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**Tony Campos and
Members of the Santa Cruz County Board of Supervisors
701 Ocean Street, Room 500
Santa Cruz, CA 95060**

RE: Housing Appeals Board and County Civil Penalties.

Mr. Campos,

Earlier this year your Board received petitions from some local farmers and homeowners in your District on the issue of civil penalties. Some of them requested me to write this letter because they heard you state at the last two Board meetings that you would like someone to write a letter explaining the issue of the Housing Appeals Board and the Building Appeals Board. This letter only addresses the HOUSING APPEALS BOARD and civil penalties because it seems that the Board now understands the necessity of the Building Appeals Board.

Property owners, first of all, submit that the County of Santa Cruz Hearing Officer has no jurisdiction to hearing HOUSING CODE complaints because only buildings have been declared to be "substandard buildings" or actions declaring a misdemeanor that are being handled by the District Attorney's Office are allowed under state law. Since, those are the only two allowable ways to enforce violations of regulations on existing buildings or there uses then COUNTY HEARING OFFICERS are prohibited under state law to hold hearings under Santa Cruz County Code § 1.12.070. A substandard building must be declared to be substandard under the UNIFORM HOUSING CODE which prescribes the process, form, and penalties from commencement to completion.

Health and Safety Code § 17922(g) is set out below:

"A local ordinance may not permit any action or proceeding to abate violations of regulations governing maintenance of existing buildings, unless the building is a substandard building or the violation is a misdemeanor."

In addition the property owners submit the following:

A Notice of Violation issued by the County is not a Notice and Order pursuant to the *UNIFORM HOUSING CODE* § 1101. The recordation of a Notice of Violation (County method) is not done in compliance with *UNIFORM HOUSING CODE* § 1102. County Hearings are not being held in accordance with Health and Safety Code § 17920.6 which requires a HOUSING APPEALS BOARD. The *UNIFORM HOUSING CODE* § 203 creates a local HOUSING APPEALS BOARD and its make up. The *UNIFORM HOUSING CODE* § 1301 states the general procedures for the hearing and Section 1301.1 states who can hear the appeals. The County Hearing Officer is not among the designated examiners. The definition of a substandard building is stated in Health and Safety Code § 17920.3 and the local definition cannot conflict with that definition as per Article XI § 7 of the State Constitution. The *Uniform Housing Code* is the preemptive law of the state for occupancy standards – *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378 at page 1381-1382.

Health and Safety Code § 17922 and Health and Safety Code § 17958 together require local governments to adopt the statewide Uniform Building Codes, Uniform Housing Code and California Building Standards Code. The Legislature has shown its intent to preempt local governments from legislating on the subject, except as narrowly permitted under the Health and Safety Code - *Leslie v. Superior Court* (1999) 73 Cal.App.4th 1042.

The County Counsel often cites Government Code § 53069.4 as authority for the County Hearing Officer program § 1.12.070.

Government Code § 53069.4 states:

“(a)(1) The legislative body of a local agency, as the term ‘local agency’ is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty.”

In this case the local ordinance that is adopted by the local agency is the statewide UNIFORM HOUSING CODE that the County did not adopt although it was required to be adopted by state law - Health and Safety Code § 17958.

Since, Government Code § 53069.4 does not allow the legislative body of a local agency to make the violation of a preemptive state law subject to an administrative fine or penalty, then this entire Administrative Hearing Officer procedure is void because it conflicts with state law and the County Hearing Officer program is void because a state law can be made applicable.

Article XI § 7 states:

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

Article IV § 16(b) states:

“A local or special statute is invalid in any case if a general statute can be made applicable.”

Therefore the County cannot issue “Notice of Violations” on existing buildings, levy fines or penalties, record Notice of Violations on real property, hold hearings, or any other action or proceeding to abate violation of regulations on existing building unless and until the County adopts and enforces the UNIFORM HOUSING CODE, Health and Safety Code 17920.3 and establishes a HOUSING APPEALS BOARD to hear and decide the issues appealed by the property owners.

In addition, Health and Safety Code § 17980 et seq. establishes the statewide enforcement procedure for violations of building codes and standards. If the County did establish its own enforcement standards then the County ordinances would be void as stated above because the local laws conflict with state laws and because state laws can be made applicable.

Also, the County has adopted penalties and fines that administrated by the County Hearing Officer that conflict with the state law on penalties for building and housing code violations as found in Health and Safety Code § 17995 et seq.

STATUTE OF LIMITATIONS

The statute of limitations for civil actions is found in Code of Civil Procedure § 338(a). The statute of limitations for misdemeanors is found in Penal Code § 802.

Since violation of regulations on the use and maintenance of existing building can only be abated if the building is a substandard building (pursuant to Health and Safety Code § 17920.3) or a misdemeanor, then those are the applicable statutes of limitations which the County of Santa Cruz does not acknowledge.

UNCONSTITUTIONAL ENFORCEMENT

The County and its employees are acting individually and jointly to deprive owners of their constitutionally vested property rights to the use of buildings acquired before the County adopted its general plan or current building codes. The current General Plan was adopted in 2007 and the buildings and uses in place at the time of adoption are “grandfathered in” and are called existing non-conforming uses. That is the uses in place at the time of adoption of the 2007 General Plan are all “grandfathered in” and the County does not want to acknowledge that fact. The County Staff wants to and likes to pretend that the law states that all buildings and uses, WHERE THE OWNER CAN

PROVE WITH A PERMIT ISSUED BY THE COUNTY, are legal existing buildings and uses at the time of adoption codes or General Plan.

All buildings build before January 1, 2008 are also existing building as defined in the 2007 California Building Code adopted by your Board last November 2007.

CONCLUSION

Therefore, the attempted enforcement of County red-tags (Notice of Violation) on existing buildings without compliance with the UNIFORM HOUSING CODE, HOUSING APPEALS BOARD and limited to the penalties in Health and Safety Code § 17995 is a violation of DUE PROCESS OF LAW.

Respectfully submitted;

Harold Griffith