

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Agricultural Commissioner *John Cash*

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE April 20, 2010

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Adopt the Recommendation of the Nuisance Abatement Hearing Board Regarding Case No. 782009-ABT at 6155 Foote Road, Ceres, California and Barnhart Road, Ceres, California

STAFF RECOMMENDATIONS:

Adopt the decision of the Nuisance Abatement Hearing Board regarding nuisances at 6155 Foote Road, Ceres, California and Barnhart Road, Ceres, California as set forth in Attachment 1.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2010-202

On motion of Supervisor O'Brien, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

This agenda item is important because it promotes a strong agricultural economy/heritage and the efficient delivery of public services, serves the public's interest, and fosters pride in our local community. The decision to be made by the Board of Supervisors is to adopt, modify, or reject the March 25, 2010 recommendation of the Nuisance Abatement Hearing Board, as presented in Attachment 1.

The properties in question are located at 6155 Foote Road, Ceres, California and Barnhart Road, Ceres, California, and are zoned A-2-40 (Exclusive Ag 40 Acre) and A-2-10 (Exclusive Ag 10 Acre) respectively. These properties consist of abandoned orchards that include nuisances such as ground squirrels, noxious weeds and insect pests which affect the surrounding agricultural properties. The Agricultural Commissioner has been attempting to work with the property owner since April 2008, in response to an initial complaint, with no satisfactory progress to date.

Should the Board decide to adopt the Nuisance Abatement Hearing Board's recommendation as detailed in Attachment 1, Sargon Yonan and Joseph Yonan, owner(s) of the property, shall abate the nuisance within two weeks of the Board of Supervisors' decision by complying with Attachment A. Should the owner(s) fail to comply within that two-week period, the County would proceed with the abatement process through forced abatement action, whereby the cost of the abatement will be charged to the owner(s). If the responsible person(s) fails to pay the cost of abatement, a Notice of Abatement Lien will be recorded against the property.

POLICY ISSUE:

The Board should decide if accepting, modifying or rejecting the written decision as presented in the Decision of Abatement Hearing Case No. 782009-ABT (Attachment 1) is consistent with the Board's priorities of A strong agricultural economy/heritage and the Efficient delivery of public services.

STAFFING IMPACT:

There is no staffing impact associated with this request.

CONTACT PERSON:

Gary Caseri, Agricultural Commissioner. Telephone: 209-525-4730.



NUISANCE ABATEMENT HEARING BOARD

RECOMMENDED DECISION

IN RE: 6155 Foote Road, Ceres, CA 95307

Barnhart Rd., Ceres, CA 95307

Abatement Hearing No. Case# 782009-ABT

The above referenced matter came before the Nuisance Abatement Hearing Board for hearing on March 25, 2010. Upon consideration of oral testimony and documentary evidence presented at the hearing, the Nuisance Abatement Board makes the following findings of fact and conclusions:

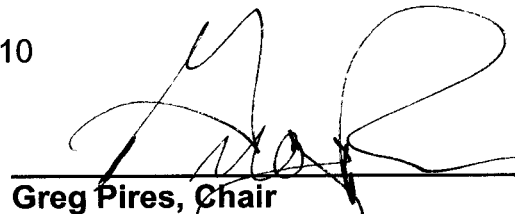
1. The property located at 6155 Foote Road, Barnhart Rd., Ceres, CA, in the unincorporated area of Stanislaus County, California, also identified as Assessor's Parcel Number 045-047-012, is zoned A-2-40, Exclusive Ag 40 Acre; and Assessor's Parcel Number 045-045-013, is zoned A-2-10, Exclusive Ag 10 Acre.
2. County Staff confirmed the existence of and presented evidence of violations of Stanislaus County Codes, (as listed in the County Code(s) or interpreted or determined to violate County Code(s)) occurring on the property, as noted in "Attachment A."
3. All interested parties were served a Notice and Order to Abate pursuant to Stanislaus County Code Section 2.92.030, describing the conditions or use of the property that constitutes the violations and ordering abatement of those conditions.
4. County staff has attempted to obtain voluntary compliance by the interested parties, and the interested parties have had significant and reasonable time to correct all violations but have refused and/or failed to meet the deadlines prescribed by Notice.
5. The owners have the legal responsibility for maintenance of the property in conformance with the applicable law, ordinance and rules, including abatement of all violations and compliance with all orders of the County.
6. The interested parties were served proper Notice of Hearing to Abate Nuisance pursuant to Stanislaus County Code Section 2.92.070.
7. Based on the evidence and testimony presented at the hearing, which is incorporated herein by reference, there is substantial evidence that violations of the Stanislaus County Code, as set forth in the staff report for the matter, still exists on the property.
8. Pursuant to Stanislaus County Code Section 2.92.010, the continuing violations that exist on the property constitute a public nuisance.

The Nuisance Abatement hearing Board further recommends the Board of Supervisors adopt the following decision:

- Approve Staff's recommendation and determine the use of the property described as a nuisance/abandoned orchard in the staff report is a violation of Stanislaus County Code Section 2.92.010.
1. Order the owner and interested parties to abate the nuisance on the property within two weeks from the date of the Board decision by correcting the condition or use of the property as set forth in the staff report on this matter.
 2. Authorize the County to abate the nuisance and to charge the costs of the abatement to the County if the Owners or other interested parties do not abate the nuisance within the specified time period.
 3. Authorize County staff, pursuant to Stanislaus County Code Section 2.92.070, to dispose of any material, equipment, vehicles or other personal property removed from the property to abate a nuisance in any manner authorized by law, and to charge the costs of disposal to the owners and/or interested parties as part of the cost of abatement.
 4. Authorize County staff to charge the owners and/or interested parties for County staff time incurred to investigate through the Abatement Hearing.
 5. Order a Notice of Abatement Lien be recorded against the property if the owners and/or interested parties fail to pay the costs demanded by the County.
- Deny Staff's recommendation and determine the use of the property described as a nuisance/abandoned orchard in the staff report is not a violation of Stanislaus County Code Section 2.92.010.

NOW THEREFORE, the Nuisance Abatement Hearing Board orders the Director to forward these findings and conclusions and its recommended decision to the Stanislaus County Board of Supervisors within 30 days.

Dated: March 25, 2010



Greg Pires, Chair
Stanislaus County Nuisance Abatement Hearing Board

It should be noted that on APR 20 2010 the Board of Supervisors will hear this matter as a consent item.



AGRICULTURAL COMMISSIONER'S OFFICE AND SEALER OF WEIGHTS & MEASURES

Gary Caseri
Agricultural Commissioner/Sealer

3800 Cornucopia Way, Suite B
Modesto, California 95358
Phone: 209.525.4730 Fax: 209.525.4790

NOTICE AND ORDER TO ABATE NUISANCE

DATE: January 4, 2010

CASE# 782009-ABT

OWNER/LEASEE: Sargon Yonan and Joseph Yonan

ADDRESS: 6155 Foote Road, Ceres, CA 95307

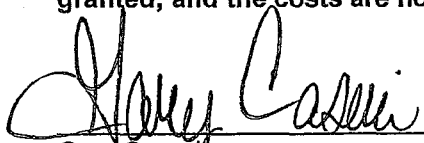
You are hereby notified that the property hereinafter described is severely infested with noxious weeds and other pests, specifically ground squirrels and insect pests; that said manifestation (see Report of Inspections dated 6/19/09 and 12/21/09, attached hereto) is of such nature and magnitude as to constitute a "public nuisance" (as defined in, but not limited to, Section 5551 of the California Food and Agricultural Code; Sections 3479 and 3480 of the Civil Code; and Section 372 and 373a of the Penal Code and Section 9.32.030 of the Stanislaus County Code); that the maintenance of such public nuisance is unlawful under California Food and Agricultural Code Section 5553 and Penal Code Section 372. Stanislaus County Ordinance Code 292.010 through 2.92.130 provides for nuisance remedy.

The locations and description of the properties on which said public nuisance exists is as follows:

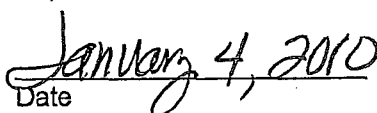
1. Southwest corner of Keyes Road and Foote Road
Section 31 Township 04S Range 10E
Assessor's Parcel Number: 045-047-012
Crops or plants grown on said property:
Crop: Almond Orchard (abandoned) Acreage: 9.2
2. Northwest corner of Keyes Road and Foote Road
Section 31 Township 04S Range 10E
Assessor's Parcel Number: 045-045-013
Crops or plants grown on said property: Almond Orchard (abandoned)
Crop: Almond Orchard (abandoned) Acreage: 3.81

You are hereby further notified and ordered that said public nuisance must be abated on or before March 5, 2010 (60 days from date of notice), by removal or destruction of all nuisance pests on said properties. "Abatement" means the removal of dead and dying almond trees and parts thereof, removal of weeds and control or eradication of ground squirrels.

A re-inspection will be made again in 60 days from the date of this notice. If not abated, this matter will be submitted for Abatement pursuant to Stanislaus County Code 2.92.010-2.92.130 before an Abatement Hearing Board. The County will seek an order to abate the nuisance. If granted, and the costs are not paid, record a lien for such costs against said properties.



Gary Caseri
Agricultural Commissioner/Sealer



Date

California Food and Agricultural Code Section 5004 and 5006 define "noxious weed" and "pest", respectively.

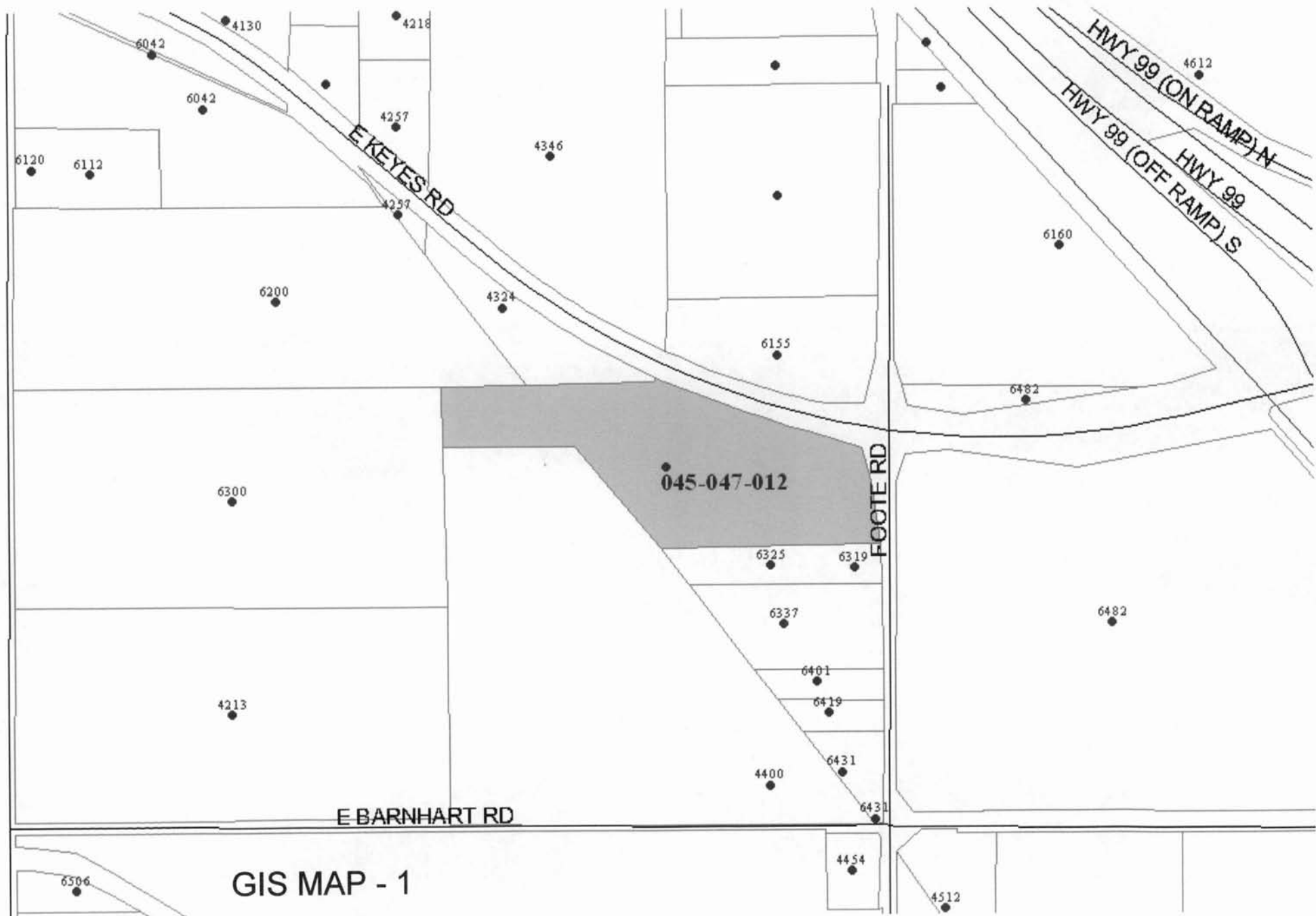


NUISANCE ABATEMENT
Case# 782009-ABT

6155 Foote Road
Barnhart Road
Ceres, CA 95307

Joe Duchala
Agricultural Inspector III

Gary Caseri
Agricultural Commissioner



GIS MAP - 1



GIS MAP - 2

ABATEMENT CHRONOLOGY 2008

April 4, 2008 – Complaint Received by Agricultural Commissioner
Two parcels contain dead and dying almond trees, ground squirrels, noxious weeds and uncontrolled insect pests. Unable to contact property owner, Mr. Sargon Yonan, after several attempts to visit the property.

May 29, 2008 - Letter from Ag Commissioner requesting abatement of ground squirrels sent to property owner Sargon Yonan.

November 25, 2008 - Letter from Ag Commissioner request to abate nuisance in 60 days, sent to property owner, Mr. Sargon Yonan.

December 5, 2008 - Ag Commissioner contacted by Property Owner, stating his intention to abate the nuisance. Ag Commissioner again outlined the steps necessary to effectively abate the nuisance.

June 11, 2008 - Mr Yonan contacted Ag Inspector Joe Duchala, stating he was “moving on it”, in reference to the nuisance, and requested Mr. Duchala visit the property and witness the progress.

ABATEMENT CHRONOLOGY 2010

January 4, 2010 - Formal Notice and Order to Abate Nuisance issued. Notices posted on property.

January 6, 2010 - Notice and Order to Abate sent via certified mail to Sargon Yonan, returned "unclaimed".

March 5, 2010 - Field/site inspection by Inspector Joe Duchala indicated no significant change in status of abandoned orchard. There was some minor limb removal and discing in both properties.

March 15, 2010 - Formal abatement proceedings initiated pursuant to the Stanislaus County Code and Nuisance Abatement Hearing Board.

March 17/18, 2010 – Property photos taken

March 25, 2010 – Property photos taken

EXHIBIT A – PHOTOGRAPH 1

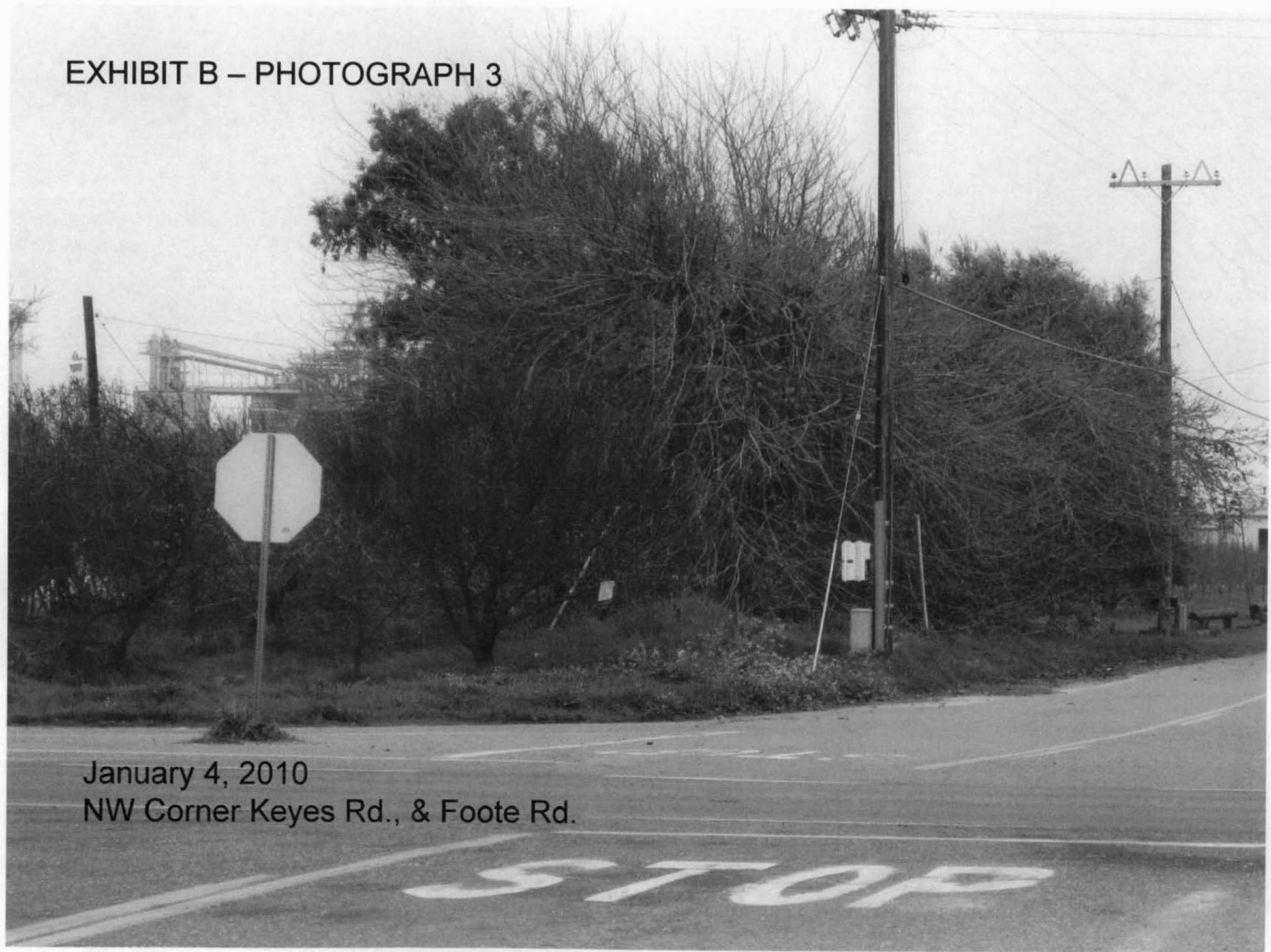


EXHIBIT A – PHOTOGRAPH 2



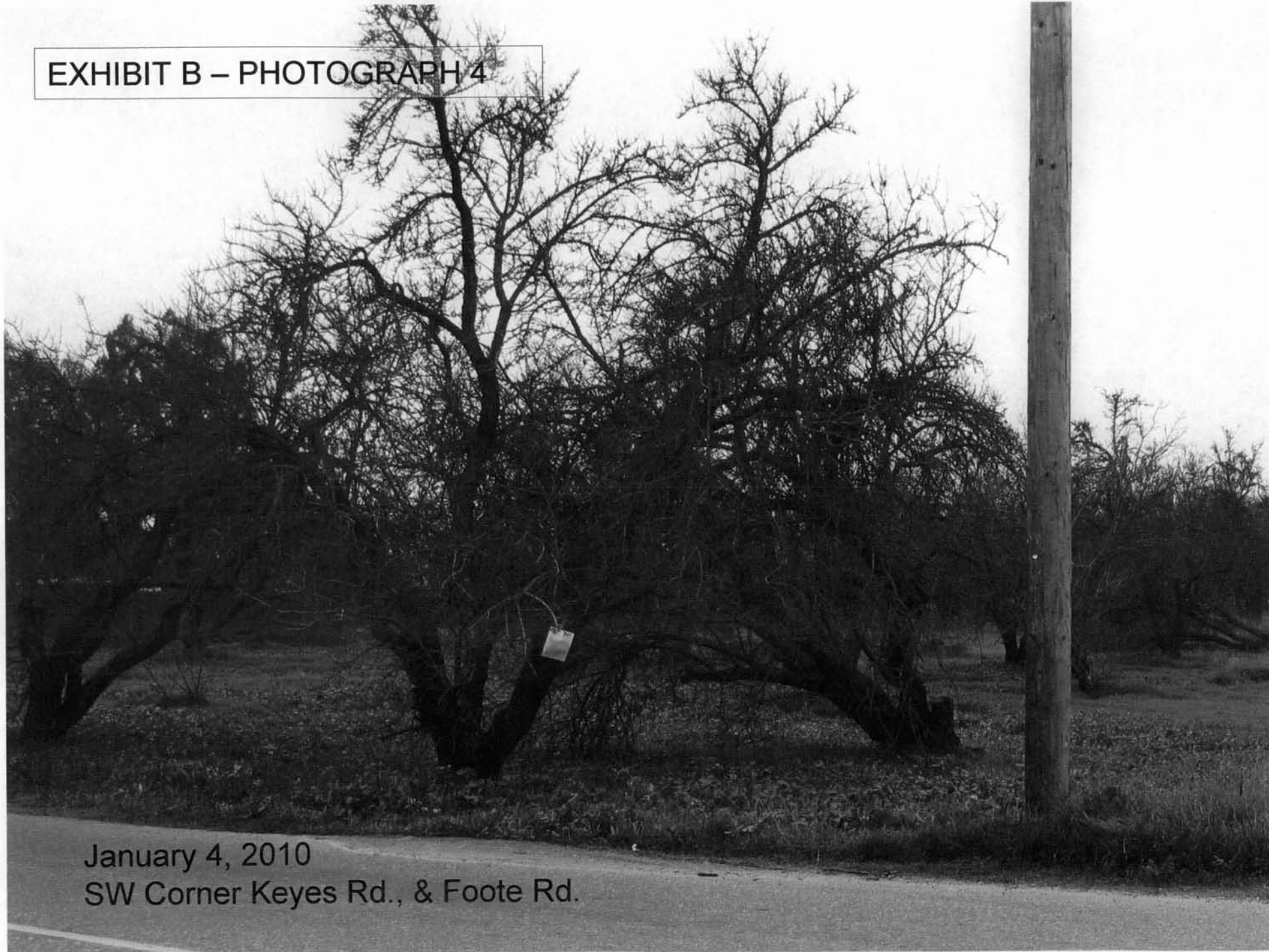
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EXHIBIT B – PHOTOGRAPH 3



January 4, 2010
NW Corner Keyes Rd., & Foote Rd.

EXHIBIT B – PHOTOGRAPH 4




January 4, 2010
SW Corner Keyes Rd., & Foote Rd.

March 17, 2010



March 18, 2010





March 18, 2010



March 18, 2010



March 18, 2010

March 18, 2010





March 18, 2010

March 25, 2010



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March 25, 2010



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March 25, 2010

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Abatement Presentation

Ag Commissioner's Office