

CACASA Neglected/Abandoned Orchard Abatement Guidelines

Adopted: December 19, 2014

These guidelines are intended to assist county agricultural commissioners in the decision making process, and to facilitate consistency between counties when CACs are evaluating orchards and considering abatement actions for properties that may be abandoned, harboring Asian Citrus Psyllid, or potentially provide a reservoir for Huanglongbing (Citrus Greening disease). The two abatement authorities in the Food and Agricultural Code on which CACs have relied are FAC 5401 and FAC 5551.

Food and Agricultural Code (FAC) 5401 or 5551?

In most cases, the County Agricultural Commissioner (CAC) will be asked to address a neglected or abandoned crop because of a pest problem brought to his/her attention by an affected neighbor. Usually this will be a perennial crop such as a grove or vineyard, because an annual crop will quickly become just a weedy field if not tended. Jim Allen, Solano County CAC has provided a power point flow chart and narrative of how to proceed in these cases.

5401

Most of the examples provided by the California Agricultural Commissioners and Sealers Association (CACASA) were of the use of 5401 which addresses specifically identified pest problems created by a neglected or abandoned grove or vineyard. We have several letters provided as examples of how to notify the property owner to abate the grove or vineyard which produces an identified pest.

5551

Both 5551(a) and (b) may also be used when a pest is actually identified. The current discussion of the emergent issue is because of the use of 5551(c) which states:

FAC 5551. *Any neglected or abandoned plant or crop is a public nuisance in any of the following circumstances:*

(c) It is a *host plant* of, or provides a *favorable* or *likely harbor* for, any pest. (*Emphasis added*)

FAC 5551(c) - Abating a Neglected or Abandoned Crop Which Provides a Harborage for a Pest

Several CACs have used 5551(c) in the areas where European Grape Vine Moth (EGVM) is/was under quarantine and eradication. We have examples of the letters they used for your reference. The difference here is that we don't need to prove the pest is in that specific vineyard or grove, but has been identified in the area.

ACP/HLB

In the case of Asian Citrus Psyllid (ACP) and Huanglongbing (HLB) the bacterial disease it vectors, 5551(c) is the appropriate section to use where there is a quarantine for ACP and the risk of HLB being present but undetected in the area. In this case, we don't wait for complaints from neighbors about ACP. Rather, by complaint or by observations made by our inspectors we identify groves which appear to be in decline or distress because of the absence of care.

First Steps

- Review the statutes with your County Counsel, County Administrative Officer (CAO) and Board of Supervisors and industry to assure they agree with your plan to use this abatement authority.
- Survey your County and inventory the neglected or abandoned groves
- Check Pesticide, Certified Farmers' Market, Organic and other records for ownership and operator information.
 - Use Citrus Research Board and the County Assessor if your records fail.
 - San Diego County is exploring aerial imagery to identify declining groves.
- Attempt to phone the owner/operator to see why the grove is in such poor condition.
- If they are no longer farming the grove ask them to consider removing it.

What if They Don't Respond by Removing the Public Nuisance?

Target Commercial Groves

This document addresses commercial groves, which are defined under the pest control district section of the FAC as 25 or more trees. Residential trees would primarily be addressed through public education and media outreach, with abatement authorities being employed should there be an HLB infection nearby.

What is a Neglected or Abandoned Grove?

For the purpose of ACP/HLB guidelines, defining what may be a neglected or abandoned grove facilitates uniform and consistent action. When orchard trees are untended, they decline and before long they cannot be brought back to commercially viable production condition. Usually, the grove was neglected because it was not economically viable. Initial action should focus on groves where trees are in obvious distress or are dying. Additional criteria that may be considered are:

- No harvest for the past 2 years
 - Ask for sales receipts for fruit sold
- No Pest control
 - Ask for pest control receipts
 - Ask for Monthly Pest Control Reports
 - This does not include actions taken solely to comply with fire or other government codes such as:
 - Weed abatement
 - Insect eradications, such as OFF, Medfly, etc.

- No Irrigation
 - Irrigation is defined as artificial watering sufficient to produce a marketable crop
 - Ask for water bills
 - Ask for electric bills for well service

Exceptions may be considered for orchards in a county that has officially been declared a drought area. These exceptions should be reserved for cases where the owner/operator can demonstrate that access to normal sources of irrigation water is limited or nonexistent, e.g. no well, no district service, etc. It is recommended that these situations be addressed on a case by case basis and at the discretion of the California Department of Food and Agriculture, CAC and the courts.

Start with the biggest and most visible first

- If they are growers with other groves they need to lead by example, protecting other agricultural investments and the local industry.
- If the trees are in decline (other than limited or no access to water) they probably are not commercially viable and abandonment/neglect was a business decision.
- If the land is being developed they will be removed at some point in the development process
- Any subsequent use will require the removal of the trees
 - New grove of other varieties
 - Other fruit trees
 - Field or row crops
 - Any building or construction development, etc.
 - Even weed abatement is easier and cheaper without the trees
- The trees are a liability not an asset
- It is **when**, not **if** they will be removed

Help landowner to retain agricultural status of the land

There may be a variety of reasons and disincentives that discourage a landowner from removing an orchard. These situations may include issues related to local land use ordinances or Williamson Act/Agricultural Preserve rights. The CAC is recommended to work with his/her Planning Department, CAO and Board of Supervisors to address these issues to maintain the rights of the landowner once the orchard has been removed.

Beginning the Legal Process

CHAPTER 7. ABATEMENT OF NEGLECTED OR ABANDONED CROPS	
Article 1. General Provisions	5551-5555
Article 1.5. Notice	5561-5564
Article 2. Institution of Proceedings	5571-5581
Article 3. Hearing and Order	5601-5605
Article 4. Expense of Abatement	5631-5645

Review examples of abatement actions and notices provided by other CAC's that can be modified to address your county's situation. In most cases, sending a letter notifying the property owner of the concern and authority results in compliance. Examples of abatement actions and notices will be made available on CACASA.org, under "Pest Prevention Resources".