



# County of Santa Cruz

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## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060

(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

October 26, 2001

Agenda: November 6, 2001

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, California 95060

### Code Compliance Program

Members of the Board:

On October 23<sup>rd</sup>, your Board considered a report from our Department, working in conjunction with County Counsel, which discussed various issues associated with our Code Compliance Program. Throughout our report, we presented various policy and procedural recommendations for your Board's consideration which we believed would improve the effectiveness of our enforcement effort. At the conclusion of our report, under recommendations, we asked your Board to *"Direct Planning and County Counsel to implement the changes discussed throughout this report"*. Rather than acting on a general recommendation of this nature, your Board requested that we enumerate the specific changes for your Board consideration, and to return on this date with that information.

Attached is a copy of our October 23<sup>rd</sup> report, with highlighting of those sections of the report where we made policy or procedural recommendations for which we are seeking Board concurrence. These are also summarized as follows:

- ▶ Establish the Notice of Violation posting date as the date which starts the "enforcement clock" for the purposes of monitoring the 120 day legal referral goal for cases requiring further legal action.
- ▶ Approve, the practice of not referring minor cases for administrative hearing or further legal action where there is no adverse health or safety impact, once the Notice of Violation has been recorded.
- ▶ Approve, in concept, the practice of using administrative compliance agreements that would serve as the basis for referring cases for administrative hearing or further legal action. Where an owner is acting in good faith to resolve a violation, and where the violation appears to be correctable through the permit process, staff would negotiate a compliance schedule to be utilized with such agreement(s) as a basis for delin-

referral for administrative hearing or further action.

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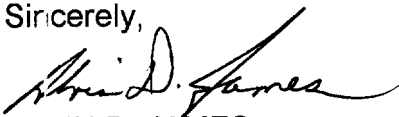
- ▶ De-emphasize the pursuit of significant civil penalties in routine enforcement cases, and instead seek the imposition but suspension of penalties as a tool to obtain timely compliance.
- ▶ Direct Planning and County Counsel to develop more specific compliance plans with action milestones as part of the orders presented to and requested of the Administrative Hearing Officer and/or the Courts.

In the coming months, we will refine our administrative practices to implement these general principles. We will also return to your Board next February with further information and recommendations as appropriate to respond to your Board's additional directives from October 23<sup>rd</sup> as well as the issue of whether the support arrangements for the administrative hearing process should be handled differently.

It is therefore RECOMMENDED that your Board:

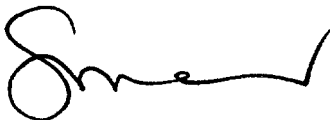
1. Accept and file this report;
2. Approve the five general principles detailed in this report, and direct the Planning Department and County Counsel to begin implementing these changes in our Code Compliance Program; and
3. Report back on February 5<sup>th</sup>, 2002 in response to your Board's October 23<sup>rd</sup> directives.
4. Report back on February 5<sup>th</sup>, 2002 with recommendations as appropriate regarding alternative support arrangements for the administrative hearing process.

Sincerely,



ALVIN D. JAMES  
Planning Director

RECOMMENDED:



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SUSAN A. MAURIELLO  
County Administrative Officer

October 23<sup>rd</sup> Minute Order

cc: County Counsel

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# County of Santa Cruz

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## PLANNING DEPARTMENT

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(831) 454-2580 FAX: (831) 454-2131 TDD (831) 454-2123

ALVIN D. JAMES, DIRECTOR

October 11 2001

Agenda: October 23, 2001

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, California 95060

SUBJECT: Status Report on Code Compliance Investigations

Members of the Board:

On October 2<sup>nd</sup>, we submitted a status report on code compliance investigations to your Board. In that report, we presented our findings regarding the department's recent success at either resolving complaints within 120 days after receipt, or referring unresolved cases to County Counsel's Office.<sup>1</sup> Attached is a copy of our October 2<sup>nd</sup> report.

As your Board will recall, over 51% of the investigations opened resulted in resolution of the violation through the initial enforcement process. We are pleased with this accomplishment which demonstrates that our initial administrative actions including: field investigations, issuing notices of violations, recording violations, and other staff actions- are motivating property owners to resolve their violations.

On the other hand, obtaining compliance for the remaining 49% required longer than our goal of 120 days. As our previous report indicated, there were 143 unresolved cases analyzed within the six month time period ~~which~~ we were to further review. An additional 16 investigations have been resolved since our previous report was prepared, which reduces the number of unresolved investigations to 127. The following table indicates the current status of these 127 investigations.

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<sup>1</sup> The study period was a six month period from November, 2000, through and including April, 2001.

UNRESOLVED CODE COMPLIANCE CASES	
No of Investigations in Progress	31
No of Investigations Confirmed	96
Violations Posted	18
Violations Posted and Recorded	22
Application Submitted/reviewed	25
Permits Issued but not Finaled	13
Violations Referred for Action	18
TOTAL UNRESOLVED CASES	127

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Of the 96 investigations confirming that a violation exists and that further enforcement actions are required, 38 cases (40%) were moving towards compliance by either submitting a permit application (25) or having been issued a permit that had not yet been finaled (13). Of the remaining 58 cases, 18 cases (31%) were referred for administrative and/or legal action, and five of those referred cases (28%) were referred within the 120 day referral goal.

Compliance is a process in which the status of an investigation progresses from complaint received through investigation, administrative actions, and ultimately referral for legal action through enforcement of a legal decision. At each step of this process the number of unresolved violations diminishes, leaving only the most recalcitrant property owners as appropriate for referral for either administrative or legal action. The first category entitled "INVESTIGATIONS IN PROGRESS" includes those investigations in which the property has been inspected, but a Notice of Violation has not been issued. The reasons for not posting a notice on the initial visit include: the need to complete further research of building and/or planning records; the fact that the violation was transitory or minor in nature and a warning may be sufficient to get the violation corrected or, the need to have other staff such as a geologist or building inspector join in the site inspection. In all likelihood, some portion of the investigations in progress will require, after reinspection, issuance of a Notice of Violation, moving the investigation into the next category.

As noted in our earlier report to your Board, the 120 day referral goal was established as the optimal target for referring unresolved cases to County Counsel's Office for legal action. However, upon examination of this 120 day goal, it is important to account for the numerous factors which can limit the timing and progression of our enforcement response, and distinguish between minor violations and the more serious land use violations. Initial investigative steps take time before a violation can be confirmed, and the enforcement "clock" should not start until the violation has been confirmed and posted by code compliance staff. Until this point in this process, the complaint is essentially an unconfirmed violation or it has not been determined that compliance will require further administrative action. Furthermore, even after the clock has started, there are some cases, by their very nature, that should not be referred for administrative hearing or legal action, as suggested earlier and discussed in further detail below.

\*

Once a violation is confirmed, the next typical step is to post it. In our chart above, the categories, 'VIOLATION POSTED' AND VIOLATION POSTED AND RECORDED' consists of those violations

which have been posted and recorded. Recordation automatically follows posting after the 20 day appeal period has ended. These are instances in which the investigation has concluded that a violation is present and that the property owner has not taken the necessary steps to address the violation. <sup>0744</sup>  
Notification and recordation is the appropriate exclusive response for many minor violations where there is no adverse health or safety impact, and where it is determined that there is little or no impact on nearby residents.\*



Recording violation notices protects future purchasers from unknowingly acquiring a property on which a violation exists. As your Board is aware, recordation has the effect of preventing an owner from obtaining financing and, therefore, is a self-enforcing effective means of obtaining compliance. Of course, in some instances, property owners have sought to refinance properties as a way of funding correction of the violation. Some lenders have, with the Countys' cooperation and at our suggestion, offered property owners loans on red tagged properties in which a portion of the loan proceeds are held back pending the correction and subsequent expungement of the Notice of Violation. By treating minor violations in this manner, we are able to concentrate our staff resources on the more serious violations. Our formal enforcement efforts end for these minor violations after recordation of the red tag. These are not cases where we would pursue further action.



The next group, titled "APPLICATION SUBMITTED/REVIEWED" includes those properties for which the owner has filed the necessary application to resolve the violation, but the permit application is still under review. "PERMITS ISSUED, BUT NOT YET FINALED" represents those instances where the owner has obtained a permit to correct the violation and where Code Compliance is monitoring the property owner's progress toward obtaining a final County signoff on the required permit. In most instances, these properties have already been posted and the violation has been recorded, and the owners are attempting to resolve the violation through the permit process. Where an owner is acting in good faith to resolve the violation, it is premature to make an immediate referral for administrative hearing or other legal action — particularly if the violation appears to be correctable through the permit process. These types of cases, should they have to proceed to administrative hearing (e.g., the permit application is denied) will almost certainly take longer than 120 days. Even if the application is ultimately approved, it may take longer than 120 days for the process to be completed --- especially if a public hearing is required. Furthermore, obtaining a permit and performing corrective work can oftentimes take longer than 120 days.



## ANALYSIS AND DISCUSSION REGARDING OUR EXPERIENCE WITH THE COURTS

County Counsel analyzed code compliance court cases that were handled by their Office since January, 2000 in connection with legal action either initiated by the County or, by appeal of the property owner. They have provided us with the following summary of findings:

Cases referred by Planning

38

<sup>2</sup> Examples of minor violations include most over height rear yard fences, garden equipment storage sheds, and similar structures.

Cases not yet heard by the Court	-7	0245
Cases for which a decision has been rendered by the Court	31	
Cases Where the Courts Upheld Existence of a Violation	30	
Average Civil Penalty Amount Granted by the Hearing Officer	\$2,079	
Average Civil Penalty Amount Awarded by The Court on Appeal	\$734	

As indicated above, the Courts routinely find that a violation exists. However, the Court's have not likewise agreed with the decisions of the Hearing Officer regarding civil penalties. Of the cases analyzed, the courts significantly reduced penalty awards in most instances, and eliminated them entirely in 40% of the cases. According to Counsel, the Courts decisions imply that they want to achieve compliance, and they do not favor large civil penalties.



Even in those cases where the Hearing Officer and/or the Superior Court has found that a violation exists, this has not always translated into timely or effective compliance. We examined the 30 cases referenced above where the Court found that a violation exists to determine how many have since been resolved. Here are our findings:

Cases Where the Court Found that a Violation Exists	30
Cases Where the Violation has Since Been Resolved	-10
Unresolved Cases Where the Compliance Deadline has Not Yet Passed	-10
Unresolved Cases Where the Compliance Deadline has Passed	10

As indicated, **as** of the writing of this report, one third of the Court decided cases are resolved. Another one third remain unresolved but the compliance deadline imposed by the Court has not yet passed. The Code Compliance staff continue to monitor those cases. When, as in the case of the remaining one third, unresolved cases have passed the compliance deadline imposed by the Court, Code Compliance staff refers the cases back to County Counsel for further consultation with the Court.

## DISCUSSION

Bssed on County Counsel and Planning review of the code enforcement process, staff believes that there are a number of areas where improvements can be made which will result in a more effective program. For example, because the Courts have not supported the imposition of large civil penalties, the Court proceedings tend to be more focused on civil penalties- rather than enforcement- detracting from the County's primary goal to achieve compliance. To improve our effectiveness in obtaining compliance, we believe that it is possible to develop more specific compliance plans and to request the Hearing Officer to incorporate these as part of the decision. Currently, in many instances, the order



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of the Hearing Officer contains general references regarding performance particularly as they relate to meeting deadlines imposed by Planning. Because the Hearing Officers' decisions, as they relate to the amount of civil penalty imposed are more often than not the basis of the legal dispute, the issue of the need for a specific compliance plan and schedule rarely gets the requisite amount of attention. To address this problem, County Counsel has indicated an intent to include this compliance detail in the orders and judgements which they seek from the court. By being more precise, and by including these action milestones in our legal documents, we believe that it will introduce greater accountability into the process, and set the stage for follow-up legal action when necessary. Rather than missing a staff imposed deadline, owners will be in violation of a Hearing Officer order or Court order which may provide greater incentive for timely compliance.

& other issue which we are examining with County Counsel is whether the support required for the administrative hearing process might be more efficiently handled by the Planning Department. The Planning Department currently supports the Planning Commission and Zoning Administrator's hearing processes and could support the administrative hearing process as well. County Counsel could perform the advisory function for the administrative hearing process in much the same manner as it currently does for the Planning Commission and Zoning Administrator hearing processes. We will report back to your Board on this issue in our quarterly report next spring.

## CONCLUSION AND RECOMMENDATIONS

A great deal of progress has been made over the past year to streamline the code compliance process. Additional improvements, as discussed throughout this report, will further enhance our effectiveness. We look forward to a continuing dialogue with County Counsel's Office on ways to make our process more efficient and effective.


It is therefore RECOMMENDED that your Board:

1. Accept and file this report;
2. Direct Planning and County Counsel to implement the changes discussed throughout this report; and
3. Direct Planning, and County Counsel, to report back to your Board on or before the end of April, 2002 with recommendations regarding the issue of support arrangements for the administrative hearing process.

Sincerely,

  
Alvin D. James  
Planning Director

RECOMMENDED:

  
J. Mauriello  
County Administrative Officer

Attachment: October 2<sup>nd</sup> Board Report Regarding Code Compliance Investigations

cc: County Counsel



# County of Santa Cruz

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## PLANNING DEPARTMENT

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(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

September 26, 2001

Agenda: October 2, 2001

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, California 95060

SUBJECT: Status Report on Code Compliance Investigations

Members of the Board:

Background

During discussion of the Planning Department's budget last June, your Board expressed concerns about the timely resolution of the more complex code compliance cases, and the effectiveness of our legal actions. Your Board directed the Planning Department to return with a last day report describing the code compliance process and the target time lines for enforcement. In our follow up report which your Board considered on June 26<sup>th</sup>, we presented your Board with an "idealized" code compliance process from receipt of complaint to referral to County Counsel's Office. We also included information about the additional steps and time required to get a case before the Hearing Officer. During discussion, we indicated that our goal was to process unresolved cases within 120 days, or approximately 4 months, from receipt of complaint to referral to County Counsels' Office.

After some discussion, your Board directed the Planning Department and County Counsel's Office to return on August 28<sup>th</sup> with further information on the number of cases that take longer than 120 days to refer for legal action, the reasons for delay beyond the 120 day standard, the experience with the Courts, and any further recommendations to improve the effectiveness and efficiency of the enforcement system. This report was continued to your October 2<sup>nd</sup> agenda.

### ANALYSIS AND DISCUSSION REGARDING THE 120 DAY REFERRAL STANDARD

As presented in our June report, there are many steps in the typical enforcement process, some of which are under our control in terms of the time to complete a given task, and some of which are outside of our control. Examples of the former are file preparation, field investigations, and preparation of reports and correspondence; examples of the latter are required legal notice periods, including appeals. If resolution is not obtained through our initial efforts to obtain compliance (including sending

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a notice of violation to the property owner and recording such notice with the County Records Office), a routine referral is made to County Counsel's Office to schedule the matter for Administrative Hearing --- a process which typically takes approximately 4 months.'

It should be noted that the 120 day standard, (from receipt of complaint to referral to County Counsel for hearing), was developed last year as part of our efforts to improve the enforcement process. It was to be programmed into ALUS as a method for implementing internal changes and documenting, via computer system improvements, our efforts to process enforcement cases in a more timely fashion. The initial effort to revise ALUS to include these changes proved too costly and time-consuming. Therefore, the Planning Department and the Information Services Department are working collaboratively to integrate the new standard and related procedures into the ALUS Change of Platform project authorized by you Board as part of the department's budget.

To assess our success in meeting this 120 standard from receipt of complaint to referral for legal action, we reviewed all of the new cases over a six month period, from November, 2000 through and including April, 2001. *(The 120 day or 4 month target referral period for cases received at the end of April would have just ended in late August).* Here are our findings:

	E	%
COMPLAINTS RECEIVED 11/01/00-04/30/01	412	
DEFERRED MINOR OR INVALID COMPLAINTS	(123)	
INVESTIGATIONS STARTED	289	100%
VIOLATION RESOLVED	(146)	51%
UNRESOLVED VIOLATIONS	143	100%
SITE INSPECTION, NOTICE ISSUED, RECORDED	127	89%
INVESTIGATIONS PENDING	16	5%

As indicated, over 50% of the new investigations were resolved through the initial enforcement process such that a referral to County Counsel's Office was unnecessary. Of the cases that were not resolved within the first 120 days, enforcement efforts are underway in 89% of those cases. Notices of Violation have been issued, and many have been recorded. Recording a notice of violation prevents a property owner from selling their property to an unsuspecting buyer, and can complicate real property and related financial transactions. This is intended to motivate owners to resolve their violations.

While a significant number of cases were resolved, and enforcement efforts are underway on those that have not yet been resolved, the department is not meeting the optimal target for referring unresolved cases to County Counsel's Office. Planning staff and County Counsel are in the process

of assessing the factors contributing to the rate of transition from unresolved violations to referrals. We are in the process of examining both the number of cases and the referral process, however, additional time is needed. In order to provide your Board with a more definitive evaluation, we propose to bring a more comprehensive report on October 23<sup>rd</sup> for your Board's consideration with recommendations appropriate.

#### OUR EXPERIENCE WITH THE COURTS

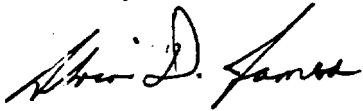
Your Board also asked for a report in conjunction with County Counsel's Office regarding our experience with the Courts. Our October 23<sup>rd</sup> report will include information regarding Court cases over the past 48 months, and will include appropriate recommendations in this area as well.

#### RECOMMENDATIONS

It is therefore RECOMMENDED that your Board:

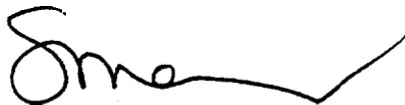
1. Accept and File this report on Code Compliance Investigations; and
2. Direct Planning to provide your Board with a further report on your October 23<sup>rd</sup> agenda.

Sincerely,



Alvin D. James  
Planning Director

RECOMMENDED:



Susan A. Mauriello  
County Administrative Officer

cc County Counsel