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1 County process is void because it conflicts with state law Health and  
2 Safety Code § 17980.et seq.

3 The Plaintiff contends that the County enforcement scheme is  
4 void because a state law can be made applicable and/or because the  
5 local ordinance conflicts with state law.

6 Plaintiff contends that the Code Enforcement Officers have not  
7 been properly trained to be sensitive to the property rights of  
8 county property owners. For years the County Code Enforcement  
9 Officers have record liens ("Notice of Violation") on private  
10 property without a hearing or a chance to be heard in violation of  
11 due process and in violation of California and Federal Constitutions  
12 and have held "Court" without a jury trial.

13 Plaintiff points out that the County Grand Jury has found that  
14 in 2001-2002 found that Santa Cruz County has not complied with the  
15 requirement to adopt a housing element since 1994. In 2002-2003, the  
16 Grand Jury found that interventions by members of the Board of  
17 Supervisors lead to inconsistent application and enforcement of the  
18 building codes and zoning ordinances. It is no secret that the Santa  
19 Cruz County Planning Department is acting without jurisdiction and/or  
20 beyond their jurisdiction.

21  
22 POINTS AND AUTHORITIES

23 STATEMENT OF LAW

24 I.

25 HOUSING ELEMENT REQUIRED  
OR NO GENERAL PLAN EXISTS

1           General Plan and Zoning laws were not recognized as a valid  
2 exercise of police powers in the United States until *Euclid v. Ambler*  
3 *Realty* (1926) 272 U.S. 365. But in *Nectow v. Cambridge* (1928) 277  
4 U.S. 183, the Supreme Court ruled that a zoning ordinance was invalid  
5 if it had no foundation in reason and was merely an arbitrary or  
6 irrational exercise of power. Plaintiff submits that the County's  
7 General Plan is invalid because it is an arbitrary and irrational  
8 exercise of power.

9           In California, local governments must adopt a General Plan  
10 pursuant to Government Code § 65000 et. seq. (Planning and Zoning  
11 Law) that contains a housing element (Gov. Code § 65580) or no  
12 general plan exists at all. See: *Holt v. County of Monterey* (1982)  
13 128 C.A.3d 797 at 800, *Camp v. Board of Supervisors* (1981) 123 C.A.3d  
14 334 at 352; and *El Toro Association v. Days* (1977) 74 C.A.3d 64 at  
15 70.

16           In *Camp v. Board of Supervisors* (above) the Appellate Court  
17 wrote at 352 Footnote 10, finding 17 that:

18                   "Since the County lacks a valid general plan,  
19                   the County may not lawfully approve any sub-  
20                   division or parcel maps or enact any zoning  
                    ordinances or issue any certificates of  
                    compliance or certificates of approval."

21           The Appellate Court in *Resource Defense Fund v. Santa Cruz*  
22 *County* (1982) 133 C.A.3d 800 ruled that the 1980 Santa Cruz County  
23 General Plan did not contain a valid housing element. On page 809 the  
24 court ruled that the County Planning department could not issue  
25 subdivision permits because of this defect. The Board of Supervisors

1 adopted a Resolution 607-80 on September 30, 1980, which was supposed  
2 to be the County's housing element but this housing element was  
3 adopted after the planning extension from OPR had expired. The County  
4 Planning Department ignored the ruling of the Appellate Court and  
5 continued to issue building permits, development permits, sub-  
6 division permits and the like in spite of this final legal ruling on  
7 the subject.

8 The County was required to update its housing element in 1985  
9 but failed to do so. In other words, between 1978-1990 the County did  
10 not have a General Plan. On February 2, 1990, Resolution 97-90, the  
11 County adopted its first revision to the housing element. The first  
12 revision was REQUIRED TO BE COMPLETED in 1985. That first revision  
13 expired on June 30, 1991 by virtue of Government Code § 65588(b)(3)  
14 which required the adoption of a new housing element (second  
15 revision) by July 1, 1991. The third revision was to be modified by  
16 December 31, 2002 as required by Government Code § 65588 (e)(4). This  
17 requirement has not been completed and cannot now be achieved.

18 On October 21, 2003 the Board of Supervisors held a public  
19 hearing on its Draft Housing Element. That Draft plans for only 2,621  
20 housing units while AMBAG has determined that 3,441 units should be  
21 planned for. The result is that the County has not substantially  
22 complied with the objective of the statutory requirements of  
23 Government Code § 65580 et seq. See: *Hoffmaster v. City of San Diego*  
24 (1997) 55 Cal.App.4<sup>th</sup> 1098.

25 ///



1 to adopt the codes adopted by the California Building Standard  
2 Commission within 180 days after the commission's adoption then the  
3 uniform codes are adopted by the local jurisdiction by operation of  
4 law. Thus, the 1997 Uniform Housing Code is the local housing code,  
5 as a matter of law being adopted as of June 30, 1999. This position  
6 is accepted by the County of Santa Cruz in its TRIAL BRIEF in Rusty  
7 Hartman v. County of Santa Cruz - case CV 143495 - page 30 and 31.  
8 (Citation incorporated herein as if set forth again here in its  
9 entirety).

10 Santa Cruz County is a general law County so they are prohibited  
11 by California Constitution Article XI § 7 from adopting laws that  
12 conflict with the general state laws like the Uniform Housing Code  
13 and Health and Safety Code § 17922. California Constitution Article I  
14 § 26 states that all provisions of the constitution are prohibitive  
15 and mandatory. California Constitution Article IV § 16 provides that  
16 a local law is invalid if a state law can be made applicable.

17 Quoting *People v. Minor* (2002) 96 Cal.App.4<sup>th</sup> 29 at 36 the Court  
18 writes:

19 "The California Constitution provides now, as  
20 then, that, '(a) All laws of a general nature  
21 have uniform operation,' and that '(b) A local  
22 or special statute is invalid in any case if a  
23 general statute can be made applicable."  
(See now Cal. Const., art. IV, § 16.)

23 Health and Safety Code § 17922 (g) reads:

24 "A local ordinance may not permit any action  
25 or proceeding to abate violations of regulat-  
ions governing maintenance of existing build-  
ings, unless the building is a substandard  
building or the violation is a misdemeanor."

1           The building has not been declared to be a substandard building.  
2 These violations have not been prosecuted as misdemeanors.

3           In California, the proper court to try misdemeanors in is  
4 Superior Court according to Penal Code § 1462.2 and the People of the  
5 State are a necessary party according to Penal Code § 684. A person  
6 is supposed to be cited in accordance with Penal Code § 853.6, then  
7 released if they do not demand to be taken before a magistrate. Both  
8 misdemeanors and substandard buildings are defined by state law, but  
9 the local ordinance permits actions or proceedings to abate violat-  
10 ions on existing buildings that are not misdemeanors and where the  
11 building is not a substandard building.

12           At this point it should be pointed out again that Health and  
13 Safety Code § 17922(g) restricts abatement of violations of  
14 regulations on existing building to misdemeanors and substandard  
15 buildings. It does not say that abatement of violations of  
16 regulations on existing buildings can be made through civil penalties  
17 for violations that would otherwise be misdemeanors. Health and  
18 Safety Code § 17922(g) says, "No local ordinance may permit any  
19 action or proceeding to abate..." Santa Cruz County Code § 1.12.070  
20 pretends to provides authority to abate violations of regulation on  
21 existing buildings that are not substandard. The violations are not  
22 being prosecuted as misdemeanors.

23           The County system conflicts with the Uniform Housing Code  
24 because, the Uniform Housing Code § 1101 et seq. contains the  
25 procedure for the "Commencement of Proceedings" to abate nuisances,

1 zoning violations, illegal and unsafe building conditions by issuing  
2 a "Notice and Order". The "Notice and Order" requirements contain a  
3 provision that any person having any legal interest in the building  
4 may appeal from the notice and order within 30 days and Section 1204  
5 says that the appeal stays the enforcement of the notice and order.  
6 The County of Santa Cruz Code § 1.12.070 (D) requires notice of an  
7 opportunity to correct the violation within 30 days of "Red Tag". The  
8 County system does not "stay" the "Red Tag" on appeal. The Plaintiff  
9 was not served with a "Notice and Order" and therefore does not have  
10 a "substandard building" as defined by Health and Safety Code  
11 17920.3 - substandard conditions.

12         The local ordinance (Santa Cruz County Code § 1.12.070)  
13 permitting these civil actions and proceedings are in conflict with §  
14 17922 (g) above and conflict with state law which is prohibited by  
15 Article XI § 7. Since the Uniform Housing Code can be made to  
16 applicable to the abatement of nuisances, zoning ordinances and  
17 unsafe housing conditions then the local law (1.12.070) is invalid  
18 Pursuant to Constitution Article IV § 16.

19         The hearing procedures are different under the County system  
20 than under the Uniform Housing Code. Under the County system a  
21 Hearing Officer is hired by the County and the Uniform Housing Code §  
22 203 requires a Housing Advisory and Appeals Board to hear appeals.  
23 Health and Safety Code § 17920.6 and Health and Safety Code § 17920.5  
24 provide for a local Appeals Board.

1 The penalties and enforcement are different under the County  
2 system than under the Uniform Housing Code Chapter 14, 15, and 16.  
3 The Santa Cruz County Code 1.12.070 (B) states that any person who  
4 constructs or converts a structure for human habitation without a  
5 building or development permit which would otherwise be a misdemeanor  
6 shall be liable for a civil penalty in the amount of any rent  
7 received from the person occupying the illegal structure and (C) a  
8 person violating any provision of this code which would otherwise be  
9 a misdemeanor shall be liable to pay the county's total cost of  
10 enforcement. County Code § 1.12.070 (A)(2) calls for a civil penalty  
11 of \$2,500.00 for each violation that would otherwise be a  
12 misdemeanor. In other words, the County has created a hybrid - a  
13 civil misdemeanor and is prosecuting these with administrative  
14 hearings. But, these civil cases still need to comply with the  
15 requirements of a trial by jury and other due process concerns.

16 The Uniform Housing Code is binding on the County because this  
17 code preempts local authority according to *Briseno v. City of Santa*  
18 *Ana* (1992) 6 Cal.App.4<sup>th</sup> 1378. The Uniform Housing Code contains a  
19 distinct definition of Nuisance so it would appear that Santa Cruz  
20 County Code Chapter 1.14 (Nuisance) would be void because the state  
21 law is applicable. The Plaintiff was given notice that she could  
22 correct the conditions within 30 days and not be subject to civil  
23 penalties. Therefore she has a building that is not an **IMMEDIATE**  
24 **DANGER TO HEALTH AND SAFETY.**

1 The last sentence of subsection (e) of Health and Safety Code §  
2 17922 reads:

3 "Regulations governing abatement of substandard  
4 buildings **shall** permit those conditions pre-  
5 scribed by Section 17920.3 which do not endanger  
6 the life, limb, health, property, safety, or wel-  
7 fare of the public or the occupants thereof."  
8 (bold added for emphasis)

9 The County's system of abatement of building, plumbing,  
10 electrical, structural and zoning issues therefore conflicts with the  
11 State law because it covers the exact same area of enforcement -  
12 buildings which have conditions that do not immediately endanger the  
13 health and safety of the public but where conditions exist that are a  
14 danger to the public. That makes the local law (1.12.070) void  
15 because the state law can be made applicable as shown by Article IV  
16 § 16 and the local law duplicates state law.

17 Therefore, the County has adopted a local ordinance that  
18 attempts to abate violations of regulations on existing buildings  
19 that are neither misdemeanors nor substandard buildings. Santa Cruz  
20 County Code § 1.12.070 conflicts with state law and is void. Santa  
21 Cruz County Code includes the Uniform Housing Code by operation of  
22 law and that Uniform Housing Code can be made applicable to enforce  
23 housing, zoning, and nuisance law on existing buildings so the local  
24 law 1.12.070 is invalid pursuant to Article IV § 16.

25 III.

INJUNCTION TO PREVENT THE ILLEGAL  
EXPENDITURE OF TAXPAYER'S FUNDS

1 California Code of Civil Procedure § 526 (a) allows a taxpayer  
2 to apply for an injunction to prevent the illegal expenditure of  
3 taxpayer's funds.

4 Since Government Code § 65000 **COMPELS** local entities to undergo  
5 the discipline of adopting a general plan which is required to  
6 contain a housing element that accepts the AMBAG "fair share" housing  
7 allotment and the County has not done so, then the continued expenses  
8 for a County Planning Department are illegal.

9 Since the County has adopted the Uniform Housing Code by  
10 operation of law then the continued expenditure of taxpayers funds  
11 for a Hearing Officer and Code Compliance Officers to enforce zoning  
12 and building regulations through the void Santa Cruz County Code §  
13 1.12.070 is illegal.

14 Government Code § 65751 allows a writ of mandate pursuant to  
15 Civil Code § 1085 to challenge the validity of any housing element.  
16 Government Code § 65009 is a statute of limitations barring a  
17 challenge to zoning and planning issues but Government Code §  
18 65009(c)(1)(A) states that this limitation does not apply where the  
19 Petitioner is challenging the complete lack of a housing element and  
20 general plan.

21 The Plaintiff may follow the noticed motion procedure without  
22 requesting a temporary restraining order or an order to show cause  
23 as per *Wutchumna Water Co. v. Superior Court* (1932) 215 Cal. 734 at  
24 pages 739-740 and Cal. Rules of Court, Rule 359(a). This Plaintiff  
25 chooses to follow the ORDER TO SHOW CAUSE procedure.

1 IV.

2 VIOLATION OF CIVIL RIGHTS  
3 CIVIL CODE § 52.1

4 PROPERTY RIGHTS

5 Substantive Due Process claims can be based upon the claim that  
6 "the government has used its power in an abusive,  
7 irrational or malicious way."

8 From *Graham v. Connor* (1989) 490 US 386 at page 395. Here the County  
9 has no authority to enact, apply or enforce zoning ordinance since it  
10 lacks a housing element and therefore is acting in an irrational,  
11 abusive and malicious way. Here the County has adopted and is  
12 enforcing a void local ordinance 1.12.070 render void by its  
13 conflict with state law and because local laws are invalid if a state  
14 law can be made to be applicable. The entire purpose of the local  
15 enforcement system is to violate people's rights because it is easier  
16 than following the law. The County could not have had a legitimate  
17 reason for acting as it did. The County was Defendant in *Resource*  
18 *Defense Fund v. County of Santa Cruz* it therefore knew that it needed  
19 a housing element in order to have a valid General Plan.

20 In the United States of America a local government cannot affect  
21 recognized real property interests through zoning laws unless and  
22 until land use regulations reasonably tailored to promote the health,  
23 safety, morals, or general welfare of the public are adopted. The  
24 County has not adopted a General Plan that conforms to the state  
25 requirements (housing element is lacking) and therefore the County  
General Plan does not reasonably promote the health, safety, morals,

1 or welfare of the people. The County deprives landowners of Due  
2 Process of law and takes property without compensation by applying a  
3 General Plan, local housing code and local building code section that  
4 are invalid, preempted and in conflict with state laws. The local  
5 Hearing Officer and Code Compliance effort therefore has no relation-  
6 ship to the orderly process of applying legal binding laws on the  
7 Plaintiff so there can be no reasonable or rational relationship to a  
8 legitimate government purpose. In *Nectow v. Cambridge* (1928) 277 U.S.  
9 183, the Supreme Court ruled that a zoning ordinance was invalid if  
10 it had no foundation in reason and was merely an arbitrary or  
11 irrational exercise of power.

12  
13 Since the County has not submitted to the state's authority and has  
14 not abided by the requirements of that authority in adopting a  
15 General Plan, housing element and Uniform Housing Code, then the  
16 County of Santa Cruz has no power or authority over local land use,  
17 local building codes or local housings codes in the County of Santa  
18 Cruz. Plaintiff submits that the County's General Plan is invalid  
19 because it is an arbitrary and irrational exercise of power.

20  
21 V.

22 RECORDATION OF NOTICE OF VIOLATION  
23 IS AN ILLEGAL LIEN

24 The County took the Plaintiff's property by placing a lien on  
25 the title without a hearing or a chance to be heard.

1 As stated above, a local ordinance is invalid where it conflicts  
2 with the general states laws or where a state law can be made  
3 applicable. Both of those situations are present here, in relation-  
4 ship to the recordation of a "Notice of Violation".

5 First of all, Santa Cruz County Code § 12.10.140 lists  
6 violations of Chapter 12 as infractions. Health and Safety Code §  
7 17922(g) does not allow local ordinances to permit the abatement of  
8 regulations governing existing buildings unless the violation is a  
9 misdemeanor or the building is a substandard building. Neither  
10 situation exists here.

11 Secondly, the Uniform Housing Code (Section 1102) provides a  
12 procedure for the abatement of violation on existing buildings and  
13 includes a section on the recordation of a "Notice and Order". That  
14 process can be made to be applicable to zoning, building and nuisance  
15 abatement so the local ordinance § 1.12.070 (I) is invalid as per  
16 Article IV § 16 of the California State Constitution. The procedure  
17 in the Uniform Housing Code is different because after the "Notice  
18 and Order" is served on the accused, the accused has an opportunity  
19 to appeal and the appeal stays (Section 1203) the "Notice and Order".  
20 The local ordinance has no such provision.

21 In *Ward v. Superior Court* (1997) 55 Cal.App.4<sup>th</sup> 60 at page 66  
22 the court ruled that:

23 "A county recorder is obligated to accept for  
24 recordation only those documents which are  
25 'authorized or required by law to be recorded'  
(Government Code § 27201.) ... There is no  
authority for the proposition that the recorder  
must or may accept *unauthorized* documents for  
recordation."

