EXC), THE VARIETY WAS MIXED WITH THE SPECIES MAKING IT DIFFICULT TO COUNT INDIVIDUALS. S COLONY ON PRIVATE LAND; OWNERS INTEND TO LEAVE IT UNDISTURBED.
Owner/Manager: PVT, UNKNOWN

<i>Laterallus jamaicensis coturniculus</i>			Element Code: ABNME03041
California black rail			
Status	NDDB Element Ranks	Other Lists	
Federal: None	Global: G4T1	CDFG Status:	
State: Threatened	State: S1		
Habitat Associations			
General: INHABITS FRESHWATER MARGHES, WET MEADOWS & SHALLOW MARGINS OF SALTWATER MARSHES BORDERING LARGER BAYS			
Micro: NEEDS WATER DEPTHS OF ABOUT 1 INCH THAT DOES NOT FLUCTUATE DURING THE YEAR & DENSE VEGETATION FOR NESTING HABITAT.			
Occurrence No. 263	Map Index: 76675	EO Index: 77621	Dates Last Seen
Occ Rank: Unknown	Origin: Natural/Native occurrence		Element: XXXX-XX-XX
Presence: Presumed Extant	Trend: Unknown		Site: XXXX-XX-XX
Record Last Updated: 2009-09-23			

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39.14578° / -121.14362°
UTM: Zone-10 N4334595 E660422
Mapping Precision: NON-SPECIFIC
Symbol Type: POINT
Radius: 2/5 mile

Township: 15N
Range: 07E
Section: 13 Qtr: SE
Meridian: M
Elevation: 1,700 ft

Location: VICINITY OF MCCOURTNEY RD AT CHAMPAGNE LN, ABOUT 6.6 MI SW OF GRASS VALLEY (PO).

Location Detail: MAPPED BY GEOREFERENCING FIGURE 2 IN RICHMOND 2008. WITHIN THE CORE SURVEY AREA.

Ecological: SURVEY MARSHES GENERALLY SMALL, GENTLY SLOPED, DENSELY VEGETATED & HIGHLY FRAGMENTED
(SURROUNDED BY UNSUITABLE HABITAT). WATER SOURCES PRIMARILY FROM IRRIGATION DITCHES.
OCCURRENCE REPRESENTS PART OF A METAPOPOPULATION IN THE SIERRA FOOTHILLS

Threat:

General: CA BLACK RAILS DETECTED BY RICHMOND ET AL AT 1 SITE DURING AT LEAST 1 PHASE OF
CALL-PLAYBACK SURVEYS IN 1994-2006. PART OF A YEAR-ROUND RESIDENT BREEDING POPULATION IN
THE SIERRA FOOTHILLS, DISCONTINUOUS WITH THE SF BAY-DELTA POPULATION.

Owner/Manager: UNKNOWN

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U.S. Fish & Wildlife Service

Sacramento Fish & Wildlife Office

Federal Endangered and Threatened Species that Occur in
or may be Affected by Projects in the Counties and/or
U.S.G.S. 7 1/2 Minute Quads you requested

Document Number: 121217021434

Database Last Updated: September 18, 2011

Quad Lists

Listed Species

Invertebrates

- *Desmocerus californicus dimorphus*
 - valley elderberry longhorn beetle (T)

Fish

- *Hypomesus transpacificus*
 - delta smelt (T)
- *Oncorhynchus mykiss*
 - Central Valley steelhead (T) (NMFS)
- *Oncorhynchus tshawytscha*
 - Central Valley spring-run chinook salmon (T) (NMFS)
 - winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

- *Rana draytonii*
 - California red-legged frog (T)

Quads Containing Listed, Proposed or Candidate Species:

ROUGH AND READY (542B)

County Lists

No county species lists requested.

Key:

- (E) Endangered - Listed as being in danger of extinction.
- (T) Threatened - Listed as likely to become endangered within the foreseeable future.
- (P) Proposed - Officially proposed in the Federal Register for listing as endangered or threatened.
- (NMFS) Species under the Jurisdiction of the National Oceanic & Atmospheric Administration Fisheries Service. Consult with them directly about these species.
- Critical Habitat - Area essential to the conservation of a species.
- (PX) Proposed Critical Habitat - The species is already listed. Critical habitat is being proposed for it.
- (C) Candidate - Candidate to become a proposed species.
- (V) Vacated by a court order. Not currently in effect. Being reviewed by the Service.
- (X) Critical Habitat designated for this species



10-Jun-02

Site Address: 20047 WILDWOOD WEST DRIVE

20047 WILDWOOD WEST DR
PENN VALLEY, CA 95946

Land Value: \$ 69870

Date Assessed: 04/30/01

Zoning: AG-X

General Plan Designation: RUR-5

Fire District: PENN VALLEY

Aerial Photo Date: August 1998

Location Description:
LOT 27 HOUGHTON RANCHES 6/24

Flood Hazard Zone: ZONE C 6000B 1/19/83

Remarks: SANDRINI

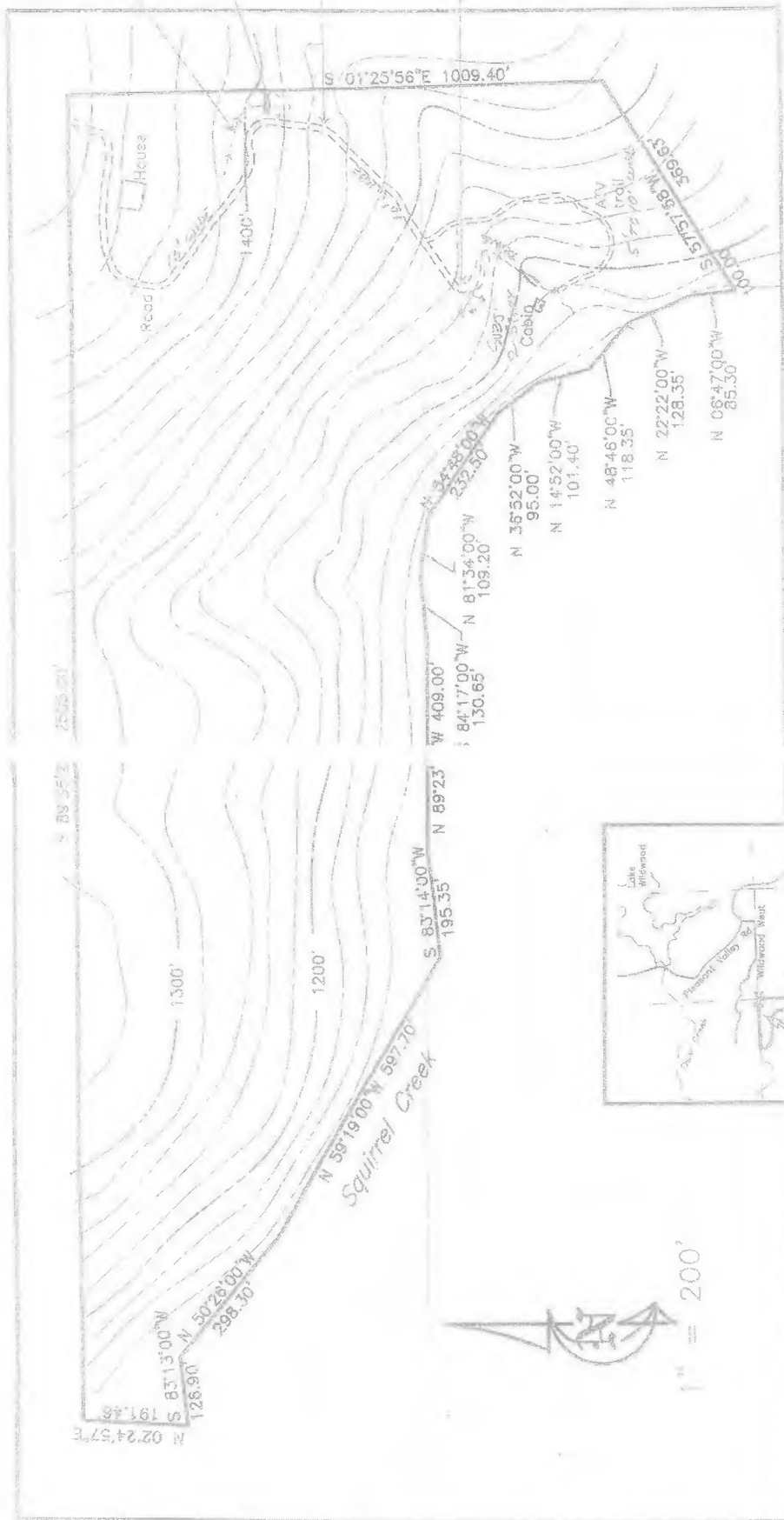


1 Inch = 1270 Feet

Every reasonable effort has been made to assure the accuracy of the maps and data provided; nevertheless, some information may not be accurate. The County of Nevada does not warrant, represent, or provide any kind of warranty for the maps and data provided. THE MAPS AND ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, either expressed or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. Before making decisions using the information included on this map, contact the Nevada County public counter staff to confirm the validity of the data provided.



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Attention: Nevada County Community Development Agency(CDA)
and all other interested parties.

We the undersigned below, live on Wildwood West Dr. in Penn Valley, CA. and are aware of an abatement hearing that has been scheduled on October 16, 2014 at 2:00 p.m. in the supervisors chambers. Nevada County seeks to get the authorization to remove a perfectly safe building which was built by a licensed contractor. We are requesting that the hearing officer and the county rule in favor of the property owners, Mr. and Mrs. Charles and Katherine Frank because the issue involved with their property and their structure which was erected in its present location, poses no danger to the community nor does it affect the district in any way. It surely could not be classified as a nuisance.

In certain circumstances, if a property owner desires to exercise a property right that would benefit them, this decision should be honored as long as it does not majorly affect the neighboring properties. In this case, the Frank's right should be granted, and we the undersigned stand with them, in that their request is not inconsistent with other neighboring properties who's provisions have already been granted through variances.

In a recent case, Crown Point vs. Sun Valley, the issue of equal justice with regard to individual rights and private property was clearly addressed.

In November the Ninth Circuit Court of Appeals unanimously applied a 2005 US Supreme Court decision that operates to change how inverse condemnations are evaluated. Inverse condemnations occur when government imposes restrictions or regulations that prohibit the reasonable exercise of private property rights.

The Federal Appeals Court held that government agencies and their employees can no longer use as a defense to a property owner's takings claim that they were simply 'advancing a legitimate state interest'. With this decision the federal courts will require compensation if the right to the reasonable use of private property has been abridged.

In addition, besides being an equal protection issue, the Frank's structure which was built in 2004 could very well be reclassified and permitted as an outbuilding such as a greenhouse or an agricultural barn suited for animal husbandry. While the structure is situated in a no build zone and has drawn considerable attention from the county, the removal of the structure would only make sense if it fell within the category of being a true nuisance or if it was seen as a threat to the health, safety or welfare of our community which has never been the case nor was this ever proven.

Furthermore, we are presently familiar with other local cases on Wildwood West Dr. and those various properties that have been given variances by the county. The Houghton Ranch parcel belonging to Dr.

Roberta Navickis, AX(APN50-400-02) actually fell within the same zoning classification as the Franks which was a no build zone along Squirrel Creek, but that parcel was changed to a build zone after a variance was requested and then granted by Nevada County.

Presently, the Frank's are only asking for a variance for the subject structure because their request, if granted, would not constitute the granting of a special privilege inconsistent with the limitations placed on other properties in the vicinity and in the same zoning district in which the subject property is located. If not granted, we believe that the Frank's would be deprived of special privileges enjoyed by three additional properties along Squirrel Creek which are also in the vicinity and along the same creek. We also believe in this particular case, there would be no adverse affect to the character of the District, nor the utility and value of any of the nearby properties. Finally, we see the variance as a minimum departure from the requirements of the ordinance necessary to grant relief to the applicant.

We the undersigned cast our vote in favor of leaving the Frank's structure where it is, as it truly does not fall within the category of a being a nuisance nor does it pose any danger of any kind to the vicinity. It is our desire that the hearing officer rule in favor of the Franks.

Print name & address below.

Signature

Shane Wallace

Shane Wallace 20045 Wildwood West

Alain LAZARD

19895 Wildwood W. Dr.



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Print name & address below.

Signature

Edward T. Navickis

Edward T. Navickis

12360 Pleasant Valley Rd. Penn Valley, Ca.

CSL 581852

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and all other interested parties.

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Print name & address below.

Signature

C. Bruce McDONALD



15038 COCAIN Way, G.V. 95845

Retired planner of Washoe County, Nevada for 20 years.

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Print name & address below.

Signature

Dale E. Winther



P.O. Box 898 Coarsegold CA 93614

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Print name & address below.

Signature

Linda S. Winther

Linda S. Winther

P.O. Box 898 Coarsegold 93614

1. Because the CEO of the county falsely reported in The Union (the main newspaper in Nevada County), two major untruths about my cabin, there is now a conflict of interest to where I will never get a fair ruling in my favor from the county. The planning department will paint a picture on their behalf so as not to lose favor with the CEO. If planning and CDA went ahead and ruled in my favor, job security among planners and others who are associated with my case is at issue. There is now a huge conflict of interest. CDA has a track record of not wanting to help anyone resolve property issues as stated by an ex code enforcer who quit Nevada County code enforcement a few years back because the main director of CDA told him that he didn't want to help anybody get any issue resolved.

Complaints misunderstand Code Compliance

In recent weeks there have been a couple of articles in The Union regarding the county's Code Compliance program. The essence of

OTHER VOICES

Rick Haffey

these articles is that the code compliance function is being criticized because the employees assigned to this program are bullying and harassing citizens through enforcement of the county codes. There was also a wild-eyed, bombastic request during this year's budget hearings to eliminate the code compliance function entirely.

What is Code Compliance? Code Compliance helps improve and maintain the quality of life by working with property owners to correct code violations in relation to property, buildings and structures. This could mean things as minor as garbage strewn across private property or inoperable vehicles to something as serious as raw sewage spilling from a homeowner's septic system into a creek. Often times it relates to the lack of permits and inspections for structures. Our building code is the California Residential Code given to all local governments by the state. It requires permits with particularly specific conditions for structures which will be inhabited by people. These conditions are generally required for the integrity of the structure and the health and safety of the inhabitants.

Code Compliance is

to routinely charge double inspection fees for permits resulting from code actions. The board of supervisors' compliance philosophy is in opposition to that view. The board of supervisors believes that enforcement should only be used as a last resort and only double the fees with the most recalcitrant of individuals. The board of supervisors wants the county to work with the citizens if the citizens want to comply with the codes.

In the first of the two The Union articles, this article goes on to describe a difficult and elongated process to resolve a complaint-driven yet serious code violation. In the second article, a gentleman who spoke to the board and was quoted in the article about not attaching fees on long-standing code violating properties. His statement was rather self-serving since he has even more serious code violations than most. His case is a good example of why code compliance is important to the public's health, safety and quality of life.

Consider this gentleman's case: In August 2011, a citizen complained that the gentleman had built an unpermitted cabin in a flood plain and no-build area adjacent to Deer Creek, and it was being advertised as a vacation rental. An unpermitted primitive septic system was part of the development adjacent to the public waterway. In discussion with county staff the gentleman stated he was aware that a structure could not be there, but he built it

Code Compliance is

FEEDBACK

In response to the question "How do you feel about standardized tests?"

Mary Rothenberger-Schreiber — (Definitely a) waste of time ... because if kids don't score high enough for the school ... they toss them aside. Teachers blame the parents if the kids don't score high ... they don't see it as themselves being the issue.

Mary Cretokos Pavlik — They're a big waste of time

Gary Watts — I think they are only a way for the schools to try to make themselves look better by having the kids get higher test scores, which equals more money for the district. I think the school teaches the test to the kids just for that reason ...

Angie Westervelt — I have never liked the testing. I have always felt they're not always true reflection of a child. Kids don't always test well. They can do great but have a hard time testing. It's so annoying that their placement is based on these tests. In some cases, they hurt the children instead of benefiting them.

Miranda Goodman — Our public education system is similar to that of an English factory during the industrialization era. It's gross.

Lyn Coleman Dominguez — The whole point of school is to learn. Testing is fine to gauge where the need is, but testing and gaining the knowledge that a particular child is not learning the material should require the teacher to teach and the child to learn. This is what education is.

Code Compliance is a very difficult task, and the employees in that program have to tell people who are not in compliance with county codes things they don't want to hear like: "I'm sorry but you have to get a permit for that structure," or "Unfortunately, you must stop building until you get a permit," or the most difficult, "I'm very sorry but your structure violates numerous building, health and safety codes, and you need to get a demolition permit to take your structure down." These are not statements that can easily be sugar coated and are only said after lengthy investigations, numerous warnings, problem-solving and often other due-process opportunities.

Our Code Compliance personnel receive extensive training in their field, including but not limited to customer service and communication strategies, which lead to positive resolution. They are backed up by the experts in the Planning, Building, Environmental Health, Public Works and other departments of the county.

In the county of Nevada, we emphasize compliance first and enforcement as a last resort. We also only proactively pursue health and safety violations (for example, exposed electrical wiring, failing septic systems and the like) or citizen complaints about violations in their neighborhoods. These citizen complaints, neighbor on neighbor, are very difficult because there is often a long history in a neighborhood conflict and the county is brought in as leverage in the neighbors' struggles.

In fact, Code Compliance has been the subject of three grand jury reports in a little more than a decade where there have been recommendations that the county should emphasize enforcement over voluntary compliance of the codes. In all three of the grand jury reports, there were specific recommendations

Code Compliance is a very difficult task, and the employees in that program have to tell people who are not in compliance with county codes things they don't want to hear... These are not statements that can easily be sugar coated and are only said after lengthy investigations, numerous warnings, problem-solving and often other due-process opportunities.

anyway. A warning notice was issued and a compliance date of October, 2011 was given. Staff explored alternative site locations with the gentleman, but due to difficult site restrictions, only one alternative could be a possibility. He declined any action, and a second notice of warning was issued and a new compliance date of December 2011 was given. A meeting in December 2011 with his attorney and staff, including a fire planner, concluded after six months of discussion that the cabin could not be permitted because, among other issues, the steep slope prevented safe access. In August 2012, a third notice was given, and the gentleman decided to apply for a Management Plan and Map Amendment. These were finally completed in March 2013. The Planning Commission heard his applications in June 2013 and denied them. He was given one last citation warning and an extension to comply by Aug. 27, 2013. If he has not complied, he will be cited.

There are some who might think the county has been too patient and lenient in this matter but staff used the time to try and get the individual to comply. In this case, it appears we have been unsuccessful, and the

is often not the case so the child is labeled not on fiction and sent on to the next assignment or the next grade up. To me, (this) is a complete waste of time for teacher and child.

Chelsa Conley --- You can't judge a fish by his ability to climb a tree

Robin Killingbeck --- I think it's a great guide for parents sending their kids to the schools in CA. Would you want to move to a neighborhood with a school that has low test results? Plus we can start to make the teachers accountable for teaching our children.

The above comments were taken from The Union's Facebook page at <http://facebook.com/theuniondotcom>.

OUR POLICIES

LETTERS TO THE EDITOR

Letters are limited to 200 words. Kudos must be 700 words or less. Please include your name, address and phone number.

OTHER VOICES

"Other Voices" may be 500 to 750 words in length. Please include your name, address, daytime phone number and a paragraph at the end describing yourself.

EMAIL TO

letters@theunion.com

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ELECTED OFFICIALS

NEVADA CITY COUNCIL

530-265-2490
Sally Harris (mayor),
Terri Andersen (vice-
mayor), Jennifer Ray (Deane
Strawser, Robert Bergman,

CITY CLERK

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In fact, Code Compliance has been the subject of three grand jury reports in a little more than a decade where there have been recommendations that the county should emphasize enforcement over voluntary compliance of the codes. In all three of the grand jury reports, there were specific recommendations that essentially stated, "The county should modify its philosophy to emphasize enforcement over voluntary compliance" and, "The county should direct staff

hear... These not statements that can easily be sugar coated and are only said after lengthy investigations, numerous warnings, problem-solving and often other due-process opportunities.

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There are some who might think the county has been too patient and lenient in this matter, but staff took the time to try and get the individual to comply. In this case, it appears we have been unsuccessful, and this will become an enforcement matter with all of its due-process provisions.

Bob Harper is the CEO of the county of Nevada.

think it's a great guide for parents solidifying their kids to the schools in CA. Would you want to move to a neighborhood with a school that has low test results? Plus we can start to make the teachers accountable for teaching our children.

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530-265-2496
Sally Harris (mayor),
Terri Andersen (vice-
mayor), Jennifer Ray, Duane
Strawser, Robert Bergman,

GRAND JURY
CITY CLERK
530-274-4310 (for city clerk)
Dan Miller (mayor), Jason
Fouyer (vice mayor), Jan
Aubuckle, Howard Levine,
Lisa Swarthout

SUB 6

FINAL MAP 77-36

Houghton Ranches

BEING A PORTION OF
SECTION 25, T.16N., R.6E., 2nd SECTIONS 30&31, T.16N., R.7E., M.D.M.
IN THE UNINCORPORATED AREA OF
NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING

AUGUST, 1979

OWNER'S CERTIFICATE:

The undersigned being the only persons representing any record title interest in the herein submitted lands do hereby consent to the preparation and recording of this final map of "HOUGHTON RANCHES" and offer for dedication and do hereby dedicate to the County of Nevada the following:

1. For any and all public uses, all that portion of these certain strips of land shown and designated as "Houghton Ranch Road, Bull Ridge Drive, Wet Hill Drive and China Court" situated within the boundaries of this subdivision. Until acceptance of said land by the County of Nevada, the above referenced roads will remain private and for the exclusive use of the property owners in this subdivision to be owned and controlled by the property owners' association of said subdivision, except as further granted by deed conveyance.
2. Rights of way and easements for water, gas, sewer and drainage pipes, conduits and ditches, and for poles and overhead and underground wires and conduits for electric and telephone services, together with all appurtenances, thereto, on, over, under and across those strips of land lying 6 feet on each side of all side and rear lot lines of each lot, and on, over, under and across those strips of land shown and designated as "Public Utility Easements (PUE)", and on, over, under, and across those strips of land of a width of 10 feet lying adjacent and parallel to rear lines of public and/or private roads, situated within the boundaries of the subdivision, and on, over, under and across those strips of land of a width of 15 feet lying adjacent and parallel to all lot lines which form the exterior boundaries of this subdivision, excepting those exterior lines which are common to road lines of public and/or private roads, together with the right to trim and for remove only necessary trees, limbs or brush.
3. Rights-of-way for side easements together with all appurtenances thereto, on, over, under and across those certain strips of land shown and designated as "Side Easements" (S.E.).
4. For ingress and egress on, over, and across those certain strips of land shown and designated as "Access Easements" (A.E.) together with the right to trim and/or remove only necessary trees, limbs or brush.
5. "Emergency Access Easement" (E.A.E.) for any and all emergency purposes including but not limited to fire, rescue, etc.
6. "No Access Easement" (N.A.E.) for the purposes of denying access to land from a roadway where access is undesirable or a more suitable access exists.
7. "Temporary Easement" (T.E.) to provide a turn around area until a through connection is made.

By Carl E. Houghton

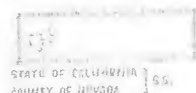
INTER-COUNTY TITLE COMPANY, a California Corporation, as trustee, under Deeds of Trust recorded in Book 931, Page 291 and Book 931, Page 299, re-recorded in Book 934, Page 407, Official Records, Nevada County, California.

By [Signature] By [Signature]

STATE OF CALIFORNIA
COUNTY OF NEVADA

On this 14th day of August, 1979, before me, Carl E. Houghton, a Notary Public in and for said County and State, reading therein duly commissioned and sworn, personally appeared Carl E. Houghton, known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above written.



Notary Public in and for said County and State
My commission expires June 24, 1982

On this 14th day of August, 1979, before me, Carl E. Houghton, a Notary Public in and for said County and State, reading therein duly commissioned and sworn, personally appeared Carl E. Houghton and John Houghton, known to me to be the persons who executed the within instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above written.

Carl E. Houghton
Notary Public in and for said County and State
My commission expires June 24, 1982

SURVEYOR'S CERTIFICATE:

This final map of "HOUGHTON RANCHES" represents a survey which is true and correct as shown, made by me of my own observation in accordance with the requirements of the SUB-DIVISION MAP ACT and local ordinances in August, 1978 and the monuments used of the character and accuracy, the positions are shown are sufficient to enable the survey to be retraced.

James E. Baker
Kenneth E. Baker, L.S. 2959

COUNTY SURVEYOR'S CERTIFICATE:

This final map has been examined by me, and the subdivision is shown as substantially the same as it appeared on the tentative map and any approved alterations thereto, and provisions of the SUB-DIVISION MAP ACT and any local ordinances applicable at the time of the approval of the tentative map have been complied with, and I am satisfied that this final map is technically correct this 14th day of August, 1979.

Terrance L. Lowery
Terrance L. Lowery, L.S. 19398
County Surveyor

STATE OF CALIFORNIA
COUNTY OF NEVADA

This is to certify that the BOARD OF SUPERVISORS of the County of Nevada, State of California, by a motion adopted at a meeting held on the 12th day of August, 1979, did approve for filing this map of "HOUGHTON RANCHES" consisting of 7 sheets and accepted for any and all public uses the following: (a) item 1 for PUE purposes only; (b) item 2 except drainage pipes, conduits and ditches (c) items 5 & 6, deferred acceptance of the following: (a) item 1, except for PUE purposes; (b) item 2, drainage pipes, conduits and ditches (c) item 3, except item 4. All provisions of the SUB-DIVISION MAP ACT and local ordinances have been complied with regarding deposits this 14th day of August, 1979.

Chairman of the Board

Carl of the Board

COUNTY TAX COLLECTOR'S CERTIFICATE:

I, MARCELLA J. CARSON, the official computing tax collector, for the County of Nevada, State of California, do hereby certify that according to the records of my office, there are no taxes for unpaid taxes or special assessments collected or taxes against the lands involved herein, except taxes or assessments not yet due and payable, but constituting a lien is none.

In Witness Whereof, I have hereunto set my hand this 14th day of August, 1979.

Marcella J. Carson, Nevada County Tax Collector

COUNTY RECORDER'S CERTIFICATE:

I, Melba Polglase, hereby certify that said tentative certificate on 14th day of August, 1979, was filed with this office, and that this plat map was accepted for record, and recorded in Book 934 of Subdivisions of Page 20, Document 18200000, August 14, 1979, at 9 A.M.

Melba Polglase
27095 Fee 77.00
County Recorder, Nevada County, California
My Commission Expires June 24, 1982

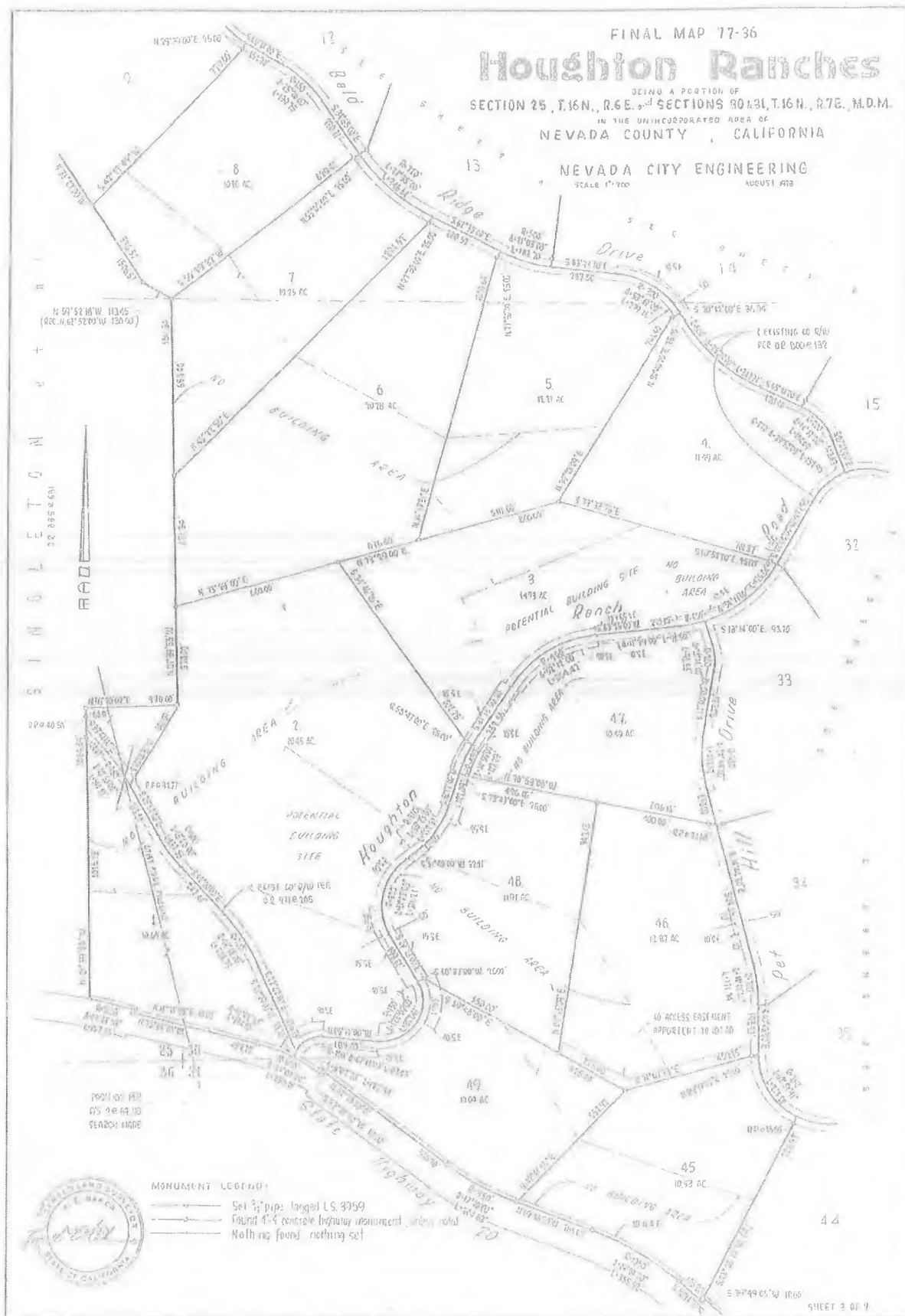
All bearings in this record are based upon monuments found along the northerly line of the subject property as established in Parcel Maps 10 & 208.

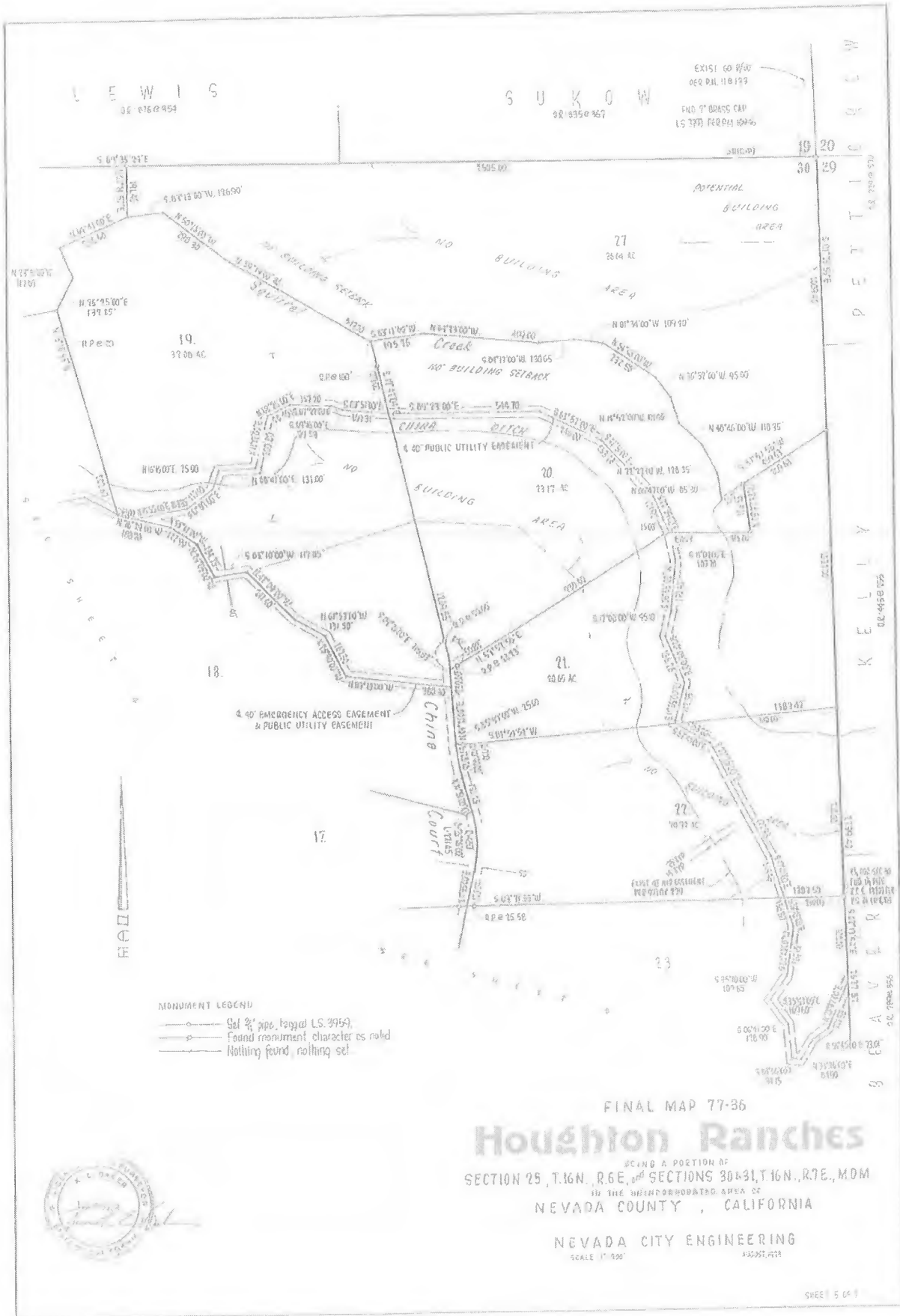
SUBDIVISION ADDRESS:

The gross area of land contained within the boundaries of this subdivision is 819.68 acres, more or less. The area of land contained within the lots numbered 1 to 49, inclusive is 819.68 acres, more or less.

NOTES:

1. There is no guarantee that water is available on any lot of this final map.
2. There is no guarantee that sewage can be disposed of on any lot of this final map.
3. The signatures of copies of the easements mentioned in this subdivision and other records, the 208, 209 & 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.
4. All 76 or designated areas is to be combined with an adjacent parcel.





WHEN RECORDED MAIL TO:

Mr. Carl E. Houghton
320 E. Taber Ave.
Fairfield, California
94533

DECLARATION OF PROTECTIVE COVENANTS

HOUGHTON RANCHES

THIS DECLARATION is made on _____, by

CARL E. HOUGHTON.

RECITALS

Declarant is the owner and developer of that certain real property located in the County of Nevada, State of California, known as Lots 1 through 47 inclusive of HOUGHTON RANCHES ("the Development"), as shown on the Official Map thereof, filed in the office of the Nevada County Recorded on _____, in Book _____ of Subdivisions, at Page _____.

Declarant intends to sell and convey the lots situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions and covenants under a general plan or scheme of improvement for the benefit of all of the lots in the Development and the future owners thereof. NOW, THEREFORE, Declarant declares that all of the lots in the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.

3. A lessee of a lot under a recorded lease from the owner of fee simple title to said lot for a term of not less than 50 years, in which case the lessor under said lease shall cease to be the owner while said lease is in effect.

H. "Single family dwelling" means a residential dwelling for one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three adult persons not so related, together with his or their domestic servants maintaining a common household in such dwelling, which dwelling is constructed on a lot in the Development.

II. LAND USE. Lots in the Development shall comply to the zoning thereof as to their permissible uses and shall be subject to the restrictive or other provisions of this Declaration relating to such uses. Lots 1 through 47 are zoned "Single Family Residential District" and A1-X "General Agriculture District", with a minimum lot size as shown on the Official Map of Houghton Ranches.

It is understood that zoning is subject to change only upon the proper application to the County of Nevada, and the Lots in the herein described Houghton Ranch cannot be subdivided without permission pursuant to proper procedures before the board having jurisdiction for zoning in the County of Nevada, State of California.

A. Wildlife Management. No area shall be fenced, with the exception of gardens, with a restrictive fence such as solid board or hog wire. All fences with the exception of garden areas shall be designed to permit the free unrestricted movement of wildlife animals. Dog control by property owners is recommended to reduce the harassment of wildlife. All vegetation should be retained when ever possible to provide areas of escape for wildlife.

B. Single Family Residential. Only single family dwellings and such outbuildings as are usually accessory thereto and in accordance with the zoning thereof shall be permitted. The following restrictions shall apply specifically to such lots:

E. Maintenance of Lots. All lots and parcels, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary or a hazard to health.

F. Disposal of Sanitary Waste. All places of human habitation shall be provided with septic tanks, designed and built in accordance with specifications approved by health authorities having jurisdiction, and no outside toilets, privies or cesspools shall be permitted on any parcel within the tract. All septic tanks and drain lines shall be so constructed as to permit no drainage or run-off to pollute any stream or otherwise constitute or become a menace to health.

G. Signs. All signs shall be professionally prepared and shall be in conformance with the zoning ordinances of Nevada County and with any other applicable laws. Name plates shall not exceed four square feet in area and there shall not be more than one such name plate per dwelling. Except for one Professional sign of not more than four square feet advertizing the property for sale or lease. All other signs, billboards, or advertizing structures of any kind are prohibited.

H. Animals. No animals shall be kept or maintained on any lot except in conformance with the zoning of said lot.

I. Gargage and Refuse Disposal. No owner shall accumulate on his lot junked vehicles, or litter, refuse or gargage, except in receptacles provided for such purposes.

J. Concealment of Fuel Storage Tanks and Trash Receptacles. Fuel storage tanks on any lot shall be either buried below the surface of the ground or screened. Every receptacle for ashes, trash, rubbish or garbage shall be installed underground or be so placed and kept as not to be visible from any street except at the times when refuse collections are made.

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purchaser at such sale, or his successors or assigns, shall hold any and all property so purchased subject to all of the restrictions, covenants, conditions, agreements and other provisions of this declaration.

VII. ROAD MAINTENANCE CONDITIONS AND RESTRICTIONS:

A. It is hereby agreed and declared that each lot shall bear an equal share of any and all costs required for maintenance and repairs of the roads within said subdivision, Houghton Ranch Road, Pet Hill Drive, Bald Ridge Drive and China Court, under the terms and conditions as set forth herein.

B. Said roads described above shall be used by all owners of property within the subdivision bounding thereon for ingress, egress and or utilities.

C. The right-of-way created by said easement shall be maintained in a good, passable condition under all traffic and weather conditions.

D. Repairs on the said private roads shall be required when a majority of the owners of properties reach an agreement in writing that repairs are needed. Pursuant to said agreement, such owners shall obtain three bids from reputable licensed contractors and shall accept the lowest of said three bids and shall then initiate the repairs of said road with each owner bearing his pro-rata share of the costs and expense thereof, regardless of whether such owners shall have concurred in said agreement or not.

E. Every owner of property who shall cause or allow, in any manner, said private roads to be used, traversed, or altered by vehicular traffic or otherwise, thereby causing damage to the surface thereof, as may be determined by a majority of the owners of properties bounding thereon, shall bear as his responsibility the costs and expense of repairing such damage.

F. If a dissenting owner shall not pay his pro-rata share of costs and expenses immediately upon receiving his bill for the same, the remaining

C. No owner shall have any claim or cause of action against Declarant or its licensees arising out of the exercise or nonexercise of any easement reserved hereunder or shown on the Map except in cases of negligence.

IX. TERM.

The provisions of this agreement, pertaining to Road Maintenance Conditions and Restrictions and Easements, shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the subdivision forever, or until such time as the private roads are dedicated to and accepted for use as public streets or thoroughfares by municipal government lawfully exercising jurisdiction over said private roads.

X. REMEDIES.

A. Enforcement. Declarant and each person to whose benefit this declaration inures, may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision of this declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

XI. GRANTEE'S ACCEPTANCE.

Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from declarant or a subsequent owner of such lot or parcel, accept with deed or contract upon and subject to each and all of the provisions of the declaration. By such acceptance such grantee or purchaser shall for himself,



OSSE Pre-Issue Site Inspection Report

Job No. 41- 08-07572 APN: 50-330-27 Lot #: _____ Date: 7/28/08

Perc Tests Number: 3 Depth(s): @ ~36"
other perc's. at M-4 these
contingent upon Additional Wet Weather
Open Trench Required ☒ Yes ☐ No *whether* Testing Required: ☐ Yes ☒ No
(possibly) (and other test data recovered)
Curtain Drain Required ☐ Yes ☒ No Depth _____

Comments/Steep Slopes/Other Issues:

— Steep slope of >30% @ M-4
— for installation proposal here at request
for variance and review process would be required.

Defined Area Agreed To: M-1/M-2/M-3
possible replacement area at M-4.

MAXIMUM Trench Depth in Defined Area and Proposed Disposal System Type(s)
(Pending Satisfactory Perc Test): 24" gravity system proposal

possible, standard of engineered
[P.D. if perc rate avg. exceedingly slow...?]


(Signature of EH Specialist)


(Signature of Soils Consultant)

OSSE Pre-Issue Site Inspection Report

Job No. 08007592 APN 50-330-27 Date 7/28/08

Physical Location Wildwood West Dr.

Consultant R. Yuen Excavator D. Mohr Inspected by E. Farnum

Others Present owners; Bastin

Type of Inspection: ☒ OSSE ☐ Pre-Issue ☐ Single Family ☐ Commercial ☐ Subdivision ☐ Other

Water Supply: Existing? ☒ N ☐ Well ☐ Public ☐ Other _____ No. of Acres 30

1. Recent Weather History: Wet Weather Test Season? Y ☒ N

2. Vegetation Cover (trees, brush, ground-cover, riparian vegetation, maturity of growth, amount of cover.)
live oak foyon, few grey joint
thick fallen grove trees manzanita

3. Site Topography: Percent Slope 8-14 % ☒ Convex ☐ Concave Sun Exposure Shade
Contours: Smooth ☒ Irregular M-1/M-2/M-3

30%+ slopes @ M-4

4. Specific Topographical Concerns: M-4 area
☒ Rock Outcroppings ☐ Pond ☐ Wells ☐ Cut Bank ☐ Fill ☐ Perennial Stream
☒ Seasonal Drainage ☐ Roadside Drainage ☐ Structures ☐ Powerline ☐ Easements
M-1/M-2/M-3

5. Other Comments: Look for (existing?) file
different APN? or reported in other
file

The Equal Protection Clause seeks to deal fairly with individual cases depending upon the the situation, yet the state is obligated to treat people the same if they are "similarly circumstanced"...whereas Equal Justice more fully seeks to maintain a desired balance between laws and inherent moral principles which are defined within the realm of unalienable God-givien rights which have been not granted by the state of California but are actually protected by the state which is in their constitution.

Now then, In cases of equal justice the principles with regard to property rights were laid out recently by the Ninth Circuit Court of Appeals in the Crown Point vs. Sun Valley case which illustrates the contrast between social justice and equal justice. Social justice relies on the establishment of "civil law," which is designed to expand government and its partners authority at the expense of individual liberty. Equal justice on the other hand respects individual rights and private property. The Crown Point case sets an example for equal justice.

In a case with daunting ramifications, the Ninth Circuit Court of Appeals ruled that elected officials, "planning" bureaucracies and their agents no longer enjoy absolute immunity when processing land use applications.

In November the Ninth Circuit Court of Appeals unanimously applied a 2005 US Supreme Court decision that operates to change how inverse condemnations are evaluated. Inverse condemnations occur when government imposes restrictions or regulations that prohibit the reasonable exercise of private property rights.

The Federal Appeals Court held that government agencies and their employees can no longer use as a defense to a property owner's takings claim that they were simply 'advancing a legitimate state interest'. With this decision the federal courts will require compensation if the right to the reasonable use of private property has been abridged.

The case is Crown Point v. City of Sun Valley and various individuals

involved with that City. The City defended against the takings claim with the Ninth Circuit's earlier ruling in *Armendariz*. *Armendariz* held that government and its individual officers can defend itself against claims of inverse condemnation by uttering the magical incantation: "We were working to substantially advance a legitimate state interest". This gave carte blanche to the implementation of the policies of Sustainable Development and its Smart Growth component.

Ironically, it was in the same Supreme Court rulings that established the right to sue for regulatory or inverse takings that also established the 'legitimate state interest' defense to such claims.

The holding in *Crown Point* was also based on US Supreme Court precedence. This is where the story becomes especially intriguing. In 2005 the Court unanimously decided *Lingle v. Chevron*. Mrs. Lingle is the Republican Governor of Hawaii. In *Lingle*, the Court held that there was no standard under takings analysis that allows government officials to claim that their efforts were in furtherance of the 'public interest'. Accordingly, inverse condemnation cases are to be decided without consideration of this defense.

Section L-II 5.7 Variances

A. **Purpose.** To provide a procedure to allow a variation from the strict application of the provisions of this Chapter where special circumstances pertaining to the physical characteristics of the site are such that the literal enforcement of the requirements of this Chapter deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.

B. **Definitions.**

1. **Variance** - A departure from any provision of this Chapter for a specific parcel, except use, without changing the provisions of this Chapter or the zoning of the parcel. It may only be granted upon demonstration of a hardship based on the peculiarity of the property in relation to other properties in the same zoning district.

Subject: Obtaining A Variance
From: dayspring <dayspring@stardustweb.net>
Date: Thu, 2 Feb 2012 20:58:40 -0800
To: timothy@kassounilaw.com

A-030: HOW TO OBTAIN A VARIANCE (Nevada County)

You can apply for a variance from any requirement of these regulations. However, a variance can only be given to reduce or modify a requirement, not eliminate it entirely. In reviewing a variance, sufficient information must be provided by the applicant so that the Director can make a finding that there will not be a health hazard or pollution created, along with other requirements listed below.

(1) No variance will be granted that constitutes a grant of a special privilege inconsistent with limitations placed upon other properties in the vicinity and zoning district. An application for a variance must show:

(A) Special circumstance(s) exist(s) for the property that create(s) a unique hardship, or that will deprive the owner of privileges enjoyed for other property in the vicinity and zoning district in which such property is located; and

(B) The hardship was not intentionally caused by the action of the applicant; and

(C) Granting the variance would not have any significant adverse environmental effect and would not significantly affect use of adjoining property; and

(D) Reduction of requirements would not present a public health hazard or the pollution or degradation of public waters.

(2) The procedure for applying for a variance is as follows:

(A) Obtain an information packet from the Department. It includes useful and helpful information to assist you. Read carefully the materials you receive to help you make a complete application.

(B) Submit the completed application and any needed supplemental information to the Department. You must pay a review fee at that time. The Nevada County Board of Supervisors sets the fee.

(3) The Director or designated staff will review and investigate the variance application and either approve, conditionally approve, or deny it in writing within fifteen (15) working days from the date a completed application was received. For unique, lengthy, or complex variances, the applicant may choose to waive the 15-day time period in writing to the Department. California Environmental Quality Act (CEQA) time frames apply to projects where CEQA review is required for that variance. Variances are reviewed on a case-by-case basis.

(4) After conclusion of the investigation, the Director will prepare a written order of specific findings of fact and reasons for granting or denying your variance.

(5) An applicant or any person interested in the variance may appeal any decision of the Director regarding the variance. See Section A-032 for the appeal procedure.

[http://online.nvcc.net/~/media/Departments/EnvironmentalHealth/Forms/Building%20News-Press%20Releases%20\(Public\)/CDA%20News-Press%20Releases/ENH%20News-Press%20Releases/Well%20Owners%20-%20Drought%20Preparedness%20Page/CDA%20Handouts--Environmental%20Health/Document-9999.htm](#)

Nevada County

E. **Decisions, Findings and Conditions.** The Zoning Administrator shall approve, approve subject to conditions, or disapprove a variance as set forth hereinafter.

Approval or conditional approval shall be granted only when the Zoning Administrator first determines that the variance satisfies the standards set forth in

Government Code Section 65906 by finding that:

- ① The variance, if granted, does not constitute the granting of a special privilege inconsistent with the limitations placed on other properties in the vicinity and in the same zoning district in which the subject property is located; and
- ② There are special circumstances applicable to the subject property including size, shape, topography, location or surroundings and because of these circumstances, the strict application of the provisions of this Chapter would deprive the subject property of privileges enjoyed by other properties in the vicinity and in the same zoning classification; and
3. The variance does not authorize a use not otherwise authorized by the zoning district in which the property is located, and
- ④ The granting of the variance does not, under circumstances and conditions applied in the particular case, adversely affect the public health, safety, or welfare, the integrity and character of the District, nor the utility and value of nearby property.
5. The variance is consistent with the Nevada County General Plan.
- ⑥ The variance is the minimum departure from the requirements of this ordinance necessary to grant relief to the applicant.

Re: Cabin update

Subject: Re: Cabin update
From: dayspring@stardustweb.net
Date: Fri, 13 Jan 2012 11:45:32 -0800 (PST)
To: "Timothy Kassouni" <timothy@kassounilaw.com>

Hi Tim. Great job. Once again, I would only add to this that the cabin which is only used on a part time basis, poses no public danger nor does it impact the environment in any way.

Cal Fire has not yet gotten back to me but I will let you know when they do and what they have to say. Until then.

Chuck

Here is the draft:

"January 13, 2010

Lyle Bohnet

Code Enforcement Officer

Community Development Agency

County of Nevada

950 Maidu Ave.

Nevada City, CA 95959-8617

/Re/: Charles Frank

Dear Mr. Bohnet:

I am in receipt of your correspondence of December 22, 2011. This correspondence is intended to respond to several points, and to provide additional documentation requested by you. It is hoped that a mutually agreeable resolution may be obtained to preclude the destruction of Mr. Frank's second unit, which was constructed by a licensed contractor renowned for his exceptional craft with log homes. Indeed, the contractor was on site for over one year in crafting the home.

First, the "no build" area you reference is not a County of Nevada general plan or zoning specification. It is related to the Houghton Ranches Declaration of Covenants. You indicated that you have not seen this document, therefore I have attached it for your reference. The Houghton Ranches Final Map 77-35 was prepared in August, 1978, concurrent with the Declaration of Covenants. Again, these are /private land use restrictions/ which may be waived, modified, and/or enforced only by the owners of subdivision lots. Governmental entities have no jurisdiction to enforce private land use restrictions.

Second, there is a factual discrepancy between your account of the circumstances surrounding the inspection, and that of Mr. Frank. On two occasions, with no invitation, you arrived on private property in an unmarked car crossing multiple property lines to get to Mr. Frank's doorstep. On both occasions you arrived unannounced at Mr. Frank's primary residence without an invitation. On both occasions Mr. Frank's wife answered the door and refused to allow you to inspect the property.

Re: Cabin update

You were told that you were trespassing and asked to leave. You then threatened Mr. Frank's wife and said that if the Franks did not comply with your desire to see the cabin, you would bring in "back up", which was clearly a threat of force. As you should know, forcible entry in civil inspections is illegal, as is the threat of the use of force. (See Code of Civil Procedure section 1822.56; see also/Schneckloth v. Bustamonte/, 412 U.S. 218, 228.)

With respect to Mr. Estin's property, you are again mistaken. The Estin property borders the

same creek as the Frank property. Although you deny it, the Estin topography is the same as that of Mr. Frank. You have never walked the property and are basing your opinion on a map which does not represent the true lay of the land. The land is actually a mixture of rolling terrain from flat, to 20 degrees, but also over 30 degrees, which is exactly like that of Mr. Frank. It took an engineer eight attempts to obtain county approval for the road that goes to the house. And it was approximately 13 months ago that the house was given a final. Thus, if a house on the same steep terrain and with the same creek can be given a final, then there should be no reason why Mr. Frank's cabin should not also be given approval in its present location.

It should also be emphasized that the cabin was built by licensed contractors per code. Mr. Frank has every intention of allowing an inspection for the purposes of securing permits for all aspects of construction, including plumbing, electrical, and sewage. As for the fire issue, we can easily obtain expert medical and meteorological opinions to buttress Mr. Frank's need for the second residence.

Finally, I do not see in the link provided in your letter any specific code restrictions on the placement of the cabin in its present location.

In sum, the threat of destruction or economically infeasible replacement of the cabin is unwarranted in the circumstances. Mr. Frank should be allowed to maintain the cabin in its present location, and is committed to working with you to obtain all necessary permits. This is an equitable and fair resolution of the matter, which will protect the interests of Mr. Frank as well as the interests of the County of Nevada.

Thank you for your attention. I look forward to your response.

Sincerely,

Timothy V. Kassamli

309

6/22/2012 4:31

California Government Code

25845. (a) The board of supervisors, by ordinance, may establish a procedure for the abatement of a nuisance. The ordinance shall, at a minimum, provide that the owner of the parcel, and anyone known to the board of supervisors to be in possession of the parcel, be given notice of the abatement proceeding and an opportunity to appear before the board of supervisors and be heard prior to the abatement of the nuisance by the county. However, nothing in this section prohibits the summary abatement of a nuisance upon order of the board of supervisors, or upon order of any other county officer authorized by law to summarily abate nuisances, if the board or officer determines that the nuisance constitutes an immediate threat to public health or safety. ? *never did* ←

MANAGEMENT PLAN FOR CONSTRUCTION
WITHIN STEEP SLOPES GREATER THAN 30 PERCENT

FRANK PROPERTY
20047 WILDWOOD WEST DRIVE
NEVADA COUNTY, CA
APN 50-400-07.

December 19, 2012

Prepared for:
Chuck Frank
20047 Wildwood West Drive
Penn Valley, CA 95946

Prepared by:
Tina Costella
Costella Environmental Consulting
P.O. Box 215
Nevada City, CA 95959

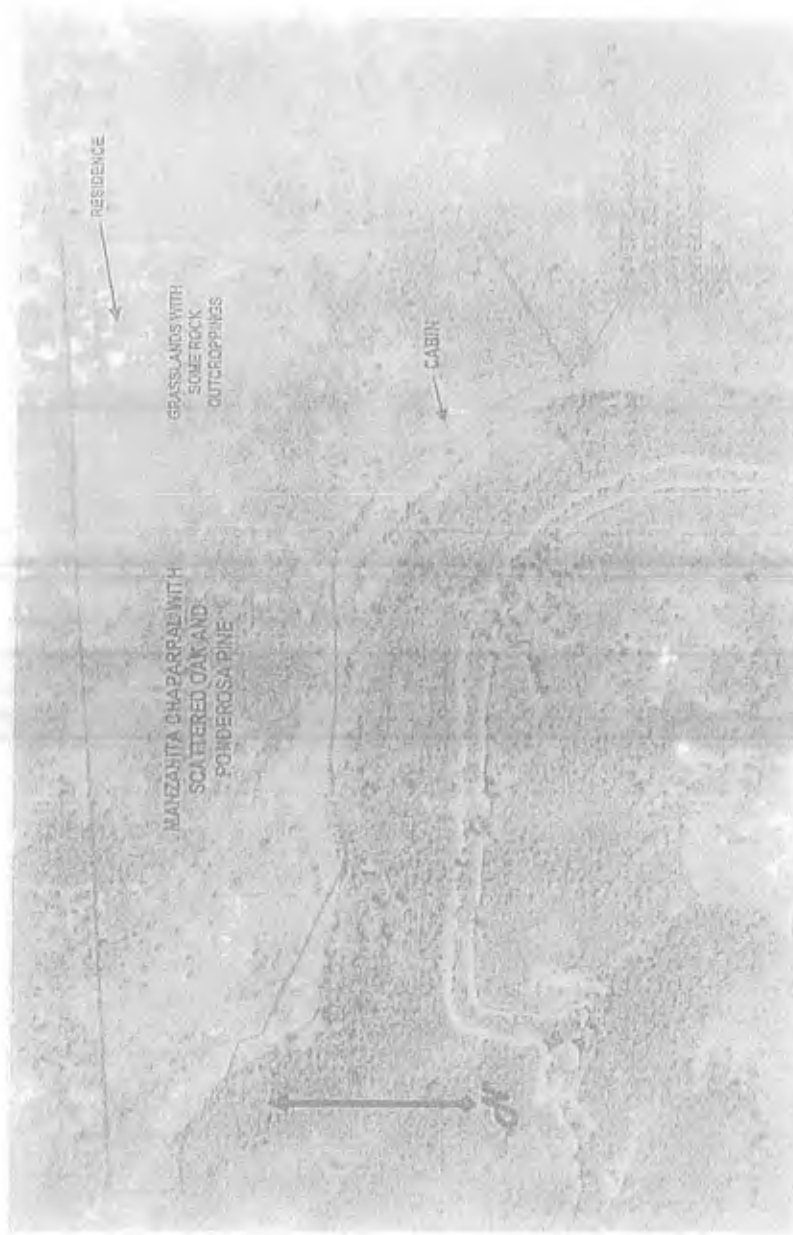
Appendix B. Site Photographs



COSTELLA ENVIRONMENTAL CONSULTING
P.O. Box 215, Nevada City, CA 95959
(530) 265-6969
E-mail: costella@metrailer.com

SITE: FRANK PROPERTY
ITEM: Site Photos
DATE: November 2012 Plate: 1 of 2

Appendix C. Biological Resources Map
Frank Property



INTRODUCTION

This report addresses the Steep Slope/High Erosion Potential concerns regarding an "after the fact" built cabin that is a "granny house" (not a permanent residence; used primarily for company during the spring, summer and fall) on a 30% or greater slope on the Frank Property pursuant to Nevada County LUDC Ordinance No. 2152, referenced below. Under that ordinance, disturbance within the above-defined area is allowed subject to approval of a Management Plan that provides the following findings can be made:

- 1) That the proposed development ensures the preservation of the natural and topographic character of the slope; and
- 2) The aesthetic quality of the slope is ensured, including the preservation of significant rock outcroppings and native plant materials; and
- 3) That alternatives to development on steep slopes are not feasible; and
- 4) That disturbance of steep slopes is minimized to the greatest extent possible; and
- 5) That water quality problems created by sedimentation and/or excessive vegetation removal are minimized.

This report addresses the findings relative to these concerns and also recommends additional mitigation in accordance with Nevada County Land Use and Development Code (LUDC) - Chapter II - Zoning Regulations, Section L-II 4.3.13 [Ordinance No. 2152]. Under this ordinance, Nevada County requires that a Management Plan be prepared for projects B.1 with steep slopes of (30+) % and/or B.2 high erosion hazard areas, i.e. areas that are determined to have highly-erodible soils based on soils surveys prepared by the U.S. Soil Conservation Service and U.S. Forest Service. (Nevada County 2000. Land Use and Development Code, Chapter II: Zoning Regulations. Effective July 27, 2000).

PROJECT DESIGN

All construction work occurred at the Frank Property during the dry season of 2012. These activities were completed in a timely manner. As described by Mr. Frank and confirmed in my site inspections, the plan ensured that appropriate environmental protection and impact minimization techniques were implemented before, during, and after the construction of the cabin. Photographs of the site are in Appendix A; a site plan with a vicinity map is included in the permit package. The site chosen was a leveled area on an old abandoned ditch, known as China Ditch, that runs parallel to and uphill from Squirrel Creek, a perennial water course. This is the only site within this area where a cabin could be constructed.

The primary construction activities included the following components:

- " A gravity-fed cable system, 125 long, was constructed to convey, viz. "air-lift" building materials to the construction site.
- " Foundation piers, 10-in all, were laid approximately 4-feet underground, extending upward to 1-foot above ground.
- " The foundation is 16 feet x 20 feet, the same as the cabin dimensions, and the cabin footage is approximately 320 square feet.
- " The Minimum Usable Sewage Disposal Area (MUSDA) is 5 feet wide x 50 feet long and also is within the leveled area of the ditch. There are 3-40 gallon septic tanks included in this system.
- " Gray water is dispersed through a pipe into the same leach field used by the septic system.

Project Location

The project is located at 20047 Wildwood West Drive in Penn Valley, CA 95946, approximately 1.7 air miles northwest from the intersection of Highway 20 and Pleasant Valley Road. The specific location is Section 19, Township 16 North, Range 7 East, M.D.M., located on the Rough and Ready USGS quadrangle map. Elevation at the north end of the property is $\pm$ 1,300 feet and the south boundary is $\pm$ 1,200 feet above mean sea level (MSL). Appendix B includes the topographic and parcel maps of the Frank property and the specific location.

EXISTING CONDITIONS

Environmental Setting

The study area is situated on a dry, south facing slope in an open mixed chaparral habitat with some Ponderosa Pine (*Pinus ponderosa*) interspersed throughout the site and open areas of annual grasslands throughout, with some rock outcroppings. The manzanita chaparral is composed of a few scattered black oak (*Quercus kelloggii*), scrub oak (*Q. berberidifolia*), sticky whiteleaf manzanita (*Arcotstaphylos viscida* ssp. *viscida*), buckbrush (*Ceanothus cuneatus* var. *cuneatus*), and a few patches of Scotch broom (*Cytisus scoparius*). Annual grasslands are dominated by non-native grasses of brome (*Bromus* spp.), barley (*Hordeum* spp.), and Italian ryegrass (*Lolium multiflorum*). Appendix C provides a Biological Resources Map of the parcel.

The study area is located in the Squirrel Creek watershed; the total land mass of the watershed is 6.705 acres. The general topography of the property is characterized by moderate to steep slopes; elevations range from $\pm$ 1,300 feet above mean sea level (MSL) along the northern boundary and $\pm$ 1,200 along the southern boundary adjacent to Squirrel Creek.



Soils within the construction site are Auburn-Rock Outcrop Complex, 30 to 50 percent slopes, according the Soil Survey for Nevada County Area, California (Brittan 1993). The Auburn soil in this complex is steep and is on the sides of the more prominent hills and the creek channels and drainageways. About 10 to 25 percent of this complex is Rock outcrop. In places, the soil mapped in this complex is slightly shallower than in Auburn-Rock outcrop complex, 2 to 30 percent slopes. Runoff is medium to rapid; the hazard of erosion is moderate to high.

SPECIAL STATUS SPECIES

Special-status species were considered for this analysis based on field survey results, a review of the California Natural Diversity Database (CNDDB), CNPS literature, database information provided by the U. S. Fish and Wildlife Service (USFWS) (Rough & Ready Quad 7 ½ Minute Quad database last updated September 2012) see Appendix D for these listings. No special status species were observed during the surveys and no further studies are recommended at this time since no suitable habitat for any of the potential species were found within the footprint of the cabin.

DISCUSSION OF IMPACTS AND RECOMMENDED MITIGATION

Impacts to the site were lessened by the construction of a gravity fed cable system to convey, viz. "air-lift" building materials to the construction site. This was an effort to preserve the natural and topographic character of the slope as well as to ensure that only minimal impacts to the native vegetation would occur. In addition, the rock outcroppings throughout the site were not impacted during construction, including the area where placement of the cabin occurred. No trees or other significant vegetation was removed from the construction site. As noted, the cabin was placed along a leveled area that is an abandoned ditch, known as China Ditch. Use of this leveled area aided in the effort not to create disturbance to the steep slope. Any spoils were removed from the construction site, thus avoiding creation of sediment that could find its way into Squirrel Creek, which lies more than 100 feet down-slope from the building site. The landscape surrounding the cabin shows no evidence of erosion, for example the removal of soil, water run-off, sediment, regolith, and/or rock fragments due to the construction at this site.

Geotechnical Engineer Report

According to the Nevada County LUDC - Chapter II - Zoning Regulations, Section L-II 4.3.13, C.3.b.4, all grading within the defined area that requires a grading permit shall include an evaluation by a registered geotechnical engineer. The property owner has contacted an engineer to evaluate the site for structural integrity as required by this section, and that report will be included with the permit package.



Fuel Modification on a Steep Slope

The property owner has maintained fuel reduction around the cabin site, and continuation of this effort should be required as additional mitigation. The specific fuel reduction models required by the ordinance are included below for the ongoing vegetation maintenance of the site. Within these parameters there are no protected resources, i.e. wetlands, landmark oaks or landmark oak groves that are impacted by routine vegetation management.

According to the Nevada County LUDC - Chapter II - Zoning Regulations, Section L-II 4.3.13, C.5, fuel modification shall be provided and maintained around all structures developed on steep slopes, as follows:

Fuel Models		
1-3 *	Grasses	100'
4-6 *	Brush	200'
8-13	Timber	200'

*Northern Forest Fire Lab Fuel Models Code

The above fuel model code numbers designate the following:

- 1- Short grass (1 foot)
- 2- Timber (grass and understory)
- 3- Tall grass (2.5 feet)
- 4- Chaparral (6 feet)
- 5- Brush (2 feet)
- 6- Dormant brush, hardwood slash
- 7- Southern rough
- 8- Closed timber litter
- 9- Hardwood litter
- 10- Timber (litter and understory)
- 11- Light logging slash
- 12- Medium logging slash
- 13- Heavy logging slash

CONCLUSION

This concludes the required Management Report for this project and satisfies the requirements of relevant Nevada County ordinances, subject to the pending evaluation by the geotechnical engineer, as noted above. Please feel free to contact me if you have any questions regarding any of the findings in this report.

U.S. Fish & Wildlife Service

Sacramento Fish & Wildlife Office

Federal Endangered and Threatened Species that Occur in
or may be Affected by Projects in the Counties and/or
U.S.G.S. 7 1/2 Minute Quads you requested

Document Number: 121217021434

Database Last Updated: September 18, 2011

Quad Lists

Listed Species

Invertebrates

- *Desmocerus californicus dimorphus*
 - valley elderberry longhorn beetle (T)

Fish

- *Hypomesus transpacificus*
 - delta smelt (T)
- *Oncorhynchus mykiss*
 - Central Valley steelhead (T) (NMFS)
- *Oncorhynchus tshawytscha*
 - Central Valley spring-run chinook salmon (T) (NMFS)
 - winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

- *Rana draytonii*
 - California red-legged frog (T)

Quads Containing Listed, Proposed or Candidate Species:

ROUGH AND READY (542B)

County Lists

No county species lists requested.

Key:

- (E) Endangered - Listed as being in danger of extinction.
- (T) Threatened - Listed as likely to become endangered within the foreseeable future.
- (P) Proposed - Officially proposed in the Federal Register for listing as endangered or threatened.
- (NMFS) Species under the Jurisdiction of the ~~National Marine Fisheries Service~~ National Oceanic and Atmospheric Administration Fisheries Service. Consult with them directly about these species.
- Critical Habitat - Area essential to the conservation of a species.
- (PX) Proposed Critical Habitat - The species is already listed. Critical habitat is being proposed for it.
- (C) Candidate - Candidate to become a proposed species.
- (V) Vacated by a court order. Not currently in effect. Being reviewed by the Service.
- (X) Critical Habitat designated for this species

Clarkia biloba ssp. brandegeae

Brandegee's clarkia

Element Code: PDONA05053

_____ Status _____	NDDB Element Ranks _____	Other Lists _____
Federal: None	Global: G4G5T4	CNPS List: 4.2
State: None	State: S4	

_____ Habitat Associations _____

General: CHAPARRAL, CISMONTANE WOODLAND, LOWER MONTANE CONIFEROUS FOREST

Micro: OFTEN IN ROADCUTS 75-915 M.

Occurrence No. <u>79</u>	Map Index: <u>73127</u>	EO Index: <u>74058</u>	_____ Dates Last Seen _____
Occ Rank: Good			Element: 2008-06-03
Origin: Natural/Native occurrence			Site: 2008-06-03
Presence: Presumed Extant			
Trend: Unknown			Record Last Updated: 2008-12-10

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39 17876° / -121 15736°	Township: 15N
UTM: Zone-10 N4338231 E659180	Range: 07E
Mapping Precision: SPECIFIC	Section: 02 Qtr SE
Symbol Type: POLYGON	Meridian: M
Area: 4.0 acres	Elevation: 1,700 ft

Location: S OF CLEAR CREEK, APPROXIMATELY 1.9 AIR MI E OF INDIAN SPRINGS

Location Detail: MAPPED BY CNDDDB AS 3 POLYGONS IN THE SE 1/4 OF SECTION 2 ACCORDING TO A 2008 HOSTLER & FISHER MAP. ONE POLYGON IS LOCATED JUST SE OF THE PEAK NAMED "1659" AND THE OTHER 2 POLYGONS ARE JUST SE OF PEAK "1766"

Ecological: ON OR NEAR ROADCUTS ON N-FACING SLOPES IN OPENINGS WITHIN THE TREE CANOPY. HERBACEOUS AND SHRUB SPP GROWING W/ BRANDEGEE'S CLARKIA INCLUDE BROMUS DIANDRUS, JENSIA RAMMII, B. HORDEACEUS, TOXICODENDRON DIVERSILOBUM, AESCULUS CALIFORNICA, ETC.

Threat: POTENTIAL RESIDENTIAL DEVELOPMENT.

General: 2,460 PLANTS SEEN IN 2008.

Owner/Manager: PVT

Laterallus jamaicensis coturniculus

California black rail

Element Code: ABNME03041

Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G4T1	CDFG Status:
State: Threatened	State: S1	

Habitat Associations

General: INHABITS FRESHWATER MARSHES, WET MEADOWS & SHALLOW MARGINS OF SALTWATER MARSHES BORDERING LARGER BAYS.

Micro: NEEDS WATER DEPTHS OF ABOUT 1 INCH THAT DOES NOT FLUCTUATE DURING THE YEAR & DENSE VEGETATION FOR NESTING HABITAT.

Occurrence No: 262	Map Index: 76674	EO Index: 76620	Dates Last Seen
Occ Rank: Unknown	Origin: Natural/Native occurrence	Element: XXXX-XX-XX	Site: XXXX-XX-XX
Presence: Presumed Extant	Trend: Unknown	Record Last Updated: 2009-09-23	

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39.17041° / -121.18943°	Township: 15N
UTM: Zone-10 M4337231 E655545	Range: 07E
Mapping Precision: NON-SPECIFIC	Section: 09 Qtr: NE
Symbol Type: POINT	Meridian: M
Radius: 2/5 mile	Elevation: 1,460 ft

Location: VICINITY OF SPENCEVILLE RD ABOUT 0.7 MI SSW OF INTERSECTION WITH INDIAN SPRINGS RD, ABOUT 8 MI WSW OF GRASS VALLEY (PO).

Location Detail: MAPPED BY GEOREFERENCING FIGURE 2 IN RICHMOND 2008. WITHIN THE CORE SURVEY AREA

Ecological: SURVEY MARSHES GENERALLY SMALL, GENTLY SLOPED, DENSELY VEGETATED & HIGHLY FRAGMENTED (SURROUNDED BY UNSUITABLE HABITAT). WATER SOURCES PRIMARILY FROM IRRIGATION DITCHES. OCCURRENCE REPRESENTS PART OF A METAPOPULATION IN THE SIERRA FOOTHILLS

Threat:

General: CA BLACK RAILS DETECTED BY RICHMOND ET AL AT 1 SITE DURING AT LEAST 1 PHASE OF CALL-PLAYBACK SURVEYS IN 1994-2006. PART OF A YEAR-ROUND RESIDENT BREEDING POPULATION IN THE SIERRA FOOTHILLS, DISCONTINUOUS WITH THE SF BAY-DELTA POPULATION

Owner/Manager: UNKNOWN

Laterallus jamaicensis coturniculus

California black rail

Element Code: ABNME03041

_____ Status _____	_____ NDDB Element Ranks _____	_____ Other Lists _____
Federal: None	Global: G4T1	CDFG Status:
State: Threatened	State: S1	

_____ Habitat Associations _____

General: INHABITS FRESHWATER MARSHES, WET MEADOWS & SHALLOW MARGINS OF SALTWATER MARSHES BORDERING LARGER BAYS.

Micro: NEEDS WATER DEPTHS OF ABOUT 1 INCH THAT DOES NOT FLUCTUATE DURING THE YEAR & DENSE VEGETATION FOR NESTING HABITAT.

Occurrence No: 263	Map Index: 76675	EO Index: 77621	_____ Dates Last Seen _____
Occ Rank: Unknown			Element: XXXX-XX-XX
Origin: Natural/Native occurrence			Site: XXXX-XX-XX
Presence: Presumed Extant			
Trend: Unknown			Record Last Updated: 2000-09-23

Quad Summary: Rough And Ready (3912122/542B)

County Summary: Nevada

Lat/Long: 39.14578° / -121.14362°	Township: 15N
UTM: Zone-10 N4334585 E660422	Range: 07E
Mapping Precision: NON-SPECIFIC	Section: 13 Qtr: SE
Symbol Type: POINT	Meridian: M
Radius: 2/5 mile	Elevation: 1 700 ft

Location: VICINITY OF MCCOURTNEY RD AT CHAMPAGNE LN, ABOUT 6.6 MI SW OF GRASS VALLEY (PO).

Location Detail: MAPPED BY GEOREFERENCING FIGURE 2 IN RICHMOND 2008, WITHIN THE CORE SURVEY AREA.

Ecological: SURVEY MARSHES GENERALLY SMALL, GENTLY SLOPED, DENSELY VEGETATED & HIGHLY FRAGMENTED (SURROUNDED BY UNSUITABLE HABITAT). WATER SOURCES PRIMARILY FROM IRRIGATION DITCHES. OCCURRENCE REPRESENTS PART OF A METAPOPULATION IN THE SIERRA FOOTHILLS.

Threat:

General: CA BLACK RAILS DETECTED BY RICHMOND ET AL AT 1 SITE DURING AT LEAST 1 PHASE OF CALL-PLAYBACK SURVEYS IN 1994-2006. PART OF A YEAR-ROUND RESIDENT BREEDING POPULATION IN THE SIERRA FOOTHILLS. DISCONTINUOUS WITH THE SF BAY-DELTA POPULATION.

Owner/Manager: UNKNOWN

<i>Lathyrus sulphureus</i> var. <i>argillaceus</i>		Element Code: PDFAB25101
dubious pea		
Status	NDDB Element Ranks	Other Lists
Federal: None	Global: G1G2	CNPS List: 3
State: None	State: S1S2	
Habitat Associations		
General: CISMONTANE WOODLAND, LOWER MONTANE CONIFEROUS FOREST, UPPER MONTANE CONIFEROUS FOREST		
Micro: 150-305M		
Occurrence No. 5	Map Index: 79241	EO Index: 80221
Occ Rank: Good		Element: 2001-04-12
Origin: Natural/Native occurrence		Site: 2001-04-12
Presence: Presumed Extant		Record Last Updated: 2010-07-08
Trend: Unknown		

Quad Summary: Rough And Ready (3912122/542B)
 County Summary: Nevada

Lat/Long: 39 13769" / -121 13063"	Township: 15N
UTM: Zone-10 N4333720 E661563	Range: 09E
Mapping Precision: SPECIFIC	Section: 19 Qtr: N
Symbol Type: POLYGON	Meridian: M
Area: 2.0 acres	Elevation: 1,600 ft

Location: NORTHEAST OF SWAN 1301 DAM, ABOUT 0.7 AIR MILES NORTHWEST OF PINE HILL
Location Detail: N COLONY: SOUTH SIDE OF NEWELL PLACE ~0.15 MI NE FROM INTERSECTION WITH WOODLAKE RD. S COLONY: 12781 WOODLAKE RD, 1.2 MI FROM INTERSECTION WITH MCCOURTNEY RD. MAPPED BY CNDDDB IN THE N 1/2 OF SECTION 19 ACCORDING TO 2001 HANES MAPS.
Ecological: BLUE OAK WOODLAND AND CHAPARRAL. ASSOCIATED WITH LATHYRUS SULPHUREUS, ANNUAL GRASSES, SYMPHORICARPOS SP., RANUNCULUS SP., VICIA SP., CHLOROGALUM SP., TOXICODENDRON DIVERSILOBUM, ERODIUM SP., AESCULUS CALIFORNICA, CEANOTHUS CUNEATUS, ETC.
Threat: N COLONY: THREATENED BY ROAD MAINTENANCE AND CLEARING FOR FIRE PROTECTION S COLONY USED AS A NATURE TRAIL
General: 2001: 1 PLANT OBSERVED IN N COLONY (OCC RANK POOR), 17+ IN S COLONY (OCC RANK EXC); THE VARIETY WAS MIXED WITH THE SPECIES MAKING IT DIFFICULT TO COUNT INDIVIDUALS. S COLONY ON PRIVATE LAND; OWNERS INTEND TO LEAVE IT UNDISTURBED
Owner/Manager: PVT. UNKNOWN

304

Section L-II 5.22 Property Maintenance

- A. **Purpose.** The purpose of this Section is to establish an administrative procedure to remove conditions of property hereinafter described and declared to be public nuisances which have a blighting influence on properties in the vicinity and/or are detrimental to the health, safety and welfare of the residents of the County.

No blighting influence



July 11, 2013

To Whom it may Concern,

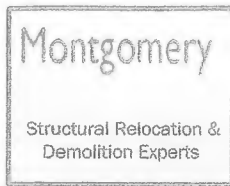
This is a letter regarding the disassembly of the D Log cabin at Chuck Frank's property in Grass Valley, CA.

The disassembly is cost prohibitive and virtually impossible to disassemble the cabin because of the lag screws that the logs were put together with are imbedded in the logs and cannot be take out without a lot of damage to the logs. The cost of rebuilding this cabin would be 4 to 5 times its' original cost and would still have a lot of damage to the logs. Moving the cabin is also extremely difficult and expensive.

Sincerely,

A handwritten signature in cursive script, reading "Jim Maushak", is written over a horizontal line.

Jim Maushak
President-True Log Homes, Inc



Since 1875

N.D. MONTGOMERY CONTRACTORS, INC.

3611 51st Ave

Sacramento, Ca 95823

Chuck Frank

20047 Wildwood West Dr.

Penn Valley, CA 95946

530-432-3619

August 22, 2013

To whom it may concern:

N.D. Montgomery Contractors, Inc. has been in the house moving business since 1875. We have moved homes when they did not meet set back requirements, or were built partially on someone else's property.

We need work, but the site condition at this cabin prevents us from moving the cabin 1200' up the hill. The terrain is too steep and rocky. Trees would have to be removed, and ground cover would be destroyed. The path of travel would look like a fire went through it. Erosion would be a major problem. Please consider a solution that is less destructive to the environment.

Requiring this cabin to be demolished would be an outrage. When you consider all the energy and environmental effects to demolish and haul off the debris no one wins. The greenest building is the one that already exists. Please consider the carbon footprint if this cabin is destroyed.

If you have any questions, please feel free to contact Steve on his cell or email:

Thank you,

Steve Montgomery

916-825-9443

Lic# 351975

3/31/2015

Class B, C21

Montgomery 3611 51st Ave / Sacramento, CA 95823 / 916-448-8602 Fax: 916-395-2510





9432 Katy Freeway, Suite 200, Houston, TX 77055
Phone: 713-935-5697 Fax: 713-935-0643

September 22, 2011

Re: Charles W. Frank

To Whom It May Concern:

Mr. Charles W. Frank was under the care of Board Certified Oncologist, Robert Ira Lewy, M.D., F.A.C.P., who was employed at my clinic, from February 17, 2003 to April 30, 2004. Mr. Frank was treated for non-Hodgkin's lymphoma, low-grade, stage IV, here at the Burzynski Clinic. As the result of treatment, the patient's lymphoma has stabilized.

The patient has requested my professional opinion about the effect of fire smoke on his malignancy. It is my professional opinion supported by scientific evidence (article enclosed) that fire smoke is a major contributing factor to non-Hodgkin's lymphoma. Mr. Charles W. Frank was advised to avoid exposure to fire smoke.

Sincerely,

S. R. Burzynski, M.D., Ph.D.

Enc.

original

CHUCK FRANK

RECEIVED

OCT 16 2014

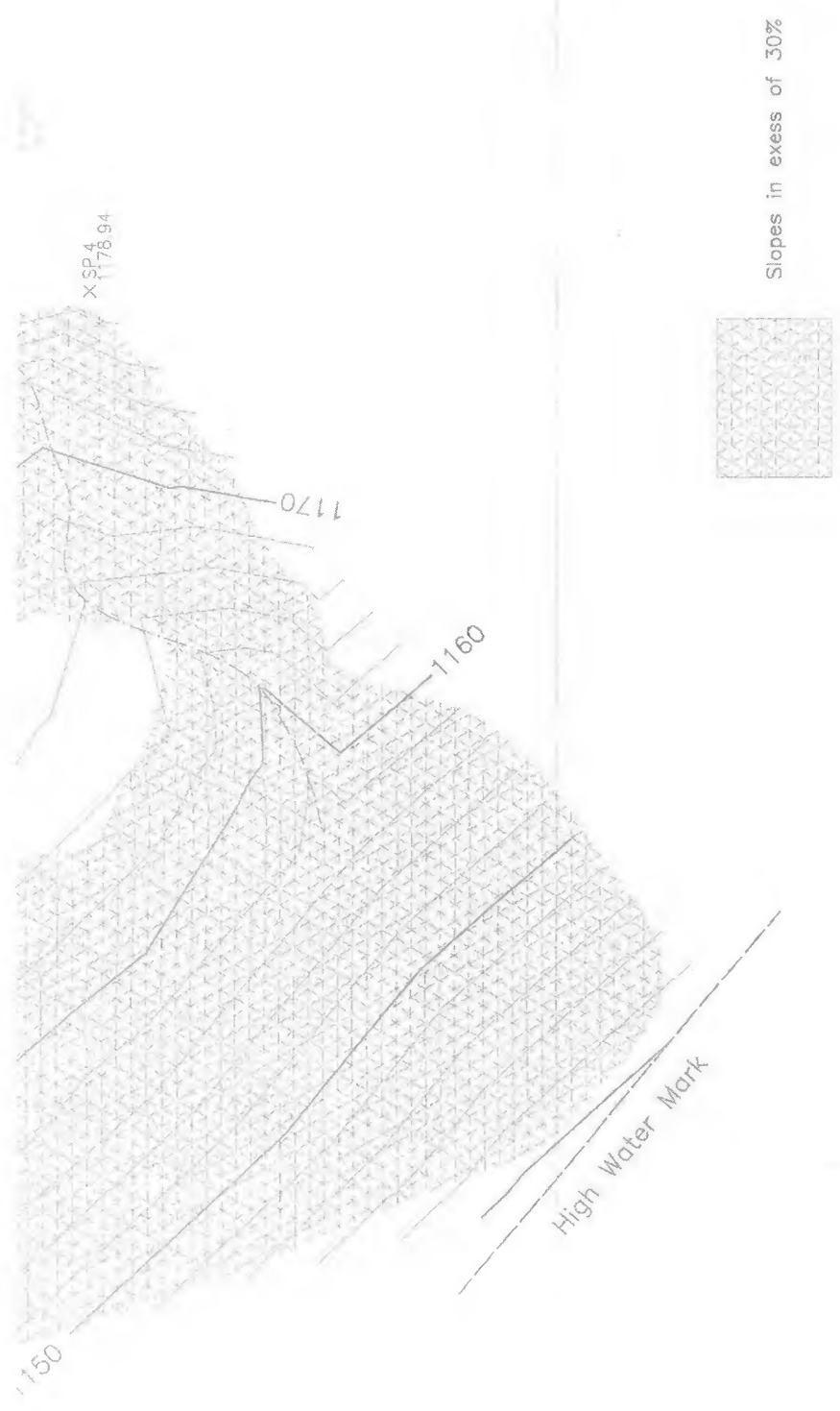
PLANTATION
SCIENCE OF ELECTRONICS

CLARK COUNTY



1" = 10'





Slopes in excess of 30%



Topographic Map

FOR

Chuck Frank

A portion of the N.E. $\frac{1}{4}$ of

Sec. 30 T.16N. R. 7E. MDB&M

In the unincorporated territory of

NEVADA COUNTY, CALIFORNIA

May, 2012 Scale: 1" = 10'

Contour Interval = 2'

CALIFORNIA SURVEY COMPANY

(530) 273-6651

10/23/14

RECEIVED

OCT 27 2014

NEVADA COUNTY
BOARD OF SUPERVISORS

RECEIVED

OCT 27 2014

COUNTY COUNSEL

Barbara

Enclosed please find copies of all documents left here at my office by Charles Frank. I am also including a copy of the map that includes the note on the "post-it".

I will assume you will get copies to Ms. Chapman for the County.

Thank you!

Stephen C. Baker

October 20, 2014

Diamond - Baker - Mitchell, LLP
149 Crown Point Court, Suite B
Grass Valley, CA. 95945
Attn: Stephen Baker

Dear Mr. Baker:

Per your request here is the copy of the letter that was sent by Mark Alcorn, our attorney on August 24, 2011 with regard to the vacation rental that was closed down during the month of August 2011. As I shared at the hearing the building has not been rented for over three years and it is not rented to anyone at the present time. It is only used for our families personal needs which arise when we need a break from the heavy smoke at a lower elevation during the summer months. I have countless witnesses that would testify to the cabin not being rented, including Ed Navickis who spoke at the hearing and neighbors that are nearby.

Mrs. Brown was clearly untruthful when she made the claim that it was still being rented. In addition, Homeaway has also confirmed in their recent email to me (see document) that my website listed through them was taken down on August 31, 2011. Also, in the last three years the county has inspected the cabin more than once and saw that there was no one living there.

Also, my attempt to get a permit for either a greenhouse or an Ag. building falls within the 400 sq.ft. Nevada County code. My structure is a 16X20 footprint (320 sq.ft.)

In closing I would just ask you to truly consider our right to the reasonable use of our own private property as we are prepared to apply for a permit and turn it into either a greenhouse or an Ag. building..

Thank you.

Sincerely,



Charles W. Frank

ALCORN associates

LAW
OFFICES

August 31, 2011

Sharon Rogers,
Civil Division Associate
Nevada County Treasurer and Tax Collector
950 Maidu Avenue
Nevada City, CA 95959-0128

SUBJECT: Your Correspondence Dated August 24, 2011

Dear Ms. Rogers:

I am assisting Charles Frank, a resident of the state of Washington, with respect to your correspondence to him dated August 24, 2011. A copy of the first page of your letter is attached.

I have been informed that Mr. Frank neither owns nor operates any lodging facility in Nevada County. He had, in the past, attempted to let a small building on a parcel in Nevada County, but had virtually no success in doing so, and has now completely discontinued those activities. It is my understanding that the premises are now used for personal property storage.

Should Mr. Frank in the future decide to use the premises for a lodging facility, he will gladly register it for that purpose.

Please let me know if you have any questions or concerns about this matter.

Cordially,



Mark Alcorn
Attorney at Law

cc: Charles Frank

Mark D. Alcorn, J.D., M.B.A.
E: mark@alcornlaw.com
W: www.alcornlaw.com

1000 O Street
Suite 120
Sacramento, CA 95811

P: 916.444.5959
C: 916.320.6456
F: 915.443.6719

339

Move

CHASE: CHARLES FRANK IS WEST Nevada County 72008 FLAID STOPS HERE



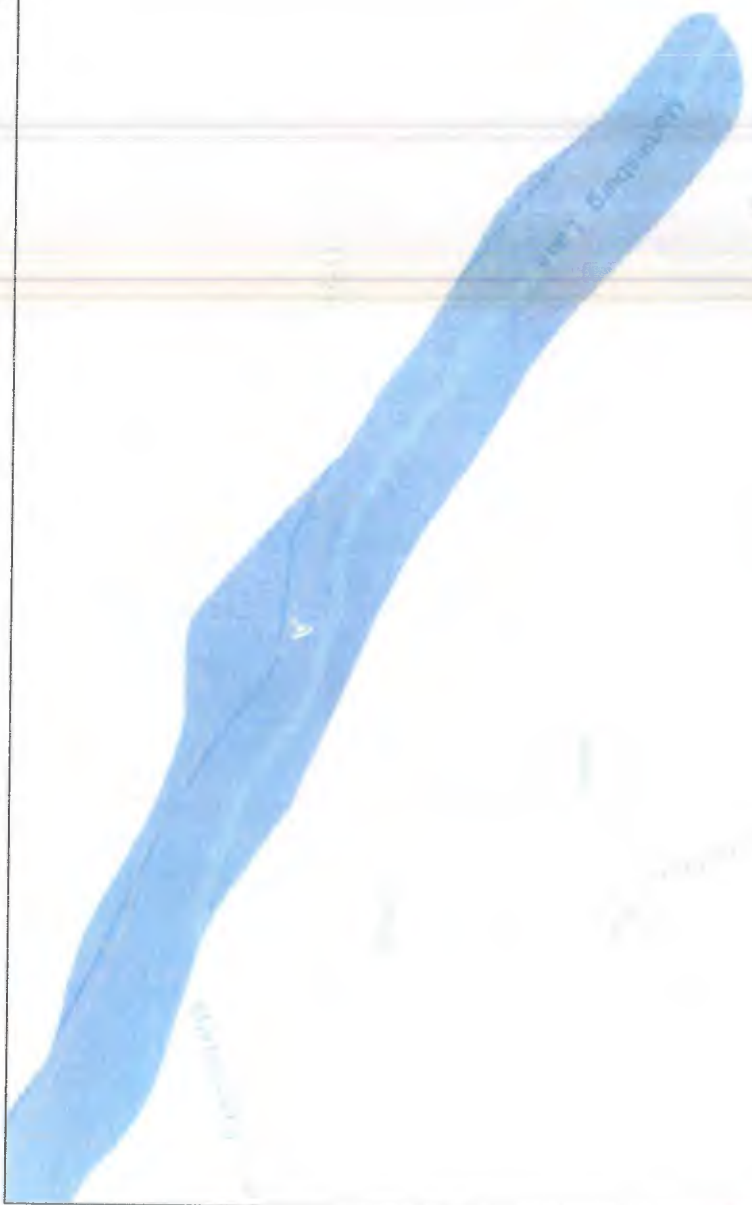
October 20, 2014

CLIFF CHARLES FRANK IS WEST Nevada County FLOODPLAIN STOPS HERE

CONFIRMATION
FLOODPLAIN
DOES NOT REACH
OUR PROPERTY.
Charles ~~Frank~~

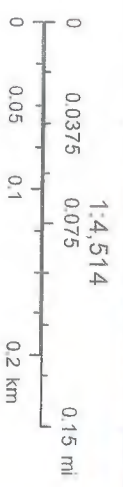
19760
MARTIN'S BATH
LN.

Limberlost
Ranch
Airport



October 20, 2014
MAP SUPPLIED BY
NEVADA COUNTY
PLANNING DEPT.

South



October 20, 2014

Diamond - Baker - Mitchell, LLP
149 Crown Point Court, Suite B
Grass Valley, CA. 95945
Attn: Stephen Baker

Dear Mr. Baker:

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Thank you.

Sincerely,



Charles W. Frank

ALCORN associates

LAW
OFFICES

August 31, 2011

Sharon Rogers,
Civil Division Associate
Nevada County Treasurer and Tax Collector
950 Main Avenue
Nevada City, CA 95959-0128

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Should Mr. Frank in the future decide to use the premises for a lodging facility, he will gladly register it for that purpose.

Please let me know if you have any questions or concerns about this matter.

Cordially,



Mark Alcorn
Attorney at Law

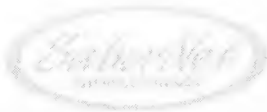
Charles Frank

Mark D. Alcorn, J.D., M.B.A.
E: mark@alcornlaw.com
W: www.alcornlaw.com

1000 G Street
Suite 120
Eureka, CA 95501

WILLIAMSON
COURT REPORTERS
(916) 441-2700

344

**Quota Usage:**

695.09 MB of 1,000.00 MB

Folders

Last Refresh:
Mon, 8:21 am
(Check mail)

INBOX (29)
Deleted Items
Drafts
Sent Items

Current Folder: INBOX

Logged in as gateway@saber.net [Sign Out](#)

[Compose](#) [Addresses](#) [Folders](#) [Options](#) [Search](#) [Help](#)
[Calendar](#)

[SaberNet](#)

[Message List](#) | [Unread](#) | [Delete](#) [Previous](#) | [Next](#) [Forward](#) | [Forward as Attachment](#) | [Reply](#) | [Reply All](#)

Subject: FW: Listing No Longer on Live Site- HomeAway.com [ref:00D78VtP.5007InJa7:ref]

From: "Tom Lemons" <tlemons@homeaway.com>

Date: Mon, October 20, 2014 8:35 am

To: "gateway@saber.net" <gateway@saber.net>

Priority: Normal

Options: [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#) | [View Message Details](#)

----- Original Message -----
From: Customer Support [support-cs@homeaway.com]
Sent: 8/31/2011 10:40 AM
To: dayspring@stardustweb.net
Subject: Listing No Longer on Live Site- HomeAway.com [ref:00D78VtP.5007InJa7:ref]

Dear Chuck,

As of today, August 31st, 2011, we have taken down Listing #141385 from our live site. Please allow up to 24 hours for the listing to be completely down.

You can call us at any time to have your listing go live again at, 866.210.6106.

Thank you and have a great day.

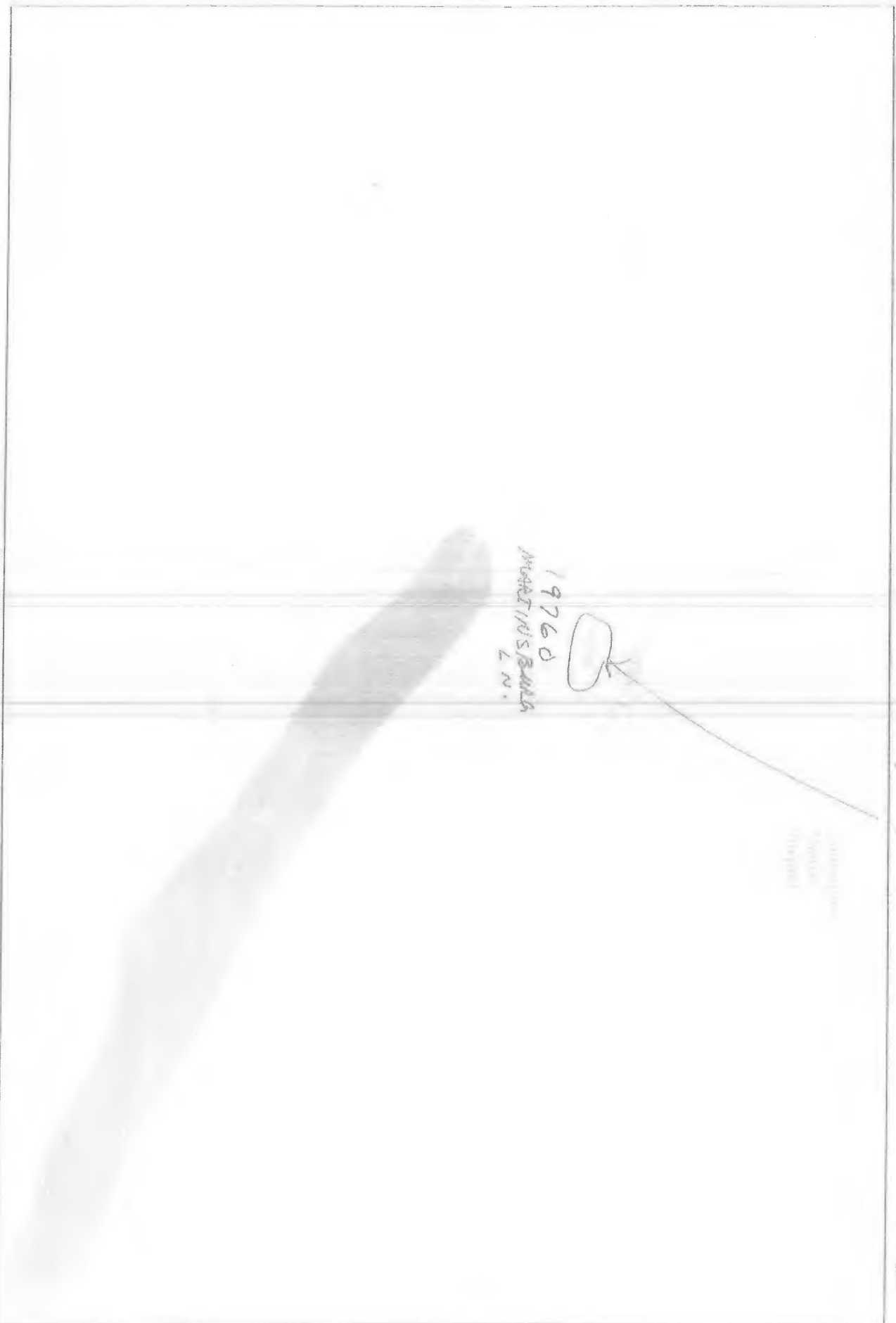
Chance at HomeAway

ref:00D78VtP.5007InJa7:ref

[Delete & Prev](#) | [Delete & Next](#)

Move to: **INBOX** [Move](#)

CASE: CHARLES FRANK IS WEST Nevada County 72008 PLAIN STOPS HERE



\$00111

ASE: CHARLES FRANK IS WEST Nevada County FLOOD PLAIN STOPS HERE

CONFIRMATION

FLOOD PLAIN

DOES NOT REACH
OUR PROPERTY

Charles ~~Frank~~



19760
MARTINIS BUILT
L.N.

1000 ft
1000 ft
1000 ft

October 20, 2014

MAP SUPPLIED BY
NEVADA COUNTY
PLANNING DEPT.

SOUTH



Map of Nevada County

CERTIFICATE OF MAILING

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the Abatement Order; my business address is: Clerk of the Board of Supervisors, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California 95959-8617.

I served the enclosed documents:

Documents provided to Hearing Officer by property owner after the Hearing

On the following persons via email on October 27, 2014:

Nevada County Code Compliance Program Manager Gregory Shaffer
Nevada County Code Compliance Officer Nicholas Hockstra
Nevada County Counsel, Scott McLeran
Nevada County Counsel, Katy Jacobs
Nevada County Counsel, Sheri Chapman
Nevada County Planning Director Brian Foss
Nevada County Building Official Craig Griesbach
Nevada County Clerk of the Board Donna Landi

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

10/27/14
Date

Barbara Price
Barbara Price

 Diamond Baker Mitchell, LLP
149 Crown Point Court, Suite B
Grass Valley, CA 95945

Nevada County Counsel
Attn: Barbara Price
950 Maiden Ave, Suite 200
Nevada City, CA 95959

\$1.400
US POSTAGE
PAID
06350100567122
95945

149 Crown Point Court, Suite B
Grass Valley, CA 95945

Barbara Price

From: Barbara Price
Sent: Monday, October 27, 2014 1:21 PM
To: Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Sheri Chapman; Brian Foss; Craig Griesbach; Donna Landi
Subject: Documents received from Mr. Frank
Attachments: Documents.pdf

Attached are documents received by the Hearing Officer for your information.

Barbara Price

Board Clerk II
Nevada County Board of Supervisors
950 Maidu Avenue, Ste. 200
Nevada City, CA 95959
(530) 265-1480

NOTICE TO ABATE NUISANCE
Nevada County Land Use and Development Code Section L-II 5.22

The owners and occupants of real property described on the latest equalized Nevada County tax roll as A.P.N. 50-400-07, and having a street address of 20047 Wildwood West Drive, are hereby notified to appear before a hearing officer of the County of Nevada at the Nevada County Board of Supervisors Chambers, First Floor, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, California 95959, on October 16, 2014, at 2:00 p.m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Nevada County Land Use and Development Code Section L-II 5.22 B.

After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the hearing officer, the cost of prior time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from the decision of the hearing officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, and the cost of securing expert and other witnesses may become a lien against the subject property and also assessed against the property in the same manner as taxes. The abatement lien to be recorded shall have the same force and effect as an abstract of judgment that is recorded pursuant to a money judgment obtained in a court of law.

If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that after an initial showing by the Code Enforcement Officer, you will have the burden of proving that no public nuisance exists on your property. In this connection, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a public nuisance as defined in the Nevada County Code. Copies of LUDC Sec. L-II 5.22 and uniform hearing procedures relating to abatement hearings are enclosed to assist you in the preparation of your presentation.

The original and three copies of any documents you wish to be included in the packet provided to the Hearing Officer must be provided to the Clerk of the Board 7 days prior to the scheduled hearing. If you wish to present evidence at the hearing, you must provide the original and three copies at that time.

A finding that a public nuisance exists on the property may result in an administrative decision ordering the abatement of uses on your property which are found to be a public nuisance. If the hearing officer finds that your property is in violation of the Nevada County Code, the County will contend that you are bound by such finding at any subsequent judicial action to enforce the abatement.

Important: Read This Notice Carefully. Failure To Appear And Respond At The Time Set Forth In This Notice Will Likely Result In Administrative Abatement And Termination Of Uses Of Your Property Which The CDA Director Contends Are In Violation Of The Nevada County Land Use and Development Code.

Dated: 7-22-2014

Donna Landi
Donna Landi, Clerk of the Board

Encl Nevada County LUDC L-II 5.22
Nevada County Resolution 99-058
Certificate of Mailing

253

CERTIFICATE OF MAILING

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the Abatement Order; my business address is: Clerk of the Board of Supervisors, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California 95959-8617.

On September 22, 2014 I served the enclosed:

Notice to Abate Nuisance
Board of Supervisors Resolution 99-058
Nevada County LUDC I-II 5.22

On the following persons via First Class US Mail on September 22, 2014:

Charles and Kathryn Frank, 20047 Wildwood West Drive, Penn Valley CA 95946
Steven Baker, Esq., Diamond Baker Mitchell, LLP
149 Crown Point Court, Ste. B, Grass Valley CA 95945

I placed such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of Nevada County for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing.

On the following persons via email on September 23, 2014:

Nevada County Code Compliance Program Manager Gregory Shaffer
Nevada County Code Compliance Officer Nicholas Hockstra
Nevada County Counsel Scott McLeran
Nevada County Counsel Katy Francis
Nevada County Planning Director Brian Foss
Nevada County Building Official Craig Griesbach
Nevada County Clerk of the Board Donna Landi

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

9/23/14
Date


Barbara Price



RESOLUTION No. 99-58
OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION APPOINTING HEARING OFFICER AND
ESTABLISHING HEARING PROCEDURES FOR THE
CONDUCT OF PROPERTY MAINTENANCE HEARINGS

WHEREAS, on August 11, 1998, the Board of Supervisors adopted Ordinance No. 1981 to authorize a hearing officer to hear property maintenance hearings; and

WHEREAS, it is necessary and desirable to establish a uniform procedure for the conduct of property maintenance hearings; and

WHEREAS, it is necessary and desirable to empower the hearing officer to issue subpoenas, to receive evidence, to administer oaths and to rule on questions of law and the admissibility of evidence;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Nevada hereby adopts the uniform hearing procedures attached to this resolution as Exhibit "A" and empowers hearing officers to be designated by this Board to exercise the power and responsibilities set forth in such procedures.

BE IT FURTHER RESOLVED, that the following named individual is duly appointed to hear abatement matters pursuant to the provisions of Ordinance No. 1981 and the uniform hearing procedures established by this resolution:

Catherine Harris, Esq.

BE IT FURTHER RESOLVED, that the Board may, from time to time, authorize the appointment of additional individuals as hearing officers for property maintenance hearings.

BE IT FURTHER RESOLVED, that the Chairman of the Board of Supervisors be, and he is hereby authorized, to execute on behalf of the County of Nevada, that certain Agreement for Professional Services, dated January 5, 1999, by and between said County and Catherine Harris, Esq.

///

///

///

///

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 2nd day of February, 1999, by the following vote of said Board:

Ayes: Supervisor Peter Van Zant, Karen Knecht, Bruce Conklin, Elizabeth Martin, Sam Dardick.

Noes: None.

Absent: None.

Abstain: None.

ATTEST;

CATHY R. THOMPSON

Clerk of the Board of Supervisors

By: Cathy R. Thompson

[Signature]
Chairman

DATE	COPIES SENT TO
2/4/99	Bldg. Dpt.
	CDA Dir.
	County Counsel
	Admin. <i>[initials]</i>
	A-C <i>[initials]</i>
	Attorney Harris
	10/2/98

Wk\abateres.

EXHIBIT "A"

UNIFORM NEVADA COUNTY PROPERTY MAINTENANCE HEARING PROCEDURES

1. Hearing Officers for Property Maintenance Hearings Appeals.

Property Maintenance hearings shall be heard by a Hearing Officer. Such Hearing Officer shall be a member of the California Bar admitted to practice for at least five years prior to appointment as is required by Government Code section 27724.

2. Powers of Hearing Officers.

Hearing Officers shall have those powers set forth in sections 27721 and 27722 of the Government Code including the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to administer subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and power to prepare a record of the proceedings.

3. Continuances/Subpoenas

All requests for either continuances or issuance of subpoenas shall be made in writing to the Hearing Officer no later than ten (10) days prior to the scheduled hearing date. Failure to comply with this provision shall be deemed to constitute a waiver of any right to request either a continuance or the issuance of subpoenas.

4. Fairness of Hearings.

Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

5. Evidentiary Rules.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions before a court a competent jurisdiction. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Hearing Officer.

6. Order of Proceeding at Hearing.

The Hearing Officer shall ordinarily proceed in the following order when conducting Property Maintenance hearings;

- (a) The Hearing Officer, in advance of the hearing, shall provide a summary of the procedure for abatement of public nuisances as adopted by Nevada and codified in Article 40 of Chapter 11 of the Land Use & Development Code, including entitlement to notice and opportunity to be heard, rules for conduct of the hearing, and appeal rights.
- (b) County staff's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, an account of enforcement costs relating to the property, and a recommended decision.
- (c) A presentation by or on behalf of the property owner shall next proceed.
- (d) Tenants or other occupants of the subject property shall speak third.
- (e) Individuals owning property immediately contiguous to the subject property shall speak fourth.
- (f) Other interested parties shall speak fifth.
- (g) The property owner shall be entitled to rebuttal.

After all of the testimony is taken, the Hearing Officer shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Board of Supervisors. During the course of the hearing, the Hearing Officer may question any witness and may, through the Hearing Officer, allow cross-examination if he or she deems it in the interest of justice to do so.

7. Speaker's Presentation.

- (a) Each speaker shall approach the microphone and give his or her full name and address for the record.
- (b) Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Hearing Officer may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for the

presentations of County staff and the property owner and at least three minutes shall be allowed for all other speakers. Speakers shall, at the discretion of the Hearing Officer, be allowed to speak for longer than established limits if that speaker represents a group of individuals, the remainder of which chooses not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitations upon the length of written statements.

- (c) Subject to the Hearing Officer's right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
- (d) Witnesses shall be sworn and subject to cross-examination by the Hearing Officer.

8. Submission of Additional Written Evidence and Argument.

At any time before or after the hearing up to the point the hearing is closed by the Hearing Officer, any interested party may submit written evidence or argument. Any party desiring to submit written evidence shall provide three (3) copies of each document. One copy each shall be provided to the Hearing Officer and opposing party and one copy shall be made available for public review. In the event the Hearing Officer concludes the hearing and continues the decision to another time, the Hearing Officer may, in his or her discretion, set a deadline for submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Hearing Officer during the period of a continuance or after the public hearing has been closed.

9. Field Trips.

Whenever the Hearing Officer deems it necessary to take a field trip to view the site in question, the Hearing Officer may conduct a site visit. Unless the site visit is tape recorded, the Hearing Officer shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit the Hearing Officer shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

10. Recording.

All proceedings shall be recorded by mechanical means. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the

court reporter shall provide a copy of the reporter's written transcript to the Hearing Officer at no charge to the County.

11. Recusal of Hearing Officer.

At the time the Property Maintenance hearing is noticed, the name of the Hearing Officer responsible for the conduct of the hearing shall be included in such notice. Within five days from the date such notice is published, posted or mailed, any individual desiring to recuse such Hearing Officer on the basis of an alleged conflict of interest shall notify the Community Development Agency specifically setting forth the factual basis for the alleged conflict. Failure to notify the Community Development Agency of the requested recusal of a Hearing Officer within the five day period shall be deemed a waiver of any right to recuse such Hearing Officer at the time of the Property Maintenance appeal hearing. In the event the Hearing Officer denies that a conflict of interest exists the Board of Supervisors shall hear evidence, consider the matter, and render a decision regarding whether a conflict of interest exists.

12. Decision by Hearing Officer.

Within thirty (30) calendar days of the conclusion of the Property Maintenance hearing, the Hearing Officer shall render a written decision, including any findings or conclusions required for that decision. If a nuisance is found to exist the decision shall order the property owner to abate such within a time certain and, if such is not accomplished, shall authorize the Community Development Agency to cause such abatement to occur thereafter. The decision and the record shall be submitted to the clerk of the local body on whose behalf the hearing was held and shall give notice of the decision as provided for in the Nevada County Land Use and Development Code. Said notice of decision shall include notification of the right and procedure to appeal the decision of the Hearing Officer to the Board of Supervisors and of the last date upon which such an appeal can be made pursuant to LVDC Sec. L-11 40.5.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this 5th day of January, 1999, by and between the COUNTY OF NEVADA, a political subdivision of the State of California (hereinafter referred to as "County"), acting by and through the Community Development Agency, and CATHERINE HARRIS (Tax ID No. 68-007-4878) (hereinafter referred to as "Contractor").

WITNESSETH:

In consideration of the mutual promises set out below, Contractor and County agree as follows:

1. (A) The services to be performed, (B) the time within which said services are to be performed, (C) the amount of compensation, and (D) the schedule for payment of such compensation shall be as specified in Exhibit "A", attached hereto and by this reference incorporated herein.
2. GENERAL PROVISIONS. The general provisions set forth in Exhibit "B" are part of this Agreement. Any inconsistency between said general provision and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.
3. DESIGNATED REPRESENTATIVES. The Community Development Agency Director is the representative of the County and will administer this Agreement for the County. Catherine Harris is the authorized representative for Contractor. Changes in designated representatives shall occur only by advance written notice to the other party.
4. EXHIBITS. All exhibits referred to herein are attached hereto and by this reference incorporated herein. Exhibits include:

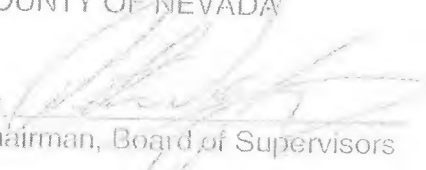
Exhibit "A" - Services and Payment
Exhibit "B" - General Provisions
5. AGREEMENT DATE. The Agreement Date is: January 5, 1999.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day here first above written.

COUNTY

CONTRACTOR

COUNTY OF NEVADA

By 
Chairman, Board of Supervisors


CATHERINE HARRIS

ATTEST:

By 
Clerk, Board of Supervisors

EXHIBIT "A"

A. SCOPE OF SERVICES AND DUTIES:

The services to be provided by Contractor and the scope of Contractor's duties include the following:

1. Unless disqualified by reason of a conflict of interest or otherwise, Contractor shall provide hearing officer services as assigned by the County before, during, and after such hearings as may be scheduled by the County for the purpose of adjudicating property maintenance disputes and issuing a decision related thereto. The specific nature of such services to be performed for any particular matter assigned shall be determined by the Contractor.
2. All hearing officer services rendered by Contractor shall be performed in accordance with the provisions of Article 40 of Chapter II of the Land Use and Development Code of the County of Nevada, the Uniform Nevada County Property Maintenance Hearing Procedures and any other administrative procedures adopted by the County with regard thereto.
3. Contractor's performance with regard to any particular code enforcement matter assigned to him or her for hearing shall be deemed complete upon delivery of Contractor's decision for that matter to the Clerk of the Board of Supervisors within thirty (30) days after the hearing is closed by the Contractor.
4. Contractor shall perform such other services relating to the discharge of the hearing officer function contemplated by this Agreement as County and Contractor may orally agree to be reasonably necessary to Contractor's performance of the hearing officer function described herein.

B. TIME SERVICES RENDERED:

The term of this contract shall be January 5, 1999 through July 5, 2001.

C. MANNER SERVICES ARE TO BE PERFORMED:

As an independent contractor, Contractor shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. County shall not control the manner of performance.

D. FACILITIES FURNISHED BY COUNTY:

The County shall furnish the following facilities and services to the Contractor:

1. A suitable place at which hearings conducted by Contractor shall be held;
2. A certified shorthand reporter to record hearings, in those instances when the County determines such a record is desirable in lieu of a mere tape recording;
3. A suitable tape recorder, microphones, tapes and related equipment and energy appropriate to the recording of hearings in those instances when the County determines not to use a shorthand reporter for that purpose.
4. The County shall advise Contractor, at the time a hearing is assigned, whether or not a shorthand reporter will be used to make a record of that hearing.

E. PAYMENT:

County shall pay Contractor as follows:

1. Base Contract Fee: County shall pay Contractor a contract fee not to exceed one hundred twenty-five dollars (\$125.00) per hour, for all time expended in the performance of Contractor's duties as specified herein. Contractor shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. County shall pay Contractor within thirty (30) days of receipt of request for payment from the Contractor.
2. Mileage: County shall reimburse Contractor for travel by private vehicle only for site inspections necessary to perform the Contractor's duties as required by this Agreement. Reimbursement shall be paid for travel between the Nevada County Administration Center and inspection site(s) at the standard mileage rate allowed by the County to reimburse County staff. At the time of this Agreement, that rate is thirty-two and one-half cents (0.325) per mile. If the mileage rate should change during the contract period, Contractor shall be paid at that new rate, but in no event shall the reimbursement be less than \$0.325 per mile.
3. Travel Costs: County shall not pay Contractor for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the County representative and then County shall pay Contractor per diem rates in effect on the date of invoice upon presentation of invoices.

4. Copy and Postage: County shall reimburse Contractor for copying of all documents necessary to perform the services relating to the discharge of the hearing officer function contemplated by this Agreement at a rate not exceeding the actual cost of such copying. County shall reimburse Contractor for postage paid to mail all documents necessary to perform the services relating to the discharge of the hearing officer function contemplated by this Agreement at the current rate for first class delivery established by the U.S. Postal Service.
5. Authorization Required: Services performed by Contractor and not authorized in this Agreement shall not be paid for by County. Payment for additional services shall be made to Contractor by County if, and only if, this Agreement is amended by both parties in advance of performing additional services.

EXHIBIT "B"

GENERAL PROVISIONS

1. Acceptance by County of the work performed under this Agreement does not operate as a release of said Contractor from responsibility for the work performed. Contractor understands and agrees that the scope of the work to be performed under this Agreement can and shall be performed in a manner compatible with the standards of Contractor's occupation or profession.
2. It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County. This Agreement shall not be construed as an agreement for employment. Contractor shall be solely liable and responsible to pay all required taxes and other obligations, including but not limited to, withholding and Social Security.
3. Contractor shall provide County with timely advice of all significant developments arising during performance of its services hereunder, orally or in writing, as Contractor deems appropriate.

Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Contractor's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. It is recognized by the parties hereto that a substantial inducement to County for entering into this Agreement was and is the reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor without prior written approval of County, and this agreement contemplates the services of contractor as the primary provider of the services called for to be performed. Except as otherwise provided in this section, Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of County. Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of Contractor, as may be allowed by this Agreement (hereinafter referred to as the "Secondary Parties"), shall comply with each term and condition of this Agreement. Furthermore, Contractor shall be responsible for the Secondary Parties acts and satisfactory performance of the terms and conditions of this Agreement.

5. Contractor shall maintain books, records, documents and other evidence directly pertinent to all work under this Agreement in accordance with accepted professional practice and accounting procedures for a minimum period of four (4) years after the termination of the Agreement. County, or any of its duly authorized representatives, shall have access to such books, records, documents and other evidence for purposes of inspection, audit and copying.
6. Prior to rendering services provided by the terms and conditions of this Agreement, Contractor or its subcontractor shall acquire and maintain during the term of this Agreement, insurance coverage, through and with an insurer acceptable to County, naming the County and any related agency governed by the Board of Supervisors which is letting the contract or for whom the services under the contract are being provided, and County's, or related agency's, officials, employees, and volunteers as additional insured, (hereinafter referred to as "the insurance"). The limits of insurance herein shall not limit the liability of the Contractor hereunder.

Contractor shall provide automobile liability coverage including non-owned and hired automobile liability in the amount of \$500,000. Said policy shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis. The County shall be named as an additional insured on the automobile liability policy. The insurer shall supply a certificate of insurance with endorsement signed by the insurer evidencing such insurance to County prior to commencement of work, and said certificate with endorsement shall provide for ten (10) days advance notice to County of any termination or reduction in coverage.

Failure to provide and maintain the insurance required by this contract will constitute a material breach of the agreement. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

7. Contractor shall maintain appropriate licenses throughout the life of this Agreement. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.
8. Contractor and any permitted subcontractor shall not discriminate against any individual based on race, color, religion, nationality, sex, age or condition of disability.
9. If litigation or administrative hearings ensue which pertain to the subject matter of Contractor's services hereunder, Contractor upon request agrees to testify therein at a reasonable and customary fee.
10. Contractor warrants and covenants that Contractor presently has no interest in, nor shall any interest be hereinafter acquired in any matter which will render the

services required under the provisions of this Agreement, in violation of any applicable state, local or federal law. Contractor further warrants that no officer or employee of the County has influenced or participated in a decision to award this contract which has or may confer on contractor a benefit in which such employee or officer may have an interest, pecuniary or otherwise. In the event that any conflict of interest or violation of this section should nevertheless hereafter arise, Contractor shall promptly notify County of the existence of such conflict of interest or violation so that the County may determine whether to terminate this Agreement.

11. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Contractor. In the event County gives notice of termination, Contractor shall immediately cease rendering service upon receipt of such written notice and the following shall apply:
 - a. Contractor shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
 - b. County shall pay Contractor the reasonable value of services rendered by Contractor to the date of termination pursuant to this Agreement not to exceed the amount documented by Contractor and approved by County as work accomplished to date; provided, however, County shall not in any manner be liable for lost profits which might have been made by Contractor had Contractor completed the services required by this Agreement. In this regard, Contractor shall furnish to County such financial information as, in the judgment of the County, is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of the County shall be final. The foregoing is cumulative and does not affect any right or remedy which County may have in law or equity.

Contractor may terminate its services under this Agreement upon thirty (30) working days written notice to the County, without liability for damages, if Contractor is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by County, provided that Contractor has first provided County with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the County may cure the alleged breach.

12. This Agreement, together with its specific references, exhibits and attachments, constitutes all of the agreements, understanding, representations, conditions,

warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

13. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.
14. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
15. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
16. In any action at law or in equity, including an action for declaratory relief, brought to enforce or interpret provisions of this Agreement, each party shall bear its own costs, including attorney's fees.
17. Unless otherwise expressly waived in writing by the parties hereto, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Nevada. This Agreement and all matters relating to it, shall be governed by the law of the State of California.
18. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions of the California Tort Claims Act, Division 3.6 of the Government Code, are not waived by County and shall apply to any claim against County arising out of any acts or conduct under the terms and conditions of this Agreement.
19. If Contractor is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation or board or commission of said public agency, and that this Agreement is binding upon said corporation in accordance with its terms. If Contractor is a corporation, Contractor shall, within thirty (30) days after execution of this Agreement, deliver to County a certified copy of a resolution of the board of directors of said corporation authorizing or ratifying the execution of this Agreement.

20. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within ten (10) days of the date of notice, then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

21. This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
22. County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
23. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

To County: COMMUNITY DEVELOPMENT AGENCY
Eric Rood Administration Center
950 Maidu Avenue
Nevada City, CA 95959

To Contractor: CATHERINE HARRIS
980 Ninth Street, Suite 1600
Sacramento, CA 95814-2736

Each party shall provide the other with telephone and written notice of any change of address as soon as practicable.

Notices given by personal delivery or acknowledged shall be effective immediately.

Sec. L-II 5.22 Property Maintenance

- A. **Purpose.** The purpose of this Section is to establish an administrative procedure to remove conditions of property hereinafter described and declared to be public nuisances which have a blighting influence on properties in the vicinity and/or are detrimental to the health, safety and welfare of the residents of the County.
- B. **Condition Creating Public Nuisance.** The following condition is hereby declared to be a public nuisance:
1. Any nuisance heretofore or hereafter defined as a nuisance by any ordinance of the County of Nevada, Section of the Nevada County code, Section of any adopted uniform code, resolution of the Board of Supervisors, or statutes of the State of California.
 2. Any condition of property which would materially hamper and interfere with the prevention or suppression of fire upon the premises or which may be detrimental to the health, safety and welfare of persons in the vicinity.
- Exception: No agricultural activity, agricultural processing activity, operation, or facility or appurtenances thereof, as such is defined in California Civil Code Section 3482.5, is subject to this Section.
- C. **Director of Community Development Agency.** The Director of the Community Development Agency (CDA) is hereby designated to enforce this Chapter. Whenever a public nuisance as defined herein is alleged to exist anywhere within the unincorporated limits of the County of Nevada, the Director of CDA may exercise such powers that may be necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter. The Director of CDA may appoint and delegate the duties of such officers, agents, and employees as the Director deems necessary.
- D. **Duty to Abate.** No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist within the unincorporated limits of the County of Nevada. It shall be the duty of every owner, occupant, and person that controls any land or interest thereon within this jurisdiction to remove, abate, and prevent the reoccurrence of the public nuisance upon such land.
- E. **Procedure for Abating Public Nuisances Generally.**
1. Whenever the Director of CDA determines that a public nuisance may exist the Director or his or her designee may order the public nuisance to be abated. If the condition(s) continue the Director of CDA may set the matter for hearing. If the matter is set for hearing, the Director shall post the property upon which the public nuisance exists and shall mail notices to those persons known to be in possession of the property and to persons shown on the last equalized county tax roll to be the owners of the property at least 10 days prior to the hearing. Both the mailed and posted notice shall be in substantially the following form:

Notice to Abate Nuisance

The owner(s) and occupants of real property described on the latest equalized Nevada County tax roll as A.P. No. _____ and having a street address of _____ is (are) hereby notified to appear before a hearing officer of the County of Nevada at (insert place), on _____, 19____, at the hour of ____ o'clock ____m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Nevada County Ordinance Code. After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the hearing officer, the cost of prior time and expenses associated with bringing the matter to hearing, the cost associated with any appeals from the decision of the hearing officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, and the cost of Securing expert and other witnesses may become a lien against the subject property and also assessed against the property in the same manner as taxes. The abatement lien to be recorded shall have the same force and effect as an abstract of judgment that is recorded pursuant to a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or

assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that after an initial showing by the Code Enforcement Officer you will have the burden of proving that no public nuisance exists on your property. In this connection, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not public nuisance as defined in the Nevada County Code. Copies of the ordinance and uniform hearing procedures relating to abatement hearings are enclosed to assist you in the preparation of your presentation.

A finding that a public nuisance exists on the property may result in an administrative decision ordering the abatement of uses on your property which are found to be a public nuisance. If the hearing officer finds that your property is in violation of the Nevada County Code, the County will contend that you are bound by such finding at any subsequent judicial action to enforce the abatement.

Important: Read This Notice Carefully. Failure To Appear And Respond At The Time Set Forth In This Notice Will Likely Result In Administrative Abatement And Termination Of Uses Of Your Property Which The CDA Director Contends Are In Violation Of The Nevada County Ordinance Code.

Dated: _____

Nevada County Community Development Agency Director

By: _____

Enclosure: Property Maintenance Ordinance, Uniform Hearing Procedures.

2. At the time and place set for the hearing, the hearing officer shall review the CDA Director's determination ordering cessation of the alleged public nuisance to determine whether such decision conforms to law and is supported by substantial evidence. The hearing officer shall hear testimony and receive written or documentary evidence relating to the alleged violation. Additional procedural rules may be adopted by resolution of the Board of Supervisors. The hearing officer shall tape record the hearing and shall preserve all photographs and other documentary evidence introduced at the time of the hearing. Within 30 days after the hearing is closed, the hearing officer shall render his or her decision relating to the existence or nonexistence of the alleged public nuisance. The decision shall include a statement of the costs incurred by the County in abating the violation, if a violation is found to exist and shall also include a demand that administrative costs of abatement incurred to date be paid to the County within 10 days. The decision shall contain findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail, to the owner of the parcel that is subject to the hearing, any occupant(s) of such parcel and the appellant.
3. The decision of the hearing officer shall be final. The hearing officer shall notify the clerk of the Board of Supervisors of his or her decision, the date upon which the decision became final and the last date upon which an appeal may be made. If the Board of Supervisors does not receive an appeal within ten (10) calendar days of receipt of the hearing officer's decision, it shall be deemed to have ratified and adopted the hearing officer's decision. If it is the decision of the hearing officer that a public nuisance exists, the owner of the property shall be responsible for paying all of the County's administrative abatement costs, including but not limited to, those cost items set forth in the notice required by subsection A.
4. Within the ten (10) calendar day period referred to in subsection C, the owner or occupant of the property, the Director of CDA, or any other interested person may appeal the decision of the Hearing Officer to the Nevada County Board of Supervisors if such individual or entity does all of the following:

- a. Delivers a written appeal to the Clerk of the Board of Supervisors within the ten (10) calendar day appeal period; and
 - b. Within fifteen (15) days of being notified by the Clerk of the Board of Supervisors, the appellant shall deposit with the Clerk of the Board an amount of money equal to the estimated cost of transcribing the oral proceedings before the Hearing Officer and the cost of duplicating seven copies of the administrative record, including all exhibits introduced at the hearing. The appellant shall be responsible for the cost of the appeal and record; provided, however, that: (i) if the appellant is not the owner of the property, and the Board upholds the appeal and finds that a zoning violation exists, the costs of the appeal shall be paid by the property owner; and (ii) if the appellant is the owner of the property and the Board upholds the appeal and finds that no violation exists, then the costs of the appeal shall be borne by the County.
5. In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal based solely on the administrative record and decision prepared by the Hearing Officer. The Board shall review the record and then adopt, reject or modify the decision of the Hearing Officer.
 6. In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal within ninety (90) days after receipt of the administrative record. Notice of the Board's decision shall be mailed to the property owner and those persons receiving notice pursuant to subsection A.
 7. If a final decision of the Hearing Officer or the Board of Supervisors finds that a violation exists, the owner of the property shall be responsible for paying all of the County's administrative abatement costs, including, but not limited to, those cost items set forth in the notice required by subsection 1. Costs of abatement shall become a lien against the property as is authorized by the Government Code and the following paragraph:

The final decision shall also order that abatement costs that have been incurred to date shall be assessed against the property as provided by Government Code Section 25845(b) and that an abatement lien will be recorded as is authorized by Government Code Section 25845(c). The notice of abatement lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which abatement of the nuisance was ordered by the Hearing Officer or the Board of Supervisors, describe the real property subject to the lien, set forth the amount of the abatement costs incurred to date and, if applicable, the date upon which the abatement was complete. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional abatement costs will be incurred in the future. It is the intent of the Board of Supervisors that abatement costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all abatement costs have been incurred and the abatement is complete, the CDA shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.
 8. Decisions of the hearing officer or Board of Supervisors shall order abatement within a time certain. The order may be recorded by the CDA. In the event of such recordation and in the further event that the violation is corrected, a notice of such correction shall be recorded. The Director of CDA is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process. The County may, in its discretion commence a judicial action to enjoin a violation of this chapter without the necessity of first going through the administrative procedures set forth herein.
- F. **Recovery of Unpaid Costs.** As set forth in Section 5.22.E of this Article, the County may recover the administrative and physical costs of abatement and reasonable attorney fees. If, however, the property owner(s) responsible for the nuisance fails to pay the costs of abatement and attorney fees upon de-

mand by the County, the County may recover its costs pursuant to Government Code Sections 25845 and 54988 as follows:

1. **Itemization of Costs.** Code Compliance Officials shall keep an itemized account, including all of the administrative and physical expenses incurred in abating any nuisance arising under this Article. Upon completing the abatement of a nuisance, Code Compliance Officials shall file an itemized account, including a description of the real property on which the building or structure is or was located, the name and address of the owner(s) of record as it appears on the most recent assessor's roll, and the possessors of the property.
2. **Special Assessment Against the Parcel.** If the record owner(s) of the affected parcel does not pay the County's costs for abating a nuisance under this Article within forty-five (45) calendar days after receipt of a written demand by the County, the Board of Supervisors may order the costs of abatement to be specially assessed against the parcel. The owner shall have an opportunity to appear and be heard regarding the proposed action. The special assessment will be collected in the same manner and at the same time as County taxes, and will be subject to all laws applicable to the levy, collection, and enforcement of County taxes. In case of delinquency, the special assessment will be subject to the same penalties, including delinquency sale, as are ordinary County taxes.
3. **Recordation of Notice of Abatement Lien.**
 - a. If a special assessment is ordered, pursuant to paragraph (2) above, the Board of Supervisors may also order that a notice of abatement lien be recorded. The abatement lien shall include at least the following information: identity of the record owner(s) or possessor(s), the date the Board of Supervisors ordered the abatement, the date the abatement was completed, a description of the real property subject to the lien, and the total costs of abatement.
 - b. If an abatement lien is not recorded on the affected parcel, and the parcel is later sold to a bona fide purchaser for value, or a lien on a bona fide encumbrancer for value has been created and attaches to the affected parcel, prior to the delinquent date for the first installment of County taxes, then the abatement costs shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.
 - c. Recording a notice of abatement lien shall have the same effect as recordation of an abstract of money judgment recorded pursuant to Code of Civil Procedure 697.310, et seq. An abatement lien created has the same priority and effect as a judgment lien on real property until the lien is released. The Board of Supervisors may order an abatement lien created under this Section released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.
4. The County may file an action in court to enforce decisions of a hearing officer or the Board of Supervisors to recover civil penalties and costs, and to pursue injunctive or any other lawful remedy. Any second or subsequent civil or criminal judgment rendered against a property owner within a two-year period subjects the property owner to treble the costs of the abatement, pursuant to Government Code Section 25845.5.
- G. **Cumulative Remedy.** The administrative remedy provided herein shall not be exclusive and may be cumulative to any other remedy provided by law for maintenance of a public nuisance.
- H. **Severability Clause.** If any Section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every Section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more Sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

Barbara Price

From: Barbara Price
Sent: Tuesday, September 23, 2014 8:10 AM
To: Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Brian Foss; Craig Griesbach; Donna Landi
Subject: Notice to Abate Nuisance
Attachments: Property Abatement - Frank.pdf

Notice is attached for your information.

Barbara Price

Board Clerk II
Nevada County Board of Supervisors
950 Maidu Avenue, Ste. 200
Nevada City, CA 95959
(530) 265-1480

COUNTY OF NEVADA
ABATEMENT ORDER OF July 9, 2014
AS TO THE PROPERTY LOCATED AT
20047 WILDWOOD WEST DRIVE, PENN VALLEY, CA.

TO: Charles and Kathryn Frank
20047 Wildwood West Drive
Penn Valley CA 95946

FROM: Steven L. DeCamp, Director
Community Development Agency ("CDA") of the County of Nevada

PLEASE BE ADVISED: PURSUANT TO the authority vested in me by Section L-II 5.22 of the Land Use and Development Code of Nevada County (copy attached), I DO HEREBY DETERMINE that a public nuisance exists at the property identified above, which is Assessor Parcel No. 50-400-07, ("the Property"). This determination is based the attached Report of Inspection ("ROI") dated July 8, 2014, provided to me by Code Compliance Officer Nick Hoekstra and after review and approval of the Program Manager of the Code Compliance Division of CDA.

My determination of public nuisances is intended to authorize the Code Compliance Division to proceed with a nuisance abatement proceeding as described in Section L-II 5.22. This proceeding will protect your rights while the County seeks authorization for its employees, officers, and agents to enter the Property and conduct the necessary abatement activities under lawful authority.

Abatement activities include, but are not limited to, clean-up, repair, securing of structures against unlawful use, demolition, removal of solid waste, and other actions reasonably necessary to correct violations and abate nuisances on the Property. The total cost incurred by the County for these activities will be imposed upon you as an abatement charge. If the charge is unpaid, it may become a lien on the Property and/or an assessment on the tax bill for the Property. The total cost imposed may also include the County's administrative and legal costs from July 9, 2014, through to completion of abatement.

After thirty or more days, the Code Compliance Division will send you (as the responsible parties) a Notice of Abatement, which will also be posted on or near the Property. This Notice will show the time and date for the administrative hearing at which the County will seek authority to enter and conduct abatement. You may contact the Code Compliance Division (see letterhead on the ROI) if you have any questions, suggestions, or preferred hearing dates.

Dated: July 10, 2014


Steven L. DeCamp, Director of CDA



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9854 <http://www.mynevadacounty.com>

Planning Department Environmental Health Building Department Sanitation Department Dept. of Public Works Agricultural Commissioner

Steven L. DeCamp Community Development Agency Director

MEMO

TO: Steven DeCamp, Director,
Community Development Agency

FROM: Nicholas Hoekstra, Code Compliance Officer
Code Compliance Division

RE: REPORT OF INSPECTION - Frank property, 20047 Wildwood West Drive, Penn
Valley, CA 95946 (APN 50-400-07)

DATE: July 8, 2014

This Report of Inspection follows a site visit by me on July 8, 2014. The purpose of the inspection was to ascertain the condition of the property as to presence or absence of violations of County-adopted Codes, which constitute a public nuisance.

This Report includes background information relative to previous inspections of this property. There have been five inspections including the most recent, completed on July 8, 2014. There has been no substantial progress toward compliance, which would require permits to be obtained or demolition of the illegal residence, (cabin)

SUMMARY:

Charles & Kathryn Frank – owners of record as joint tenants.
20047 Wildwood West Drive
Penn Valley CA
APN: 50-400-07
Acres: 36.64
Zoned: AG-X

Current case opened August 29, 2011, stemming from a complaint alleging, unpermitted cabin and septic. The cabin was also alleged as being used for commercial purposes, as a rental cabin. The cabin was also built in an area of the property that is designated as a "No Build Zone".

- There have been five site inspections between the date the case was opened, in August of 2011, to the current date of July 8, 2014.
- Property owner issued three separate Administrative Citations from August of 2013 to November of 2013.
 - Unlawful Structure -- 2009 IPC 108.1.4
 - Sewage Disposal -- LUDC L-VI 1.4
- Property owner applied for a Management Plan and Map Amendment in March of 2013.
 - The Planning Commission heard the applications and subsequently denied them in June of 2013.
 - The property owner also paid for and received a Planners Consultation to find out the feasibility of getting the cabin permitted at its present location. He met with Planner Tod Herman. The property owner was told that it would be "next to impossible" to get the cabin permitted in its present location.
- Property owner brought legal action against the County of Nevada to restrain the County from enforcement of its ordinances and its employees from performing their duties, in relation to his property. This action was denied in Superior Court, County of Nevada, on January 27, 2014.
- Inspections leading to this report.
 - 09/08/11: CCO Bohnet attempted to inspect the property, was denied permission by property owners wife.
 - 09/09/11: CCO's Bohnet and Choate inspected the cabin from a neighboring property. Observed someone apparently removing plumbing from under the cabin. CCO's responded to the property and were again denied inspection by the property owner's wife.
 - 09/12/11: Property owner agreed to an inspection on this date by CCO's Bohnet and Parker. Property owner had a contractor with him at this time.
 - 11/08/11: CCO Bohnet met with the property owner, on the property, to look at a potential site to relocate the cabin. A suitable site was located, on the North/Central portion of the property.
 - 07/08/14: CCO Hoekstra and CCPM Shaffer inspected the cabin from a neighboring property. The purpose of this inspection was to confirm that the illegal cabin remains on the property and to obtain photographs showing this. Photos and CCO observations confirmed the cabin is still there.

REPORT OF CONDITIONS:

The property continues to be a public nuisance. The unpermitted cabin is still located on the property, in a designated "No Build Zone". Mr. Frank was issued a third citation for the code violations in November of 2013. Since that time no response or progress toward compliance has been forthcoming.

VIOLATIONS NOTED:

This is not an exhaustive list of violations.

1. Unlawful Structure, 2012 International Property Maintenance Code, Section 108.1.4, (An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered, or occupied, contrary to law).
2. Sewage Disposal, County of Nevada Land Use and Development Code, Section L-VI, 1.4, (A sewage system shall be constructed, operated, and maintained in compliance with all requirements of the permit allowing its installation and operation and so as not to permit sewage to rise to the ground surface or to discharge sewage onto the ground or into the groundwater or surface water).

PHOTOGRAPHS:

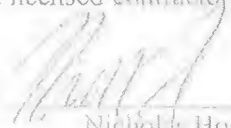
I have attached 8 photographs showing the illegal cabin and septic system, on Mr. Franks property.

CONCLUSION:

The responsible parties for this property have taken no action to correct the violations and abate the public nuisance. This code case was opened in August of 2011 and it is now July of 2014. This will be a three year period, next month, (August-2014). The cabin remains in the same location where it was originally built, by the property owners. The last verifiable conversation with Mr. Frank was in July of 2013, when he told Planning Director, Brian Foss, that he was having trouble finding a contractor to demo the cabin.

I believe that timely abatement can only be achieved by County intervention. The County should have the violations abated and charge the cost to the responsible parties. The means of abatement would be for the County to hire a licensed contractor to demo and remove the illegal structure, (cabin).

Dated: July 8, 2014

Signed: 

Nicholas Hockstra
Code Compliance Officer



06/19/2012 09:06



06/19/2012 09:05



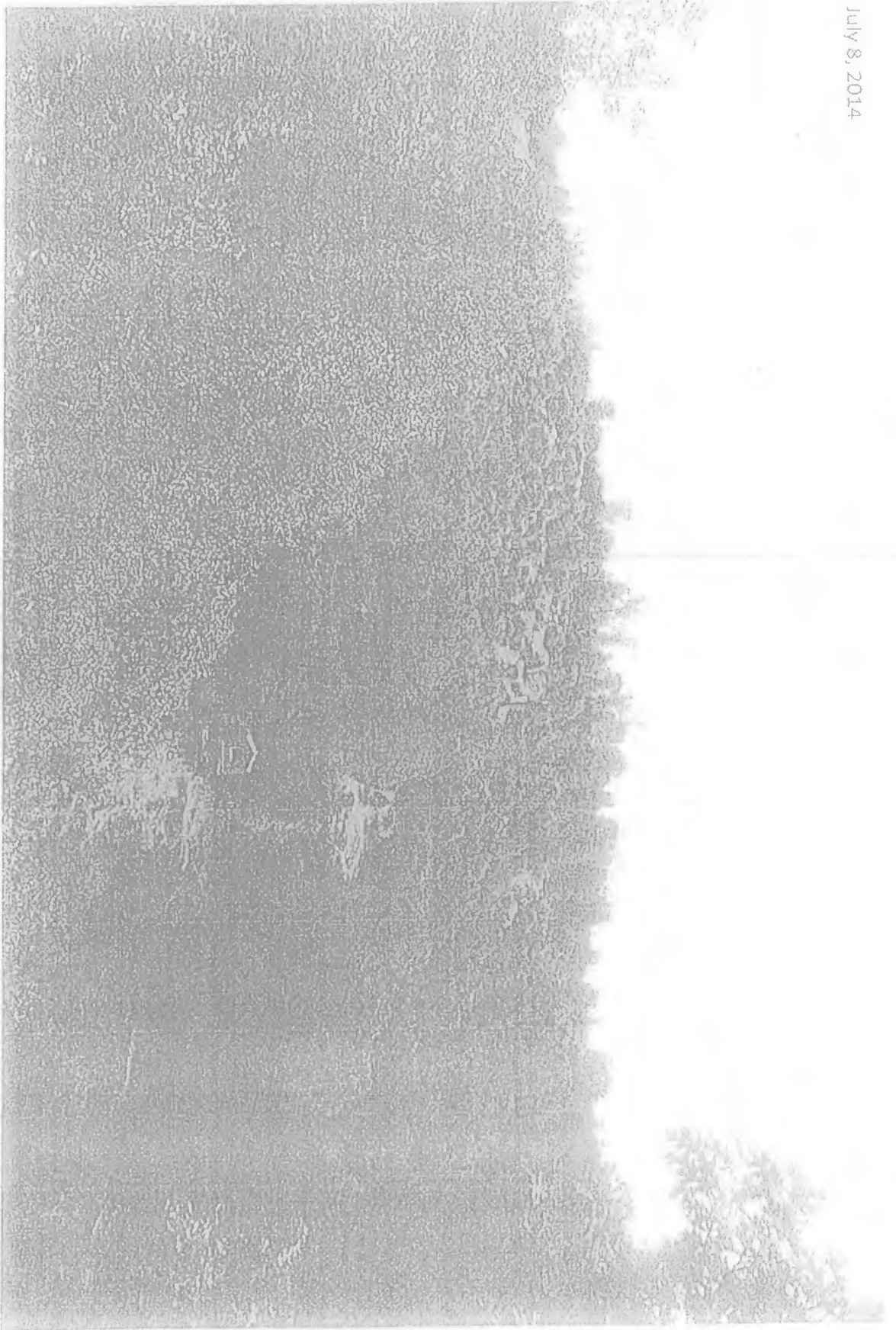
09/09/2011 09:54







July 8, 2014



July 8, 2014



CERTIFICATE OF MAILING

I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the Abatement Order; my business address is: Clerk of the Board of Supervisors, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California 95959-8617.

I served the enclosed documents:

Abatement Order of July 9, 2014
Memo from Code Compliance Officer of July 8, 2014

On the following persons via First Class US Mail on October 9, 2014:

Charles and Kathryn Frank, 20047 Wildwood West Drive, Penn Valley CA 95946
Steven Baker, Esq., Diamond Baker Mitchell, LLP
149 Crown Point Court, Ste. B, Grass Valley CA 95945

I placed such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of Nevada County for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing.

On the following persons via email on October 10, 2014:

Nevada County Code Compliance Program Manager Gregory Shaffer
Nevada County Code Compliance Officer Nicholas Hockstra
Nevada County Counsel Scott McLeran
Nevada County Counsel Katy Francis
Nevada County Planning Director Brian Foss
Nevada County Building Official Craig Griesbach
Nevada County Clerk of the Board Donna Landi

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

10/9/14
Date

Barbara Price
Barbara Price

Barbara Price

From: Barbara Price
Sent: Friday, October 10, 2014 10:43 AM
To: Gregory Shaffer; Nick Hoekstra; Scott McLeran; Katy Jacobs; Brian Foss; Craig Griesbach; Donna Landi
Cc: Kari Stehmeyer
Subject: Abatement Hearing Scheduled October 16, 2014
Attachments: Hearing Packet - Frank.pdf

Attached for your information is the packet that was mailed to the Hearing Officer and Property Owners.

Barbara Price
Board Clerk II
Nevada County Board of Supervisors
950 Maidu Avenue, Ste. 200
Nevada City, CA 95959
(530) 265-1480