wittwer / parkin

September 26, 2023

VIA EMAIL

Planning Commission
c/o Mark Connolly
County of Santa Cruz
701 Ocean Street, 5^{4h} Floor
Santa Cruz, CA 95060
Mark.Connolly@santacruzcountyca.gov

Re: Meeting Date, September 27, 2023
Agenda Item 6; Study Session on the 6th Cycle Housing Element

Dear Commissioners:

On September 11, 2023, we submitted the enclosed letter to the Board of Supervisors regarding the above referenced agenda item. We believe the Planning Commission should be well aware of our position regarding the Housing Element as it considers the item and we provide the enclosed letter for your consideration.

Thank you for your attention and consideration of these comments.

Very truly yours,
WITTWER PARKIN

William P. Parkin

cc: Client

wittwer / parkin

September 11, 2023

VIA EMAIL

Board of Supervisors
701 Ocean Street, 5th Floor
Santa Cruz, CA 95060
BoardOfSupervisors@santacruzcountyca.gov

Re: Meeting Date, September 12, 2023
Agenda Item 8; Study Session on the 6th Cycle Housing Element

Dear Chair Friend and Supervisors:

This law firm represents The Aptos Council, a group of concerned residents who have been involved in County land use decisions and has previously litigated the County's balkanized approach to County Code amendments and the previous cycle of the Housing Element. The latter dispute was settled with the County in 2016.

We now submit this letter opposing the proposed rezoning of property as envisioned by the proposed Housing Element through an Addendum to the Environmental Impact Report (EIR) for the Sustainability Policy and Regulatory Update. Your Staff Report indicates that such an Addendum will be completed in late September.

To be clear, The Aptos Council supports affordable housing through increased densities in appropriate locations. However, environmental quality and affordable housing are not mutually exclusive as is now commonly argued in Sacramento and by local agencies. We oppose the rezoning of parcels without proper environmental review. Moreover, without the requisite environmental review, your Board and the public cannot possibly understand the impacts the proposed General Plan amendments and rezonings will cause. In fact, because these proposed amendments and rezonings are being done through this Housing Element process without much focus on the amendments and rezoning, many in the community are not aware of what is being proposed. Environmental review will inform the public of the proposals. After all, the California Environmental Quality Act (CEQA) is a law of disclosure.

> The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." [Citation]. Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it

> disagrees. [Citation]. ***The EIR process protects not only the environment but also informed self-government.***

Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392, emphasis added; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 554; 14 Cal. Code Regs. § 15003. "CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment." (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* ("*Union of Medical Marijuana Patients*") (2019) 7 Cal.5th 1171, 1184, citing *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382.) ""CEQA embodies a central state policy to require state and local governmental entities to perform their duties 'so that major consideration is given to preventing environmental damage.' [Citations.] [¶] CEQA prescribes how governmental decisions will be made when public entities, including the state itself, are charged with approving, funding — or themselves undertaking — a project with significant effects on the environment." (*Union of Medical Marijuana Patients, supra* 7 Cal.5th at 1185, citing *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711-712.)

As explained below, the County cannot pursue the General Plan amendments and rezonings with an Addendum to the EIR for the Sustainability Policy and Regulatory Update. To highlight the problem with the proposal to use an Addendum, we cite as an example the proposed General Plan amendment and rezoning of two parcels (APNs 039-201-36 and 039-201-37) located at Mar Vista Drive and Soquel Drive. These parcels are known in the community as "Par 3."

A. The History of Par 3

As the Board and your staff know, Par 3's name comes from the longstanding Par 3 golf course that occupied these properties for many years. The course was considered a local recreational asset that was enjoyed by the community and families. The tenants that operated the course were on a month-to-month lease and the landowner ultimately asked the tenant to vacate the premises. For a period of time after the course ceased to operate, Native Revival Nursery, which as its namesake indicates, sold native plants for sale to residents.

The Parcels are currently zoned for "Parks, Recreation and Open Space PR District." The primary purpose of the PR District is to provide for commercial recreation, parks and open space. Shockingly, the proposed rezoning would instead designate these properties for 430 units by simply doing an Addendum to an unrelated EIR. This proposal would remove a recreation

site to the detriment of the community. Again, we support affordable housing. But as the area densifies, recreational sites will become more critical and the County should not develop recreational sites for housing. Many jurisdictions in California developed without preserving areas for recreation and are now park deficient. San Jose and Los Angeles are two such examples. Before you dismiss this concern as "we are not San Jose or LA," they were once less dense places that developed without regard to recreational needs. We do know that Santa Cruz will become denser, either by state fiat or because developers are keen to develop land on the coast. Once recreational sites are lost, they are lost forever and as the County becomes more urban its citizenry will decry the lack of urban parks or sites for recreation. In fact, the County is also proposing another PR District site at Seascape Golf Club for housing as part of the Housing Element.

Moreover, anyone studying the history of Par 3 knows that the County previously rejected building housing on these properties due to community sentiment. The community outcry was immense, and perhaps the only reason you are not hearing loud voices is because this proposal is buried in the high level Housing Element process, without proper environmental review, which most people do not understand. However, the outcry will be loud when people later figure out that your Board changed the zoning and County planners later argue that the property was rezoned and an Addendum to an EIR was already approved. The proposed process is undemocratic and unfair to the public.

Aside from the loss of a recreational site, the Par 3 parcels have access issues that make building 430 units of housing a literal nightmare, and density bonuses will only lead to an increase in density. One access point is presumably via Old Dominion Court. Old Dominion Court meets State Park Drive at a dangerous point just after traffic merges from Soquel Drive and right before the entrance ramp to northbound Highway One. Making a left turn from Old Dominion without a traffic light is difficult at best, and adding another light at this location would be disastrous, if not impractical, because there are lights at Soquel and State Park Drives, and State Park Drive and the Highway One entrance ramp.

The other access point to these properties is via Mar Vista Drive, which dead ends at Highway One. This access point for 430 units would create utter gridlock and safety issues along Mar Vista Drive and at Mar Vista Drive and Soquel Drive. In short, these properties are unsuited for such densities.

Finally, in order to develop 430 units, we presume that the buildings will have to be three stories or higher. And density bonuses might force the County to accept higher buildings. This would be inconsistent with the current aesthetic along Highway One, which is listed as eligible for listing as a State Scenic Highway, and while not officially designated by the state, it has been by County.

An Addendum will not address these impacts associated with Par 3, or other sites that are designated for rezoning. As discussed below, the changes are sweeping and an Addendum cannot supplant the need for environmental review for the Housing Element.

B. The County Cannot Adopt an Addendum to Address the Significant Environmental Impacts of the Proposed Rezonings

1. It is Clear From the Timeline of Sustainability Policy and Regulatory Update that the County is Engaging in Piecemeal Environmental Review

The CEQA Guidelines state that "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [including] [a]n activity directly undertaken by any public agency… ." (14 Cal. Code Regs. § 15378(a).) A project is defined broadly in order to maximize environmental protection. (*City of Santee v. County of San Diego (Santee)* (1989) 214 Cal.App.3d 1438, 1452; *McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds).) A project must be defined and accurately described to ensure an "intelligent evaluation of the potential environmental effects of a proposed activity." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592, citing *McQueen v. Bd. of Directors, supra,* 202 Cal.App.3d at 1143-44.) "A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole." (*Id.*)

Precedent has long established that the environmental impacts of a project cannot be submerged by chopping a larger project into smaller pieces. (*See*, *Burbank-Glendale-Pasadena Airport Authority v. Hensler, supra,* 233 Cal.App.3d at 592.) Chopping a larger project into smaller pieces is referred to as "piecemealing" or "segmenting" a project and is prohibited under CEQA.

What is fatal to the County's process for both the Sustainability Policy and Regulatory Update, and the Housing Element, is that the County was processing these decisions simultaneously. Then in a bait and switch, the staff proposes a simple Addendum to the EIR for the Sustainability Policy and Regulatory Update. The County knew all along that it was proceeding with both programs simultaneously and should have analyzed the whole of the action. The County cannot simply prepare an Addendum to cure what it did not do before. Given the current state of affairs and the County's self-inflicted wound of approving the Sustainability Program and Regulatory Update prior to including the Housing Element in the EIR, the County needs to prepare a separate EIR for the Housing Element as it was indeed proceeding with both programs separately. The County cannot have its cake and eat too.

The Sustainability Policy and Regulatory Update was approved by the Board on December 13, 2022. The EIR was certified at the Board's November 15, 2022 hearing. Your Staff Report for the Housing Element Update sets forth a timeline that shows that the Housing Element was well on its way before you certified the EIR and approved the Sustainability Policy and Regulatory Update. Staff presented the Housing Element Update to the Housing Advisory Commission on March 1, 2022, and November 2, 2022. It was also presented to the Planning Commission on November 9, 2022. A work program and outreach process for the Housing Element was presented to the Board on October 25, 2022, and this Board directed staff to return in January 2023 for further presentations to the newly elected Supervisors. The County was working on and proposed the Housing Element Update prior to certification of the EIR indicating that the County engaged in a piecemeal review process that thwarted public review and confused decisionmaking. The County cannot now do an Addendum to the EIR when the Housing Element Update was conceived prior to the certification of the EIR. If the County wanted to use the same EIR, it should have circulated a revised EIR prior to its certification. But it is too late for such actions and the County must prepare an EIR for the Housing Element Update.

2. Assuming for the Sake of Argument that the EIR for the Sustainability Policy and Regulatory Update Can be Used for the Housing Element Update, Subsequent Environmental Review is the Only Proper Vehicle and an Addendum Does Not Comply with CEQA

Pursuant to CEQA Guidelines section 15162(a)(1), a subsequent EIR is required when there are "Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects." An Addendum is not appropriate here because of the multiple General Plan amendments and rezonings.

"CEQA's subsequent review provisions apply when an agency modifies a project after it has certified an EIR or has adopted a negative or mitigated negative declaration." *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2017) 11 Cal.App.5th 596, 604. As such, a court must first determine "whether implicit or explicit—that the original environmental document retains some informational value. If the proposed changes render the previous environmental document wholly irrelevant to the decisionmaking process, then it is only logical that the agency start from the beginning..." *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 951. "Once a court determines that substantial evidence supports an agency's decision to proceed under CEQA's subsequent review provisions (see § 21166; CEQA Guidelines, § 15162), the next—and critical—step is to determine whether the agency has properly determined how to comply with its obligations under those provisions." (*San Mateo Gardens*, at p. 953, 207 Cal.Rptr.3d 314, 378 P.3d 687.)" *Id.* at 605.

A lead agency or a responsible agency may prepare an addendum only if "some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." 14 Cal. Code Regs. § 15164(a). "Consistent with these principles, section 21166 and CEQA Guidelines section 15162 provide that an agency that proposes changes to a previously approved project must determine whether the changes are "[s]ubstantial" and "will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects." (CEQA Guidelines, § 15162, subd. (a)(1).) If the proposed changes meet that standard, then a subsequent or supplemental EIR is required." *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist., supra*, 1 Cal.5th at 950.

The Court of Appeal in *Save Berkeley's Neighborhoods v. The Regents of the University of California* (2020) 51 Cal.App.5th 226 established that when an agency makes substantial changes to a project, or program, an agency must prepare a subsequent or supplemental EIR rather than a tiered EIR. In *Save Berkeley's Neighborhoods*, the court found that the University of California's decision to increase enrollment in excess of what was analyzed under the 2005 LRDP for the UC Berkeley campus constituted

> substantial changes to the original project that trigger the need for a subsequent or supplemental EIR. (Pub. Resources Code, § 21166, subd. (a); Guidelines, §§ 15162, subd. (a) and 15153, subd. (a); see *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1077 [quotation omitted].)

(*Id.* at p. 237.) The change in the project that triggered Section 21166's provisions to prepare a supplemental or subsequent EIR was an increase in enrollment. Here, the change in project that triggers Section 21166 is, *inter alia*, the enormous number of General Plan amendments and rezonings that were not contemplated by the EIR for the Sustainability Policy and Regulatory Update.

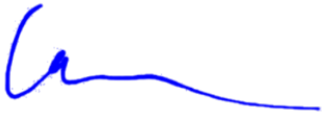
Finally, Pursuant to Public Resources Code § 21167(f), I am requesting that the County forward a Notice of Determination for the Addendum to this office if the Housing Element is approved. That section provides:

> If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of

the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

Thank you for your attention and consideration of these comments.

Very truly yours,
WITTWER PARKIN



William P. Parkin

cc: Client