

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Department of Environmental Resources

BOARD AGENDA # B-4

Urgent

Routine

AGENDA DATE November 6, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Continuation of the Approval to Adopt the Nuisance Abatement Hearing Board's Recommendation and Find that the Property Located at 1301/1113 Washington Road, near Turlock, is a Nuisance

STAFF RECOMMENDATIONS:

1. Adopt the Nuisance Abatement Hearing Board's recommendation and find that the property commonly known as 1301 & 1113 Washington Road, and 4800 Fulkerth Road, near the City of Turlock, in the unincorporated area of Stanislaus County, California, Assessor Parcel Nos. 023-039-016, 023-039-017, 023-039-018 (the "Property"), contains non-permitted land uses, illegally built structures, and illegal grading activities in violation of California Building Code Title 24, section 105, and Stanislaus County Code sections 21.20.020, 16.05.020, and 14.14.120, and constitutes a nuisance as defined in 2.92.010.

(Continued on Page 2)

FISCAL IMPACT:

Staff from the Department of Environmental Resources (DER), the Public Works Department, and the Planning Department have assisted with the subject Nuisance Abatement process. Total costs to date for DER and Public Works are estimated to be \$3,300. The Planning Department will recover costs through the application process for the various permits (land use and building) needing to be obtained to bring the property into compliance. If a forced abatement is necessary, the costs will be charged to the property owners and if the responsible person fails to pay the cost of abatement, a Notice of Abatement Lien will be recorded against the property.

BOARD ACTION AS FOLLOWS:

No. 2012-555

On motion of Supervisor Chiesa, Seconded by Supervisor Withdraw
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withdraw, Monteith, De Martini and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

MOTION: Amended Staff Recommendation No. 2(b) to read: "(b) delay implementation of the immediate abatement action per (2a), provided that the owners agree within two weeks to perform the actions set forth in an Indemnity Agreement"; amended the Indemnity Agreement to add the phrase "with no extensions" at the end of Section 3.2(a); and, approved Staff Recommendations 1 through 3 as amended

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS: Continued

2. Direct County staff to implement the following abatement actions:
 - a) Take immediate action to abate any health and safety concerns at the Property, and hold in abeyance the abatement of any illegal land uses for which the Property owner is actively seeking a land use permit; and
 - b) Delay implementation of the immediate abatement action outlined in item (2a), provided that the owners agree to perform the actions within two weeks setforth in an Indemnity Agreement.
3. Approve the Indemnity Agreement between Stanislaus County and Dan and Lori Avila in substantially the form setforth in Attachment A, and authorize the Interim Director of Department of Environmental Resources to negotiate, finalize and sign the Agreement.

DISCUSSION:

On October 30, 2012, the Board of Supervisors considered adopting the September 27, 2012, Nuisance Abatement Hearing Board recommendation to declare the properties located at 1301 & 1113 Washington Road, and 4800 Fulkerth Road, near the City of Turlock, in the unincorporated area of Stanislaus County, California, Assessor Parcel Nos. 023-039-016, 023-039-017, 023-039-018, a nuisance for various non-permitted land uses, illegally built structures and illegal grading activities as setforth in Attachment B (October 30, 2012 Staff Report). Following discussion, the Board directed that staff evaluate the possibility of developing and entering into an Indemnity Agreement between the County and Dan and Lori Avila, and bring the item back to the Board for reconsideration at its next regularly scheduled meeting.

Following the Board's direction, County staff worked collectively to develop an Indemnity Agreement (Agreement) which is included as Attachment A. The Agreement includes a timeline that identifies specific actions which must be completed by the property owner(s) by dates certain in exchange for the County's agreement to hold in abeyance any action in the Courts to abate the subject health and safety concerns associated with the illegal land uses during the Agreement term. The Board may adopt, modify, or reject the staff recommendations included herein.

At the hearing on October 30, 2012, Mr. Avila asserted that he did not receive notice from the Department of Planning and Community Development that Use Permit Application No. 2011-06 would be removed as an active file and a new application would be required after June 8, 2012. A copy of the letter sent to Mr. Avila is attached as Attachment C. Staff notes that pursuant to Evidence Code section 641, "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail."

Continuation of the Approval to Adopt the Nuisance Abatement Hearing Board's Recommendation and Find that the Property Located at 1301/1113 Washington Road, near Turlock, is a Nuisance
Page 3

POLICY ISSUE:

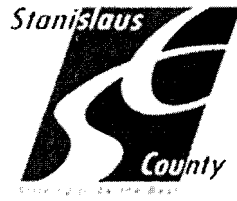
The recommended actions support the Board's priorities of A Safe Community, A Healthy Community, and the Efficient Delivery of Public Services by improving the quality of life and protecting the health and safety of the community.

STAFFING IMPACTS:

There is no staffing impact anticipated as a result of this action.

CONTACT PERSONS:

Jami Aggers, Interim Director of Environmental Resources. Telephone: 209-525-6770
Angela Freitas, Planning and Community Development Director. Telephone: 525-6330



Attachment A

Indemnity Agreement

**STANISLAUS COUNTY
INDEMNITY AGREEMENT**

This Agreement is made and entered into on November 6, 2012, (the "Effective Date") by and between the County of Stanislaus, a political subdivision of the State of California, ("County"), and Dan J. Avila and Lori L. Avila, ("Owners").

RECITALS

WHEREAS, Dan J. Avila and Lori L. Avila are the current owners of record of the property commonly known as 1301 & 1113 Washington Road, and 4800 Fulkerth Road, near the City of Turlock, in the unincorporated area of Stanislaus County, California, Assessor Parcel Nos. 023-039-016, 023-039-017, 023-039-018 (the "Property");

WHEREAS, the Property is zoned A-2-40, General Agriculture District;

WHEREAS, beginning as of at least October 1, 2010, and continuing Owners used the Property for receiving, sorting, packing, and shipping (hereinafter collectively referred to as "Handle" or "Handling") of watermelons and sweet potatoes grown off-site and as a produce stand to sell watermelons;

WHEREAS, under Stanislaus County Code Chapter 21.20, these uses are only permitted in the A-2 zone upon first securing a use permit;

WHEREAS, as of at least August 1, 2010, Owners performed construction and improvements upon the Property and their workers occupy structures constructed without first obtaining building permits in violation of California Building Code, Title 24, section 105;

WHEREAS, as of at least December 1, 2010, Owners performed grading upon the Property in violation of County Code section 14.14.120, and the California 2009-0009-DWQ Construction General Permit;

WHEREAS, on August 29, 2012, County issued a Notice and Order to Abate (**Exhibit 1**) ordering Owners to cease the non-permitted use and to abate the building and grading violations;

WHEREAS, the Nuisance Abatement Hearing Board (NAHB) held a hearing on September 27, 2012, regarding the above violation, at the conclusion of which the NAHB recommended that the Board of Supervisors declare the property a nuisance and order abatement;

WHEREAS, on September 25, 2012, Owners submitted an application for a Conditional Use Permit to establish an agricultural warehouse for the Handling of watermelons and sweet potatoes and a staff approval permit application for a produce stand and have submitted a building permit application for the single family dwelling converted conversion to office;

WHEREAS, the Nuisance Abatement Hearing Board's recommendation to find the Property a Nuisance was heard by the County's Board of Supervisors on October 30, and continuing to November 6, 2012; that Board found true the above violations of the County Code and that the

violations constitute a nuisance; and

WHEREAS, the County agrees, without prejudice to its ability to later seek all available penalties and remedies during the term of this Agreement, to allow Owners the opportunity to diligently pursue the Use Permit while continuing to Handle sweet potatoes through the end of sweet potatoes season and Owners agree to immediately abate the health and safety issues identified herein below.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 INCORPORATION OF THE RECITALS

1.1. Parties admit and agree that the foregoing recitals are true and correct and by this reference said recitals are incorporated herein as though set forth in full.

2.0 TERM OF AGREEMENT AND TERMINATION

2.1. Term. This Agreement shall commence on the date set forth above and continue until: (a) Owners' use permit application is approved or denied, (b) July 1, 2013, or (c) Owners failure to comply with the terms of this Agreement, whichever occurs first.

3.0 ABATEMENT

3.1. County Agrees, without prejudice to its ability to later seek any and all penalties and remedies otherwise available during the term of this Agreement, to hold in abeyance any action in the Courts to abate the illegal land use identified above during the Agreement Term.

3.2. Owners agree to complete:

- (a) The actions described in the attached **Exhibit 2** no later than the date specified therein with no extensions; and
- (b) Any other action the County orders to be completed in writing by the date identified therein.

3.3. Owners acknowledge and agree that nothing in this Agreement precludes the County from immediately taking action to abate any violation of any State or Federal law including but not limited to, the California Building Code, California Housing Code, the California 2009-0009-DWQ Construction General Permit, or the Federal Porter-Cologne Clean Water Act present upon the Property. Owners acknowledge and agree that the County may take all appropriate legal action to abate any violation of law occurring upon the Property that in the opinion of the County constitutes an imminent health hazard or a significant threat or danger to the health of the County's residents.

3.4. Owners acknowledge and agree that nothing in this Agreement precludes any Federal, State, or County agency or department from assessing penalties, issuing orders, or taking any other actions for violations of laws or orders relating to matters or conditions

existing prior to or concurrently with the commencement date of this agreement.

3.5. Owners acknowledge and agree that nothing in this Agreement precludes any Federal, State, or County agency or department from assessing new penalties, issuing new orders, or taking any other actions for violations of laws or orders that occur after the date this Agreement, including new violations relating to matters or conditions existing prior to or concurrently with the commencement date of this agreement.

3.6. Owners acknowledge and agree that nothing in this Agreement shall be construed as an approval of any particular land use nor shall it create an expectation that any particular land use will be approved. Neither Owners performance under this agreement, nor any sums spent by Owners in performing work required under this Agreement, nor any sums spent in preparation to obtain a building permit, nor the issuance of any building permit, shall create a vested right to proceed with any particular development plans.

4.0 USE PERMIT

4.1. Owners agree to exercise good faith and make all commercially reasonable efforts to complete any required studies and provide any additional information required to be presented to the Planning Commission for consideration of their use permit application by July 1, 2013.

5.0 COUNTY RIGHTS OF ACCESS

5.1. Owners shall permit County through its officers, agents, or employees, during normal business hours, and accompanied by a representative of Owner, to enter upon the Property (except in the case of emergency, in which case County is authorized to enter the Property upon such notice as may be practical under the circumstances) (a) to inspect the Property to determine that the same is in conformity with all laws and the requirements of this Agreement, and (b) Upon the Owners obtaining the Use Permit referred to herein, to inspect the ongoing use of the Property to determine that the same is in conformance with the conditions of the Use Permit.

6.0 COSTS OF ENFORCEMENT

6.1. Owners agree to pay the County's costs of enforcement incurred to date in the amount of \$3,300, within 10 days of the Effective Date of this Agreement.

7.0 INSURANCE REQUIREMENTS

7.1. Minimum Scope and Limits of Insurance. Owners, at their sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Owners normally carry insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this

Agreement:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Owners under this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.

7.2. Endorsements. The Owners shall obtain a specific endorsement to all required insurance policies, except Worker's Compensation, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the performance of this Agreement, but, to the extent that any insurance issued to Owners in effect after the expiration of three years provides additional insured coverage to parties Owners agreed in writing to name as an additional insured, then Owners shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Owners have regarding:

- (a) Liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Owners, including the insured's general supervision of its subcontractors;
- (b) Ongoing services, products and completed operations of the Owners;
- (c) Premises owned, occupied or used by the Owners; and
- (d) Automobiles owned, leased, hired or borrowed by the Owners.
- (e) For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County, its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Owners.

7.3. Deductibles: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Owners shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Owners agree that they will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Owners' defense and indemnification obligations as set forth in this Agreement.

7.4. Certificates of Insurance: At least ten (10) days prior to the date the Owners begin performance of their obligations under this Agreement, Owners shall furnish County with

certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Owners. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

7.5. Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Owners and Owners' officers, employees, agents, representatives or subcontractors for payments of damages to persons or property.

7.6. Primary Insurance: The Owners' insurance coverage shall be primary insurance regarding the County of Stanislaus, its officers, directors, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the county of stanislaus, its officers, directors, officials, agents, employees and volunteers shall be excess of the Owners' insurance and shall not contribute with Owners' insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees. The Owners' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Agreement.

7.7. Cancellation of Insurance: Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days prior written notice has been given to County. The Owners shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

7.8. California Admitted Insurer: Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

8.0 INDEMNIFICATION

8.1. Indemnification: Owners shall defend (with counsel approved by County), indemnify and hold harmless the County from and against any and all present and future claims for damage arising from or in connection with Owners' failure to comply with all applicable laws and regulations relating to the Property, including, without limitation, all applicable federal and state labor laws and standards, or in any other manner relating to the Property, or Owners' activities or performance under this Agreement whether such activities or performance be by

Owners or by anyone directly or indirectly employed or contracted with by Owners and whether such claim shall accrue or be discovered before or after termination of this Agreement. Owners' indemnity shall not extend to claims resulting solely from County's gross negligence or willful misconduct.

8.2. Duty to Defend: The duty of Owners to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and at Owners' own cost and expense and the duty to defend as set forth in Section 2778 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that County's caused or contributed to the Losses.

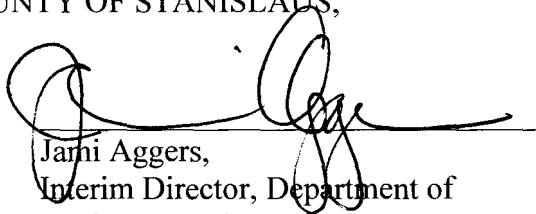
9.0 SURVIVAL

9.1. Upon the expiration or termination of this Agreement, the obligations of the parties to each other shall continue under the provisions of paragraphs 5, 6, 7, and 8 above, which paragraphs shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:


COUNTY OF STANISLAUS,

By:

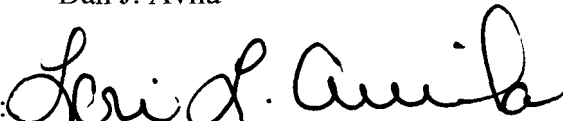

Jami Aggers,
Interim Director, Department of
Environmental Resources

OWNERS

By:


Dan J. Avila


By:


Lori L. Avila

APPROVED AS TO FORM:

John R. Doering
County Counsel

By:


Thomas E. Boze
Deputy County Counsel



Recording Requested By
And For The Benefit Of:
and
When Recorded Mail To:

County of Stanislaus
Environmental Resources
Attn: Code Enforcement Unit
3800 Cornucopia Way, #C
Modesto, CA 95358-9492

Space Above For Recorder's Use

NOTICE AND ORDER TO ABATE

TO: DAN J AVILA & LORI L AVILA
2718 ROBERTS RD
CERES, CA 95307

RE: File No. DER CE 12-0134
Assessor's Parcel No. 023-039-017 & 023-039-018
Address: 1301 & 1113 WASHINGTON AVE
TURLOCK, CA 95380

NOTICE IS HEREBY GIVEN, pursuant to Stanislaus County Code § 2.92.030, that conditions described on **Attachment A** which, by this reference is made a part hereof, exist on the above-referenced real property in the County of Stanislaus, State of California, which conditions are in violation of Stanislaus County Code. These conditions exist to an extent that endangers, the life, health, property, safety or welfare of the public and, as such, constitute a nuisance under Stanislaus County Code § 2.92.010.

YOU ARE HEREBY ORDERED to commence the abatement of the aforementioned nuisance and to thereafter diligently prosecute and complete such abatement within the time frames specified on **Attachments A, B & C**. If corrective action is not undertaken and diligently pursued within the time allotted, then the responsible County department may (1) impose an administrative penalty (§ 2.92.060); (2) initiate abatement proceedings pursuant to Government Code sections 25845 or 26528 (§ 2.92.070); (3) commence criminal prosecution (§ 2.92.080); (4) file a civil lawsuit for injunctive relief (§ 2.92.090); and/or (5) initiate any other remedy available under the law (§ 2.92.100).

Pursuant to Stanislaus County Code § 2.92.070 you have the right to request a hearing and be heard before the Nuisance Abatement Hearing Board to dispute the violations contained on **Attachment A, B & C**. Requests can be made in person or by calling our office.


In the event that abatement proceedings are initiated, all costs incurred by the County to abate the nuisance will be charged to the owner of the property and shall become a lien against the property under Government Code 25845.

In the event that an administrative citation is issued, the fine or penalty imposed, as confirmed by the Board of Supervisors, shall become a lien against the property under Stanislaus County Code § 2.92.060 E.

For further information concerning this Notice, please contact the Department of Environmental Resources, 3800 Cornucopia Way, Suite C, Modesto, California 95358-9492 or call (209) 525-6700.

Dated: August 29, 2012

DEPARTMENT OF ENVIRONMENTAL RESOURCES

By 
Ginny Thomas
Code Enforcement Unit

Attachment "A"

RE: File Number CE 12-0134

Assessor's Parcel Number: 023-039-017 & 023-039-018

Address: 1301 & 1113 WASHINGTON AVE, TURLOCK, CA.

Inspection of the above reference property revealed the following violations of Stanislaus County Code §2.92.010:

Code Section Violation:	Corrective Action:	Compliance Date:
§21.20.020 and §21.16.040 of the Stanislaus County Code. Non-Permitted Land Use (the processing, including receiving, sorting, packing and shipping, of produce).	Immediately discontinuing the non-permitted use (the processing, including receiving, sorting, packing and shipping, of produce). For information regarding the allowable uses on the property in question, you may consult Stanislaus County Planning and Community Development, located at 1010 10th Street, 3rd Floor, Modesto (525-6330).	09/13/12

Attachments: B & C
Stanislaus County Codes

cc: Supervisor Vito Chiesa – District 2
Angela Freitas – Interim Planning Director, Department of Planning and Community Development
David A. Leamon – PE, Senior Civil Engineer, Stanislaus County Department of Public Works
Steve Treat – Chief Building Official, Department of Planning and Community Development
Tom E. Boze – Deputy County Counsel, Stanislaus County Counsel



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Building Permits Division

1010 10TH Street, Suite 3400, Modesto, CA 95354
Phone: 209.525.6557 Fax: 209.525.7759

Attachment "B"

Case Number SWO2012-00031
SWO2012-00032

Assessor's Parcel Number: 023-039-017 & 023-039-018
Address: 1113 & 1301 Washington Ave, Turlock, CA

An inspection of the above referenced property revealed the following violations of the Stanislaus County Code Title 16, Chapter 16.05.020, Section 105.1 and 2010 California Building Code, Chapter 1 Administration, Section 105 Building Permits required for:

Construction of New Agricultural Structure, Remodel, Addition and Change of Occupancy to an Existing Agricultural Structure (Redwood Barn) and Change of Occupancy of Single Family Dwelling to Office and Sales establishment.

Corrective Action:

1. Immediately discontinue use of illegally built structures referenced above;
2. Submit Construction documents to complete process to obtain Building Permits from Stanislaus County, Planning and Community Development Department, Building Permits Division within 30 days of this notice;
3. Demolish structures and return existing structures to original state and use. A Demolition permit is required.

For further information concerning this Notice, please contact the Building Permits Division between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday at (209) 525-6557

Sincerely,

Steve Treat
Chief Building Official
Stanislaus County



DEPARTMENT OF PUBLIC WORKS

Matt Machado, PE
Director

Laurie Barton, PE
Deputy Director, Engineering/Operations

Diane Haugh
Assistant Director, Business/Finance

Attachment "C"

1716 Morgan Road, Modesto, CA 95358
Phone: 209.525.4130 Fax: 209.541.2505

www.stancounty.com/publicworks

August 29, 2012

Mr. Dan Avila
2718 Roberts Road
Ceres, CA 95307

Re: **2nd Notice of Violation for County Code Section 14.14.120**
Grading Permit for 1113 and 1301 N. Washington Road (APN 023-039-018 and 017), Turlock, CA

Dear Mr. Avila:

On July 28, 2012, we sent you notice that certain grading activities on your property are in violation of County Code section 14.14.120, the California 2009-0009-DWQ Construction General Permit (CGP) and possible Federal Porter-Cologne Clean Water Act violations. In that notice we informed you of specified actions that you must take to comply with the law. As of today's date, you continue to be in violation.

No later than September 11, 2012, you must provide a grading plan, prepare a SWPPP and file a Notice of Intent in order to obtain a Waste Discharge Identification Number (WDID). If you fail to comply, this enforcement action will be referred to the State. The State has the power to fine a minimum of \$3000 per day and they will consider economic benefit of not complying with State Law as an additional part of the fine.

Please contact me at the number listed above.

Sincerely,

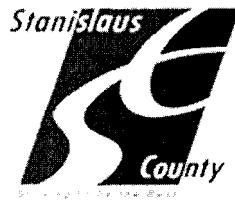
David A. Leamon, PE
Senior Civil Engineer

cc: Keith Boggs, Assistant Executive Officer
Thomas Boze, Deputy County Counsel
Angela Freitas, Interim Planning and Community Development Director
Matt Machado, Public Works Director

EXHIBIT 2
To
Indemnity Agreement
Dated November 6, 2012

Owners agree to complete the following on or before the date set forth below:

1. November 9, 2012:
 - a. Obtain an encroachment permit for new driveway on Fulkerth Road; and
 - b. Submit a Dust Control Mitigation Plan (including any carry-out/track-out onto public right of ways) to Stanislaus County Planning Department.
2. November 16, 2012:
 - a. Construct a new driveway on Fulkerth Road as provided in the encroachment permit;
 - b. Abandon the existing driveway on Fulkerth Road;
 - c. Abandon the exiting driveway on Washington Road (except for emergency vehicle use only);
 - d. Fully implement the Dust Control Mitigation Plan; and
 - e. Apply for building permits for the new steel building (roof only) and converted milk barn.
3. November 30, 2012:
 - a. Submit an Erosion Control Plan to Stanislaus County Department of Public Works;
4. December 14, 2012:
 - a. Fully implement the Erosion Control Plan;
5. February 1, 2013:
 - a. Address all County plan check letters/requests for information/requests for revised plans in order to have permits ready to be issued by this date, pending approval of the Use Permit Application submitted on September 25, 2012, for all of the following structures:
 - i. Single-family dwelling to office conversion
 - ii. Agricultural barn addition and remodel
 - iii. New steel building (roof only) construction
 - iv. Milk barn conversion



Attachment B
Staff Report
October 30, 2012

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Department of Environmental Resources

BOARD AGENDA # *B-4

Urgent

Routine

AGENDA DATE October 30, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Adopt the Nuisance Abatement Hearing Board's Recommendation and Find that the Property Located at 1301/1113 Washington Road, near Turlock, is a Nuisance

STAFF RECOMMENDATIONS:

1. Adopt the Nuisance Abatement Hearing Board's recommendation and find that the property located at 1301/1113 Washington Road, near Turlock, contains non-permitted land uses, illegally built structures and illegal grading activities in violation of California Building Code Title 24, section 105, and Stanislaus County Code sections 21.20.020, 16.05.020, and 14.14.120, and constitutes a nuisance as defined in 2.92.010.
2. Direct County staff to take immediate action to abate any health and safety concerns, and hold in abeyance the abatement of any illegal land uses for which the property owner is actively seeking a land use permit.

FISCAL IMPACT:

Staff from the Department of Environmental Resources (DER), Public Works Department, and the Planning Department have assisted with the subject Nuisance Abatement process. Total costs to date for DER and Public Works are estimated to be \$3,300. The Planning Department will recover costs through the application process for the various permits (land use and building) needing to be obtained to bring the property into compliance. If a forced abatement is necessary, the costs will be charged to the property owners and if the responsible person fails to pay the cost of abatement, a Notice of Abatement Lien will be recorded against the property.

BOARD ACTION AS FOLLOWS:

No. 2012-539

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

This Item was removed from the consent calendar for discussion and consideration; and, continued to the November 6, 2012 meeting

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

The Code Enforcement Unit responds to complaints throughout the unincorporated area of the County and attempts to gain voluntary compliance through education and personal contact by working with property owners and those persons responsible for creating nuisances. Compliance efforts include issuing Notice and Orders to Abate, conducting inspections, granting extension requests, issuing administrative citations, recording Notices of Non-compliance with the Clerk-Recorder's Office, presenting cases before the Nuisance Abatement Hearing Board and the Board of Supervisors, obtaining inspection warrants, and conducting forced clean-ups.

On June 29, 2012, in response to a complaint regarding illegal construction activities and a change of occupancy of a single family dwelling, the Building Division of the Planning Department conducted an on-site investigation. The investigation revealed an existing agricultural barn addition and remodel, construction of a new steel building for agricultural storage located at 1301 Washington Road, and a change of occupancy from a single family dwelling to office/sales located at 1113 Washington Road. A Stop Work Order was immediately placed on the structures and occupants were informed of the action.

On July 5, 2012, in response to a complaint regarding the operation of a non-permitted use and non-permitted construction and grading, Code Enforcement staff conducted an inspection at 1301/1113 Washington Road, and verified the non-permitted land use and processing activities including receiving, sorting, packing, and shipping of produce. Mr. Avila was directed to contact the Planning Department to obtain information about applying for a Use Permit for the business on his properties.

On July 18, 2012, a meeting was held with the owner, Mr. Dan Avila, and representatives from the Departments of Environmental Resources, Planning, Public Works, and County Counsel, and the Board of Supervisor's office. The Planning Department advised Mr. Avila to cease his business operation immediately. He was told he could resume his operation after obtaining a valid Use Permit and was advised it could take up to six months to finalize. Mr. Avila was reminded that he had several non-permitted buildings that were potential safety issues for his employees. The Public Works Department explained the violations of encroachment, illegal grading, and traffic flow on Washington Road. Mr. Avila stated he would cease his operation by transferring the watermelons to another location and apply for a Use Permit. Mr. Avila stated it could take a while to relocate the sweet potatoes. At this meeting Mr. Avila was personally served with a letter stating there would be a disconnection of electrical service serving the redwood barn on August 3, 2012, due to the addition and renovation/remodel to the existing redwood barn.

On July 20, 2012, in response to a complaint regarding illegal grading activities the Department of Public Works sent a notice to the property owner that certain grading activities were in violation of the Stanislaus County Code, the California 2009-0009-DWQ Construction General Permit, and possible Porter-Cologne Water Quality Act violations. Mr. Avila was informed that he needed to implement the requirements of the California Construction General

Permit immediately. This would require the applicant to enlist the services of a qualified engineer to prepare a Storm Water Pollution Prevention Plan.

On July 23, 2012, a letter was sent to property owners Dan and Lori Avila regarding the non-permitted activities on 1301/1113 Washington Road. The letter included the following actions they were required to take immediately: 1) ceasing the processing of produce including watermelons grown off site (including receiving, sorting, packing, and shipping); 2) ceasing on-site sales of any produce, including watermelons, grown on or off-site; 3) returning to a condition appropriate for crop production the areas which have been graded for loading docks and truck parking; and 4) completing the applications necessary to obtain building permits for all non-permitted additions, modifications, and non-permitted construction.

On July 24, 2012, DER staff observed and took photos of the properties from the County right-of-way. The properties remained in violation including the non-permitted land use, illegally built structures, and illegal grading activities.

A Notice and Order to Abate was issued to Dan and Lori Avila on August 29, 2012. The Notice and Order to Abate ordered the property owners to do the following:

- Immediately discontinue the non-permitted use (the processing, including receiving, sorting, packing and shipping, of produce);
- Immediately discontinue the use of illegally built structures;
- Submit construction documents to complete the process to obtain building permits from Stanislaus County;
- Demolish structures and return existing structures to their original state and use. A demolition permit is required;
- Provide a grading plan;
- Prepare a Storm Water Pollution Prevention Plan (SWPPP); and
- File a Notice of Intent in order to obtain a Waste Discharge Identification Number (WDID).

On September 14, 2012, an inspection of the properties revealed that the properties remained in violation. This resulted in the recordation of a Notice of Non-compliance with the Clerk-Recorder's Office.

On September 25, 2012, Dan Avila submitted the Use Permit Application required to bring his property into compliance. The Use Permit is currently out for a two-week early consultation review that was to be completed by October 22nd. The City of Turlock has requested, and the Planning Department has authorized, a one week extension to October 29th. Following the end of the two-week early consultation review period, Mr. Avila may be required to provide additional information and/or complete additional studies in order to adequately address comments received. If required, a defined time-line will be provided to Mr. Avila for delivery of the additional information and/or completion of additional studies. If no additional information and/or studies are required, environmental review of the project will be completed and circulated and the Use Permit will be presented to the Planning Commission for consideration in January or February 2013.

Approval to Adopt the Nuisance Abatement Hearing Board's Recommendation and Find that the Property Located at 1301/1113 Washington Road, near Turlock, is a Nuisance
Page 4

Mr. Avila has submitted a Staff Approval Permit for the operation of a produce stand allowing for the on-site sales of watermelons and sweet potatoes. The Staff Approval Permit cannot be processed independently due to the overall non-compliance status of the property and, as such, has been incorporated into the Use Permit application. There is no authorization for on-site sales of any type of produce.

A building permit application for Change of Occupancy, single family dwelling to office/sales, was submitted on September 13, 2012. A plan check has been completed and a letter for corrections to the plan was sent to Mr. Avila's designer/architect on October 2, 2012. Building permit applications for the barn remodel/addition and the new steel storage building have not yet been submitted by Mr. Avila. Until the Use Permit process is completed, Mr. Avila will be unable to obtain building permits for any of the projects noted above and the buildings will remain out of compliance with applicable Building Codes.

A driveway at the site has been installed without a Public Works Encroachment Permit or approval. The location of the installed, unpermitted driveway is in an unsafe location. The driveway is too close to a structure which blocks the sight distance of vehicle drivers both on and off the site, plus it is located too close to the intersection. This situation does not allow drivers enough time to make a safe decision about oncoming or turning traffic. The existing driveway needs to be removed and relocated in a location approved by Public Works with the proper permit in place. The applicant has hired an engineer to work on the Storm Water Pollution Prevention and Erosion Control Plan to stabilize the site for the winter. A Grading Plan will be put together once the project's conditions of approval are approved by the Planning Commission.

Mr. Avila continues to operate illegally without the necessary permits, which is in violation of applicable health and safety codes.

On September 27, 2012, the Nuisance Abatement Hearing Board supported staff's recommendation to declare the property a nuisance and forwarded the matter to the Board of Supervisors recommending approval (Attachment 1). The Board may adopt, modify, or reject the recommendations, and if adopted, the property owners will be required to abate the nuisance within two weeks of the Board's decision by complying with the requirements identified in Attachment 1. The cost of the abatement will be charged to the property owners and if the responsible person fails to pay the cost of abatement, a Notice of Abatement Lien will be recorded against the property. Additionally, the Notice of Non-compliance will remain filed in the Clerk-Recorder's Office until the property has been brought into compliance.

Per Stanislaus County Code section 2.92.070 D.1, decisions of the Board of Supervisors shall order abatement within a time certain not to exceed six months. The order may authorize the County to abate the nuisance and charge the cost of abatement to the owners of the abated property. The Board shall consider and determine the reasonableness of the costs of abatement and, thereafter, shall order the owner to pay the abatement costs. If the owner fails to pay the cost of abatement upon demand by the County, a Notice of Abatement Lien shall be recorded and the cost of abatement shall become a lien on the property pursuant to the provisions of California Government Code Section 25845. The Director of Environmental

Resources is authorized to prepare and record a Notice of Release of Lien against the legal title of the subject properties, if the County is fully compensated for the amount of the lien placed upon the property.

Staff is recommending to take immediate action to abate the following health and safety concerns:

- Occupied non-permitted structures (redwood barn, converted single family dwelling, and steel barn) not meeting the standards set forth in the California Code of Regulations Title 24.
- Operation of non-permitted equipment, illegal wiring, and mechanical venting located within non-permitted structures not meeting the standards set forth in the California Code of Regulations Title 24.
- Operation of the non-permitted driveway on Fulkerth Road that does not meet Stanislaus County Public Works Standards and Specifications section 3.17 Approaches.
- Operation of any non-permitted/non-engineered earthen loading docks not meeting Stanislaus County Public Works Standards and Specifications section 3.9 Earthwork.

Staff also recommends that the following be held in abeyance the abatement of the following, while Mr. Avila is actively seeking permits:

- Operation of non-permitted use (the processing, including receiving, sorting, packing and shipping, of produce) until: 1) a final determination by either the Stanislaus County Planning Commission or Stanislaus County Board of Supervisors is made, on the Use Permit submitted on September 25, 2012 provided that Mr. Avila (the applicant) makes every effort to provide the Stanislaus County Planning Department with any information and/or studies necessary and 2) if the use permit is approved, all conditions of approval are met.

POLICY ISSUE:

The recommended actions support the Boards' Priorities of A Safe Community, A Healthy Community, and the Efficient Delivery of Public Services by improving the quality of life and protecting the health and safety of the community.

STAFFING IMPACTS:

Staff from the Departments of Environmental Services, Planning, Public Works, and County Counsel will continue to enforce the abatement of health and safety concerns. The abatement process will include working with Dan and Lori Avila to complete the Use Permit process and, if approved, monitor the use to ensure timely and on-going compliance with all Use Permit conditions of approval. Those conditions will include requirements for obtaining all necessary building, grading, and encroachment permits.

Approval to Adopt the Nuisance Abatement Hearing Board's Recommendation and Find that
the Property Located at 1301/1113 Washington Road, near Turlock, is a Nuisance
Page 6

CONTACT PERSON:

Jami Aggers, Interim Director of Environmental Resources. Telephone: 209-525-6770
Angela Freitas, Planning and Community Development Director. Telephone 525-6330



NUISANCE ABATEMENT HEARING BOARD

RECOMMENDED DECISION

**IN RE: 1301 & 1113 Washington, Turlock, CA
Abatement Hearing No. CE# 12-0134**

The above referenced matter came before the Nuisance Abatement Hearing Board for hearing on Sept 27, 2012. 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 1301 & 1113 Washington, Turlock, CA, in the unincorporated area of Stanislaus County, California, and identified according to the Assessor's website as Parcel Numbers 023-039-017 & 023-039-018, is zoned A-2-40, General Agriculture District.
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, B & C."
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.

ATTACHMENT 1

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 non-permitted land use, containing illegally built structures and illegal grading activities in the staff report are a violation of Stanislaus County Code Section 21.20.020, Section 16.05.020, and Section 14.14.120.
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 non-permitted land use, containing illegally built structures and illegal grading activities in the staff report are not a violation of Stanislaus County Code Section 21.20.020, Section 16.05.020, and Section 14.14.120.

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: September 27, 2012



Ron Peterson, Chair

Stanislaus County Nuisance Abatement Hearing Board

It should be noted that on OCT 3 0 2012 the Board of Supervisors will hear this matter as a consent item.

Attachment "A"

RE: File Number CE 12-0134
Assessor's Parcel Number: 023-039-017 & 023-039-018
Address: 1301 & 1113 WASHINGTON AVE; TURLOCK, CA.

Inspection of the above reference property revealed the following violations of Stanislaus County Code §2.92.010:

Code Section Violation:	Corrective Action:	Compliance Date:
§21.20.020 and §21.16.040 of the Stanislaus County Code. Non-Permitted Land Use (the processing, including receiving, sorting, packing and shipping, of produce).	Immediately discontinuing the non-permitted use (the processing, including receiving, sorting, packing and shipping, of produce). For information regarding the allowable uses on the property in question, you may consult Stanislaus County Planning and Community Development, located at 1010 10th Street, 3rd Floor, Modesto (525-6330).	09/13/12

Attachments: B & C
Stanislaus County Codes

cc: Supervisor Vito Chiesa – District 2
Angela Freitas – Interim Planning Director, Department of Planning and Community Development
David A. Leamon – PE, Senior Civil Engineer, Stanislaus County Department of Public Works
Steve Treat – Chief Building Official, Department of Planning and Community Development
Tom E. Boze – Deputy County Counsel, Stanislaus County Counsel



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Building Permits Division

1010 10TH Street, Suite 3400, Modesto, CA 95354
Phone: 209.525.6557 Fax: 209.525.7759

Attachment "B"

Case Number SWO2012-00031
SWO2012-00032

Assessor's Parcel Number: 023-039-017 & 023-039-018
Address: 1113 & 1301 Washington Ave, Turlock, CA

An inspection of the above referenced property revealed the following violations of the Stanislaus County Code Title 16, Chapter 16.05.020, Section 105.1 and 2010 California Building Code, Chapter 1 Administration, Section 105 Building Permits required for:

Construction of New Agricultural Structure, Remodel, Addition and Change of Occupancy to an Existing Agricultural Structure (Redwood Barn) and Change of Occupancy of Single Family Dwelling to Office and Sales establishment.

Corrective Action:

1. Immediately discontinue use of illegally built structures referenced above;
2. Submit Construction documents to complete process to obtain Building Permits from Stanislaus County, Planning and Community Development Department, Building Permits Division within 30 days of this notice;
3. Demolish structures and return existing structures to original state and use. A Demolition permit is required.

For further information concerning this Notice, please contact the Building Permits Division between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday at (209) 525-6557

Sincerely,

Steve Treat
Chief Building Official
Stanislaus County



DEPARTMENT OF PUBLIC WORKS

Matt Machado, PE
Director

Laurie Barton, PE
Deputy Director, Engineering/Operations

Diane Haugh
Assistant Director, Business/Finance

1716 Morgan Road, Modesto, CA 95358
Phone: 209.525.4130 Fax: 209.541.2505

www.stancounty.com/publicworks

Attachment "C"

August 29, 2012

Mr. Dan Avila
2718 Roberts Road
Ceres, CA 95307

Re: 2nd Notice of Violation for County Code Section 14.14.120
Grading Permit for 1113 and 1301 N. Washington Road (APN 023-039-018 and
017), Turlock, CA

Dear Mr. Avila:

On July 28, 2012, we sent you notice that certain grading activities on your property are in violation of County Code section 14.14.120, the California 2009-0009-DWQ Construction General Permit (CGP) and possible Federal Porter-Cologne Clean Water Act violations. In that notice we informed you of specified actions that you must take to comply with the law. As of today's date, you continue to be in violation.

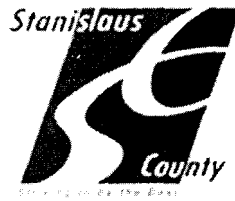
No later than September 11, 2012, you must provide a grading plan, prepare a SWPPP and file a Notice of Intent in order to obtain a Waste Discharge Identification Number (WDID). If you fail to comply, this enforcement action will be referred to the State. The State has the power to fine a minimum of \$3000 per day and they will consider economic benefit of not complying with State Law as an additional part of the fine.

Please contact me at the number listed above.

Sincerely,

David A. Leamon, PE
Senior Civil Engineer

cc: Keith Boggs, Assistant Executive Officer
Thomas Boze, Deputy County Counsel
Angela Freitas, Interim Planning and Community Development Director
Matt Machado, Public Works Director



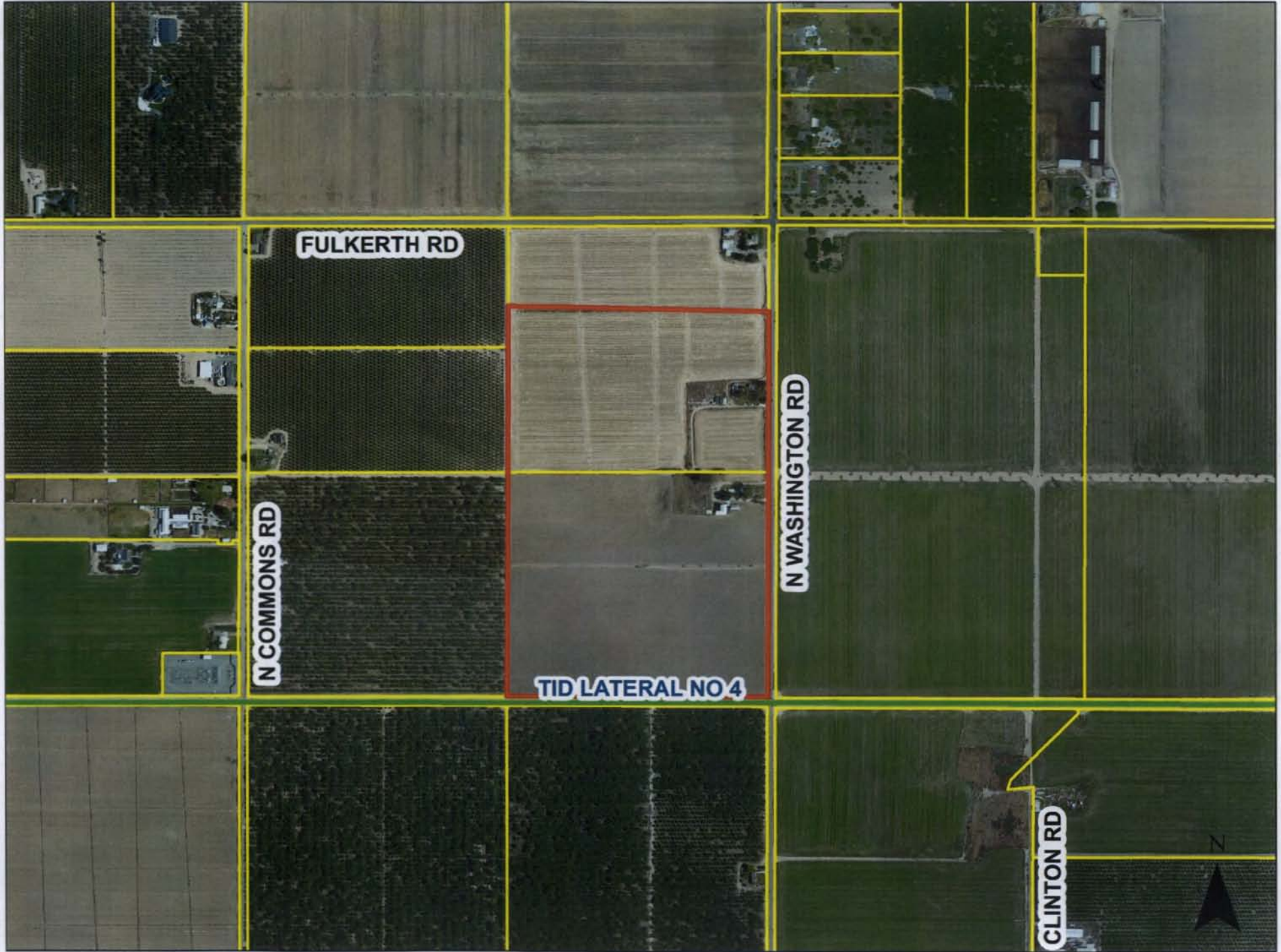
10.30.12

Powerpoint
Presentation
Available from the
Clerk of the Board
of Supervisors

CE #12-0134

**1301/1113 WASHINGTON RD
TURLOCK, CA. 95380**





FULKERTH RD

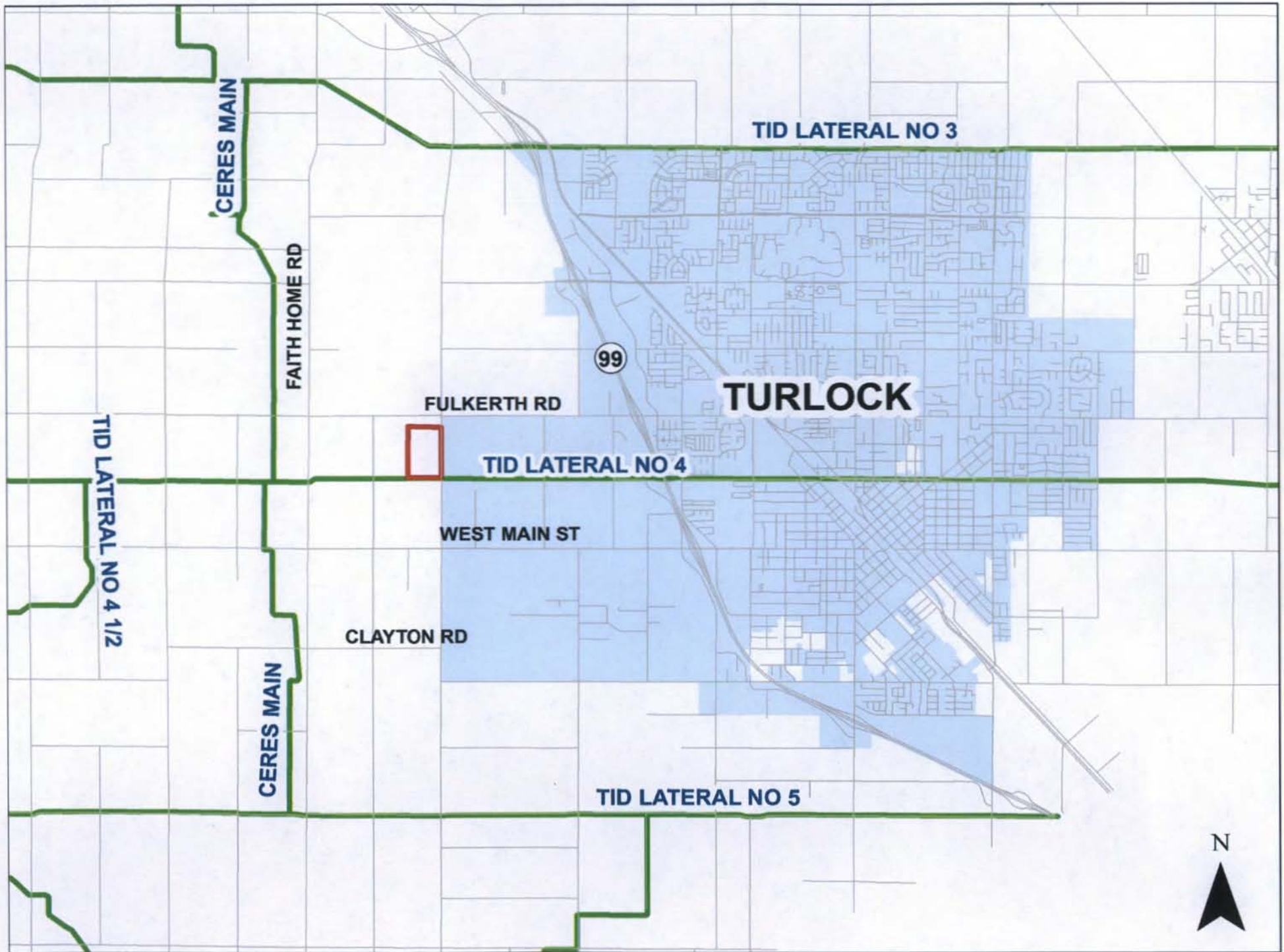
N COMMONS RD

N WASHINGTON RD

TID LATERAL NO 4

CLINTON RD





1



07/05/2012

2



07/05/2012

3

07/05/2012



4



07/05/2012

5

07/24/2012



6



07/24/2012

7



07/24/2012

8



07/24/2012

9



10



11


The following information is being provided to you for your information only. It is not intended to be used for any other purpose. The information is provided for your information only and is not intended to be used for any other purpose. The information is provided for your information only and is not intended to be used for any other purpose.



08/30/2012



12



09/14/2012



09/14/2012

14



09/14/2012



09/27/2012

16



09/27/2012

17



09/27/2012

18



09/27/2012

**CE #12-0134
1301 AND 1113
WASHINGTON ROAD
TURLOCK, CA.**

**Jami Aggers, Interim Director
Department of Environmental Resources
October 30, 2012**

FULKERTH RD

1301 Washington Rd
023-039-017
26.49 acres

1113 Washington Rd
023-039-018
35.2 acres

TID, LATERAL NO 4

N COMMONS RD

N WASHINGTON RD

CLINTON RD

N



Approach

- Code Enforcement responds to complaints throughout the unincorporated area and attempts to gain voluntary compliance through education and personal contact, working with property owners and those persons responsible for creating nuisances

Approach

- Compliance efforts include: inspections, time extensions, Notice and Orders to Abate and administrative citations, recording Notices of Non-compliance with the Recorder's Office, bringing cases to the Nuisance Abatement Hearing Board and Board of Supervisors, inspection warrants, and forced actions

Why Are We Here?

- Planning received multiple complaints re: 1301 & 1113 Washington Road, Turlock which included:
 - Non-permitted land use (processing, receiving, sorting, packing and shipping produce).
 - Non-permitted grading activities

Why Are We Here?

- Non-permitted construction of a new agriculture structure; remodel, addition and change of occupancy to an existing redwood barn, and change of occupancy of a single family dwelling to an office/sales establishment.

Background

- 1/7/12 - Use Permit Application No. 2009-22 – Dan Avila & Sons, withdrawn by the applicant: Request to establish an agricultural warehouse for storing and shipping sweet potatoes and watermelons.
- 35 acre parcel located at 1113 N. Washington Road, between Fulkerth Rd and W. Main St, Turlock.

Background Cont'd.

- The Project: Construction of an 180,000 sq. ft. metal building used in conjunction with the Avila farming operation, which produces watermelons & sweet potatoes on property both leased & owned in Stanislaus and Merced counties.
- Proposal also includes an area for equipment storage used to harvest properties leased & farmed by the applicant.

Background Cont'd.

- 6/11/2012 – A second Use Permit Application from Dan Avila, No. 2011-06, was removed from Planning's "active project file" due to the applicant's inactivity in addressing concerns raised by Public Works and the City of Turlock regarding a required traffic analysis.

Background Cont'd.

- Essentially the same request as Use Permit 2009-22 except: revised site plan, alternate route for trucks to access the project site across an adjoining 13-acre parcel, operation time extended by an additional month, and estimated number of truck deliveries increased from 60 to 80.

Enforcement Summary

- 6/29/12 - Building Inspection Division conducted an on-site investigation.
- Findings revealed an existing agriculture barn addition and remodel, construction of a new steel building for storage located at 1301 Washington Rd, and a change of occupancy from a SFD to office sales located at 1113 Washington Rd.

Enforcement Summary Cont'd.

- A Stop Work Order was immediately placed on the structures and occupants were informed of the action.
- 7/5/12 - CE staff conducted an inspection at both locations and verified the non-permitted land use and processing activities including receiving, sorting, packing, and shipping of produce.

Enforcement Summary Cont'd.

- Mr. Avila was directed to contact Planning to obtain information about applying for a Use Permit for the business on his properties.
- 7/18/12 - a meeting was held with Mr. Avila and representatives from DER, Planning, Public Works, County Counsel and the Board of Supervisor's office.

Enforcement Summary Cont'd.

- Planning staff advised Mr. Avila to cease his business operation immediately and obtain a valid Use Permit.
- Mr. Avila stated he would cease his operation.

Enforcement Summary Cont'd.

- 7/20/12 - PW notified Dan Avila that certain grading activities violated the Stanislaus Co Code, the Calif. DWQ Const. General Permit, & possibly the Federal Porter-Cologne Clean Water Act.
- Mr. Avila was informed that he needed to implement the requirements of the Const. General Permit immediately.

Enforcement Summary, Cont'd.

- Requires the applicant to obtain a qualified engineer to prepare a Storm Water Pollution Prevention Plan (SWPPP).
- 7/23/12 - Planning sent a letter to Dan and Lori Avila regarding the non-permitted activities on 1301 & 1113 Washington Rd. and the actions they were required to take including:

Enforcement Summary, Cont'd.

- Ceasing the processing (including receiving, sorting, packing and shipping) of produce, including watermelons grown off site.
- Ceasing on-site sales of any produce, including watermelons, grown on or off site.

Enforcement Summary, Cont'd.

- Return to a condition appropriate for crop production the areas graded for loading docks and truck parking areas.
- Complete the applications necessary to obtain building permits for all non-permitted additions, modifications, and non-permitted construction.

Enforcement Summary, Cont'd.

- 7/24/12 - DER staff observed and took photos of 1301 & 1113 Washington Rd.
- The properties remained in violation including non-permitted land use, illegally built structures and illegal grading activities.

Enforcement Summary, Cont'd.

- 8/29/12 - Notice & Order to Abate was issued ordering the Avila's to do the following:
 - Immediately discontinue the non-permitted uses (processing, receiving, sorting, packing and shipping of produce).
 - Immediately discontinue the use of the illegally built structures.
 - Submit construction documents to complete the process to obtain building permits.

Enforcement Summary, Cont'd.

- Demolish structures and return existing structures to their original state and use.
- Provide a grading plan.
- Prepare a SWPPP.
- File a Notice of Intent in order to obtain a Waste Discharge Identification Number (WDID).

Enforcement Summary, Cont'd.

- 9/13/12 - Dan Avila submitted a building permit application for Change of Occupancy, SFD to office/sales. However, until the Use Permit process is completed, he will be unable to obtain building permits.
- 9/25/12 - Dan Avila submitted the Use Permit application.

Enforcement Summary, Cont'd.

- 9/27/12 - Dan Avila submitted a Staff Approval Permit for the operation of a produce stand. This has been incorporated into the Use Permit.

Enforcement Summary, Cont'd.

- A driveway at the Fulkerth Rd. site has been installed w/o a PW Encroachment Permit or approval. The location of the driveway is in an unsafe location.

The driveway needs to be removed and relocated in a location approved by PW with the proper permit in place.

Conclusion

- 9/27/12 - Nuisance Abatement Hearing Board (NAHB) supported staff's recommendation to declare the property a nuisance.
- Mr. Avila continues to operate illegally without the necessary permits, which is in violation of applicable health and safety codes.

Staff Recommendations

- Adopt the NAHB recommendation.
- Finding: properties located at 1301 & 1113 Washington Rd., Turlock, contain non-permitted land uses, illegally built structures and illegal grading activities violate the Calif. Building Code Title 16, section 105 and County Code sections 21.20.020, 16.05.020 and 14.14.120, and constitutes a nuisance as defined in 2.92.010.

Staff Recommendations, Cont'd.

- Direct staff to take immediate action to abate any health and safety concerns, and hold in abeyance the abatement of any illegal land uses for which the property owner is actively seeking a land use permit.

Staff Recommendations, Cont'd.

- To be held in abeyance, the abatement of:
 - Operation of non-permitted use (the processing, receiving, sorting, packing & shipping of produce) until: a) a final determination is made on the current Use Permit application; and b) if the Use Permit is approved, until all conditions are met.

The single family residence that was used for an office.



07/05/2012

The addition to the Ag Building



Loading the watermelons.



07/24/2012

The loading docks.



07/24/2012

On-site sales of watermelons.



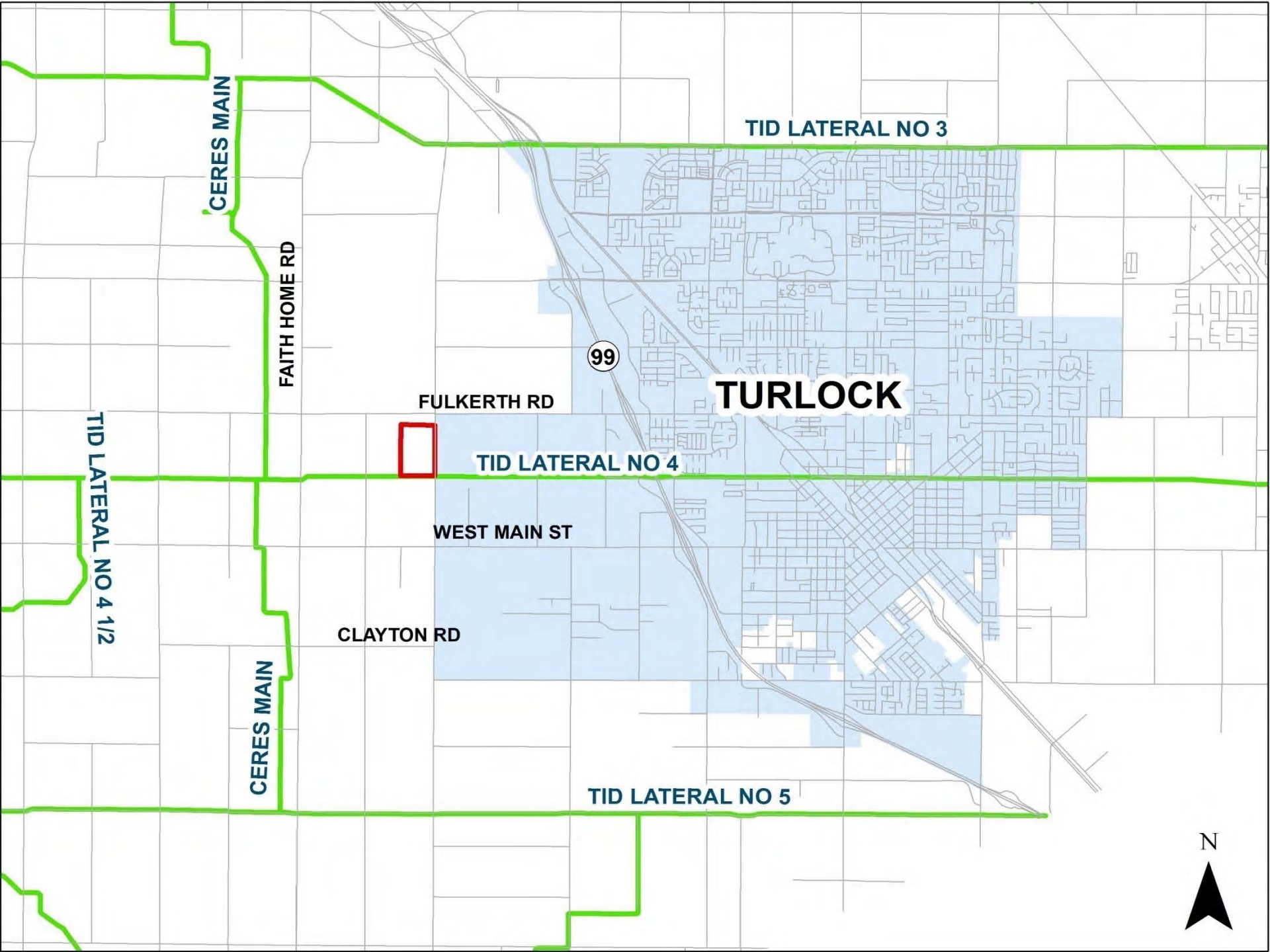
07/24/2012

A truck pulling on to Fulkerth Road









TID LATERAL NO 3

CERES MAIN

FAITH HOME RD

99

TURLOCK

FULKERTH RD



TID LATERAL NO 4

WEST MAIN ST

TID LATERAL NO 4 1/2

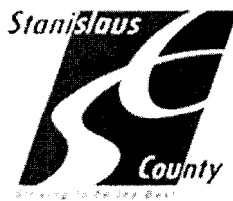
CLAYTON RD

CERES MAIN

TID LATERAL NO 5



Questions?



Attachment C
Notice from the
Department of Planning
and Community
Development that
Use Permit
Application
No. 2011-06



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

1010 10th Street, Suite 3400, Modesto, CA 95354
Phone: 209.525.6330 Fax: 209.525.5911

May 9, 2012

Dan Avila
2718 Roberts Road
Ceres, CA 95307

SUBJECT: USE PERMIT APPLICATION NO. 2011-06 - DAN AVILA & SONS

Dear Mr. Avila:

The subject application has been on hold with our department since August 4, 2011. You were informed that you needed to contact the City of Turlock regarding their response to your project, provide the information requested by the Stanislaus County Department of Public Works, and your project was being placed on hold. To date, there has been no contact with our department that this has been accomplished.

Please contact our department **no later than June 8, 2012**, with a plan in place to immediately move your project forward. If no contact is made and the project does not move forward immediately, our department will be removing this project from our active project file. **After June 8, 2012, a new application and application fee will be needed.**

If you have any questions, please contact me at (209) 525-6330 or by e-mail at mabenc@stancounty.com.

Sincerely,

Carole Maben
Associate Planner

(I:\Planning\Staff Reports\UP\2011\UP 2011-06 - Dan Avila & Sons\30-day notice to move forward wpd)

CE #12-0134
1301 AND 1113
WASHINGTON ROAD
TURLOCK, CA.

November 6, 2012

FULKERTH RD

1301 Washington Rd
023-039-017
26.49 acres

1113 Washington Rd
023-039-018
35.2 acres

TID, LATERAL NO 4

N COMMONS RD

N WASHINGTON RD

CLINTON RD

N



Approach

- Code Enforcement responds to complaints throughout the unincorporated area and attempts to gain voluntary compliance through education and personal contact, working with property owners and those persons responsible for creating nuisances

Why Are We Here?

- Multiple complaints received re: 1301 & 1113 Washington Road, Turlock:
 - Non-permitted land use
 - Non-permitted grading activities
 - Non-permitted construction & remodeling activities, on-site produce sales, & conversion of SFD to Office

Background

- Board considered this item on Oct. 30th
- Staff reviewed the history on the case and effectively established that these activities have occurred onsite without the proper permits
- The property owner addressed the Board acknowledging the requirements and his failure to follow them

Background, Cont'd.

- Staff recommendations presented on 10/30/12 were the following:
 - Adopt the NAHB's recommendation and find the properties to be a nuisance
 - Direct County staff to take immediate action to abate any H&S concerns, however,

Background, Cont'd.

- Hold in abeyance the abatement of illegal land uses for which the owner was pursuing the appropriate land use permits

Board Direction

- After much discussion, the Board directed staff to look into the possibility of developing an Indemnity Agreement
- Bring the item back to the Board for further consideration

Current Status

- Building Evaluation and Building Permit Status – Post October 30th
- Indemnity Agreement
 - Insurance and Indemnity
 - Work to be Done – Exhibit 2

Exhibit 2

- Access
- Dust Control
- Erosion Control
- Building Permits

Staff Recommendations

- Adopt the NAHB's recommendation and find the properties to be a nuisance.
- Direct County staff to implement the following abatement actions:
 - Take immediate action to abate any health and safety concerns at the property, and hold in abeyance the abatement of any illegal land uses for which the Property owner is actively seeking a land use permit; and

Staff Recommendations

- Delay implementation of the immediate abatement action provided that the owners agree within two weeks to perform the actions set forth in an Indemnity Agreement.
- Approve the Indemnity Agreement in substantially the form set forth in Attachment A, authorize the Interim Director of DER to finalize the Agreement.

Questions?