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VIA ELECTRONIC MAIL

June 12, 2024

Santa Cruz County Planning Commission
701 Ocean Street
Santa Cruz, CA 95060

**Re: Follow-up Comments on the County of Santa Cruz's Draft SB 9
Implementing Ordinances on behalf of Kevin and Sandy Huber's SB 9
Submittals for 625 Beach Drive**

Dear Commissioners:

This letter follows up on our May 27, 2024 letter (attached) on behalf of Kevin and Sandy Huber, applicants for an SB 9 project at 625 Beach Drive, Aptos, California, to the Planning Commission's May 28, 2024 study session on the pending ordinance implementing SB 9.

During the Study Session, some Planning Commissioners indicated their desire to restrict SB 9's legislative intent and authority as much as possible. This apparent goal directly conflicts with SB 9's purpose, which is to **require** a local agency to approve a project that is consistent with the statute's provisions (see Gov. Code, § 65852.21, subd. (a)) and to enable the production of more housing, particularly in existing single-family areas. Nowhere is this more difficult than the Coastal Zone.

However, merely based on a facial reading of the statute, the County may not impose standards on an SB 9 project that conflicts with its provisions. As the California Supreme Court stated, under the rules of preemption, "[i]f otherwise valid local legislation [such as the County's SB 9 implementing ordinance] conflicts with state law, it is preempted by such law and is void." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)

Related to the foregoing, during the Study Session, Commissioner Gordon cautioned that he did not want to adopt any SB 9 implementing ordinance that may soon be preempted by any imminent State legislation amending SB 9. As Commissioner Gordon stated, underpinning this concern, is the State legislature's recent efforts to revise and strengthen SB 9 through [Senate Bill 450](#) ("SB 450"). Relevant for the County, SB 450 would clarify that a local agency may only adopt object zoning and design standards to implement SB 9, "if those standards are more permissive than applicable standards within the underlying zone."

Here, if the County adopts an implementing ordinance that imposes an arbitrary 1,200 square-foot cap on all new two-unit SB 9 developments, the result would be more restrictive standards than what the zoning currently allows on many parcels. For example, our client's Property is designated as Ocean Beach Residential Zone District, which permits a floor area

ratio of up to 0.5:1. Square footage limitations should be flexible and relate to overall lot coverage (FAR, etc.). We caution the County from adopting any overly restrictive square footage requirements that might be in direct conflict with future legislation amending SB 9.

Notwithstanding the arguments presented above, if the County still intends on limiting the size of projects developed under SB 9, we encourage the County increase the maximum square footage permitted. A 1,200 square-foot limit is far too restrictive to permit the feasible development of units of at least three bedrooms. The current rental stock in the County demonstrates that it is very difficult to find, let alone develop, a 3-bedroom unit with a total square footage of 1,200 square feet or less. This limited stock is likely due to such a project's financial and practical infeasibility.

The draft ordinances' blanket exclusion of SB 9's use on parcels located on "coastal bluffs and beaches" is inconsistent with SB 9's provisions and the County's permitting precedent for development on single-family lots containing such features. As raised in our earlier letter, in enumerating certain geographic features that exclude a property from using SB 9, the Legislature borrowed a list of exemptions from Senate Bill 35 ("SB 35") but **chose not to adopt a coastal zone exemption**. The County has provided no basis to support why the draft ordinances must be more restrictive than SB 9. Moreover, such a restriction is inconsistent with the County's permitting precedent for development on single-family lots located adjacent to beaches and bluffs. For example, the Huber's property is located on a partly undeveloped lot, adjacent but not on the beach, and part of a line of roughly 11 downcoast and 19 upcoast fully developed Beach Drive homes. The County's draft ordinances would unnecessarily exclude the Hubers from using SB 9 in this fully developed tract.

If the County desires to retain an exclusion from SB 9 for properties containing beaches and bluffs, we request that, at a minimum, the County provide a corresponding definition to those terms so property owners can understand what properties may be excluded. As currently proposed, the draft ordinances exclude parcels from using SB 9 that are located on "[c]oastal bluffs and beaches, or other Environmentally Sensitive Habitat Areas, as defined in [Santa Cruz County Code, section] 13.20.040." However, section 13.20.040 does not contain any definition of the term "bluff" or "beaches," or clarify when a parcel might contain either of the foregoing. This lack of clarity results in the draft ordinances being vague and ambiguous as to SB 9's application to certain properties in the coastal zone. Furthermore, fully subdivided single-family neighborhoods like the Rio Surf and Sand Community, where the Huber's existing, partly undeveloped single-family lot at 625 Beach Drive is located should be specifically exempted from the definition or square footage restrictions.

We appreciate the County's consideration of the foregoing recommendations and look forward to the successful, lawful application of SB 9 throughout the County and State.

Very truly yours,



John P. Erskine
Nossaman LLP

June 12, 2024
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JPE:nd3

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Santa Cruz YIMBY Comments on County SB 9 Ordinance
June 10, 2024

Thank you for hosting outreach on the County's ordinance implementing Senate Bill 9 (SB9), allowing two-unit developments and urban lot splits. **We believe that SB9 can result in needed missing middle housing throughout our county, adding additional density to residential zones, much as ADUs/JADUs have. SB9 can address the issue of fair housing in our coastal county by enabling much-needed missing middle housing in exclusionary single-family zoned parcels.**

Santa Cruz YIMBY has the following feedback on the draft ordinance that was part of the staff report for the Planning Commission's May 10th study session. We advocate for the County to adopt a maximum interpretation of the law, rather than the minimum as it has in several cases.

Your Unit Size Limits Are Arbitrary and Small

Your limit of 1200 sq ft for maximum unit size is arbitrary, it is not in the law. Your justification that this cap will "help produce and encourage more affordable and "missing middle" housing in our community." is counter-intuitive.

- We believe that the unit size should be limited only by the underlying zoning.
- This should be removed from the ordinance 13.10.327 E(2): ~~Maximum Unit Size. New units constructed in a two-unit development shall be a maximum of 1,200 square feet.~~

Similarly, you limit the size of primary units on each lot from an urban lot split to only 800 sq ft which is arbitrary and not in the law.

- We believe that the unit size should be limited only by the underlying zoning.

- This should be removed from the ordinance 13.10.328 D(6): ~~Urban lot splits shall allow up to two 800 square foot primary units on each lot created.~~

These size limits are also baked into the deed restriction

- This should be removed from the ordinance 13.10.328 F(1): ~~The maximum size of any new primary dwelling unit is limited to 800 or 1,200 square feet, as determined during the lot split approval.~~

You are Conflating Primary, ADU and JADUs in Maximum Units Allowed

You state that SB9 only allows four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs. **This is not true.**

- Please see [HCD's SB9 Fact Sheet](#), for distinctions of primary units, ADUs, and JADUs (Page 5 has the definitions) and what is allowable (Page 6 addresses ADUs on lot splits and no lot splits)
- In short, ADU law may allow two additional units (ADU/JADU) with a primary unit without a lot split. This is noted in your graphic sourced from Association of Bay Area Governments (ABAG), as well.
- This should be corrected in the ordinance 13.10.327 D(1), ~~The total number of units (primary units, ADUs and JADUs) may not exceed four units on a single parcel.~~

Remove Discretionary Review from Ministerial Approval

SB9 includes ministerial approval. **We believe that objective standards should apply to the project including for the Coastal Zone. If the Local Coastal Program requires any subjective or discretionary findings, they should be revised and the CDP updated.**

- What would trigger discretionary review of the project as noted in the ordinance 13.10.327 F(1)?
- 13.10.327 F(2)(b): "For a two-unit residential development in the Coastal Zone, the development being inconsistent with Chapter 3 of the California Coastal Act is basis for project denial." This is unclear, given no public hearings and ministerial approval.
- This also affects 13.10.327 D(9) which highlights that a coastal development permit is subject to discretionary review.

Other Issues of Note

Your ordinance allows for SB9 “within the SU, R-1, RA, RB, or RR zone districts, exclusively.” Is this inclusive of zones that are single-family residential?

- The SB9 law mentions “single-family zoning”. [HCD’s SB9 Fact Sheet](#) indicates (page 1) that *“In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses and which are therefore subject to SB 9.*

We question whether the following are legal:

- This should be removed from the ordinance 13.10.327 D(8) ~~Existing or proposed common interest developments are not eligible.~~
- 13.10.327 E(4) - is the gross parcel size in SCCC Chapter 7.38 larger than 1200 sq ft which is what is in SB9 law? 13.10.327 E(10) builds on that.
- What is precluding 13.10.327 E(11)? We could see it being encouraged, but should not be enforced.

Santa Cruz YIMBY advocates for abundant housing at all levels of affordability to meet the needs of a growing population in Santa Cruz County. We support sustainable growth, including along transportation corridors and activity centers and a commitment to lower Vehicle Miles Traveled by housing people near services and jobs.

From: Cove Britton <cove@matsonbritton.com>

Sent: Tuesday, June 25, 2024 11:37 AM

To: Kevin Huber <khuber@grupehuber.com>

Cc: Jacob Lutz <jacob.lutz@santacruzcountyca.gov>; Mark Connolly

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Subject: Re: Draft Ordinance in Staff Report

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Hi Jacob, Mark, and Jocelyn-

The exclusion of "coastal bluffs and beaches, or other Environmentally Sensitive Habitat Areas" conflicts with the state legislation:

Findings of Denial (Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d)) SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency's building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

Clearly coastal bluffs, beaches, and possible associated environmental issues are mitigated regularly for these areas. Regardless, it is the SB9 legislation that specifies that it is the "building official" to make that determination and on specific SB9 applications. It also needs to be spelled out that appeals of the building official goes to the building appeals board (and not to the planning director).

Please also provide specific reference to law and codes on exactly how the planning staff came to the determination that the LCP and General Plan supersede SB9. I understand local Coastal Commission staff's viewpoint however they, nor the Coastal Commissioners, are the legislative body on this issue. Lacking specific response from planning staff on how they came to that conclusion is problematic.

I suggest that County legal counsel become more involved in these issues as much of the issues are legal in nature and multiple letters have been written from attorneys where there appears to be little to no response.

Respectfully-

On Tue, Jun 25, 2024 at 10:56 AM Kevin Huber <khuber@grupehuber.com> wrote:
Hi Jacob and Mark and Jocelyn,

I am reading the staff report for the PC hearing tomorrow regarding the SB 9 Agenda Item.

The proposed language adding Section 13.10.327 (C) (3) (c) says " Coastal bluffs and beaches, or other Environmentally Sensitive Habitat Areas, as defined in SCCC 13.20.040".

In the Section 13.20.040 posted online there is no definition of coastal bluff or beach. I then went to the Sustainability update, which says "**13.20.040 Definitions [no change]**". Is there an adopted 13.20.040 that I am not finding, or do these definitions not exist?

If no definition of coastal bluff or beach currently exists in this code section, shouldn't this language be removed. Adopting this language in the Ordinance now, and then coming back later with an amendment that adds a definition of coastal bluff and beach would not afford the PC members, Board of Supervisors, or the public, the right to adequately comment on the impacts on the Ordinance that staff is proposing.

This was discussed at the previous PC hearing, and I was of the understanding from Jacob's comments at the hearing that staff acknowledged this fact, and that this language was going to be removed. Can you please let me know the staff's position on this item?

Thank you,

Kevin

Kevin Huber

President/CEO

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Cove Britton

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