

Mountain residents sue county

Homeowners say property rights being taken away

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SANTA CRUZ — In the largest single court action stemming from the October, 1989 earthquake, more than 100 homeowners in the Santa Cruz mountains filed suit

against the county this week, alleging they must in effect sign away their property rights if they want to rebuild or repair.

"I just wanted to show the court that it's not just a couple of property owners who are upset," said David Spangenberg, a Burlingame attorney who filed the suit on behalf of 130 property owners. "I want to show the court there are a substantial number of property owners who feel they are being screwed."

According to Spangenberg, a land-use attorney who has tangled successfully with the county over mobile home rent control, hundreds of other mountain residents are

also willing to join the plaintiffs.

County Counsel Dwight Herr had no immediate comment on the suit, saying he had not yet been served with a copy.

At issue is the county's requirement that mountain residents sign a waiver giving the county authority to condemn their land without compensation before they can be issued a building permit.

The waiver stems from an amendment of the earthquake hazards emergency ordinance that was approved shortly after the 7.1 quake. At the time, county-hired geologists called for further study after speculating the quake could have "reactivated

ancient landslides" and rendered some mountain areas unstable.

A building ban was instituted for the so-called "areas of critical concern" but lifted after supervisors Jan Beautz and Fred Keeley worked with homeowners on an amended version of the ordinance.

But in exchange for applying for a permit to repair or rebuild, the homeowners then had to agree to free the county of any legal liability, and register the waiver with the County Recorder for an indefinite period of time.

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'You expect the county ... to assist you, instead of beating you over the head.'

— Ellen Meyer,
Mountain homeowner

Suit

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Residents like Hank and Ellen Meyer, whose Villa Del Monte home suffered foundation damage due to what they said was imperfect construction, have found the requirement a bitter pill to swallow.

"It's agreeing that their home can be demolished by order of the county without compensation and without court review," Spangenberg said of the waiver, which also gives the county the option of condemning land by a planning department decree.

Property owners, many of whom live in the Villa, are angry with the requirement, because it bars them from recovering damages for events such as a county-caused landslide, negligent construction or other problems.

"It's really terrible what they have put us through," Ellen Meyer said. "You expect the county, in a time of a natural disaster, is going to come to assist you, instead of beating you over the head and shoving you down. They've been doing this sort of thing for the last 13 months."

Spangenberg said his clients don't have any problem with assuming the risk of rebuilding in an area that suffered significant quake damage. But he said the waiver forces them to assume an

even greater risk of losing everything without much hope of legal recourse.

"In other words, if I have a home up there and it was damaged, I want to repair the damages and I don't mind assuming the risk of putting more money into my home," Spangenberg said. "But I do mind fixing my home, and afterward I can be ordered to demolish it."

According to Spangenberg, other onerous legal effects of a waiver signature include relieving the county of any legal liability, if, for instance, a county bulldozer damages a home. The rules of the waiver also stipulate that if a plaintiff decides to sue as a result such an incident, they must pay the county's legal fees.

On Friday, Herr defended the necessity of a waiver and said the county had negotiated at length with concerned homeowners to reach a compromise between their desire to rebuild and the county's desire to protect itself from legal actions.

"It's just a protective measure," he said. "And it puts other people on notice that there is a potential for significant geologic problems that is currently under study."

The U.S. Army Corps of Engineers is overseeing a comprehensive study on the Summit area geology, but preliminary results will

not be known until sometime next year.

"The homeowners came to the board and asked permission to repair or reconstruct their houses and assume all the risk of doing so pending the completion of that study," Herr said. "So the board — after initially taking the position that everyone should wait for the study to be complete — granted the request to the homeowners and approved language of the waiver whereby they would clearly assume the risk for going forward before the study's done."

"These are all a bunch of good and decent people trying to go put their homes back together again," Spangenberg said. "The county is sitting there extorting things unrelated to the effort of these people trying to put their lives back together. They won't sue if another quake occurs and there's damage. But they have to draw the line somewhere."

The suit seeks unspecified legal costs and damages and an injunction setting aside the waiver and banning its enforcement.

Spangenberg said the county would not be served with a copy of the suit until he gathered the remainder of the clients who wish him to represent them. He said he expects a court to order a hearing on the issue in the early months of the new year.