

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

**COUNTY OF SAN BENITO
RESOURCE MANAGEMENT AGENCY
CODE COMPLIANCE DIVISION**

In the matter of:

7380 Fairview Road
Hollister, CA 95023

(APN: 016-140-0090)

Property of:

John Petree and Susan Petree

(Property Owners)

Occupants: John Petree and Jeanne

Taa

Case Number ENF016-140-009

**RECOMMENDATION FOR FINDING OF
NUISANCE CONDITIONS, TO IMPOSE
ADMINISTRATIVE PENALTIES, AND
TO RECORD A NOTICE OF VIOLATION**

I. INTRODUCTION

This matter was heard on October 30, 2019, in Hollister, California, before Danielle López, Hearing Officer for California Hearing Officers, LLP.¹ The purpose of this hearing was to decide whether to uphold the Notice to Abate Public Nuisance and Administrative Order to Show Cause and Notice of Violation and Proposed Administrative Penalty² (Notice to Abate) issued by the County of San Benito (County) on October 16, 2019, which states conditions at 7380 Fairview Road, Hollister, California (Property), constitute a public nuisance, orders the nuisance to be abated, and warns that daily administrative penalties will begin to accrue if conditions are not abated by October 26, 2019 (Exhibit A).

II. APPEARANCES

Joel Ellinwood, Assistant County Counsel, Duane Dauphinee, Resource Management Agency Chief Building Official, and Gary Lepori, Resource Management Agency Assistant Director, appeared on behalf of the County. Property Owner John Petree and Jeanne Taa³ also appeared. The County submitted a copy of the 10-Day Notice to Abate, a diagram of the triangle

¹ California Hearing Officers, LLP contracts with the County of San Benito to provide county hearing officers for administrative hearings pursuant to San Benito County Code Chapter 1.07.

² As allowed by SBCC section 1.06.080, the October 16, 2019, notice combined a "Notice to Abate Public Nuisance and Administrative Order to Show Cause" (Notice and Order), "Notice of Violation and Proposed Administrative Penalty" (NOV), and a "10-Day Notice"; all refer to the same 4-page document and will be referred to herein collectively as "Notice to Abate."

³ Jeanne Taa is only listed as an occupant on the Notice to Abate, but according to Mr. Petree she was added to the deed between October 16, 2019, the date the Notice to Abate was issued, and the hearing.

area to be abated, and photographic evidence (Exhibits A-C); Mr. Dauphinee and Mr. Lepori testified. Mr. Petree and Ms. Taa submitted photographic evidence (Exhibit D) and testified. After receiving all documentary evidence and testimony, the matter was closed and submitted for decision.

III. JURISDICTION

San Benito County Resource Management Agency, Code Compliance Division, has found that conditions on the Property constitute a public nuisance pursuant to San Benito County Code (SBCC) Chapter 1.06, which is known as the “Alternative Public Nuisance Abatement Procedures and Remedies.” Those findings resulted in the October 16, 2019, Notice to Abate.

San Benito County Code section 1.06.080 provides that “whenever the enforcing officer determines that a public nuisance as described in this chapter exists on any real property within the unincorporated area of San Benito County, he or she is authorized to issue any . . . notices in accordance with this chapter.” Pursuant to SBCC section 1.06.080, the Notice to Abate stated that the Property had been inspected by a San Benito County enforcement officer and conditions existing on it were determined to constitute a public nuisance. It stated that the Property Owners had ten calendar days to abate the nuisance, and if the nuisance conditions were not abated within that time period, a hearing would take place on October 30, 2019. The Notice to Abate warned that if the Property Owners do not abate the conditions as ordered or show good cause at the hearing why the conditions should not be abated, the County would abate the nuisance; those abatement costs, including administrative costs, may be made a special assessment added to the county assessment roll and may become a lien on the real property, or be placed on the unsecured tax roll. Additionally, it warned that if the Property Owners do not timely abate the nuisance conditions, a one hundred dollar (\$100) per day administrative penalty would be assessed for each day until the nuisance is fully abated. It further notified the Property Owners that they had the right to request a hearing before the County Hearing Officer.

The Notice to Abate states that conditions on the Property violate SBCC section 25.29.013 and California Streets and Highway Code section 1480.5(c). The Notice to Abate specified that the conditions on the Property failed to “[m]aintain the height of all fences, walls, structures, or plantings located in the triangular area with two sides equal to 25-feet along the road rights of way at the intersection of Aquistipace and Fairview Roads, and a line joining the end-points of each line farthest from the intersection so as not to obstruct cross-visibility between a height of 30 inches and 6 feet above the lowest point of the intersecting road(s)” (SBCC section 25.29.013). It also states that “[o]bjects within the right of way of Fairview Road, with a width of 60 feet, which constitute a traffic hazard due to obstruction of lines of sight at the intersection of Aquistipace Road.” (California Streets and Highways Code 1480.5(c)).

The notice was served, pursuant to SBCC section 1.06.090, via personal service to Property Owner John Petree on October 16, 2019; Officer Rich Brown personally served Mr. Petree. Officer Brown also served notice on co-owner Susan Petree on the same day via certified mail to the address shown on the last equalized assessment roll. While Officer Brown was unable to attend the hearing, Mr. Petree confirmed that he was personally served by Officer Brown; and, that his sister Susan Petree was also aware of the hearing, but chose not to attend and chose

instead to have Mr. Petree represent their interests. Mr. Petree attended the hearing and did not object to notice. The Hearing Officer has concluded that the Property Owners were properly served with the Notice to Abate a Public Nuisance.⁴

Pursuant to SBCC section 1.06.110(C)(8), after the hearing the Hearing Officer shall issue a recommended decision in the form of a resolution.

IV. STANDARD OF PROOF

Per SBCC section 1.06.110(C)(5), “[t]he standard of proof shall be by a preponderance of the evidence and the burden of proof to establish the existence of the nuisance shall be borne by the enforcing official.”

V. ISSUES

- 1. Do conditions on the Property as identified in the Notice and Order constitute a public nuisance?**
- 2. If so, what action must be taken to correct the violation(s)?**
- 3. Should the administrative penalty proposed in the Notice to Abate be imposed, modified, or disapproved, in whole or in part?**
- 4. May the enforcing officer record the Notice of Violation and Proposed Administrative Penalty (NOV) with the San Benito County Recorder in accordance with SBCC section 1.06.100?**

VI. BACKGROUND

The Property is sited at the northwest corner where Fairview Road and Aquistipace Road intersect. Code Enforcement became involved with the Property in early 2019 after receiving complaints from neighbors that, when stopped at the stop sign on Aquistipace Road and attempting to turn onto Fairview Road, cross-visibility views are obstructed by vegetation growing on the Property. The County retained a survey crew to identify the public right-of-way and the triangular area that is to be kept unobstructed pursuant to SBCC section 25.29.013(A)(1). The County determined that vegetation planted by the Property Owners encroached on the public right-of-way. Code Enforcement spoke with Mr. Petree and informed him of their finding that a violation existed.

Additional complaints came in May 2019 regarding obstructed views at the intersection. Code Enforcement returned to the Property and observed vegetation over five feet high growing in public right-of-way. The County monitored the vegetation growth between August and

⁴ Per SBCC section 1.06.110(C)(1)(a), if the enforcing officer issues a notice and order, the hearing shall be held no less than 15 calendar days after service of the notice and order. Here, the Notice and Order was served 14 calendar days before the hearing, which is one calendar day early. The Property Owners did not object to having the hearing held one day early; accordingly, no harm is found.

October 2019 as more complaints came in. As of October 4, 2019, the vegetation had not been abated and it was found to obstruct the triangular area that is to be kept unobstructed, so the County issued the October 16, 2019, Notice to Abate.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

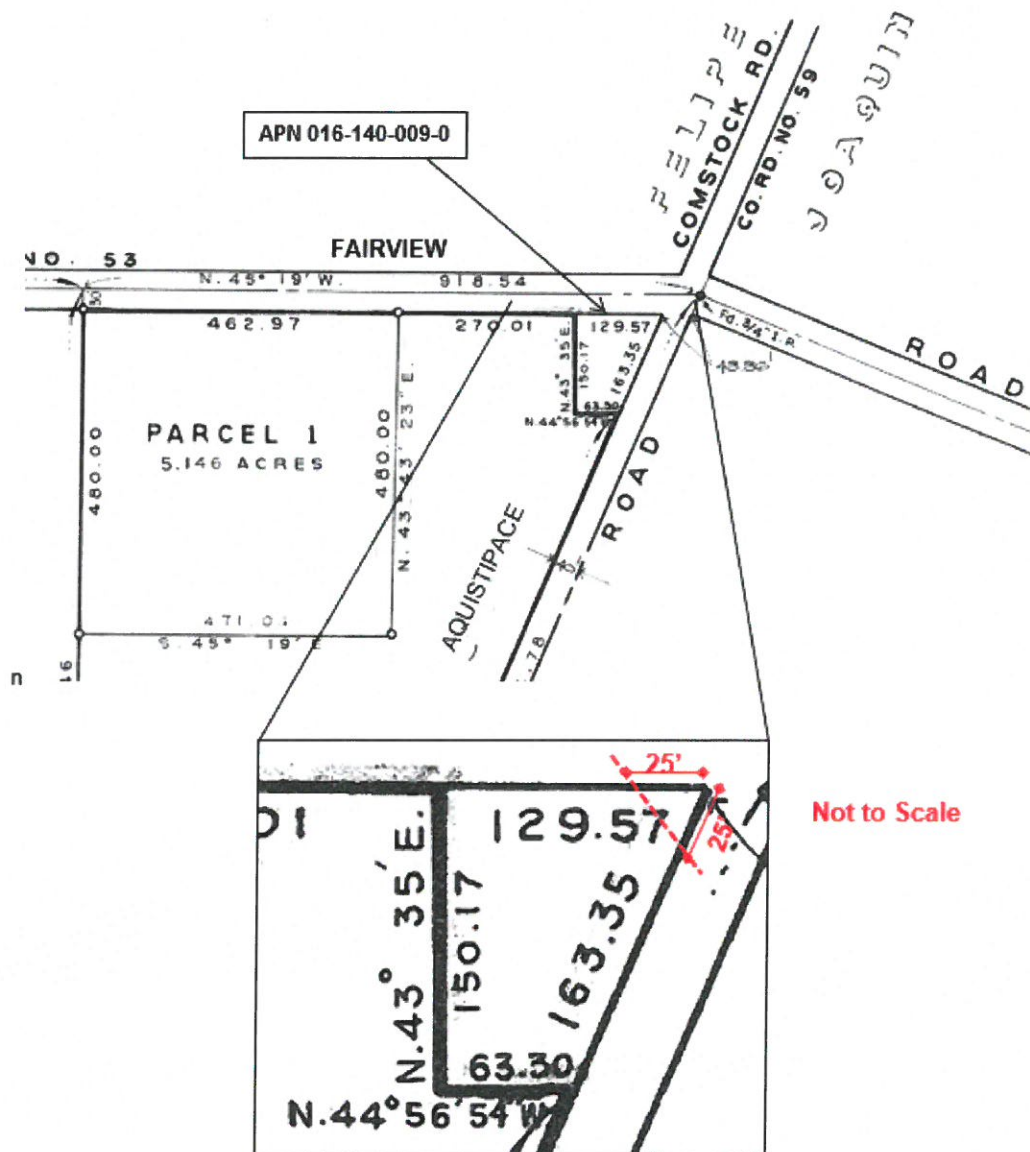
Issue 1: Do conditions on the Property as identified in the Notice and Order constitute a public nuisance?

SBCC section 25.29.013, structures or plantings obstruct the sight distance within the unobstructed triangular area (triangular area)

Section 25.29.013 of the SBCC states, “[n]o fence, wall, structure, or planting shall be erected, established, or maintained on any lot, which will obstruct the view of drivers in vehicles approaching an intersection of two roads or the intersection of a road and a driveway. Fences, walls, structures or plantings located in the triangular area described below shall not be permitted to obstruct cross-visibility between a height of 30 inches and six feet above the lowest point of the intersecting road(s). Trees shall be permitted in the triangular area provided that limbs and foliage are trimmed so that they do not extend into the cross-visibility area or otherwise create a traffic hazard.”

Section 25.29.013(A)(1) describes the unobstructed triangular area as “[t]he area formed at the corner intersection of two public right-of-way lines, the two sides of the triangular area being 25 feet in length measured along abutting public rights-of-way lines, and third side being a line connecting these two sides.” The triangular area covers area on the Property, and is different than the public right-of-way, which is part of the County highway. Below is a diagram of the triangular area that was included with the Notice to Abate (Exhibit A).

Diagram of Triangular Area to be abated per SBCC § 25.29.013



The triangular area is marked in red. The public right-of-way is the full 60-foot width of the highway.

Mr. Lepori testified that in early 2019 the County retained a survey crew to measure the triangular area at the intersection of Aquistipace and Fairview Roads. He submitted photographs showing marks sprayed on the ground by that survey crew indicating the tip of the triangle facing the roadway (Exhibit A, page 2). Mr. Lepori testified that the length on each side measured 25 feet. The photographs also show stakes were placed in the ground indicating the third side of the triangle, connecting the first two sides (Exhibit A). Those photos show that vegetation has been planted within the triangular area by the Property Owners. The Property Owners do not dispute that they planted the vegetation. At the time the photos were taken in early 2019, the vegetation was at various heights, but no violation was cited.

Mr. Lepori testified that the County received additional complaints about the blocked views at the intersection, so they returned to the Property on May 15, 2019, and saw that the vegetation within the triangular area had grown significantly. The area contained plants such as roses, weeds, a fan palm, as well as other varieties of palm (Exhibit B), some of which was now over 30 inches tall. The vegetation at this point began to block drivers's cross-visibility view at that intersection. The Property Owners were informed and asked to remedy the violation by cutting down the vegetation so that it would not exceed 30 inches in height. However, further complaints came in and Code Enforcement returned to the Property on September 13, 2019, and took photos from the intersection showing that the vegetation had grown more, further impeding the triangular area in that intersection (Exhibit B, page 2). Mr. Petree was contacted again and asked to cut down the vegetation.

Neighbors continued to complain, and Code Enforcement returned to the Property on October 4, 2019, and saw that the vegetation had not been cut down and continued to obstruct the cross-visibility view within the triangular area at that intersection. On that day, Mr. Lepori spoke with Mr. Petree, informed him that further complaints had come in, and emphasized that the vegetation needed to cut down.

On October 29, 2019, the day before the hearing, Mr. Dauphinee returned to the Property to assess whether the vegetation had been cut to improve visibility. He submitted photographic evidence that showed the vegetation had yet to be cut down (Exhibit C). The photos illustrated that visibility from the stop sign at that intersection was significantly impacted by the vegetation. The County submitted photographs that show an RV making its way down Fairview Road that cannot be clearly seen due to the vegetation until that RV is much closer to the intersection (Exhibit C, pp. 6-7).

The Property Owners contend that visibility is fine at the intersection if the drivers pull up further on Aquistipace Road before turning onto Fairview Road. Mr. Petree submitted photographs, also taken on October 29, 2019, to illustrate that oncoming traffic is visible when vehicles stop closer to the intersection (Exhibit D, page 4). The Property Owners's photographs appear to have been taken beyond the stop line as the stop line is shown painted on the roadway at approximately a third of the way into the photograph from the left, illustrating that visibility is better at the intersection, but only if drivers pass the stop line and pull further into the intersection. Ms. Taa testified that the vegetation was planted along Fairview Road to protect their Property from speeding cars that may crash onto the Property. She testified that it has

happened before, and they have no desire to remove the vegetation and other obstructions unless the County is willing to put up a protective barrier, such as guard rails.

Despite the Property Owner's assertions to the contrary, the County's photographs demonstrate that visibility is severely limited by the obstructions within the triangular area, which creates a safety hazard for drivers entering Fairview Road from Aquistipace Road.

The County has proven by a preponderance of the evidence that vegetation within the triangular area is taller than 30 inches and or hangs lower than 60 inches, and that it obstructs the triangular area as stated in the October 16, 2019, Notice to Abate. The conditions violate SBCC section 25.19.013. Pursuant to SBCC section 1.06.030(A)(5), it is a public nuisance to maintain any premises "contrary to the provisions of any provision of this code or state law." Accordingly, the violation is a public nuisance.

CA Streets and Highways Code 1480.5, an encroachment in the public right-of-way constitutes a traffic hazard

Section 1480.5 states, "[t]he road commissioner may immediately remove, or by notice may require the removal of, any of the following encroachments." Section 1480.5(c) states, "[a]n encroachment which is a traffic hazard." Section 1480(B) states an encroachment includes "any structure or object of any kind or character placed, without the authority of law, either in, under or over any county highway." The Notice to Abate cites a violation of SBCC section 25.29.013, noting conditions on the Property encroaching on the public right-of-way and impacting cross-visibility at the intersection of Aquistipace and Fairview Roads as discussed above. The evidence and testimony discussed above also apply to this violation.

It is undisputed that Fairview Road is a 60-foot wide County highway. Mr. Lepori testified that Fairview Road is not paved the entire 60 feet width, which is common in the County. He testified that the 20 unpaved feet (ten feet each side) of the public right-of-way provide for utility installation, pipelines, and other County needs, such as sidewalks and gutters. Mr. Lepori testified and provided photographic evidence (Exhibit B) that vegetation, decorative rocks, trees, and fences are in the public right-of-way adjacent to the Property; furthermore, as discussed above, the encroachment creates a traffic hazard by limiting cross-visibility.

The County has shown by a preponderance of the evidence that vegetation, decorative rocks, trees, and fences encroach in the public right-of-way; furthermore, overgrown vegetation taller than 30 inches creates a traffic hazard in violation of California Streets and Highways Code 1480.5. Pursuant to SBCC section 1.06.030(A)(5), it is a public nuisance to maintain any premises "contrary to the provisions of any provision of this code or state law." Accordingly, the violation is a public nuisance.

Issue 2: If so, what action must be taken to correct the violation(s)?

The County stated in the Notice to Abate that all fences, walls, structures, or plantings located in the triangular area must not obstruct cross-visibility. The maximum height of all fences, walls, plantings, and structures may not be higher than 30 inches. Trees may be kept

within the triangular area; however, limbs, branches, and foliage may not hang lower than six feet, and may not create a traffic hazard. All measurements are to be taken from the lowest point of the intersecting roads.

The County stated in the Notice to Abate that objects within the public right-of-way that create a traffic hazard must be removed. The County's photographs show where survey crews marked the right-of-way along both roads (Exhibit A) with stakes tied with blue flags. A fan palm and other varieties of palm are clearly within the right-of-way along Fairview Road that must be removed; all other plants must be kept lower than 30 inches so as to not create a traffic hazard. Additionally, all fences, walls, and structures located within the right-of-way are traffic hazards and must be removed.

Ms. Taa stated they are willing to remove the obstructions as long as the County installs a safety barrier along the Property line. The Property Owners do not have the option to condition abatement on the County installing a safety barrier. The Property Owners shall abate the conditions as instructed in the Notice to Abate within ten calendar days from service of this resolution.

Issue 3: Should the administrative penalty proposed in the Notice to Abate be imposed, modified, or disapproved, in whole or in part?

The Notice to Abate proposed "an administrative penalty in the amount of One Hundred Dollars (\$100.00) per day for each day until the nuisance is fully abated."

Per SBCC section 1.06.070(B), "[i]n determining the amount of the administrative penalty, the enforcing officer, or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, duration, extent, and gravity of the violation(s), any prior history of violations, the degree of culpability, economic impact, impact of the nuisance upon the community, and any other factors as justice may require."

Ms. Taa admitted that the palm trees and other plantings were planted to provide protection from potential vehicles crashing into the Property. The Property Owners have been on notice that the violations have existed since early 2019. The violations impact every driver who enters or exits the intersection of Fairview Road and Aquistipace Road. The failure to abate the conditions have potentially disastrous consequences. Accordingly, the proposed administrative penalty is approved in whole for every day the conditions remain in violation after the ten-day abatement period expires as ordered.

Issue 4: May the enforcing officer record the Notice of Violation and Proposed Administrative Penalty (NOV) with the San Benito County Recorder in accordance with SBCC section 1.06.100?

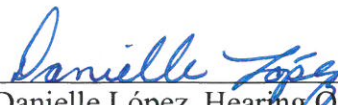
Pursuant to SBCC section 1.06.100(C)(1)(b)(3), the enforcing officer may record the Notice of Violation and proposed administrative penalty.

VIII. ORDER

Whereas the Hearing Officer has made the above findings of fact and conclusions of law pursuant to SBCC Chapter 1.06, the Hearing Officer recommends that the Board of Supervisors adopt the following order:

1. The determinations contained in the Notice to Abate Public Nuisance and Administrative Order to Show Cause and Notice of Violation and proposed Administrative Penalty (resolution) dated October 16, 2019, are affirmed.
2. The conditions described above constitute a public nuisance and are subject to abatement.
3. The Property Owners shall remove the vegetation and any other structures that are within the triangular area that are taller than 30 inches from the lowest point of the intersection at Fairview Road and Aquistipace Road and/or hang lower than 6 feet from the lowest point of intersection at Fairview Road and Aquistipace Road (SBCC section 25.29.013).
4. The Property Owners shall remove any items such as plants or other objects that are in the public right-of-way obstructing the cross-view and/or causing a traffic hazard (CA Streets and Highways Code section 1480.5 (c)).
5. If the Property Owners fail to abate the public nuisance within 10 days of service of this resolution, San Benito County may abate the nuisance conditions and the Property Owners shall be liable for the abatement costs and any administrative penalties (SBCC sections 1.06.130 and 1.06.140).
6. If the Property Owners fail to abate the nuisance conditions within the 10-day period as ordered above, an administrative penalty of one hundred dollars (\$100) per day will be applied beginning the 11th day following service of this resolution until the nuisance has been fully abated.
7. The Enforcement Office may record the NOV (SBCC section 1.06.100).
8. This resolution shall be submitted to the Board of Supervisors for review, and upon the Board affirming it, the Property Owners have ten (10) days from the date of service to abate the nuisance (SBCC section 1.06.120(B)).

Date: November 26, 2019



Danielle López, Hearing Officer
California Hearing Officers, LLP

NOW, THEREFORE, BE IT RESOLVED AND ORDERED: on this date
_____ by the Board of Supervisors of San Benito County that this Resolution No.
_____ hereby approves the Recommended Finding of Nuisance Conditions, to Impose
Administrative Penalties, and to Record a Notice of Violation at the Property located at 7380
Fairview Road, Hollister, California, 95023, APN: 016-140-0090.

Mark Medina, Dist. 1

Anthony Botelho, Dist. 2

Peter D. Hernandez, Dist. 3

Jim Gillio, Dist. 4

Jaime De La Cruz, Dist. 5

Proof of Service

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

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

On **November 26, 2019**, I served the following document(s) by email and via USPS by enclosing it in an envelope and depositing the sealed envelope with the United States Postal Service with the first-class postage fully prepaid:

RECOMMENDATION FOR FINDING OF NUISANCE CONDITIONS, TO IMPOSE ADMINISTRATIVE PENALTIES, AND TO RECORD A NOTICE OF VIOLATION

Property Owners: John Petree and Susan Petree

Occupants: John Petree and Jeanne Taa

Property Address: 7380 Fairview Road, Hollister, California

Case No.: ENF016-140-009

APN: 016-140-009

Addressed to:

Resource Management Agency
Duane Dauphinee, Chief Building Inspector
2301 Technology Parkway
Hollister, CA 95923

John Petree and Susan Petree
7380 Fairview Road
Hollister, CA 95023

Joel Ellinwood
481 Fourth Street, 2nd Floor
Hollister, CA 95023

John Petree and Jeanne Taa
7380 Fairview Road
Hollister, CA 95023

Clerk of the Board
Janet Slibsager
481 Fourth Street, 1st Floor
Hollister, CA 95023

And via Email to:

Joel Ellinwood JEllinwood@cosb.us

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



Lynette McPherson
Paralegal