

Now comes defendant NAME, who requests Judgement, costs and other orders against Plaintiff

I. Santa Cruz County, a General Law County, Has No Valid "Local Ordinance" , No Local Code Enforcement Authority and Has Pled No Enforceable Grading And/or Excavation Standard Which NAME Can Be Said to Have Violated . The Pleadings Fail to Allege Any Enforceable Standard, Code, Ordinance, Etc. the Case Should Be Dismissed

Plaintiff is a local jurisdiction, a general law county. It is subject to state law unless specifically exempted. While it seems amazing, this general law entity, as opposed to the City of Santa Cruz, never received state authority to enforce any local land use related standard in any field against any landowner. Plaintiff tried to exempt itself from State Control of Grading and Excavation but an appeals court has ruled Counties may not exempt themselves from State Control of Grading and Excavation .

The legislature of State of California has determined there are over-riding statewide interests in uniform land use codes and the entire field has been preempted by state law expressed in the Uniform Building Code as administered by the Building Standards Commission. Santa Cruz did not obtain state authorization to enact nor administer any of its local ordinances. All local ordinances, not just those relating to Grading and Excavation , are void for all purposes.

In slightly other words, drawn from the statutory language, they, the local ordinances, having not not been certified may not "become effective or operative for any purpose " . *Briseno v City of Santa Ana*, [1992] 6 Cal. App.4th 1378 citing Health and Safety Code § 17958.7. (a)

Originally this Defendant notified County that BSC state library records only indicated the County Grading and Excavation ordinances were void. (See exhibits – January 7, 2006,). Subsequent investigation of records the county was required by state law to have available as a part of a publically accessible record — but did not and could not provide even after

discovery requests that commenced November, 2005. (see Exhibits) — has lead to the discovery that all local ordinances are ‘void and inoperative for all purposes.’¹ However as an examination of exhibits attached to this present memo, County failed in October 2002 , to receive certification from State authority to administer any of its local amendments, not just a failure to have its grading and excavation ordinances certified.

After NAME could not obtain records from Publically available sources, NAME decided to go to the ‘source, to Sacramento . Obtaining several documents from the Building Standards Commission, NAME sent a formal Notice to Produce to County. In its evasive reply , which most attorneys would say was a bad faith response meriting fees and sanctions, County claimed Grading and Excavation local ordinances were exempt from the requirement of state validation and therefore refused to produce them (see exhibits) . However , a published opinion has ruled local jurisdictions are not exempt. [Leslie v Superior Court [Ventura]. (1999) 73 Cal.App.4th 1042, pg 1048 ; Health and Safety Code at §17958.5- 7958. 7 ; Baum Electric Co. v. City of Huntington Beach (1973) 33 C. A. 3d 573, 577] ; Despite County having been advised of the state of the law, that no county is exempt and that State has pre-empted the entire field of land use control , County still has no publically available records nor has produced any records in response to the Request for all records relating to BSC certification of local modifications of the State Uniform Code.

II County Attempted to Get State Certification of Local Modifications Other than Granding and Excavation but Failed to Do So. County Has No Local Ordinances and No Approved Local Enforcement Procedures. This

¹ Apparently to ‘give’ notice as to what law is applicable, State Law mandates all local jurisdictions maintain a public record of documents and modifications of the Uniform State Code.

Case Has Been Filed Without Effective Authorization from County Board of Supervisors .

Other than Grading and Excavation, County has never maintained it was exempt from state law requiring changes to state uniform building and land use laws be approved by the Building Standard Commission. . In fact , in Oct of 2002 County attempted to gain approval for its local ordinances. Even though County would not produce any BSC related files in response to either of the Requests for Production of Documents, neither the informal letter request in November 2005 ² nor the formal focused one in March 2006, and even though County had not maintained the mandated ‘publically available record’— NAME got what he needed from the State and then focused on the Board of Supervisor Records.

NAME went to the State Library Sources of the BSC in Sacramento. The discovery was stunning, absolutely stunning. It became clear why no records were being produced in response to the two record requests . What the State records showed is that in October 2002, County sent a request asking for state approval to modify state law as further specified and supported in County Resoluton 2642. The BSC did not certify the request but only attested “to the filing of Ordinance No 2642 ...: (See exhibit) [NAME asserts the lack of the word "certification" is meaningful– the refusal to determine “ the merits” and the restriction to acknowledging “local modifications “ as supported and modified in Ordinance No 2642 is very significant. As the document from the BSC shows, only the Ordinance 2642 modifications would be become

² County replied stating it had not been able to find any approvals but was pulling its stored records and would provide any approval as soon as it was found. Nothing was ever sent so NAME followed up with the Formal production Request in March . Again nothing was supplied. (see exhibits)

“effective in November 1. 2002”, if otherwise in accordance with state law.

To discover what Ordinance No 2642 required, to determine to what standards he was expected to conduct his activities, NAME returned to the Clerk of the Board of Supervisors and asked for a copy of Ordinance No 2642. Attached is a certified copy of Ordinance No 2642. The court is asked to take 3 or 4 minutes to look at the exhibits attached to this memo and attempt to determine the standards applicable to Mr NAME activities. After the court has made the determination, NAME requests the Court dismiss this case, or nonsuit County. As far as this defendant can determine no pertinent modifications are set out in Ordinance No 2542. The ‘two times’ refusal of County to provide the documents sought in the Production requests appears to be explained. County had something to hide. Clearly the County has no authority to administer any local ordinances nor procedure of enforcement of the non-existent local ordinances. There are no local land use ordinances approved by the state in a field cases and the BSC have time after time stated is wholly by state law. The only perhaps applicable ordinances are state uniform codes but NAME has not been charged with violation of any state standards. The complaint specifically alleges only violation of local standards.

III. Since November 2002, the County Has Been Enforcing "Void" Laws, Invalid Local Modifications Not "Effective or Operative for Any Purpose" Not Just NAME but All Those Penalized since November 2002 Have a Right to Be Upset and to Expect Compensation.

What the State October 25, 2002 document means is that at least since November 2002, the County has been enforcing "void" laws, invalid local modifications not "effective or operative for any purpose". Even though it may sound amazing, the County of Santa Cruz, has not just had no valid local grading nor excavation codes nor enforcement rights, it has not had

any local ordinances for nearly 4 years. Entire sections of the County Ordinance are Void as a matter of law. That this is just being discovered is because no attorney seems to have ever before gone to Sacramento sources, searched State Records and then cross checked them against local records referenced in the state applications and approvals. If NAME had not gone to the Board of Supervisors and asked to see what Ordinance 2642 required of him, he would not have made this truly amazing discovery. County, according to one source at the BSC has huge exposure. Not just in this case, but all building, grading and excavation enforcement actions taken since at least November 1, 2002 have been void, not just voidable.

IV. Due to the Failure to Follow Mandatory State Laws, The County, Lacks Powers of Enforcement in a Field Otherwise Pre-empted by the State .

Article XI, section 7 of the California Constitution provides that local jurisdictions may enact and enforce ordinances "not in conflict with general laws." An ordinance that conflicts with a state's attempt to control an area of statewide concern and is not exempted by state law is void. (Cedar Shake & Shingle Bur. v. City of Los Angeles (9th Cir. 1993) 997 F.2d 620, 623; Bruce v. City of Alameda (1985) 166 Cal.App.3d 18.). In Briseno v. City of Santa Ana(1992) 6 Cal.App.4th 1378 (Briseno) and Leslie v Superior Court [Ventura]. (1999) 73 Cal.App.4th 1042,

These cases are instructional. They hold the state has wholly preempted the field of land development and construction standards but that if certain steps are taken, findings made, recorded and certified, local jurisdictions could make minor modifications and enforce local modifications. If the state mandated steps to gain exemption from state wide code standards were not complied with, " No modification or change shall become effective or operative for any

purpose." Leslie, Supra, dealt with Grading and Excavation and Road Building. *The case held the state pre-empted local controls on Grading, Excavations and Road Construction.*

According to the State Bureau of Codes and Standards , and now admitted by the county Santa Cruz , Plaintiff has not even attempted to comply with the Health and Safety Code mandated conditions as to Grading and Excavation standards . Thus all acts taken under the local Grading and Excavation Ordinances have been void for all purposes. Fines collected, penalties assessed and red tags correction permit fees , have been extracted under void, not voidable, laws. The relevant section reads.

HEALTH AND SAFETY CODE §17958.5.

Except as provided in Section 17922.6, in adopting the ordinances or regulations pursuant to Section 17958, a city or county may make such changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 as it determines, pursuant to the provisions of Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions. For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions. 17958.7. (a) Except as provided in Section 17922.6, the governing body of a city or county, before making any modifications or changes pursuant to Section 17958.5, shall make an express finding that such modifications or changes are reasonably necessary because of local climatic, geological or topographical conditions. Such a finding shall be available as a public record. A copy of those findings, together with the modification or change expressly marked and identified to which each finding refers, shall be filed with the California Building Standards Commission. **No modification or change shall become effective or operative for any purpose until the finding and the modification or change have been filed with the California Building Standards Commission.**

v. The California Building Standards Commission (BSC) Receives and Approves Local Changes.
Established in 1953 by the California Building Standards Law, the California Building Standards Commission
(Bsc) Is an Independent Commission Within the State and Consumer Services Agency. Commission Members
Are Appointed by the Governor and Confirmed by the State Senate

As provided by Statutory Amendment, the BSC is charged with:

- * Reviewing and approving codes and standards proposed and adopted by local jurisdictions, cities , counties and state agencies
- * Codifying and publishing approved codes and standards in one state building standards code (California Code of Regulations, Title 24)
- * Administering California's code adoption processes
- * Ensuring consistency in the nomenclature and format of codes
- * Adopting and approving model codes for local jurisdictions, cities , counties and state agencies that fail to adopt these codes within one year of their publication
- * Ensuring coordination in local jurisdiction proposal of codes and standards
- * Assisting in the development of local jurisdictions, cities , counties and state agencies codes and standards
- * Resolving conflicting local jurisdictions, cities , counties and state agencies codes and building standards

Santa Cruz County evidently failed to “pick up” that the State Uniform Code was changed to include a default Grading and Excavation element and it appears simply failed to notice Leslie v Superior Court, [Ventura] , (supra) ruled that the State Codes replaced all local grading and excavation laws. County thus did not comply with H & S § 17958.7. If they had complied they would have had a local code they could enforce. But as we see in 2d section after next, the county failed to even comply with mandatory provisions of their own local 'void for all purposes' ordinance.

V. Not Only Does County Not Have Any Local Code to enforce since it was not certified under Health and Safety Code 17958, Their Authority under

'Police Powers' has Has Been explicitly Pre-empted by State Law

When one examines the Complaint on file, it is clear all the allegations flow from County's attempt to enforce portions of Sections 12 of the Santa Cruz County codes. For instance , County alleges that after commencing on 18 August 2005---during the time this Defendant was in Alaska and licensed persons sent unsupervised unlicensed persons upon the subject property who 'missed the correct job site' and performed unauthorized work while left unsupervised by the contractor --- Defendants performed work in a manner such that : "Defendants are in violation of County Code sections 16.20.210(a) and 16.10.105." [County allegation at Page 4 ¶ 9]

The 'Red Tag Violation Notice' plaintiffs sent defendants the week after County filed the complaint in this action , also only alleges violations of 16.20.210(a) and 16.10.105. However, as we saw above Sections 12 and 16 of the local county ordinances were never submitted to the State. Compliance is mandatory for without it "No modification or change shall become effective or operative for any purpose.." [Health and Safety Code Section 17958.7]. County may attempt to justify its ordinances under the general police powers possessed by local jurisdictions but this has already been rejected by published decisional law. *"Local governments must adopt the statewide UBC and the CBSC pursuant to state law. They do not enact building codes pursuant to the constitutional grant of police powers."* Leslie , supra, at page 1052.

Police Powers cannot relieve County from its duty to have filed its Grading and Excavations modifications of the state code dealing with grading and excavations. Worse, County has 'blown it, with respect to its entire building code. Ordinance 2642 does not contain any language relevant to local modifications . County's attempt to enforce their own local laws

must fail.

Even if there had been compliance, there has been no notice to the landowner as required by state law as to the modifications . The relevant law, Health and Safety Code Section 17958.7, reads: finding[s] *shall be available as a public record* . A copy of those findings, together with the modification or change expressly marked and identified to which each finding refers, shall be filed with the California Building Standards Commission. No modification or change shall become effective or operative for any purpose until the finding and the modification or change have been filed with the California Building Standards Commission.

VI. County ALSO Did Not Comply with the California Environmental Quality Act and Local Ordinances Are Invalid for That Independent Reason as Well

Despite the significant effect on the environment the county claims the local modifications to state standards will have, County wholly failed to study and report on the possible environmental effects of its local ordinance as required by law. No study and report complying with what is known as CEQA was undertaken. (See Cal. Code Regs., title. 14, Appen. G and .related Environmental laws governing local political entities). CEQA is applicable because there .is a possibility that the ordinance may have a significant impact, negative or positive , on the physical environment CEQA [div. 13], Public Resources Code section 21080: Cf *Briseno v. City .of Santa Ana* (1992) 6 Cal.App.4th 1378 , at page 1386 footnote 4.

VII Even If the County Were Able to Enforce its Own Codes County Has Here Proceeded in a Manner in Violation of Their Own Code. County Now Admits They Failed to Serve the Local Code Required Notice upon Which the Complaint Is Entirely Based.After They Served a Back Dated Notice, They

**Commenced the Administrative Hearing Process Required by Law as a
Precondition to Litigation but They Then Unilaterally Abandoned It.**

County bases its entire complaint on the allegation defendants failed to comply with what under the local code is called "Notice of Violation" and that due to the defendants' failure to comply with the notice, County was forced to file the complaint at issue. The county at page 3 in ¶ 7 alleges "plaintiff posted Notices of Violation and mailed them to the address shown on the latest assessment roll. (See Notices attached as Exhibit "B", which by this reference are incorporated herein.) plaintiff has since discovered that the required action has not been taken.... "

The county's own "void for all purposes" code at Paragraphs (a) and (b) of Section 701, only authorizes County to file an action and seek costs and penalties assessed when:

(a) GENERAL. **After any order** of the Planning Director or designee or the Hearing Officer made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

(b) FAILURE TO OBEY ORDER . **If, after any order** of the Planning Director or designee or Hearing Officer made pursuant to this code becomes final, the person to whom such order is directed shall fail, neglect or refuse to obey such an order, the County may (I) cause such person to be prosecuted under Subsection (a) of this section, (ii) proceed with abatement action pursuant to Section 701 et seq., or (iii) institute any appropriate legal action to abate such building or site as a nuisance.

Under this local code statement of jurisdictional limits, County is required to mail a violation notice and offer a hearing and the county has only authorized County Counsel file a complaint and seek penalties and costs "if the person responsible for the alleged violation has not

. corrected the violation within the time specified in the mailed notice or otherwise undertaken .action as required by the the administrative notice ".

However, when one looks at the County's .own exhibits to their Complaint [Entitled " Notices attached as Exhibit 'B' "], which County incorporated into their complaint County clearly has not followed its own code in that they filed the law suit two months before they even scheduled the administrative hearing at which evidence is to be taken , following which the determination is to made of whether or not to issue any enforcement order. The administrative order must then be served on the responsible party and only if the responsible party does not comply with the order, may the county file an action .for abatement and ask for costs, fees and penalties

" [If the " person" determined in the requested administrative hearing to be in violation of the code shall fail, neglect or refuse to .obey such an order, the County may (i) cause such person to be prosecuted under Subsection .(a) of this section, (ii) proceed with abatement action pursuant to Section 701 et seq., or (iii) .institute any appropriate legal action to abate such building or site as a nuisance"

This action was filed Oct 27, 2005 and the hearing at which evidence ,upon which a .determination was to be made of whether or not an order shall issue, was set, upon one work days notice, for December 20. Clearly under the county's own code, enforcement of an order must commence after the order is issued and that does not occur until after the hearing referred to in what is known as the "Red Tag Notice." The notice itself was not sent until the week following the filing of the action and the hearing required in the notice was by a letter dated December 15, 2005, set for December 20, 2005, providing this defendant one business days notice of the .hearing date.

As shown on the face of the county's own discovery produced signed copy the jurisdiction establishing required Notice was not even completed until after the complaint was filed . The county's pled facts of service in August of 2005, is not only contradicted by the "under penalty proof of mailing, the proof of mailing affidavit asserts the notice was mailed nearly a week before it was dated as being finished and signed.

It seems false to declare under penalty of perjury that a signed document dated Oct 31, 2005 , was mailed Oct 24, 2005. The .actual signed notice is dated Oct 31, 2005 , the week after the complaint was filed . The .notice attached to the complaint had ever been mailed to any landowner in this action! No way .could it have been served in August, creation of it had not even been started until late October .and it was not even sent out for mailing until the week after the complaint was served on this defendant.

By the county's own code, the filing of the complaint without allowing for the administrative hearing provided for in the Notice, was a violation of the local code which only .authorizes an action such as here at issue, to be filed after the hearing defendant timely demanded. Pursuant to receipt of the notice this defendant asked for the right to a hearing as provided in the bottom paragraph on the first page of the notice and as called for in County Code Section .701 , Paragraphs (a) and (b). Planning staff, as proven in the judicially noticed document from plaintiff's own files, took 60 days to even schedule the administrative hearing . They did not even send this Defendant the jurisdictional form notice advising this defendant of the administrative hearing to determine whether or not any violations existed, until December 15, 2005, two months after the complaint was filed. See County Letter dated December 15, 2005, receipt of which gave one [1] business day notice of a hearing set on Dec 20, 2005.

County filed this complaint not only not having required state law validation of their own law, but they filed it in violation of their own local code, which requires that in order to have authorization to file a civil action against the Responsible Person,³ the county must first proceed as required by its own ordinance, an ordinance amended because it was required by state law.

Even had the County complied with the Health and Safety Code and thus had a local code to enforce, there are three points concerning the claimed October 24 mailing of the Oct 31, 2005, 'Red Tag' Violation Notice. The first is that the county did not follow its own procedures which require the person alleged to be responsible for the violation of the therein stated local land use erosion control ordinance section , must be afforded advance formal notice and the right to correct the violation before a legal action can be filed .The second is that after the county 'discovered' their error they tried to correct their failure by 'backdating' the POS , and then sending the Right to Correct and Right to a Hearing Notice . Their right to collect fines, penalties, costs, etc., indeed their right to even file an action is by state law, their own code and wording in the county's own finally sent Notice, dependent on **first** service of of the Notice of Violation and the Notice of Hearing Rights , **second**, the holding of the Administrative Hearing, if requested, and, if the hearing proceeds, **third** , a Notice of the determination made after the Hearing and, **fourth** then time to correct before the complaint is filed !

The third point is somewhat related but has a separate legally recognized point, which is , that after having giving notice of the intent to proceed with the administrative hearing and recognizing NAME's right as requested in his letter November 13 , 2005, entitled " This Is a Section 19.01.070 Departmental Review Letter", they, the county , by well established law, were

³. As we shall learn during trial, county ordinance defines the party responsible for remediation of conditions causing accelerated erosion is the

required to exhaust the elected administrative process their provided , commenced and unilaterally abandoned , a process they not only elected but one required by state law and their own code. *People of the State of California v. Superior Court (Sonoma,)* [1979] 91 Cal.App.3d 95, pg 102.

VIII. Under the County's Own Code They Have Filed this Action Against the Wrong Person.

County records show NAME offered to take a polygraph on his contention he did not authorize nor suspect the work would go beyond clearing the road of less than 100 cubic yards of materials brought down when a big tree slid out from the upper road bank and spilled onto the road. Due to the improper work being done without his knowledge or consent, all such work done while NAME was in Alaska, the county , acting pursuant to a neighbor's call ⁴ of work on the

4

This is the neighbor who is suspected of planting the large 'hidden' marijuana plot NAME's workers discovered after they had already been threatened and harassed by the neighbor. The 'Mad' neighbor subsequently chased and threatened with physical harm NAME's workers who were working on the road damage done by the contractor; the unstable neighbor ran towards and yelled at NAME's two young children, ages 5 and 8, frightening them . This neighbor attacked NAME , jumping him when NAME was attempting to water the nearly 1,000\$ of trees and plants purchased to beautify the land , attempted to beat and hurt NAME, going for NAME's already broken neck from when a drinking uninsured driver had rear-ended NAME .

To defend himself, NAME , a former good and very strong wrestler, and having received some military style training while assisting the State Department in Africa and the South Pacific, 'reached back years' for techniques and pinned the enraged 'drug /pot grower to the ground. AS Name sat on The suspected Drug Dealers chest, the 'out of control neighbor, then threatened to kill NAME by a shotgun blast! A letter NAME sent to the County is attached [NAME, now 2 months from being 63, had been tested as a part of the UM process and 'found' to be between 55-65% physically disabled. NAME has been setting aside money for a 3 level neck and 1 level lumber spine fusion, estimated in 2004 to cost nearly 300,000\$, with up to one year after surgery of therapy and rehabilitation. NAME has photos of the 'combat black and blue' marks on his upper and lower torso , cut to his head and his torn clothing. NAME's workers are fearful of returning to work on the road repairs. NAME is not excited about it either and has in writing offered to pay the county to do the work they demand, offering a '15% premium', reserving the right to a court hearing to test the county's right to bring this action since the Court of Appeal and Attorney General has essentially already

NAME property , the County came to inspect. Their report states the inspector saw 3 persons operating large machinery cutting into the hillside. He asked them to stop and then, without asking them to identify themselves, left the property. NAME, upon his return about two weeks later called and wrote the county telling them he had Granite Construction come to the site before he left for Alaska and had described the project to one of their supervisors. NAME told the County the name of the licensed entity he believed was subcontracted to do the work. Thus under County Ordinance Title 16: ENVIRONMENTAL AND RESOURCE PROTECTION : Chapter 16.22: EROSION CONTROL: 16.22.030 : the county defined Responsible Party was Granite Construction and/or the subcontractor, but not NAME since he had not hired anyone nor asked anyone nor expected anyone to cut into the upper slope of the road. The county does not dispute NAME hired a licensed entity to remove materials from the road surface. The county defines the "Responsible Person" as "the person who creates a condition which may lead to accelerated erosion. If a specific person cannot be identified, the owner of the land where such condition exists shall be considered the responsible person." The county refused to accept a polygraph examination on the issue of consent/knowledge

SUMMARY

The local ordinances under which plaintiff has brought this action have been pre-empted by state statute. County has not followed state law which is a mandatory pre-condition to any local code being "Effective or operative ." [H&S Code § 17958.7]. Even if plaintiff had a local code, with knowledge they correctly commenced an arbitration process but then twice abandoned it. Under their code and pursuant to general state law, they were required to exhaust

ruled it is is a "void process", and the county is acting 'ultra viries not just in failing to comply with mandatory Health and Safety state law, the Government Code but beyond the county's own jurisdictional powers as defined and limited in its own local code !

their administrative remedies before filing a civil action. In addition they failed to give the notice required as a precondition to filing .a complaint seeking penalties, fees and costs.

Not only have they failed to comply with state law, they violated the foundational tenets of their own local ordinances and filed a premature action. This action must be dismissed since , under their own ordinances, it seeks relief to which they are not now entitled. There are additional issues but they will be presented at trial, assuming the county is allowed to get that far.

Respectfully Submitted,

JOE RITCHEY

ATTORNEY