

**From:** Cove Britton <[cove@matsonbritton.com](mailto:cove@matsonbritton.com)>

**Sent:** Tuesday, June 25, 2024 5:02 PM

**To:** Kevin Huber <[khuber@grupehuber.com](mailto:khuber@grupehuber.com)>

**Cc:** Jacob Lutz <[jacob.lutz@santacruzcountyca.gov](mailto:jacob.lutz@santacruzcountyca.gov)>; Mark Connolly <[Mark.Connolly@santacruzcountyca.gov](mailto:Mark.Connolly@santacruzcountyca.gov)>; Jocelyn Drake <[Jocelyn.Drake@santacruzcountyca.gov](mailto:Jocelyn.Drake@santacruzcountyca.gov)>; John Erskine <[ierskine@nossaman.com](mailto:ierskine@nossaman.com)>; Noah DeWitt <[ndewitt@nossaman.com](mailto:ndewitt@nossaman.com)>; Manu Koenig <[Manu.Koenig@santacruzcountyca.gov](mailto:Manu.Koenig@santacruzcountyca.gov)>; Jamie Sehorn <[Jamie.Sehorn@santacruzcountyca.gov](mailto:Jamie.Sehorn@santacruzcountyca.gov)>; Justin Graham <[Justin.Graham@santacruzcountyca.gov](mailto:Justin.Graham@santacruzcountyca.gov)>

**Subject:** Re: Draft Ordinance in Staff Report

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Hi Jacob, Mark, and Jocelyn-

I glanced at the staff report for tomorrow but it appears the staff is ignoring SB 450? SB 450 goes to the intent of the legislation and Commissioner Gordon asked specifically about that state legislation.

SB 450 was proposed by Senator Atkins and it unlikely that it will not obtain final approval in this calendar year and it addresses exactly what the planning staff is currently proposing:

- Requires consistency in local objective zoning, subdivision, and design standards to prevent local governments from imposing overly-burdensome requirements on units and lot splits created using SB 9. While SB 9 crafted an appropriate balance between respecting local control and creating opportunity for more housing in California, there have been instances where local jurisdictions have imposed excessive requirements. This update would address those issues broadly, so as to require consistency in local rules and standards.

For example, limiting the size of the second residences to 1,200 square feet is an overly-burdensome requirement that is not consistent with local objective zoning etc.

I strongly suggest that planning staff take an active role in trying to follow the legal requirements of SB9 and the *intent of SB9 and anticipate the likely approval of SB 450*.

Otherwise, and I am not speaking for Mr. Huber here, legal action is likely to occur that is supported by HCD. That outcome is a waste of public and private resources that should not be treated in a cavalier manner.

Respectfully-

On Tue, Jun 25, 2024 at 3:50 PM Cove Britton <[cove@matsonbritton.com](mailto:cove@matsonbritton.com)> wrote:

Hi Jacob, Mark, and Jocelyn-

Below are examples of environmentally sensitive exclusions the *building official* may consider in denying a SB9 application. Respectfully it does not appear to be the role of planning staff to deny the applications. Essentially the concept is, if a home can currently be built on a site, then a second home can be built. Added restrictions are not allowed.

You may disagree but I believe an explanation of how that disagreement is structured legally....would be of public benefit.

Regards-

In the context of SB 9, there are three types of sensitive ecological areas: conservation zones, endangered species habitats, and lands under conservation easement.

**Conservation zone** is a term for lands subject to a conservation or natural resource protection plan. Sometimes these plans are reflected in a municipality's zoning system.

**Protected species habitat** refers to an area that has been designated as a critical habitat for an endangered or protected animal species. These designations [cannot be applied to an entire town](#).

**Conservation easement** is a voluntary legal agreement made between a landowner and a government agency, land trust, indigenous tribe, or other qualified organization. A conservation easement protects the land by permanently restricting its allowable uses. These easements remain in place even after a property is sold to a new owner.

On Tue, Jun 25, 2024 at 11:36 AM Cove Britton <[cove@matsonbritton.com](mailto:cove@matsonbritton.com)> wrote:  
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](mailto: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**

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