

MAY 02 2017

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

CLERK OF THE SUPERIOR COURT
Alina Oliver
DEPUTY
Alina Oliver

Case No.: 16CV002523
Intended Decision

Lisa Hanes and Mark Hanes,

Petitioners,

vs.

City of Pacific Grove, a municipal corporation;

Administrative Enforcement Hearing Panel

Officers for the City of Pacific Grove,

Respondent.

This case came on for court trial on May 1, 2017. All sides were represented through their respective attorneys. The matter was argued and taken under submission. This intended decision shall suffice as a statement of decision as to all matters contained herein. (Cal. Rules of Court, rule 3.1590, subd. (c)(1).)

Factual Background

Petitioners Lisa Haines and Mark Haines own a mini pig, which they keep on their residential property. (AR 201.) On September 5, 2014, the Pacific Grove Police Department responded to a complaint from Petitioners' next-door neighbors, Mr. and Mrs. Magsalay, regarding "questions involving animal excrement." (AR 1.) On December 2, 2015, Mr. and Mrs. Magsalay again contacted police, claiming that pig feces (and its attendant odor) were accumulating in Petitioners' yard. (AR 2.) Officer Conti-Yeo, of the City's Animal Control Department, responded to the complaint. Officer Conti-Yeo advised Petitioners of potential code violations, and suggested they contact the City's Code Compliance Department to obtain a permit for their pig. (*Ibid.*)

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3 On December 14, 2015, Petitioners filed a permit application. (AR 15.) The City
4 conditionally approved the application on December 23, 2015. (AR 18.) The Permit was
5 revocable if 1) the City received any complaints; 2) Petitioners failed to confine the pig so as not
6 to “constitute a . . . nuisance”; or 3) permitted pig excrement to accumulate “so as to become
7 offensive to any neighboring property.” (*Ibid.*)

8 On January 4, 2016, the City advised Petitioners that Mr. and Mrs. Magsalay had filed a
9 complaint objecting to the permit. Mr. and Mrs. Magsalay were concerned that the pig “presents
10 a nuisance due to an accumulation of pig feces in the yard causing odor and flies to infest the
11 area.” (AR 20, 49-51.) Mr. and Mrs. Magsalay attached supporting photographs. (AR 92-93.) On
12 January 18, 2016, the City notified Petitioners that it was canceling the permit because it
13 concluded that the Pacific Grove Municipal Code (PGMC) did not require Petitioners to obtain a
14 permit for a pet pig. (AR 21.) The City reminded Petitioners that they were still subject to PGMC
15 requirements prohibiting nuisance and “offensive” accumulation of animal excretion. (PGMC, §
16 10.08.050, subd. (a), (c).) The City gave Petitioners 90 days (or until April 17, 2016) to resolve
17 Mr. and Mrs. Magsalay’s complaints. (AR 21.)

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19 However, on February 3, 2016, Mr. and Mrs. Magsalay filed another complaint, attaching
20 pictures of numerous piles of excrement on Petitioners’ property. (AR 105-118.) On February
21 24, 2016, the City’s Code Compliance Officer, Terri Schaeffer, met with Petitioners to suggest
22 potential remedial measures. Ms. Schaeffer indicated that so long as Petitioners cleaned the
23 excrement daily and provided “a dedicated place for the animals when you are not present, the
24 complaints should stop.” (AR 122.)
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1 On March 24, 2016, Mr. and Mrs. Magsalay again contacted Animal Control to report an
2 accumulation of pig feces. (AR 123.) Officer Conti-Yeo responded. She stated that, on arrival,
3 she could “immediately smell pig feces and see flies in the area”; could see six to seven piles of
4 pig excrement; and reported that Petitioners had made “little effort” to take promised remedial
5 measures. (AR 123-124.) Officer Conti-Yeo attached several pictures to her report. (AR 124-
6 125.) That same day, the City issued a notice of violation, warning that any further complaints
7 would trigger a Compliance Order. (AR 126.) New complaints — all of which focused on odor,
8 air quality, and the effect of these issues on Mr. and Mrs. Magsalay’s ability to enjoy their
9 property — followed on April 29, 2016, May 9, 2016, and May 16, 2016. (AR 132-136.) On
10 May 19, 2016, the City issued a Compliance Order. (AR 138-140.)

11 An administrative hearing followed on June 22, 2016. At the hearing, the City offered its
12 Code Compliance Report and testimony from Ms. Schaeffer, Officer Conti-Yeo, and Mr.
13 Magsalay. Petitioners presented documentary evidence and testimony from themselves, Bruce
14 Cardoza, and Robert Lucius. Petitioners stated that Mr. Lucius worked for the Humane Society
15 and specialized in pigs. (AR 246.)¹

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17 On July 21, 2016, the Hearing Officer issued her Administrative Decision. (AR 186-203.)
18 The Hearing Officer determined Petitioners had violated PGMC sections 10.08.050, subdivision
19 (a) (private or public nuisance created by a pet); 10.08.050, subdivision (c) (accumulation of
20 animal excrement); and 6.16.020, subdivision (a) (improper disposal of solid waste). (AR 202.)
21 The Hearing Officer gave Petitioners 30 days to clean up the yard and relocate the pig. (AR 203.)
22 The Hearing Officer also imposed monetary penalties for each day the pig remained on the
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25 ¹ In their briefing, Petitioners explain that Mr. Lucius was “Humane Society Asian Pig Program Manager.”
However, this title does not appear in the record.

1 property after the 30-day corrective period expired and assessed Petitioners with \$467.50 in
2 administrative costs. (*Ibid.*)

3 *Administrative Record*

4 The Court admitted the Administrative Record (AR) into evidence.

5 *Standard of Review*

6 The “inquiry” in a proceeding for writ of administrative mandamus “shall extend to the
7 question[] . . . whether there was any prejudicial abuse of discretion. Abuse of discretion is
8 established if the respondent has not proceeded in the manner required by law, the order or
9 decision is not supported by the findings, or the findings are not supported by the evidence.”
10 (Code Civ. Proc., § 1094.5, subd. (b).)

11 *Discussion*

12 Petitioners challenge the Hearing Officer’s decision on both procedural and substantive
13 grounds. As to the former, Petitioners claim the Hearing Officer improperly took administrative
14 notice of documents and truncated Mr. Lucius’ testimony. As to the latter, Petitioners insist Mr.
15 Magsalay was not a credible witness; there was no substantial evidence of recurring odor,
16 accumulating feces, or that Petitioners improperly disposed of animal waste; and that four of the
17 Hearing Officer’s findings do not support the Administrative Decision.

18 **1.0 Challenges to the conduct of the hearing below**

19 Petitioners contend the Hearing Officer did not proceed in the manner required by law
20 because she violated the Hearing Rules. Specifically, Petitioners contend that the Hearing Officer
21 1) prevented Petitioners from fully presenting their witnesses and evidence; and 2) improperly
22 took administrative notice of certain documents.
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1 “A challenge to the procedural fairness of the administrative hearing . . . amounts to a
2 question of law.” (*Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482; *Bedoe*
3 *v. County of San Diego* (2013) 215 Cal.App.4th 56, 61[“We exercise independent judgment on
4 pure questions of law”].) The court determines whether a fair hearing occurred based on its
5 independent judgment of the administrative record and any evidence submitted under Code of
6 Civil Procedure, section 1094.5, subdivision (e). (*City of Fairfield v. Superior Court* (1975) 14
7 Cal.3d 768, 776.)

8 The PGMC provides that, if violations are not corrected within the time specified in a
9 compliance order, a hearing shall be set. (PGMC, §§ 19.170, subd. (b), (c), 1.19.180, subd. (a).)
10 The City’s hearing officer panel has established rules and procedures governing the conduct of
11 any such hearing. (*Ibid*; see PGMC, § 3.30.060; AR 157-166.)

12 **1.1 Mr. Lucius’ testimony**

13
14 Petitioners argue that the Hearing Officer prevented them from fully presenting their side
15 of the story. Petitioners further argue that the Hearing Officer harbored “apparent hostility”
16 toward Mr. Lucius, and consequently, truncated his testimony. The City responds that the
17 Hearing Rules authorized Hearing Officer’s actions and that the Hearing Officer did not prevent
18 Mr. Lucius from testifying fully.

19 The Hearing Rules provide, “[e]ach person has the right to tell the Hearing Officer his or
20 her side of the story, and support it with witnesses and physical evidence.” (AR 162.) The Rules
21 also provide, however, that each side’s presentation “must deal specifically with the violation
22 before the Hearing,” and that the Hearing Officer may “[r]egulate the course of the hearing.”
23 (AR 162-163.)
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1 Petitioners cite an exchange between their counsel and the Hearing Officer regarding Mr.
2 Lucius. Petitioners' counsel asserted, "it is relevant to have Mr. Lucius talk because he is an
3 expert on pigs and miniature pigs versus industrial swine and the smells that go along with
4 them." The Hearing Officer responded, "[u]nless -- unless he has actual evidence of the pig
5 odors in this case, then I don't really need to hear from him." (AR 251.)

6 Nevertheless, the Hearing Officer allowed Mr. Lucius to testify. Mr. Lucius opined that
7 "industrial swine" and pet pigs are different species, and that, due to its diet, "it is impossible for
8 a pet pig . . . to omit odors from the feces any stronger than a box of cat litter." (AR 251-252.)
9 Mr. Lucius stated he had not met Petitioners until the day before the hearing; he did not profess
10 to have first-hand knowledge. (AR 252.)

11 The Hearing Officer's actions were well within her discretion. Petitioners' counsel gave
12 no indication that Mr. Lucius' testimony would deal specifically with the violation at issue.
13 Indeed, the Hearing Officer would have been justified in not permitting Mr. Lucius to testify.²
14 (See AR 162-163.) Yet the Hearing Officer permitted Mr. Lucius to testify without interruption.³
15 Accordingly, the Hearing Officer proceeded in the manner required by law.
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17 1.2 Administrative Notice

18 Petitioners claim that the Hearing Officer improperly took administrative notice of two
19 documents, a website that "describes odor control products for pet pigs"; and a "Green Waste
20 Informational Brochure," which describes the waste container the City required residents to use
21 to properly dispose of animal waste. (AR 192.) Petitioners contend that the Hearing Officer did
22 not afford them a chance to examine and respond to these documents. The City asserts that the
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24 ² Additionally, Petitioners never established Mr. Lucius' expert credentials.

25 ³ Further, Petitioners did not object below that the Hearing Officer truncated Mr. Lucius' testimony. Consequently, Petitioners deprived the Hearing Officer of an opportunity to correct this purported error.

1 Hearing Officer's powers are "expansive," and notes that the Hearing Rules provide a "relaxed"
2 evidentiary standard.

3 The Hearing Rules provide that the Hearing Officer "shall have all powers necessary to
4 conduct fair and impartial hearings including, but not limited to the power to . . . rule upon
5 motions, objections, and the admissibility of evidence; The technical rules of evidence shall not
6 apply. Relevant documents may be received into evidence without formal proof of authenticity."
7 (AR 162-163.) Moreover, the Hearing Officer has the power to take official notice "of any fact
8 which may be judicially noticed by the courts of this state. Parties present at the hearing shall be
9 informed of the matters to be noticed, and those matters shall be noted in the record, referred to
10 therein, or appended thereto. Any such party shall be given a reasonable opportunity on request
11 to refute the officially noticed matters" (Gov. Code, § 11515.)

12 The Green Waste brochure is distributed to all residential customers in Pacific Grove, and
13 is therefore subject to judicial notice under Evidence Code, section 452, subdivisions (g) and (h).
14 (AR 197.) At the hearing, the Hearing Officer noted that the brochure provided that animal waste
15 should be disposed of in residents' garbage, rather than yard waste, containers. Petitioners
16 acknowledged this point without objection. (AR 270.)

17 The Hearing Officer also took administrative notice of a website that offers "potbellied
18 pig own or control products" in support of its nuisance analysis. Specifically, the Hearing Officer
19 cited the website to support the proposition that "products exist to abate the exact problem the
20 City contends to be at issue. If odor is not an issue as [Petitioners] claim, it seems unlikely that
21 they would remain on the market." (AR 197.) Petitioners are correct that the Hearing Officer
22 erred by failing to give them an opportunity to challenge the website. However, this error was
23 not prejudicial.
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1 The Hearing Officer's nuisance analysis relied upon more than the administratively
2 noticed website. Indeed, the Hearing Officer referenced a different website — identified in
3 Petitioner's exhibits — for the same proposition. (AR 197) The Hearing Officer also relied upon
4 multiple police reports and Officer Conti-Yeo's testimony. (AR 187-190, 201.) There is no
5 reason to believe omitting notice of a single website would have affected the Hearing Officer's
6 analysis. Accordingly, the error did not constitute a prejudicial abuse of discretion. (Code Civ.
7 Proc., § 1094.5, subd. (b); *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236.)

8 **2.0 Whether the findings were supported by the evidence**

9 The Hearing Officer made 14 findings of fact. (AR 201.) Petitioners claim substantial
10 evidence did not support several of these findings.

11 “Where it is claimed that the findings are not supported by the evidence . . . abuse of
12 discretion is established if the court determines that the findings are not supported by substantial
13 evidence in the light of the whole record.” (Code Civ. Proc., § 1094.5, subd. (c).) “Substantial
14 evidence is relevant evidence that a reasonable mind might accept as adequate to support a
15 conclusion. [Citation.] Such evidence must be reasonable, credible, and of solid value.
16 [Citation.]” (*California Youth Authority v. State Personal Bd.* (2002) 104 Cal.App.4th 575, 584-
17 585.) In determining whether substantial evidence supports the decision below, the court must
18 look to the entire administrative record and consider all relevant evidence, including evidence
19 contrary to the decision. (*Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980,
20 986.) However, the court “do[es] not reweigh the evidence; we . . . resolve all conflicts in favor
21 of the [agency's] decision. Its findings come before us ‘with a strong presumption as to their
22 correctness and regularity.’ [Citation.]” (*California Youth Authority, supra*, 104 Cal.App.4th at
23 p. 584.)
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1 Moreover, the court must presume the record supports an agency's findings; it is the
2 petitioner's burden to demonstrate otherwise. (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 456.)
3 The court may reverse an agency's decision "only if, based on the evidence before it, a
4 reasonable person could not have reached the conclusion reached by it." (*Kirkorowicz, supra*, 83
5 Cal.App.4th at p. 986.)

6 **2.1 Mr. Magsalay's credibility**

7 Petitioners contend Mr. Magsalay is not credible because he 1) purportedly
8 tampered with evidence and 2) observed that the odor had diminished after Petitioners built a
9 fence. Consequently, Petitioners reason, the Hearing Officer unreasonably relied upon evidence
10 originating from Mr. Magsalay.

11 Petitioners insist Mr. Magsalay falsified two of the 11 photographs he submitted
12 documenting accumulation of excrement. Petitioners claim that "close examination" reveals that
13 the excrement is "no more than a black sharpie pen marking on the photograph intending to be
14 mistaken for feces" because the alleged marks "are transparent and you can see the actual trace
15 of the sharpie pen." (AR 116-117, 236-237.) The Hearing Officer noted that Petitioners objected
16 to one photograph (AR 117), excluded that photograph from consideration, and observed that the
17 other photographs submitted by Mr. Magsalay "do not appear to be altered . . . and remain under
18 consideration." (AR 189.)⁴

19
20 There are several problems with this claim. First, "close examination" of the relevant
21 photographs does not suggest malfeasance; the court finds it impossible to discern from either
22 photograph whether any alteration occurred. (AR 117.) Second, Mr. Magsalay's nine other
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24 ⁴ The transcript is opaque as to whether Petitioners actually objected to both photographs. During their testimony,
25 Petitioners specifically cite only a single photograph, which they then refer to in the singular. (AR 116, 236.)
Subsequently, Petitioners' language changes to address "these photos" and "these pictures." (AR 236-237.) The
point is immaterial however, because the Hearing Officer reasonably concluded that the other photograph appeared
unaltered. (AR 116, 189.)

1 photographs, none of which Petitioners objected to, corroborate Mr. Magsalay's claims. (AR 52-
2 53, 68, 93-94.)

3 Third, Officer Conti-Yeo's testimony and supporting photographs corroborate Mr.
4 Magsalay's complaints. For example, Officer Conti-Yeo testified that she could "immediately
5 smell" pig feces and observe flies when she arrived at the property for both her December 2015
6 and March 2016 visits. (AR 3, 215, 217.) She documented these observations with photographs.
7 (AR 131.) And, on two separate visits in May 2016, Officer Conti-Yeo testified that she found
8 five and nine piles of pig feces, respectively. (AR 218.) Officer Conti-Yeo provided 14
9 photographs documenting these observations. (AR 124-125, 134-135.)⁵

10 Petitioners also impugn Mr. Magsalay's credibility by challenging his statement that odor
11 problems had improved since the Notice of Compliance. Petitioners refer to Mr. Magsalay's
12 testimony that, although odor issues had improved Petitioners "have a large fence and I can't see
13 anything anymore." (AR 263.) Petitioners omit important context. The exchange between the
14 Hearing Officer and Mr. Magsalay dealt with both the odor *and* the penning of the pig. Mr.
15 Magsalay's testimony regarding the new fence related to the penning not the odor. (AR 263-
16 264.)
17

18 In sum, substantial evidence supports the Hearing Officer's implicit conclusion that Mr.
19 Magsalay was credible.

20 **2.2 The finding of recurring offensive odor and flies**

21 Petitioners argue that the Hearing Officer's seventh finding of fact — that "offensive
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24 ⁵ Petitioners also claim that Mr. Magsalay "implicitly admitted that he falsified the photographs" because he did not
25 address this issue in his testimony. The mere fact that Mr. Magsalay did not address Petitioners' falsification claim
does not constitute an implicit admission. There are many possible explanations for why Mr. Magsalay may have
failed to respond. "When more than one inference can be reasonably deduced from the facts, we cannot substitute
our own deductions for that of the agency. [Citation.]" (*Donley, supra*, 180 Cal.App.4th at p. 456.)

1 odor of feces and flies recurs in [Petitioners'] yard" — is unsupported by the evidence. (AR
2 201.) In support of this finding, the Hearing Officer referenced 1) police reports from September
3 2014, December 2015, March 2016, and May 2016; 2) photographs taken by Officer Conti-Yeo;
4 and 3) testimony of both Officer Conti-Yeo and Mr. Magsalay. (*Ibid.*) Petitioners argue this
5 evidence is insufficient on multiple grounds.

6 First, Petitioners contend that Mr. Magsalay is not credible, and therefore, only Officer
7 Conti-Yeo's testimony and documentary evidence arguably support the finding. But, as
8 discussed *ante*, substantial evidence supports the Hearing Officer's implicit conclusion that Mr.
9 Magsalay was credible. Further, Officer Conti-Yeo's testimony and contemporaneous
10 photographs substantiate Mr. Magsalay's December 2015 and May 2016 complaints. (AR 3,
11 124-125, 131, 134-135, 215, 218.)

12 Second, Petitioners argue that Officer Conti-Yeo's testimony was unreliable because Mr.
13 Lucius disputed her account. The Hearing Officer considered Mr. Lucius' testimony, but
14 disagreed with his conclusion. (AR 196.) The Hearing Rules empower the Hearing Officer to
15 "determine the weight, if any, to be given to the testimony." (AR 162.) Moreover, in substantial
16 evidence review, "we may not substitute our judgment for the City's and reverse because we
17 believe a contrary finding would have been equally or more reasonable." (*Committee to Save*
18 *Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1182.)

19 Finally, Petitioners claim that Ms. Schaeffer admitted Petitioners complied with the
20 PGMC and that this admission was inconsistent with the Hearing Officer's finding. Petitioners
21 misread Ms. Schaeffer's statement. It is true that Ms. Schaeffer acknowledged Petitioners
22 complied with her requests and suggested the City modify the code to prohibit pet pigs. (AR
23 179.) But this is not an admission that Petitioners complied *with the Code*.
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1 The PGMC prohibits keeping *any* animal to the extent that animal constitutes a public or
2 private nuisance or excretes waste that accumulates “so as to become offensive to any
3 neighboring property.” (PGMC, § 10.08.050(a), (c).) Although Petitioners took remedial action,
4 it failed to abate the nuisance. As the Hearing Officer explained, “It is not the city’s obligation to
5 resolve this issue. If remedies offered by the city have not abated the nuisance, it falls to
6 [Petitioners] to find remedies that do.” (AR 199.)

7 **2.3 The finding regarding accumulation**

8 Petitioners claim that the Hearing Officer’s eighth finding of fact — that Petitioners
9 “have allowed accumulation of feces to occur in their yard in a manner that creates a nuisance”
10 — is unsupported by the evidence. (AR 201.) In support of this finding, the Hearing Officer
11 referenced 1) police reports from December 2015, March 2016, and May 2016; 2) Officer Conti-
12 Yeo’s photographs; and 3) testimony of both Officer Conti-Yeo and Mr. Magsalay. (*Ibid.*)

13 Petitioners dispute the meaning of the term “accumulation.” Petitioners offer a letter from
14 Mr. Beretti, an environmental specialist employed by the County of Monterey. (AR 168.) Mr.
15 Beretti opined that “accumulation” could only occur over at least a 24-hour period. (*Ibid.*) Thus,
16 Petitioners reason, because Officer Conti-Yeo, the only credible witness, was not present on
17 consecutive days, the finding is not supported by the evidence.
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19 As discussed *ante*, the Hearing Officer reasonably concluded that Mr. Magsalay was
20 credible. Mr. Magsalay was on site for consecutive days, so he had an opportunity to witness
21 feces accumulation. (See, e.g., AR 60, 221.) Moreover, the conclusion of an expert witness is not
22 binding on either the Hearing Officer or this court. (AR 162-163; *Bedoe, supra*, 215 Cal.App.4th
23 at p. 61.) The court agrees with the Hearing Officer that PGMC section 10.08.050 is properly
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1 read to mean that pig feces that “creates an offensive smell . . . has accumulated to the point of
2 constituting a nuisance.” (AR 196.) Petitioners are responsible for avoiding such accumulation.

3 **2.4 The finding regarding improper disposal of animal waste**

4 Petitioners contend that the Hearing Officer’s 13th finding of fact — that Petitioners
5 “improperly dispose of animal waste in their yard waste bin” — is unsupported by the evidence.
6 (AR 201.) In support of this finding, the Hearing Officer referenced testimony of both Officer
7 Conti-Yeo and Petitioners. (AR 240, 269.)

8 Petitioners claim that Officer Conti-Yeo admitted she told Petitioners they were properly
9 disposing of animal waste in their Yard Waste container. Petitioners mischaracterize Officer
10 Conti-Yeo’s testimony. Officer Conti-Yeo stated that she remembered the conversation, but did
11 not recall advising Petitioners to use the Yard Waste container. Instead, she recalls stating only
12 that the waste needed to be disposed of in a closed container. (AR 269.) In any event, Petitioners
13 *admitted* they disposed of pig waste in their Yard Waste container. (AR 240.) This violated City
14 waste procedures. (AR 192, 197.)

16 **3.0 Whether the findings support the decision**

17 Petitioners argue the Hearing Officer’s 9th, 10th, 11th, and 12th findings do not support
18 the decision. “Section 1094.5 clearly contemplates that at minimum, the reviewing court must
19 determine [] whether substantial evidence supports the administrative agency’s findings and
20 whether the findings support the agency’s decision.” (*Topanga Assn. for a Scenic Community v.*
21 *County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Further, an agency decision must reveal
22 “the analytic route the administrative agency traveled from evidence to action.” (*Id.* at p. 515.)

24 **3.1 Out-of-town travel**

25 The Hearing Officer’s 9th finding of fact is that Petitioners “travel out of town for several

1 days at a time, leaving their animals at home.” (AR 201.) The Hearing Officer relied on this
2 finding, in part, to justify her determination that Petitioners violated PGMC section 10.08.050,
3 subdivisions (a) and (c), a private or public nuisance caused by a pet and the offensive
4 accumulation of animal excrement, respectively.

5 That Petitioners regularly travel out of town supports the conclusion that Petitioners
6 created a nuisance by permitted their pig’s feces to accumulate. Petitioners argue that this finding
7 improperly relies upon the credibility of Mr. Magsalay, and consequently, does not support the
8 Decision. As discussed *ante*, this argument has no merit. Additionally, Petitioners argue that the
9 evidence shows that their travel did not create a nuisance because they hired a housesitter while
10 out of town. But the fact that Petitioners hired a housesitter does not establish no accumulation of
11 feces occurred; evidence in the record supports the contrary conclusion. (AR 60, 221.)

12 **3.2 Petitioners’ awareness of odor complaints**

13 The Hearing Officer’s 10th finding of fact is that Petitioners were aware of odor
14 complaints before the City issued the Compliance Order. (AR 201.) Petitioners assert that this
15 finding improperly relies upon Mr. Magsalay’s credibility. Petitioners further repeat their
16 arguments regarding Mr. Lucius’ testimony and Ms. Schaeffer’s statement that Petitioners had
17 complied with the City’s requests. As discussed *ante*, these arguments have no merit.

18 **3.3 Petitioners’ awareness of their obligations under the PGMC**

19 The Hearing Officer’s 11th finding of fact is that Petitioners were “aware of their
20 obligations under PGMC section 10.08.050 before issuance of the Order.” (AR 201.) Petitioners
21 assert that mere knowledge of their duties does not prove a violation occurred. But the finding is
22 relevant to show that despite being aware of their legal obligations, Petitioners failed to take
23 adequate steps to avoid a nuisance. Moreover, the Hearing Officer’s findings that Petitioners
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1 violated PGMC section 10.08.050, subdivisions (a) and (c) did not rely on this finding alone.

2 Those conclusions relied on five findings of fact, including, notably, findings that Petitioners
3 allowed a recurrent odor of feces and flies in their yard, and a finding that Petitioners "allowed
4 accumulation of feces to occur in their yard in a manner that creates a nuisance." (*Ibid.*)

5 **3.4 That Petitioners were notified of means to abate the nuisance**

6 The Hearing Officer's 12th finding of fact is that Petitioners were "informed of possible
7 methods of abating the nuisance on more than one occasion." (AR 201.) Petitioners contend that
8 mere knowledge of a potential remedy does not prove a violation occurred. However, the finding
9 is relevant to show that the City afforded Petitioners sufficient opportunity to remedy the
10 nuisance before issuing the Notice of Compliance. Further, the Hearing Officer's findings that
11 Petitioners violated PGMC section 10.08.050, subdivisions (a) and (c) did not rely exclusively on
12 this finding. Those conclusions relied on five findings of fact, including, critically, findings that
13 Petitioners allowed a recurrent odor of feces and flies in their yard, and that Petitioners "allowed
14 accumulation of feces to occur in their yard in a manner that creates a nuisance." (*Ibid.*)
15

16 ***Disposition***

17 The petition for writ of mandate is denied.

18 The court directs the City's counsel to prepare an appropriate judgment consistent with
19 this ruling, present it to opposing counsel for approval as to form, and return it to this court for
20 signature.

21 Dated: 5-2-2017

22 A handwritten signature in cursive script, reading "Susan J. Matcham", is written over a horizontal line.

23 HON. SUSAN J. MATCHAM

24 Judge of the Superior Court

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CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **Intended Decision** for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

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Date: **MAY 02 2017**

TERESA A. RISI, Clerk of the Superior Court,

 Deputy Clerk

Alina Oliver

16cv002523

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