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5 Plaintiff/Petitioner

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8  
9 COUNTY OF SANTA CRUZ

10  
11 ANTOINETTE JARDINE BYRNE,  
12 Plaintiff and  
13 Petitioner

14 vs.

15 SANTA CRUZ COUNTY AND  
16 PLANNING DEPARTMENT  
17 COUNTY OF SANTA CRUZ  
18 NEAL COONERTY, JOHN LEOPOLD  
19 ELLEN PIRIE, TONY CAMPOS,  
20 JAN BEAUTZ, MARK W. STONE,  
21 COUNTY BOARD OF SUPERVISORS,  
22 COUNTY OF SANTA CRUZ  
23 AND DOES 1-25 INCLUSIVE,,  
24 ,

25 Defendants

) Case No.:  
)  
) PETITION FOR ADMINISTRATIVE  
) MANDAMUS,  
) (CCP §1094.5) WRIT OF MANDATE  
) (CCP §1085); COMPLAINTS FOR:  
) CANCELLATION OF  
) INSTRUMENT; FAILURE TO PERFORM  
) MANDATORY DUTY; EXCESSIVE AND  
) IMPROPER FEES; VIOLATION OF  
) CIVIL RIGHTS; INVERSE  
) CONDEMNATION; DECLARATORY  
) RELIEF; AND INJUNCTIVE RELIEF  
) OF PRELIMINARY AND PERMANENT  
) INJUNCTION AND CIVIL PENALTIES,  
) COSTS, CIVIL CODE §52, 42 USC  
) 1983  
)

26  
27 GENERAL ALLEGATIONS

28 1. Petitioner/Plaintiff at all times mentioned herein has been  
the owner of and resident of property located in Santa Cruz  
County since 1999, Assessors Parcel Number 102-041-28 ("Subject  
Property").

1  
2 2. Defendant, County of Santa Cruz, has zoning and planning  
3 jurisdiction, to the extent consistent with supervening state  
4 law, over the Subject property because it lies within an  
5 unincorporated portion of Santa Cruz County.

6  
7 3. Defendant Santa Cruz County Planning Department ("Planning  
8 Department") and the County have jurisdiction over both code  
9 compliance matters and the issuance of permits pursuant to the  
10 Santa Cruz County Code to the extent consistent and contrary to  
11 supervening state law. Defendants Ellen Pirie, Neal Coonerty,  
12 Tony Campos, Mark W. Stone and John Leopold are or were at all  
13 relevant times, the members of the Board of Supervisors of Santa  
14 Cruz County and are sued in their official capacity. John  
15 Leopold replaced Jan Beautz prior to this action being filed.  
16 Defendant Tom Burns ("Burns") at all relevant times has been the  
17 director of the Santa Cruz Planning Department and the  
18 unlicensed, uncertified Building Official, which has been given  
19 authority by the Board of Supervisors over certain County  
20 activities that are the subject of this action. Defendants Kevin  
21 Fitzpatrick, Kathleen Salazaar, and Ken Hart at all relevant  
22 times has been code compliance officers of the Santa Cruz  
23 Planning Department and are unlicensed, uncertified employees  
24 of the planning department. Defendant Mark Deming is unlicensed,  
25 uncertified employee of the planning department.

26  
27 4. Does 11-25 are sued here under fictitious names. Their true  
28 names and capacities are currently unknown to Petitioner. Upon  
information and belief, each of the fictitiously sued Defendants  
are responsible in some way for the occurrences  
alleged in this action and the damage complained of herein was  
caused by such fictitiously named defendants.

HISTORY OF THE SUBJECT PROPERTY

5. Petitioner purchased the subject property which included a restored existing building in July 1999, on a private road, in an agricultural zoning district.

6. Petitioner had *obtained permits, issued, inspected and approved* by the Santa Cruz County during the period of 1999-2000 for the only existing building built circa 1900, in compliance with state law 1997 Uniform Housing Code and Health & Safety Code which regulates existing buildings, housing and human habitation.

7. Petitioner /Plaintiff's Subject Property's existing building is the only building on Plaintiff's property, built circa 1900 with 639 square feet dedicated to living space, located on 13 acres with a agricultural zoning designation and private road.

8. In June 2007, Kathleen Salazaar and Kevin Fitzpatrick came onto Subject Property without an invite. Petitioner requested that they leave the property and Fitzpatrick refused to leave premises and instructed Salazaar to remain on Subject Property as well and to go "looking at everywhere" on Subject Property, thus trespassing onto Petitioner's Subject Property and interfering and violation Petitioner's right to privacy and enjoyment of her property.

9. On 21 July 2007, Kevin Fitzpatrick, code compliance officer of Santa Cruz County Planning department posted a "Notice of Violation" violation of county code but Fitzpatrick was in

1 violation of preemptive state law 1997 Uniform Housing Code  
2 and Health & Safety Code that the county is required to adopt  
3 and the county had not done.. Fitzpatrick and Salazaar had  
4 knowledge or should have known that they were in violation of  
5 preemptive state law 1997 Uniform Housing Code and Health &  
6 Safety Code, that no violations had occurred under state  
7 preemptive law Uniform Housing Code and Health & Safety Code,  
8 and Defendants Fitzpatrick and Salaazar are not licensed,  
9 qualified, certified and/or trained as required by Health &  
10 Safety Code §18949.25-31 & 19870 and acted arbitrarily,  
11 capriciously and/or and unreasonable in regards to Petitioner's  
12 rights and Subject Property. Never at any time did Defendants  
13 inform Petitioner of an Appeals Board and inform Petitioner of  
14 her rights or procedures of a housing and building Appeals Board  
15 ("Appeals Board"). Further, when Petitioner requested the file  
16 of her Subject Property at the planning department, she was  
17 denied to review all documentation in the file per by the  
18 planning department and per Fitzpatrick's instructions, in  
19 violation of the federal and state law Freedom of Information  
20 Act.

21 10. On December 31, 2007 a permit application was submitted to  
22 the planning department with applicable drawings and reports  
23 that planning department requested and reviewed numerous times  
24 from 1999 through 2007 including the citation of the Subject  
25 Property's existing building. The application was reviewed over  
26 a period of three hours at the planning department and accepted.  
27 Ken Hart, code compliance planning department employee pulled  
28 the application before the application was able to proceed  
through the planning department's normal and customary  
processing procedure and rejected the permits application on 15  
January 2008, accompanied by a letter, citing that an additional

1 permit was now required for the existing building for a  
2 previously but erroneously change to Subject Property by the  
3 planning department that was in error and should have been set  
4 aside, voided or made voidable and that no permits were required  
5 for the existing building as existing buildings and human  
6 habitation are governed by preemptive state law 1997 Uniform  
7 Housing Code and Health & Safety Code which the county is  
8 required to adopt. Hart, as a senior code compliance planning  
9 department employee knew or should have known that no permits  
10 were required for the existing building, that the county are  
11 required to adopt the Uniform Housing Code and Health & Safety  
12 Code and knew or should have known that the previously issued  
13 change to Subject Property was in error, easily discoverable by  
14 a minimum due diligence of county records; that such discovery  
15 by Petitioner of county records was made available to Hart to  
16 request a reinstatement of application and hearing of Hart's  
17 decision to deny reinstatement of Petitioner's permit  
18 application. Further, Hart did not provide express justification  
19 as required and provide to Petitioner relevant data and  
20 articulate a satisfactory explanation for its action., Hart is  
21 not licensed, qualified, certified and/or trained as required by  
22 Health & Safety Code and therefore Hart acted arbitrary,  
23 capriciously and/or irrational and unreasonably and Hart's  
24 agency actions of obstructing and denying Petitioner's permit  
25 application without notice, hearing and appeal and thus denied  
26 Petitioner's civil and state due process rights and such abuse  
27 of agency actions may and should be set aside by the court.

28 11. Petitioner wrote a letter of appeal on 24 January 2008 to  
29 Tom Burns, director, planning department requesting a  
30 reinstatement of her permit application. Petitioner received a  
31 letter from Tom Burns, director, planning department in February

1 2008, refusing the reinstatement of the permits application and  
2 stated in his letter that an additional, conditional permit was  
3 now required but it was "unlikely" to be granted by Burns; the  
4 error of the planning department of a previously issued  
5 erroneous change to Subject Property being the reason for the  
6 "requirement" of an additional permit by Burns. The requirement  
7 of a additional conditional permit for an error made by the  
8 planning department and stating that such additional permit  
9 would not effectively be granted is in effect resulting in the  
10 taking of the Subject Property from Petitioner without notice,  
11 hearing and without compensation of the diminished value of  
12 Subject Property and therefore denying Petitioner's due process  
13 rights before the taking of Property and without compensation  
14 of the diminished value of Subject Property. Burns who is not  
15 licensed, qualified, certified and/or trained as required by  
16 Health & Safety Code, acted in a arbitrary, capriciously and/or  
17 irrational, unreasonably and unnecessary manner in the denying  
18 of Petitioner's due process rights and taking of Subject  
19 Property without notice, hearing and without compensation of  
20 diminished value of Subject Property and Burns did not inform  
21 Petitioner of her right to appeal to the Appeals Board as  
22 mandated by state law Uniform Housing Code and Health & Safety  
23 Code. Further, Burns knew or should have known that the  
24 planning department erred in the previously change status of  
25 Subject Property, the error being easily discoverable by minimum  
26 due diligence and that discovery was provided to him; he knew or  
27 should have known that he denied or attempted denial of  
28 Petitioner's due process rights, remedy and right to appeal to  
Appeals Board, and his actions were effectively the taking of  
Subject Property without notice to Petitioner and without  
compensation of the diminished value of Subject Property and  
that his actions were arbitrary, capriciously and/or irrational

1 by imposing a arbitrary, capriciously and/or irrational. Further  
2 Burns knew or should have known that county code is in conflict  
3 with mandated state preemptive law Uniform Housing Code and  
4 Health & Safety Code that regulates existing and human  
5 habitation regulations. Petitioner alleges county planning  
6 department's actions of the erroneous change of Subject Property  
7 and conditional permit are an abuse of agency actions and such  
8 actions taken by Burns, Hart and planning department are  
9 irrational, arbitrary, capricious and unreasonable and therefore  
10 may be set aside by the court.. Also, such agency actions are  
11 based on flawed reasoning in the decision to change to Subject  
12 Property and requiring application of conditional permit to  
13 correct an error that the agency made and therefore Petitioner  
14 is requesting that the court set aside or void such actions.

15 12. A Notice of Violation was recorded with the County  
16 recorder on April 15, 2008.

17 13. An appeal to the Appeals Board was made on 12 May 2009 by  
18 Petitioner. The Appeals Board had been newly formed after an  
19 absence of over 20 years and convened for first time since the  
20 lapse of twenty plus years in April 2009. When Petitioner became  
21 aware of the newly formed Appeals Board, Petitioner submitted an  
22 appeal to be heard by the Appeals Board. When Petitioner  
23 submitted the Appeal to the Appeals Board, in which Petitioner  
24 was required to submit the Appeal request through the planning  
25 department, Petitioner's Appeal request documentation was  
26 intercepted by Deming, planning department employee. Deming,  
27 stated to Petitioner that he "vetted" Appeals submissions to the  
28 Appeals Board so that the planning department can determine  
whether an Appeal can be heard by the Appeals Board or not  
although Deming was not a member of the Appeals Board. Deming

1 stated he had authority to "vet" appeal applications though he  
2 is a planning department employee, and not a member of the  
3 Appeals Board. The Appeals Board members stated to Petitioner  
4 that the Appeals Board did not give Deming authority to "vet"  
5 appeal applications to the Appeals Board. Deming is not a  
6 licensed, qualified, certified and/or trained as required by  
7 Health & Safety Code. and his actions were arbitrary,  
8 capriciously and/or unreasonable and without authority to  
9 interfere or deny appeal applications to Appeals Board, thus  
10 denying or attempting to deny Petitioner of her civil, state  
11 rights and due process to appeal to Appeals Board as mandated by  
12 state law.

13 14. Petitioner received a letter from Tom Burns, director of  
14 planning department on 19 May 2009 rejecting Petitioner's right  
15 to appeal to the Appeals Board, denying and obstructing  
16 Petitioner's right to a hearing before the Appeals Board housing  
17 appeals. Burns acted without authority to send such letter to  
18 the Petitioner and Burns actions were intentionally in  
19 violation of Petitioner's rights to a hearing before the Appeals  
20 Board as mandated by state law by the Uniform Housing Code and  
21 Health & Safety Code regarding housing, existing buildings and  
22 human habitation as Burns knew or should have known that his  
23 actions were in violation of state law and that county planning  
24 department are required to follow and adopt preemptive state law  
25 of the Uniform Housing Code and Health & Safety Code. As Burns'  
26 knowingly violated the state mandated Uniform Housing Code and  
27 Health & Safety Code that county is required to adopt and  
28 follow.

15. A Decision and Order was issued by the county  
administrative hearing officer 20 May 2009, without jurisdiction

1 and in conflict of preemptive state law and state and in  
2 violation of Petitioner's federal and state civil rights and due  
3 process rights.

4  
5 16. On June 3, 2009, the Board of Supervisors voted to  
6 dissolved the Appeals Board, thus Petitioner's civil, state and  
7 due process rights, depriving Petitioner of her right to appeal  
8 hearing before the Appeals Board.

9 17. Petitioner is seeking to compel administrative actions,  
10 including the removal of the red tag and an award of damages as  
11 set forth in the causes of action below.

12 Petitioner has discovered over the course of a number of months  
13 that Defendants have consistently concealed the jurisdiction and  
14 existence of the Santa Cruz County Building, Accessibility and  
15 Fire Code and Housing Appeals Board ("Appeals Board"). Pursuant  
16 to state statutory law and County enactments, the Appeals Board  
17 have had jurisdiction over any and all matters relation to  
18 Petitioner's building. Defendants actively concealed the right  
19 of Petitioner and others similarly situated to appeal to this  
20 Appeals Board.

21 18. Defendants has further denied Petitioner the right to an  
22 hearing before the Appeals Board on the red tag, and/or  
23 recordation of the Notice of Violation as required by Section  
24 105 of Title 24 California Code of Regulations (the 2001  
25 California Building Code), the 1997 Uniform Housing Code, State  
26 Housing Law (Health & Safety Code § 17910, 17922, et seq.,  
27 including §17953) in effect at the time of issuance and  
28 recordation of the red tag. Defendants deprived Petitioner of  
a hearing before the Appeals Board, as provided by State law in  
2001 Building Code or similar board of appeals under the County

1 Code, including but not limited to Chapters 12.1, 12.10 and  
2 12.12, 12.10.125 and 12.14.

3  
4 19. Section 108.8 of Title 24 of the California Code of  
5 Regulations (2007California Building Code) reflects current  
6 state law. It provides that "(e)very city, county or city and  
7 county shall establish a local appeals board and a housing  
8 appeals board." §108.8.3 states that "(e)xcept as otherwise  
9 provided in law, any person, firm or corporation adversely  
10 affected by a decision, order or determination by a city, county  
11 or city and county relating to the application of the building  
12 standards published in the California Building Standards Code or  
13 an other applicable rule or regulation adopted by the Department  
14 of Housing and Community Development, or any lawfully enacted  
15 ordinance by a city, county or city and county, may appeal the  
16 issue for resolution to the local appeals board or housing  
17 appeals board as appropriate."

18 20. Defendants, in violation of State law, deleted §108.8  
19 from the County Code by submitting amendments to the California  
20 Building Standards Commission on October 22, 2007, absent making  
21 the required findings and before ensuring that a comparable  
22 appeals board would exist for hearing such appeals under the  
23 County Code.

24 21. As required for the 2001 California Building Code, State  
25 law requires cities and counties to adopt the 2007 California  
26 Building Standards Code, unless pursuant to Health and Safety  
27 Code § 17958.5, the legislative body of the local jurisdiction  
28 determines that changes to the 2007 California Building  
Standards Code are reasonably necessary, pursuant to Health and

1 Safety Code § 17958.7, because of local climactic, geological or  
2 topographical conditions. §17958.7 of the Health  
3 and Safety Code provides that the "governing body of a city or  
4 county, before making any modifications or changes [to the 2007  
5 California Building Standards Code], shall make an express  
6 finding that such modifications or changes are reasonably  
7 necessary because of local climatic, geological or topographical  
8 conditions." In deleting §108.8, the County failed to make the  
9 required findings pursuant to §17958.7 if, in fact, such  
10 findings could be made.

11 22. As a result of improperly deleting §108.8 of the 2007  
12 California Building Standards Code, Defendants denied Petitioner  
13 her right to appeal the Defendants' decisions, in  
14 violation of state law, including §108.8 and Health and Safety  
15 Code §17920.5 & 6.

16 23. Despite not providing Petitioner with a independent  
17 hearing of licensed, experienced members, thus protecting her  
18 due process rights, not providing a hearing before the Appeals  
19 Board as required by State law, and affirmatively concealing the  
20 existence of the Appeals Board, Defendants nevertheless recorded  
21 the red tag encumbering the Petitioner's property and depriving  
22 Petitioner of property rights.

23 24. Defendants therefore committed a prejudicial abuse  
24 of discretion and failed to proceed in the manner required by  
25 State law and in violation of Petitioner's rights to substantive  
26 and procedural due process.

27  
28 25. Defendants are liable for constitutional civil rights

1 violations by issuing "redtags" or "Notices of Violations" that  
2 were not issued in compliance with applicable state laws and  
3 then recording those allegations (Notice of Violation) on  
4 Petitioner's Subject Property without authorization by valid  
5 State laws as required.

6  
7 FIRST CAUSE OF ACTION

8 (Petition for Writ of Manadate, C.C.P. §1085)

9 (Against the County, the Planning Department)

10  
11 26. Petitioner re-alleges and incorporates by reference  
12 all General Allegations contained in paragraphs 1-25 or by those  
13 set forth fully herein.

14  
15 27. The Uniform Housing Code provides in §1102 for the  
16 recordation of a certificate describing the property, that the  
17 building is substandard and that the owner has been notified of  
18 the substandard condition and that no other recordation of  
19 building code violations are allowed on existing buildings by  
20 law except the recordation of pending actions allowed by Health  
21 and Safety Code §17985(a) after a notice or order meeting the  
22 requirements of Health and Safety Code § 17980.6 has been  
23 issued. Defendants have never recorded a pending action, thus  
24 Petitioner's rights have been violated by Defendants. Health and  
25 Safety Code § 17985(a) allows recordation of notices of pending  
26 actions pursuant to this state statute - only or in accordance  
27 with §1102 of the Uniform Housing Code. The statute of  
28 limitations on the recordation in compliance with Uniform  
Housing Code §1102 and Health & Safety Code §17985(a) is three

1 (3) years from the initial enforcement of preempted local  
2 ordinance as to Subject Property. Defendants are in conflict  
3 with Uniform Housing Code §1102 and Health & Safety Code  
4 §17985(a) and did not follow preemptive law and as a result,  
5 Petitioner's rights have been violated; recordation against  
6 Subject Property is void and should be expunged.

7 28. Defendants undertook actions that were arbitrary,  
8 capricious and/or irrational and the county's actions are an  
9 unreasonable means of advancing a legitimate government  
10 interest.

11  
12 29. Defendants are liable for damages caused to Petitioner  
13 by its unconstitutional "enforcement" of local ordinances that  
14 are void by preemption of State law.

15 WHEREFORE, Petitioner prays for judgment as set forth below.  
16

17  
18 SECOND CAUSE OF ACTION

19 (Petition for Writ of Mandate, C.C.P. §1085)

20 (Against the County, the Planning Department)

21  
22 30. Petitioner re-alleges and incorporates by reference  
23 all General Allegations contained in paragraphs 1-29 or by those  
24 set forth fully herein.

25 31. Petitioner is the owner and resides in the Subject  
26 Property which is in an agricultural residence zoning district  
27 under the County Zoning Ordinance.

28 32. Defendants Santa Cruz County and Tom Burns, director

1 of the Planning Department, now and at all times in this  
2 petition, exercise administrative functions in connection with  
3 the recorded Notice of Violation or "red tag" and permit  
4 applications alleged above.

5  
6 33. Petitioner seek extraordinary relief from this court  
7 because Defendants have recorded a Notice of Violation or "red  
8 tag" against her property which impeded its sale, transfer or  
9 refinancing and continue to erroneously insist that Petitioner  
10 must obtain permits which are contrary to Health & Safety Code  
11 §§ 17922 et. seq. and previously issued change to Subject  
12 Property that Defendants erroneously issued.

13 34. The above described actions of the Defendants were  
14 unlawful, unreasonable, arbitrary and capricious for the  
15 following reasons:

16 a. County Code 1.12 is invalid as county code is  
17 preempted by state law Uniform Housing Code and Health  
18 & Safety Code.

19  
20 b. County code 1.12.70 is invalid as county code is  
21 preempted by state law Uniform Housing Code and Health  
22 & Safety Code; County Code § 12.10.125 is invalid as  
23 county code is preempted by state law Uniform Housing  
24 Code and Health & Safety Code.

25  
26 c. California Building Code, Title 24 of California Code  
27 of Regulations including without limitation, §105.2,  
28 312.1 as well as the California Housing Code, Title 25  
of California Code of Regulations and Health & Safety  
Code §§17960, et. seq., exempt

1  
2 d. Petitioner relied to her detriment on Defendants'  
3 statements that the Notice of Violation recorded of a  
4 county code that is in conflict with preemptive state  
5 law Uniform Housing Code and Health & Safety Code and  
6 Defendants knew or should have known that county codes  
7 regarding existing buildings, housing and human  
8 habitation are preempted by state law Uniform Housing  
9 Code and Health & Safety Code which the county is  
10 required to adopt and therefore Notice of Violation is  
11 void and should be expunged.

12 e. Petitioner was issued permits, inspected and approved  
13 by Defendants over eight (8) years ago and Defendants  
14 did not request or required any additional permits of  
15 Petitioner, pursuant to the Permit Streamlining Act,  
16 Government Code §§ 65922, et.seq., before Defendants  
17 recorded its Notice of Violation of county code which  
18 is void as county codes are preempted by state law.

19 f. Defendants misled Petitioner to believe a conditional  
20 permit was required to correct error made by planning  
21 department of Subject Property. Petitioner relied to  
22 her detriment on Defendants repeated statements that  
23 Petitioner a conditional permit when permit was not  
24 required county codes are in conflict with state  
25 preemptive laws and existing buildings are governed by  
26 state law Uniform Housing Code and Health & Safety  
27 Code that the county is required to adopt. Defendants'  
28 actions were arbitrary, unreasonable, capricious and  
therefore, Defendants are estopped in their position  
of Subject Property and no permits are required.

1  
2 g. County Code §18.10.300 et. seq., relating to  
3 administrative appeals of permit applications, conflict  
4 with and are preempted by Health & Safety Code §§17922,  
5 17920.5, 1790.6, 17958, et. seq., 24 C.C.R., §108.8,  
6 Uniform Housing Code §203, and 25 C.C.R. §12 and violate  
7 Petitioner's due process rights, because, among other  
8 things, Defendants' procedures fail to provide for a  
9 housing appeals board or local building appeals board of  
10 qualified, experienced persons who are *not* employees of  
11 Defendants or contractors of Defendants.

12 h. California law, including Government Code Section 27201,  
13 does not permit a Notice of Violation to be recorded  
14 against real property and preempts County Code §§  
15 19.01.030, 19.01.070, 19.01.080 which purports to give  
16 the County such authority.

17 i. Burns and his staff, including, Mark Deming, Ken Hart,  
18 Lezanne Jeffs, Kevin Fitzpatrick and Kathleen Salazaar  
19 are not licensed, qualified, certified and/or trained as  
20 required by Health & Safety Code §§18949.25-31 & 19870.

21  
22 j. Defendants actively concealed the existence and  
23 jurisdiction of the Appeals Board and have been doing so  
24 since its inception in 1976.

25 k. In January 2009, the Board of Supervisors appointed new  
26 members to the hitherto vacant positions on the building  
27 appeals board. The Planning department staff, under the  
28 direction of Tom Burns, refused to allow the Appeals  
Board to hear cases. The Board of Supervisors then

1           unlawfully purported to eliminate the Appeals board  
2           entirely by ordinance in June 2009.

3  
4       35.       For years, the County refused to remove the red tag,  
5       which was an encumbrance that impeded any sale, transfer or  
6       refinancing of the Subject Property. Defendants arbitrarily,  
7       capriciously and without justification delayed the process for  
8       over two (2) years since July 2007, and forced Petitioner to  
9       incur substantial additional costs accommodating Defendants  
10       conflicting and unlawful demands.

11       36.       Petitioner was unlawfully denied the opportunity to  
12       appeal the recorded Notice  
13       of Violation or "red tag" to state law mandated Appeals Board  
14       and do not otherwise have a plain, speedy or adequate remedy in  
15       the ordinary course of law.

16       37.       As a result of Defendants' actions, Petitioner has  
17       sustained damages in that the Notice of Violation created a  
18       cloud on title, making it extremely difficult if not impossible  
19       to see the Subject Property or to refinance her loan on the  
20       Subject Property. Petitioner has incurred substantial  
21       unnecessary consultant and legal fees, have incurred substantial  
22       payments to the County for its planning process, have suffered a  
23       loss in property value, extreme financial loss and have suffered  
24       severe emotional distress and extreme hardship. Petitioner is  
25       entitled to recover these damages, costs and interest under Code  
26       of Civil Procedure §1095 and other applicable authority.

27       38.       Petitioner has no plain, speedy or adequate remedy in  
28       the ordinary course of law to compel the county to obey the  
          mandatory state laws governing the adoption of the Uniform

1 Housing Code not compliance with its mandatory and preemptive  
2 sections.

3  
4 39. Petitioner is personally obligated to pay her  
5 attorneys for attorney service to prosecute this action  
6 Petitioner is entitled to recover attorney fees and costs as  
7 provided in Government Code §800(a), Code of Civil Procedure  
8 §§1021.5 and 1032, on the grounds that Defendants actions were  
9 arbitrary and capricious and that Petitioner will have conferred  
10 a substantial benefit on the citizens of the region if  
11 successful in this action.

12 WHEREFORE, Petitioner prays for judgment as set forth below.

13  
14  
15 THIRD CAUSE OF ACTION

16 (Administrative Mandamus C.C.P. S. 1094.5)

17 (Against the County, Planning Department, Administrative  
18 Hearing Officer)

19 40. Petitioner re-alleges and incorporates by reference  
20 all General Allegations contained in paragraphs 1-39 or by those  
21 set forth fully herein

22 41. Defendants are liable for constitutional civil rights  
23 violations of Petitioner by holding hearings by a county  
24 administrative hearing officer, who has no jurisdiction over the  
25 matter because no proper " Notice and Order" was issued by the  
26 Building Official, no Housing Appeals Board exists, and the  
27 local ordinance allowing this hearing officer program is in  
28 conflict with state law. Government Code § 27201 allows the  
County Recorder to record only those records that are

1 "authorized" and permitted by law to be recorded and prohibits  
2 all other recordations. A "Notice and Order" which conforms to  
3 the requirements of the Uniform Housing Code and Health and  
4 Safety Code §. 17980.6 has never been issued for Subject  
5 Property, thus Petitioner's rights were violated by Defendants.

6  
7 42. Petitioner alleges that county administrative hearing  
8 officer acted beyond his jurisdiction and authority when ruling  
9 in the present case since the preemptive state law (1997 Uniform  
10 Housing Code and Health & Safety Code) is required to be used  
11 for abatement of uses of existing buildings, housing and human  
12 habitation and local ordinances can not be used as a basis for  
13 local administrative hearings or administrative fines. State law  
14 1997 Uniform Housing Code and Health & Safety Code provides for  
15 the requirement of an Appeals Board and therefore the  
16 administrative hearing officer acted in excess, improperly and  
17 beyond his jurisdiction and authority and used an improper forum  
18 for county code that is void as it conflicts and is preempted by  
19 state law Uniform Housing Code and Health & Safety Code that  
20 regulates housing, existing buildings and human habitation and  
21 provides for the requirement of an Appeals Board. Further, the  
22 administrative hearing officer knew or should have known that he  
23 was acting without jurisdiction and has a mandatory duty to  
24 follow state preempted law. Petitioner seeks extraordinary  
25 relief from this court because Petitioner alleges that  
26 administrative hearing officer issued a decision and order  
27 without jurisdiction and authority to the detriment of  
28 Petitioner and caused the recordation of a Notice of Violation  
against her property. Defendants impeded the sale, transfer or  
refinancing of Subject Property. Defendants are liable for  
damages caused to Petitioner by its unconstitutional

1 "enforcement" of local ordinances that are void by preemption of  
2 State law.

3  
4 43. Defendants' actions were unlawful, unreasonable,  
5 arbitrary, capricious and a prejudicial abuse of discretion for  
6 the following reasons:

7 i. Prior to recording the Notice of Violation,  
8 Defendants failed to provide Petitioner with any  
9 independent or objective hearing to be heard as  
10 provided by preemptive state law Appeals Board as  
11 mandated by the state Uniform Housing Code and  
12 Defendants failed to follow state and federal law of  
13 their mandatory duty per Govt. Code 815.6;

14  
15 ii. County Code Sections 18.10.300, et. seq., relating to  
16 administrative appeals of permit applications,  
17 conflict with and are preempted by Health & Safety  
18 Code §§ 17920.5 & 17920.6, 24 C.C.R. §108.8, 1997  
19 Uniform Housing Code §§ 203, and 25 C.C. R §12, and  
20 violate Petitioner's due process rights, because  
21 among other things, Defendants procedures fail to  
22 provide and concealed the Appeals Board, housing  
23 appeals board or local appeals board comprised of  
24 qualified, experienced persons who are *not* employees  
or contractors of Defendants.

25 iii. Administrative hearing officer acted without  
26 jurisdiction as county local ordinance of a  
27 administrative hearing officer that is contracted and  
28 paid by the county is in conflict with mandated  
preemptive state law of Uniform Housing Code and

1           Health & Safety Code that provides for an Appeals  
2 Board and administrative hearing officer decision and  
3 order is void as it violates Petitioner's due process  
4 rights and Defendants procedures fail to provide and  
5 concealed the Appeals Board, housing appeals board or  
6 local appeals board comprised of qualified,  
7 experienced persons who are *not* employees or  
8 contractors of Defendants.

9           iv. Petitioner established that the building posed no  
10 health or safety hazard, in compliance §and not  
11 substandard as required under the Health & Safety  
12 Code §§ 17922, et. seq. and the 1997 Uniform Housing  
13 Code. From 1999, Petitioner had vested rights of  
14 Subject Property. Notice of Violation in July 2007  
15 and Recordation of Notice of Violation in April 2008  
16 violated Petitioner's vested rights. Defendants knew  
17 and issued, inspected and approved permits of  
18 Petitioner's only existing building during the period  
19 of 1999-2000 and therefore had full knowledge and  
20 acquiescence of Subject Property for eight years  
21 before recording a Notice of Violation of alleged  
22 violation on Subject Property;

23           v. Defendants knew or should have known that Defendants  
24 must adopt and follow Uniform Housing Code and Health  
25 & Safety Code and not county code which is in  
26 conflict of preemptive state and federal law.  
27 Defendants knew or should have known that Petitioner  
28 is in compliance with Uniform Housing Code and the  
Health & Safety Code, Defendants knew or should have  
known that state Uniform Housing Code and Health &

1            Safety Code state preemptive law prevails and that no  
2            permits are required by Petitioner and therefore,  
3            Defendants are estopped in their position of Subject  
4            Property.

5  
6            vi. Permit Applications were deemed approved, pursuant to  
7            the Permit Streamlining Act, Government Code §§  
8            65922, et. seq., before Defendants issued its  
9            decision.

10           vii. California law, including Government Code § 27201,  
11           does not permit a Notice of Violation to be recorded  
12           against real property and preempts County Codes  
13           19.01030, 19.01.070, 19.01.080 which purports to give  
14           the County such authority.

15           viii. Defendants actively concealed the existence and  
16           jurisdiction of the Appeals Board and have been doing  
17           so since its inception in 1976.

18           ix. In January 2009, the Board of Supervisors appointed  
19           new members to the hitherto vacant positions on the  
20           building appeals board. The Planning department  
21           staff, under the direction of Tom Burns, refused to  
22           allow the Appeals Board to hear cases. The Board of  
23           Supervisors then unlawfully purported to eliminate  
24           the Appeals board entirely by ordinance in June 2009.

25           x. Burns and his staff, including Mark Deming, Ken Hart,  
26           Kevin Fitzpatrick and Kathleen Salazaar are not  
27           licensed, qualified, certified and/or trained as  
28           required by Health & Safety Code §§ 18949.25-31 &  
                 19870.

1 44. Defendants arbitrarily, capriciously and without  
2 justification delayed the process for two years, since July  
3 2007, and forced Petitioner to incur substantial additional  
4 costs accommodating Defendants' conflicting and unlawful  
5 demands.

6 45. The County is a local agency. A fundamental vested right  
7 is involved in that the right to the existing use of property  
8 has been impaired. Therefore, the scope of review is under the  
9 independent judgment test. Petitioner has exhausted the  
10 available administrative remedies required to be pursued, as  
11 alleged in detail above.

12 46. Petitioner does not have a plain, speedy and adequate  
13 remedy in the ordinary course of law.

14 47. As a result of Defendants' actions, Petitioner has  
15 sustained damages in that she has been unable to sell her  
16 property, her title was slandered, has incurred substantial  
17 unnecessary consultant and legal fees, Petitioner is entitled to  
18 recover these damages, costs and interests under Code of Civil  
19 Procedure §1095 and other applicable authority.

20 48. Petitioner is personally obligated to pay her attorneys  
21 for attorney services to prosecute this action. Petitioner is  
22 entitled to recover attorney fees and costs as provided in  
23 Government Code §800(a) and Code of Civil Procedure §§ 1021.5  
24 and 1032, on the grounds that Defendants' actions were arbitrary  
25 and capricious and Petitioner will have conferred a substantial  
26 benefit on the citizens of the region "and elsewhere" if  
27 successful in this action.  
28

1 WHEREFORE, Petitioner pray for judgment as set forth below.

2  
3 FOURTH CAUSE OF ACTION

4 (Cancellation of Instrument and Removal of Cloud on Title;  
5 Cal. Civ. Code § 3412, et. seq.)  
6 (Against the County, the Planning Department)

7  
8 49. Plaintiff hereby incorporates the allegations contained in  
9 the paragraphs 1 -48 of this complaint as though fully set forth  
10 herein.

11 50. Petitioner is the owner and resides in the Subject  
12 Property and Subject Property is located in agricultural zoning  
13 district.

14  
15 51. On April 15, 2008 and May 20, 2009, Defendants recorded  
16 and/or caused to be recorded with the Santa Cruz County Recorder  
17 a Notice of Code Violation or "red tag", reference 07-030,  
18 against the Subject Property owned by Petitioner. A copy of the  
19 Notice of Code Violation is attached as Exhibit A and is  
20 incorporated in this Petition by reference.

21 52. The Notice of Violation is void or voidable because  
22 California law, including Government Code §27201, does not  
23 permit such notices to be recorded against real property,  
24 because Defendants failed to provide Petitioner with notice and  
25 an opportunity to be heard before state law mandated Appeals  
26 Board before recording the Notice of Violation.

27 53. Defendants' actions were unreasonable, arbitrary,  
28 capricious and contrary to state law 1997 Uniform Housing Code  
and Health & Safety Code §§17922, 17958, 17985, et.seq which

1 preempts county codes and for all the reasons specified above,  
2 Petitioner is entitled to have the Notice of Violation adjudged  
3 void or voidable, cancelled or expunged pursuant to Cal. Civ.  
4 Code §3412.

5  
6 WHEREFORE, Petitioner prays for judgment against Defendants as  
7 set forth below.  
8  
9

10 FIFTH CAUSE OF ACTION

11 (Failure to Perform Mandatory Duty, Gov. Code Section  
12 815.6)

13 (Against All Defendants)

14  
15 54. Plaintiff hereby incorporates the allegations contained in  
16 the paragraphs 1-53 of this complaint as though fully set forth  
17 herein.

18 55. Defendants had a mandatory duty to advise that no  
19 additional permits were necessary without imposing unlawful  
20 conditions, to refrain from issuing and recording an unlawful  
21 Notice of Violation against the Subject Property, to provide  
22 Petitioner with notice and an opportunity to be heard before  
23 state law mandated Appeals Board before recording the Notice of  
24 Violation, and to expunge the unlawful Notice of Violation after  
25 it was recorded, as further detailed below.

26 a. Defendants can not apply a county paid  
27 administrative hearing officer to "hear"  
28 Petitioner's appeal, or for administrative hearing  
officer to apply county codes that are in conflict

1 with state preemptive law Uniform Housing Code and  
2 Health & Safety Code as Defendants have a mandatory  
3 duty to adopt the Uniform Housing, section 18.6 and  
4 Health & Safety Code which mandates that an  
5 independent and objective housing appeals board must  
6 be established with qualified and experienced  
7 individuals to hear housing appeals and county did  
8 not adopt the required Uniform Housing and Health &  
9 Safety Code, Defendants knew or should have known  
10 that they should have adopted and follow state  
11 preemptive law and failed in their mandatory duty to  
12 the detriment of Petitioner.

13 b. County administrative hearing officer does not have  
14 jurisdiction to "hear" appeals as county codes and  
15 ordinances are preempted by state law Uniform  
16 Housing Code and Health & Safety Code that requires  
17 an Appeals Board and therefore county administrative  
18 hearing officer in breached of his mandatory duty to  
19 adopt and apply the Uniform Housing and Health &  
20 Safety Code in which Petitioner may appeal to the  
21 appeals board by state law and as Defendants and the  
22 county did not adopt and follow preemptive state  
23 law, and the Board of Supervisors dissolved the  
24 appeals board by the before any appeals had the  
25 opportunity to be heard, including Petitioner,  
26 Defendants are in breach of their mandatory duty.

27 c. Burns, planning director stated in a letter to  
28 Petitioner that she could not appeal to the Appeals  
Board and therefore Burns is in breached of his  
mandatory duty to adopt and apply the Uniform  
Housing and Health & Safety Code in which Petitioner  
may appeal to the appeals board by state law. Also,

1 the housing appeals board is a mandatory, not  
2 discretionary duty and as Defendants and the county  
3 did not adopt and follow preemptive state law;

4 d. The Board of Supervisors dissolved the appeals board  
5 by the before any appeals had the opportunity to be  
6 heard, including Petitioner, and therefore  
7 Defendants are in breach of their mandatory duty as  
8 they did not follow preemptive state law..  
9  
10

11 56. Health & Safety Code §§ 17920.5 and 17920.6 require  
12 Defendants to provide for a "local appeals board" to hear  
13 appeals regarding new buildings and a "housing appeals board" to  
14 hear appeals regarding existing buildings. Title 24, California  
15 Building Code §108.8.1-3 establishes detailed procedures for a  
16 "local appeals board and a housing appeals board" to hear  
17 appeals from an "decision, order or determination by a....county  
18 related to the application of building standards...or any  
19 lawfully enacted ordinance[.]" Title 25, California Housing Code  
20 §203 requires Defendants to provide a "housing advisory and  
21 appeals board" to hear appeals "relative to the application and  
22 interpretations of "1997 Uniform Housing Code. Title 25,  
23 California Housing Code § 12, requires the "local appeals board"  
24 to comply with state law. California Government Code § 25042  
25 prohibits any supervisor from "willfully violating any law  
26 provided for his government as a supervisor" or "fraudulently or  
27 corruptly perform[ing] any duty imposed on him" or "willfully,  
28 fraudulently, or corruptly attempt[ing] to perform an act as  
supervisor which is unauthorized by law."

57. Defendants breached these mandatory duties by failing to

1 provide for a local and housing Appeals Board, by failing to  
2 notify Petitioner of her right to appeal to such boards, by  
3 concealing and denying the existence of such boards and by  
4 denying Petitioner's right to appeal to such boards. Defendants  
5 Supervisors, Ellen Pirie, Jan Beautz, Neal Connerty, Tony  
6 Campos, Mark W. Stone and John Leopold further breached this  
7 mandatory duty by failing to act as the local and housing  
8 appeals board and by abolishing the local and housing appeals  
9 board on 3 June 2009.

10 58. California Health & Safety Code § 17922(a) require  
11 Defendants to adopt the most recent edition of the Uniform  
12 Housing Code, that being the 1997 Uniform Housing Code.  
13 California Health & Safety Code §17958 require Defendants to  
14 make specific findings based on "local climatic, geological or  
15 topographical conditions" before it may purport to adopt any  
16 regulation in conflict with the California Building Code.  
17 Defendants violated these mandatory duties requiring Defendants  
18 to provide for a local appeals board and a housing appeals  
19 board.

20 59. California Health & Safety Code §§ 17922(e) & (g) prohibits  
21 Defendants from proceeding to abate an existing building unless  
22 the building is substandard. Defendants violated these mandatory  
23 duties by instituting an abatement action against Petitioner's  
24 existing non-substandard structure.

25 60. California Government Code §§ 66014-66025 require  
26 Defendants to limit fees charged to citizens to the "estimated  
27 reasonable cost of providing the service for which the fee is  
28 charged." Defendants violated this mandatory duty by charging  
fees in excess of the reasonable cost and in excess of amounts

1 set by Defendants, and by issuing to Petitioner rate schedules  
2 that were "proposed plan" rate schedules and not approved rate  
3 schedules by the Board of Supervisors and thus to extort payment  
4 of such fees.

5  
6 61. California Health & Safety Code §§18949.25-31 and 19870  
7 require construction inspectors, plan examiners and building  
8 official to be licensed, certified and trained. Defendants  
9 violated this mandatory duty by failing to license, certify  
10 and/or train Tom Burns, Mark Deming, Ken Hart, Kevin  
11 Fitzpatrick, Kathleen Salazaar, Leanne Jeffs.

12 62. California Government Code §27201 does not permit  
13 Defendants to record Notices of Violation and therefore,  
14 Defendants are required to expunge any Notice of Violation  
15 recorded.

16 63. The Due Process clauses of the United States and California  
17 Constitution require Defendants to provide adequate notice and  
18 fair opportunity to be heard. Defendants violated this mandatory  
19 duty by falsely representing that Defendants would not record  
20 the Notice of Violation during the time Petitioner had under  
21 instruction from Defendants, Petitioner proceeded in the permit  
22 application process; Defendants, failing to allow Petitioner to  
23 cross-examine witnesses, relying on confidential information  
24 undisclosed to Petitioner to make a decision on the merits,  
25 allowing biased individuals with a conflict of interest to  
26 participate in the decision, deciding the matter before  
27 Petitioner has an opportunity to present evidence, and allowing  
28 individuals who did not hear the evidence to make the decision  
on the merits.

1 64. As a direct and proximate result of Defendants' breach of  
2 their mandatory duties, Petitioner has suffered and will  
3 continue to suffer damages in the form of damages, including but  
4 not to, loss of value to the Subject Property, impairment of  
5 marketability, inability to refinance, delays in refinancing,  
6 fees paid to the County, attorney fees, fees paid to  
7 consultants, economic loss, lost time, inconvenience, emotional  
8 distress and anguish and extreme hardship.

9 WHEREFORE, Petitioner prays for judgment against  
10 Defendants as set forth below.

11  
12 SIXTH CAUSE OF ACTION

13 (Excessive and Improper Fees)

14 (Against All Defendants)

15 65. Petitioner incorporate the allegations of paragraphs 1-64  
16 as though set forth fully herein.

17  
18 66. Defendants charges Petitioner fees in excess of \$10,000  
19 for the processing of and recording the Notice of Violation and  
20 other fees. Defendants used illegal and extortionate measures to  
21 charge fees, such as denial and obstruction of Petitioner's  
22 right to appeal to state law mandated housing Appeals Board by  
23 Defendants, acting without authority or jurisdiction;  
24 recordation of Notice of Violation in conflict with preemptive  
25 state law, Defendants Board of Supervisors abolished the  
26 Appeals Board, thus depriving Petitioner of her state and  
27 federal rights civil and due process rights. and demand for  
28 unnecessary conditional permits application when Defendants  
knew or should have known Defendants must adopt preemptive state

1 law Uniform Housing Code and Health & Safety Code which  
2 regulates existing buildings, housing and human habitation;

3  
4 67. These fees are excessive, unreasonable, extortionate,  
5 collusive and improper in violation of the Due Process Clause,  
6 Gov. Code §§ 38773, et.seq., Health and Safety Code §§ 17995,  
7 et. seq., and in violation of the Uniform Fee Schedule adopted  
8 by Defendants.

9 68. Defendants' invoices purporting to impose these fees  
10 contained no notice of any deadline for Petitioner to protest or  
11 otherwise challenge the fees sought by Defendants, including the  
12 housing Appeals Board. Nevertheless, Petitioner repeatedly  
13 protested the excessive and improper imposition of these fees.

14  
15 WHEREFORE, Petitioner prays for judgment against Defendants as  
16 follows:  
17  
18  
19

20 SEVENTH CAUSE OF ACTION

21 (Violation of Civil Rights, 42 U.S.C. § 1983)

22 (Against All Defendants)

23 69. Petitioner incorporates the allegations of paragraphs 1-68  
24 as though set forth fully herein.  
25

26 70. This cause of action arises under the Fifth and Fourteenth  
27 Amendments to the United States Constitution and is brought  
28 pursuant to 42. U.S.C. §1983, and parallel provisions of the  
California Constitution and remedial law.

1  
2 71. Defendants' actions were motivated by improper motives and  
3 involved reckless and callous indifference to the  
4 constitutionally protected rights of Petitioners. Defendants  
5 acted with malice, in bad faith and contrary to any legitimate  
6 governmental interest.

7  
8 72. Defendants' actions were unreasonable, arbitrary,  
9 capricious and irrational exercises of governmental power in  
10 violation of the due process and equal protection clauses of the  
11 Fifth and Fourteenth Amendments to the United States  
12 Constitution and parallel provisions of the California  
13 Constitution.

14 73. Petitioner has a vested property interest in the Subject  
15 Property as the legal and equitable owner.

16  
17 74. Defendants encumbered the Subject Property, substantially  
18 impaired Petitioner's ability to remain at the Subject Property,  
19 ability to transfer or refinance the Subject Property, slandered  
20 Petitioner's title and substantially interfered with  
21 Petitioner's property rights, by recording the Notice of  
22 Violation, by denying and obstructing Petitioner's permit  
23 applications and by withholding that no permit was required.

24 75. Defendants violated Petitioner's procedural due process  
25 rights by failing to provide a hearing before the housing  
26 Appeals Board that met the minimum requirements of due process,  
27 including without limitation, falsely representing that  
28 Defendants would not record the Notice of Violation during the  
time Petitioner proceeded with permit applications processes,  
failing to allow Petitioner to present oral testimony or

1 testimony under oath, failing to allow Petitioner to cross-  
2 examine witnesses, relying on confidential information  
3 undisclosed to Petitioner to make a decision on the merits,  
4 allowing biased individuals and/or individuals with a conflict  
5 of interest on participate in the decision, deciding the matter  
6 before Petitioner had an opportunity to present evidence, and  
7 allowing individuals who did not hear the evidence to make the  
8 decision on the merits.

9 76. Defendants violated Petitioner's substantive due process  
10 rights by arbitrarily and irrationally recording the Notice of  
11 Violation and imposing unlawful conditions on the permit  
12 applications, in violation of local, state and federal laws,  
13 impairing and interfering with Petitioner's property interest in  
14 Subject Property, without compelling need or rational  
15 relationship to a legitimate government interest.

16 77. Defendants violated Petitioner's rights under the equal  
17 protection rights by selectively enforcing and interpreting  
18 county code to prosecute Petitioner for existing building of  
19 Subject Property building. The selective enforcement and  
20 selective interpretation against Petitioner and not against  
21 others similarly situated, has not rational relationship to any  
22 legitimate government interest.

23 78. Defendants committed these constitutional deprivations  
24 pursuant to their own customs, practices, policies and/or  
25 regulations.

26  
27 79. As a legal and proximate result of Defendants' violations  
28 of Petitioner's constitutional rights, Petitioner has suffered  
and will suffer damages in the form of damages, including but

1 not limited to, loss of value to Subject Project, impairment of  
2 marketability, inability to refinance, delays in refinancing,  
3 fees paid to the County, economic loss, attorney's fees, fees  
4 paid to consultants, lost time, inconvenience, emotional  
5 distress and anguish and extreme hardship. Further Petitioner is  
6 entitled to recover attorney fees and costs as provided in 42  
7 U.S.C. §1988 and other applicable laws.

8 WHEREFORE, Petitioner prays for judgment against Defendants as  
9 follows:  
10  
11

12  
13 EIGHTH CAUSE OF ACTION  
14 (Inverse Condemnation)  
15 (Against the County)

16 80. Petitioner incorporate the allegations of paragraphs 1-79  
17 as though set forth fully herein.  
18

19 81. Article 1, §19 of the California Constitution prohibits  
20 the taking or damaging of private property for a public use  
21 without compensation.

22 82. The Fifth and Fourteenth Amendment to the United States  
23 Constitution together prohibit the taking of private property  
24 for a public use without just compensation.  
25

26 83. Defendants' recording the Notice of Violation and  
27 Defendants' imposition of unlawful conditions on the Permit  
28 applications, Defendants' recording the taking of private  
property by Defendants imposing a right of way on Petitioner's

1 Subject in violation of Petitioner's Fifth and Fourteenth  
2 Amendment to the United States Constitution as more fully  
3 described above, caused a direct, substantial and peculiar  
4 burden on Petitioner's property interests and taking of  
5 Petitioner's properties without payment of just compensation in  
6 violation of the California and United States Constitutions.

7 84. Defendants have failed to advance a legitimate state  
8 interest or a legitimate public interest and caused deprivation  
9 of Petitioner's viable use, economic value and investment-backed  
10 expectations of her property interests and caused the damages  
11 alleged herein.

12 85. Defendants' unlawful conduct lacks the essential nexus to,  
13 and is not roughly proportional to, any necessary mitigation of  
14 any adverse impact on the public interest, imposes prohibitions  
15 and limitations on Petitioner's ability to use, enjoy, transfer  
16 and encumber the Subject Property, and do not substantially  
17 advance or have any nexus with any legitimate governmental  
18 interest.

19 86. Petitioner is entitled to just compensation for  
20 Defendants' unlawful taking of Petitioner's property interests.  
21 Petitioner further is entitled to reasonable costs,  
22 disbursements and expenses, including attorney, appraisal,  
23 consultant and engineering fees pursuant to C.C.P. §1036.  
24

25  
26 WHEREFORE, Petitioner **prays** for judgment against Defendants as  
27 follows:  
28



1 Defendants' costs of enforcement and deposit those fees into  
2 Defendants' affordable housing fund or general fund, pursuant to  
3 County Code 1.12.070, subdivision (K), or whether the  
4 overcharged fees and penalties must be reimbursed to the  
5 affected landowner.

6  
7 91. Petitioner requests an order declaring the following:

8 a. California law does not permit counties to record Notices  
9 of Violation against real property and California law  
10 preempts County Codes 19.01.030, 19.01.070, 19.01.080,  
11 12.10.125, 1.12, 1.12.70 which purports to give Defendants  
12 such authority.

13  
14 b. Parties challenging a Notice of Violation issued by  
15 Defendants are entitled to a hearing before the housing  
16 Appeals Board pursuant to state law.

17  
18 c. Defendants' procedures for protesting a Notice of  
19 Violation do not satisfy the requirements of due process.

20  
21 d. County Codes 18.10.300, et. seq., relating to  
22 administrative appeals of permit application, conflict  
23 with and are preempted by Cal. Health & Safety Code §§  
24 17920.5, 17920.6, 1997 Uniform Housing Code, and 25 C.C.R.  
25 Section 12, and violate Petitioner's due process rights,  
26 because, among other things, Defendants appellate  
27 procedures fail to provide for a housing appeals board or  
28 local appeals board comprised of qualified, experienced  
persons who are *not* employees or contractors paid by  
Defendants.

1 e. California Building Code, Title 24, of California Code of  
2 Regulations, including without limitation, §§105.2 and  
3 312.1, as well as California Uniform Housing Code, Health  
4 & Safety Code §§, 17922, 17922(g), 17922(n), 179222(e),  
5 17920.3, 17958, 17985, et. seq. exempt buildings that are  
6 not substandard.

7 92. A judicial determination is necessary and appropriate at  
8 this time so that Petitioner and Defendants may ascertain their  
9 respective rights and duties.

10  
11 WHEREFORE, Petitioner **prays** for judgment against  
12 Defendants as follows:

13  
14  
15 TENTH CAUSE OF ACTION  
16 (Preliminary and Permanent Injunction)  
17 (Against All Defendants)  
18

19 93. Petitioner incorporates the allegations of paragraphs 1-  
20 92 as though set forth fully herein.

21  
22 94. The continuing adherence of Defendants to an  
23 administrative scheme that disregards preemptive state law,  
24 fails to provide adequate due process protection, and fails to  
25 adhere to applicable procedural protections, poses an ongoing  
26 threat to the property rights of Petitioner and all residents of  
27 the county. Petitioner does not have a plain, speedy and  
28 adequate remedy in the ordinary course of law. Even if there  
were an adequate and speedy remedy at law or administratively,  
as this case illustrates, a series of such actions, each giving

1 partial or incomplete relief, is not an adequate remedy for the  
2 entire wrong. In the instant case, Defendants, by continuing to  
3 assert authority over Petitioner's property and continuing to  
4 use a system that denies Petitioners the protection of state  
5 statutory law, constitutional law and the required Building  
6 Appeals Board and Housing Appeals Board, continue to wrongfully  
7 violate Petitioner's property rights and the property rights of  
8 all residents of the County. Among other things, Defendants  
9 claim authority under the permit process to take further  
10 enforcement actions. Accordingly, Petitioner on behalf of  
11 herself and other similarly situated are seeking injunctive  
12 relief.

13 95. Petitioner request an order enjoining Defendants as  
14 follows:

- 15 a. Enjoining recordation of Notices of Violation against  
16 real property.
- 17  
18 b. Requiring Defendants to give parties challenging a Notice  
19 of Violation a hearing pursuant to County Codes 1.12.070,  
20 the 1997 Uniform Housing Code, and the Health & Safety  
21 Code.
- 22  
23 c. Requiring Defendants to provide for a housing Appeals  
24 Board or local appeals board comprised of qualified,  
25 experienced persons who are *not* employees of or  
26 contractors paid by the Defendants, with all appeals to  
27 be heard without charges and give citizens two years or  
28 other applicable periods from State law (rather than the  
inapplicable 90 days limit of Santa Cruz County  
Code 1.05.050) to request a hearing.

1  
2 d. Expunging all recorded notices of violation that have  
3 been recorded in Santa Cruz County.

4  
5 e. Requiring Defendants to apply to apply the 1997 Uniform  
6 Housing Code, to apply the Health & Safety Code, to  
7 notify County citizens of the right to appeal, and to  
8 authorize the applicable boards to apply State building  
9 codes when they are in conflict with County regulations.

10 WHEREFORE, Petitioner **prays** for judgment against  
11 Defendants as follows:

12  
13 **PRAYER**

14  
15 1. For an order and judgment by this Court that the  
16 Notice of Violation is void, cancelled and expunged;

17  
18 2. For an order and judgment by this Court that change to  
19 Subject Property of planning department in error be void,  
20 cancelled and expunged;

21  
22 3. Issue declarations as requested above;

23  
24 4. Award Petitioner a refund and cancellation of all fees  
25 imposed against her.

26  
27 5. Award Petitioner general and special damagers;

28  
29 6. Award Petitioner pre-judgment interest at the maximum  
30 legal rate;

