County of Santa Cruz

Department of Community Development and Infrastructure

701 Ocean Street, Fourth Floor, Santa Cruz, CA 95060
Planning (831) 454-2580 Public Works (831) 454-2160
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Matt Machado - Deputy CAO / Director

August 2, 2024

Agenda Date: August 14, 2024

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

Subject: Public hearing to review and provide recommendations to the Board of Supervisors regarding an ordinance regarding Senate Bill 9 (SB9) adding Santa Cruz County Code Sections 13.10327 and 13.10.328 to allow two-unit developments and urban lot splits.

RECOMMENDED ACTIONS:

1) Conduct a public hearing to review proposed amendments to the Santa Cruz County Code (SCCC) that would allow for two-unit developments and urban lot splits.

2) Adopt the attached Resolution (Exhibit A), recommending that the Board of Supervisors:
   a. Acknowledge that this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA): and

   b. Adopt the Ordinance (Exhibit C) adding regulations to the SCCC for two-unit developments and urban lot splits, adding Sections 13.10.327 and 13.10.328; and

   c. Direct staff to submit the Local Coastal Program (LCP) amendment to the California Coastal Commission (CCC) for certification.

EXECUTIVE SUMMARY

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require reliance on objective standards to facilitate ministerial review, and, where necessary, allow a local agency to modify development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size.

BACKGROUND

SB 9 (Atkins), signed into law by Governor Newsom on September 16, 2021, allows property owners within a single-family residential zone to build two units and/or to subdivide a lot into two parcels, for a total of four units.

The bill requires approval of the following development activities:

- **Two-unit housing development** – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).

- **Urban lot split** - A one-time subdivision of an existing single-family residential parcel into two parcels, which would in turn allow up to four units.

The bill also outlines how jurisdictions may regulate SB 9 projects. Jurisdictions may only apply objective zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. Jurisdictions can conduct design review but may not have public hearings for projects that meet the state rules (with limited exceptions).

SB 9 applies to all single-family (R-1, RB, RA, and RR) residential zoned properties and special use (SU) with a General Plan residential land use classification within a Census urban area with several key exceptions:

- Environmentally sensitive areas.

- Environmental hazard areas if mitigations are not possible (see full list later in the ordinance for eligibility requirements but note that the law does apply, with modifications, in wildfire zones).

- Historic properties and districts.

- Properties where the Ellis Act[1] was used to evict tenants at any time in the last 15 years.

- Additionally, demolition is not permitted for units rented in the last three years, rent-controlled units or units restricted to people of moderate, low, or very low incomes.

- No short-term rentals – Rental terms less than 30 days are not allowed.

This law is similar to recent state accessory dwelling unit (ADU) legislation, which allows jurisdictions to apply local standards as long as they do not prevent the development of a small new home (or multiple homes in the case of lot splits). Staff predicts the uptake will be limited in part because homeowners already have many of the same rights under ADU law. In addition, the County has received 19 pre-applications and eight formal applications. One lot split has been completed to this date. The bigger change is likely permitting the splitting and sale of lots by homeowners.

Historically, zoning has reduced or eliminated the "missing middle[2]" housing type, leaving only single-family homes and large apartments, but little in between.

SB 9 went into effect on January 1, 2022. Other jurisdictions have taken various approaches to

1 The Ellis Act is a 1985 California state law that allows landlords to evict residential tenants to "go out of the rental business.".

2 Refers to housing types such as duplexes/half-plexes, triplexes, quadplexes, bungalow courts, patio homes, and townhouses that have densities between those of single-family homes and mid-rise apartments.

SB 9. Some have done the minimum required to meet state law while others have used it as an opportunity to promote additional missing middle housing.

ANALYSIS

In order to comply with state law and allow SB 9 developments, staff has developed proposed amendments to the Santa Cruz County Code, including new sections 13.10.327 and 13.10.328, which allow for two-unit developments without lot splits and those with lot splits, respectively. See Exhibit A for the draft amendments.

What Can Be Built

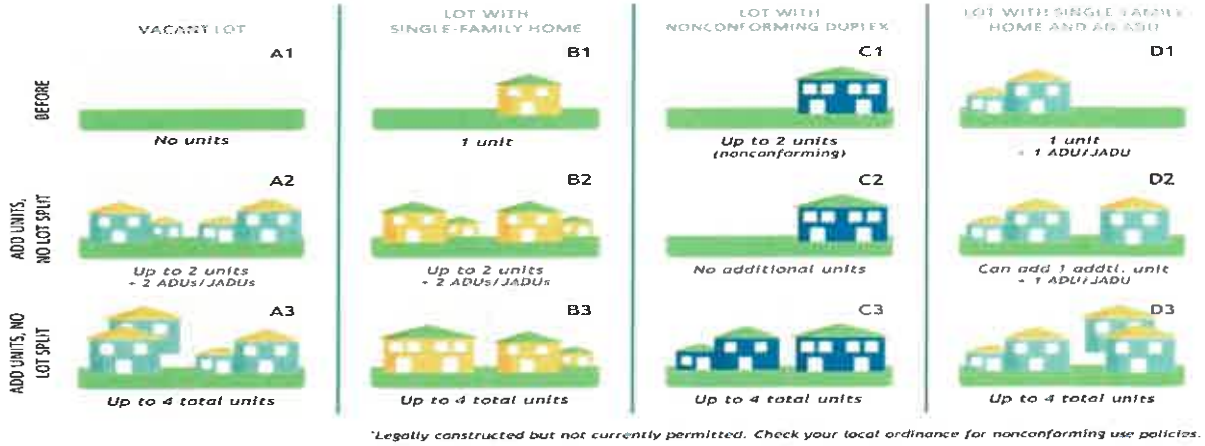
ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding a maximum of four units are identical.

Urban Lot Split. When a lot split occurs, the local jurisdiction must allow up to two units on each lot resulting from the lot split. In this situation, all three-unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local jurisdiction may choose to allow more than two units per lot if desired.

Two-Unit Development. When a lot split has not occurred, the lot is eligible to develop ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local jurisdiction must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU law. In the following section, a graphic represents various combinations of primary units, ADUs, and JADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

Scenarios

The following graphic illustrates potential scenarios that could occur on a single-family property under SB 9 projects, two-unit development or urban lot splits:



Source: Association of Bay Area Governments (ABAG)

There are several choices an applicant may choose when pursuing an SB 9 project, whether it is through a two-unit development (no lot split) or through an SB 9 Urban Lot Split. Regardless of the direction an applicant may choose a maximum of four dwellings is permissible (two primary

dwelling units and two accessory units through a combination of ADUs/JADUs). The unit configuration allowance varies between whether or not an urban lot split has occurred, but the state language is clear on the maximum unit count being four regardless of the direction an applicant pursues. The California Department of Housing and Community Development (HCD) further supports the unit max of four units for both two-unit developments and urban lot splits[3].

Requirements and Limitations for Two-Unit Development and Urban Lot Split Projects:

- Ministerial review - Jurisdictions must review and process applications for SB 9 two-unit housing developments and urban lot splits ministerially without any discretionary/subjective review or CEQA.

- Objective standards - Jurisdictions may only impose objective zoning, design, and subdivision standards. Standards shall not physically preclude the construction of two units of less than 800 square feet each, per property.

- Four-foot rear and side setbacks - Jurisdictions may not impose residential setbacks greater than four feet for side and rear property lines.

- Rebuild demolished building with same setback - Jurisdictions may not impose any setback requirements for a new residence constructed in the same location and to the same dimensions as an existing structure that is demolished.

- Zero or one parking space - Jurisdictions may not require more than one parking space per unit. For properties within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or within one block of a car share vehicle, no parking spaces may be required.

- Basis for Project Denial

    - The two-unit development fails to comply with any objective development standard imposed by this ordinance. Any such requirement or condition that is the basis for denial shall be specified in writing.

    - The Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 and further specified in this ordinance, 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.

- Attached buildings allowed - Jurisdictions may not reject an application because it proposes adjacent or connected structures provided that the structures meet building code safety standards.

- Maximum unit size - New units constructed shall be a maximum of 1,200 square feet. The justification of this cap is to help produce and encourage more affordable and "missing middle" housing in our community.

3 SB 9 Fact Sheet published by HCD: https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf

Urban Lot Split-Specific Rules:

- One lot split - Only one lot split allowed under SB 9. However, further splits may be possible under regular subdivision procedures.
- Residential only - The uses of the resulting lots are limited to residential uses.
- Approximately equal size - Each new parcel must be "approximately equal" in lot area provided that one parcel shall not be smaller than 40 percent the size of the original parcel.
- Minimum 1,200 sf parcel - No parcel shall be less than 1,200 square feet. Jurisdictions may by ordinance adopt a smaller minimum lot size subject to ministerial approval.
- Intention to occupy - The subdivider must sign an affidavit stating they intend to occupy one of the units for a minimum of three years. The local jurisdiction cannot impose additional owner occupancy standards. Community land trusts and qualified nonprofits are exempted from this requirement.
- Limits on adjacent urban lot splits - Neither the subdivider nor any person "acting in concert" with the subdivider has previously subdivided an adjacent parcel using an urban lot split. SB 9 does not define what "acting in concert" means or how it would be proven.
- Dedications/Improvements - Jurisdictions may not require dedications of rights-of-way or the construction of offsite improvements.
- Easements - Jurisdictions may require easements required for the provision of public services and facilities and may require that parcels have access to, provide access to, or adjoin the public right of way.
- No correction of non-conforming conditions - Jurisdictions may not require correction of an existing non-conforming condition as a condition for ministerial approval.

Property Eligibility GIS Tool:

To assist with the implementation of the ordinance, staff are intending to develop a public facing GIS tool to help property owners pre-screen their properties for eligibility. The premise is to incorporate key eligibility requirements (that can be mapped) to screen properties for eligibility. Overall, this tool will help streamline application interest regarding any SB 9 project whether it is a two-unit development or urban lot split.

Regional Housing Needs Allocation (RHNA)

The County's Regional Housing Needs Allocation (RHNA) is 4,634 units in the eight-year Housing Element cycle. Any new units produced from SB 9 Residential Developments will count towards the County's progress of the 4,634 housing units allocated. Santa Cruz County must include all SB 9 units and applications for urban lot splits in their annual progress reports to the state.

PLANNING COMMISSION STUDY SESSION

A study session was held before the Planning Commission on May 28, 2024. The Commission and staff held a productive discussion to iron out any unclear details and provided some initial suggestions and items for staff to research and check for clarifications in consistency with the

state law. The Commission expressed the need for more community outreach and asked for robust advertisement of the upcoming (at the time of the hearing) community meeting, described further below. Some Commissioners expressed the desire to remove Special Use (SU) zoning districts from the qualifications of two-unit developments and urban lot splits. According to HCD, the local agency is to review the zone district descriptions in the zoning code and the land use descriptions in the General Plan where it would be a single-family residential zone[4]. With guidance from County Counsel and staff review, this would allow for the inclusion of SU zone district, subject to having a residential General Plan Land Use classification, such as (R-R, R-S, R-MT, R-UVL, R-UL, and R-UM).

The Commission expressed concern regarding consistency with state law. Staff reviewed section 13.10.327(E)(5) in the draft Ordinance (Exhibit C) regarding parking standards and made an amendment to reflect better the state requirement of one off-street parking space being required per dwelling unit with the two different exceptions to not require any off-street parking spaces. In Section 13.10.328(D)(6) of the draft Ordinance (Exhibit C), the word "minimum" was added before "800 square-foot primary units on each lot created through an urban lot split", to clarify the allowance of at least 800 square foot units. Last, the Commission requested staff to check the legality of Section 13.10.328(D)(8) of the draft Ordinance (Exhibit C) stating that existing or proposed common interest developments are not eligible for these projects. Staff has sought out County Counsel's interpretation of this issue and is awaiting their review.

PUBLIC OUTREACH COMMUNITY MEETING

Staff conducted a public outreach community meeting on June 12th from 6:00-7:30 PM with a registration of 49 people and attendance of 25 people, including staff. Extensive outreach was done through multiple posting of the meeting on the various social media platforms, posting and announcement on the CDI website, with the meeting put in the calendar of upcoming events, a press release, and advertisements were also done from staff in the County's Supervisorial District 3. Extensive discussion and question and answer were held throughout the meeting after a brief presentation. Community comment centered around unit size, consistency with State Law and processing of applications within the coastal zone.

PLANNING COMMISSION PUBLIC HEARING

A public hearing was held before the Planning Commission on June 26, 2024. The Commission provided additional suggestions and items for staff to research and check for clarifications in consistency with the state law. The following section will list all suggestions given by the Commission to staff and showcase the modifications in the ordinance or provide discourse regarding why items were not included in this version of the ordinance.

Response to PC Modifications:

a. **Inquiry on if we are required to allow four units, do we have authority to restrict to two units.**
   Staff Response: No change to ordinance. This recommendation stems from a Commissioner pointing to the language in Senate Bill 9, subdivision (f) of Section 65852.21 stating the following: "Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section (65852.21) and the authority contained in Section 66411.7." The first two Sections

4 SB 9 Fact Sheet published by HCD: https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf

mentioned, 65852.2 and 65852.22, are ADU legislation. While Section 65852.21 is the first part to SB 9 regarding two-unit development and Section 66411.7 is regarding urban lot splits. This language is stating that despite ADU law allowing ADUs for primary dwelling units, a local agency is not required to permit an ADU on a parcel that is pursuing both a two-unit development and urban lot split together, which is consistent with the proposed ordinance. The language states that when a proposal for an urban lot split is received, two primary dwelling units on each parcel is allowed, for a total of four units. But the county would not be required to permit either of those primary dwelling units an ADU. Therefore, reaffirming that there is no requirement to allow more than four units when an applicant chooses an urban lot split. The county is maintaining to not allow ADUs for these parcels in question if they have already built two primary dwelling units on each parcel.

b. **Exclusion in State Response Areas (SRAs) very high and high fire severity zones.**
Staff Response: Updated ordinance. A concern was raised to exclude SB 9 projects in very high and high fire severity zones within the SRA and staff was asked to investigate the feasibility of this. Through research, staff has amended the language in SCCC 13.10.327(C)(4)(d) of the draft ordinance (Exhibit C) to better reflect consistency with state law. Outright excluding projects in the very high and high severity zones would be overstepping what is allowed in state law. Under Government Code 65913.4(a)(6)(D) it is allowed in any SRA, but all units proposed within SRA's will require sufficient mitigation for a project to be allowed. The ordinance has been amended to include very high, high, and moderate SRA zones to all require sufficient mitigation in order to allow an SB 9 project, rather than very high fire severity zones alone.

c. **Septic and water availability.**
Staff Response: No change to ordinance. Concerns arose during the public hearing of septic and water availability, and property owners not being able to meet the standards to add additional units to rural properties. All sites must meet the buildability criteria included in SCCC 13.10.327(E)(6)(a) - (e), which establishes requirements for water permits, qualifying for a compliant sewage disposal, (whether septic or a sewer connections), and must meet On Site Wastewater Treatment Systems (OWTS) standards pursuant to SCCC Chapter 7.38. Water Service permits must be approved and issued by the County Environmental Health Department for a well or other water source prior to the issuance of a building permit.

d. **Narrow streets and concern for emergency vehicle access.**
Staff Response: No change to ordinance. Additional concerns were brought forth regarding narrow streets and emergency vehicle access, particularly in the San Lorenzo Valley area. Emergency vehicle access is required for any site proposing a two-unit development or urban lot split. As stated in the draft ordinance (Exhibit C) SCCC 13.10.327(E)(6)(e): "Emergency Vehicle Access. The site access must comply with the fire district access standards applicable to both new and existing roads in SCCC 7.92.503.2.1. If a site is unable to comply with these required standards, the project will be denied".

e. **Amend parking standards exceptions to remove "within ½ of a major transit stop" to reduce parking spaces to zero.**
Staff Response: No change to ordinance. A request to remove language in the parking standard exceptions for a parcel "within ½ mile of a major transit stop" was made by a commissioner. This request occurred as a result of the County of Santa Cruz having no

current or planned major transit stops. The request was to remove this language as we do not have any, but rather add it in the code when and if the County ever receives a major transit stop. Staff has elected to not make any changes regarding this as it is not inaccurate, and the state law states the exception for parking to be within ½ mile of a "major transit stop" **or** ½ mile of a "high quality transit corridor". Opting for the language used in the state law is the staff preference.

f. **Common Interest Developments (CIDs) and explanation for exclusion/inclusion.**
Staff Response: Updated ordinance. The state legislature is silent on the issue, but legislature clarification has resulted in SB 9 not overriding CID or HOA restrictions. The ordinance has been reflected to acknowledge this by removing the language stating existing and planned CIDs are ineligible from SB 9 projects.

g. **Amend language on the allowance of "fourplexes and triplexes".**
Staff Response: Updated ordinance. The commission brought to our attention specific language used that is inaccurate and that we do not have a local definition for. Regarding residential unit types allowed for SB 9 projects, it was stated that "fourplexes and triplexes" are allowed as a unit type. This language caused confusion and is inaccurate, staff has amended the language to reflect more accurately what unit types are allowed for these projects.

h. **Clarification on the requirement that no setback shall be required for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.**
Staff Response: No change to ordinance. State law asserts that a local jurisdiction may not impose any setback requirements for a new residence constructed in the same location and to the same dimensions as an existing structure that is demolished (in other words, in the same footprint). As identified in Section 65852.21(b)(2)(B)(i), "Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure". The County's language accurately reflects this requirement as seen in SCCC 13.10.327(E)(4)(a), stating the following: "no setback is required for an existing structure, or for a structure reconstructed in the same location and to the same dimensions as an existing structure". Staff has elected not to amend language to the ordinance regarding this issue.

i. **Coastal bluffs and beaches as an exclusionary area.**
Staff Response: Updated ordinance. The California Coastal Commission has recommended County staff to alter the language of "coastal bluffs and beaches" being an exclusionary area for SB 9 projects. These areas are no longer exclusionary areas. However, if an SB 9 project is proposed on a parcel with coastal bluffs and beaches, it must meet the 100-year bluff erosion stability setback consistent with SCCC 16.10.070(H)(1) and (7) and must meet LCP Environmentally Sensitive Habitat Area (ESHA) requirements for only allowing resource-dependent uses within ESHA, consistent with SCCC 16.32.090(C)(1). These changes to this section can be seen in SCCC 13.10.327(C)(4)(c) in the draft SB 9 ordinance (Exhibit C).

j. **Considering SB 450 legislation.**
Staff Response: No change to ordinance. This bill would remove the requirement that a proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls to be considered ministerially. The bill would

prohibit a local agency from imposing objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone district. This bill is still being amended at the State level and has seen three amendments already without passage. Staff finds that it is inappropriate to include legislation that has not passed and is still changing to prescribe a process. If SB 450 passes in the future staff will make any appropriate adjustments to affected Ordinances, through the appropriate bodies.

PUBLIC COMMENTS

A collection of all written public comments received for this ordinance has been compiled and is attached in the staff report (Exhibit F). Two substantive letters were received between June 10th and 12th just before the community meeting held on the evening of June 12th. The letter on June 10th is from Santa Cruz YIMBY and the letter from June 12th is from Nossaman LLP. All letters mentioned here and any other written correspondence to staff to this date can be viewed in (Exhibit F).

Staff has not received any new public comment since the last public hearing held before the Planning Commission on June 26, 2024.

LOCAL COASTAL PROGRAM

This ordinance would be applicable within the Coastal Zone and would be part of the County's Local Coastal Program's implementing ordinances. Following adoption of the ordinance by the Board of Supervisors, staff would submit the adopted ordinance to the Coastal Commission for approval in the Coastal Zone.

ENVIRONMENTAL REVIEW

Enactment of this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Government Code sections 65852.21(j) and 66411.7(n), as this action is to adopt an ordinance to implement the requirements of sections 65852.21 and 66411.7 of the Government Code.

Report Prepared By:

Jacob Lutz, Planner
Santa Cruz County Community Development & Infrastructure Department
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Santa Cruz, CA 95060
Phone Number: (831) 454-3136
E-mail: Jacob.Lutz@santacruzcountyca.gov

Reviewed by:

Mark Connolly
Principal Planner

Exhibits:
A: Planning Commission Resolution
B: Notice of Exemption
C: Draft Senate Bill 9 Ordinance (Strikethrough and Clean)
D: Senate Bill 9 (Chapter 162, Statutes of 2021)
E: Maps of Census Urban Area Boundaries
F: Public Comments

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO._____

On the motion of Commissioner
duly seconded by Commissioner
the following Resolution is adopted:

RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF SANTA CRUZ RECOMMENDING ADOPTION OF AMMENDMENTS TO SANTA CRUZ COUNTY CODE ADDING SANTA CRUZ COUNTY CODE SECTIONS 13.10.327 AND 13.10.328, ALLOWING TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS IN UNINCORPORATED AREAS OF SANTA CRUZ COUNTY

WHEREAS, the County of Santa Cruz ("County") is experiencing a housing crisis of both affordability and supply; and

WHEREAS, the County of Santa Cruz Board of Supervisors recognizes the need for additional affordable housing, particularly promoting missing middle housing to support the local workforce and for essential workers, including but not limited to those working in healthcare, education, public safety, other public sector or non-profit jobs, services, agriculture, hospitality, and tourism; and

WHEREAS, the State of California adopted Senate Bill 9 (Atkins), signed into law by Governor Newsom on September 26, 2021, allowing local jurisdictions to either adopt the state model ordinance or their own local ordinance; and

WHEREAS, the Planning Commission held a public meeting on May 28, 2024, and public hearings on June 26 and August 14, 2024, to consider an ordinance implementing SB 9 to allow two-unit developments and urban lot splits in the unincorporated areas of Santa Cruz County (the "Ordinance"); and

WHEREAS, staff has reviewed the Ordinance for compliance with the California Environmental Quality Act (CEQA) and found that Senate Bill 9 established that implementing ordinances, like the Ordinance, are not projects under CEQA; and

WHEREAS, project approvals under the Ordinance will be ministerial in nature and CEQA does not apply to the approval of ministerial, non-discretionary projects;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the Board of Supervisors confirm that a Notice of Exemption is appropriate under CEQA.

BE IT FURTHER RESOLVED that the Planning Commission finds the proposed amendments are internally consistent with the Santa Cruz County General Plan; and

BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors adopt the Ordinance adding new sections 13.10.327 and 13.10.328 of the Santa Cruz County Code, as presented on this date; and

BE IT FURTHER RESOLVED that the Planning Commission finds that the proposed Ordinance, if adopted, would constitute part of the County's Local Coastal Implementation Plan, is consistent with the California Coastal Act, and recommends that the Board of Supervisors direct staff to submit the Ordinance to the California Coastal Commission for certification.

PASSED AND ADOPTED by the Planning Commission of the County of Santa Cruz, State of California, this 14th day of August 2024, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

_____
Chairperson

ATTEST: _____
Secretary

APPROVED AS TO FORM:

DocuSigned by:
Natalie Kirkish
D62DC6AA0E74408...
ASSISTANT COUNTY COUNSEL

cc: County Counsel
Community Development & Infrastructure Department

EXHIBIT A

County of Santa Cruz

Department of Community Development and Infrastructure

701 Ocean Street, Fourth Floor, Santa Cruz, CA 95060
Planning (831) 454-2580 Public Works (831) 454-2160
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NOTICE OF EXEMPTION

To: Clerk of the Board
Attn: Juliette Rezzato
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Project Name: Ordinance implementing Senate Bill 9, allowing two-unit developments and urban lot splits.

Project Location: Countywide, wholly within the Census Urban Area

Assessor Parcel No.: N/A

Project Applicant: County of Santa Cruz

Project Description: Ordinance allowing two-unit developments and urban lot splits within unincorporated lands wholly within the Census Urban Area. Allows property owners within a single-family residential zone to ministerially build two units and/or to subdivide a lot into two parcels, for a total of four units. This ordinance applies to all single-family (R-1, RB, RA, and RR) residential zoned properties and special use (SU) with a General Plan residential land use classification within a Census urban area with several key exceptions such as environmentally sensitive areas, environmental hazard areas if mitigations are not possible, historic properties and districts, demolition requirements, properties where the Ellis Act has been used in the past 15 years, and no properties with short-term rentals.

Agency Approving Project: County of Santa Cruz

County Contact: Jacob Lutz **Telephone No.** (831) 454-3136

Date Completed: 7-26-2024

This is to advise that the County of Santa Cruz *(insert County decision-making body)* has approved the above described project on _____ (date) and found the project to be exempt from CEQA under the following criteria:

Exempt status: (*check one*)

☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
☒ The proposed activity is exempt from CEQA as specified under CEQA Guidelines Section 15061(b)(3).
☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
☐ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
Specify type:
☐ **Categorical Exemption**
Class 1

County of Santa Cruz

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Reasons why the project is exempt: The ordinance allows for two-unit developments and urban lot splits to be approved ministerially by law. On a project-by-project basis, each one will be exempt from CEQA as all ministerial projects are. For the ordinance itself, it provides for regulations that protect against the environmental impacts, as noted in the Project Description. With the regulations in place, there is no reasonably foreseeable significant impact on the environment.

Signature: _____ Date: _____

Title: Environmental Coordinator

ORDINANCE NO._____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ ADDING NEW SANTA CRUZ COUNTY CODE SECTIONS 13.10.327 AND 13.10.328, ALLOWING TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS IN UNINCORPORATED AREAS OF SANTA CRUZ COUNTY

WHEREAS, the County of Santa Cruz Board of Supervisors recognizes the need for additional affordable housing, particularly promoting missing middle housing to support the local workforce and for essential workers, including but not limited to those working in healthcare, education, public safety, other public sector or non-profit jobs, services, agriculture, hospitality, and tourism; and

WHEREAS, the State of California adopted Senate Bill 9 (Atkins), signed into law by Governor Newsom on September 26, 2021, allowing local jurisdictions to either adopt the state model ordinance or their own local ordinance; and

WHEREAS, the Planning Commission held a public meeting on May 28, 2024, and a duly noticed public hearing on June 26, 2024, which was continued to August 14, 2024, to consider an ordinance to allow two-unit developments and urban lot splits in the unincorporated areas of Santa Cruz County; and

WHEREAS, the Board of Supervisors held a public hearing on _____, 2024, to consider public input on the proposed ordinance allowing two-unit developments and urban lot splits; and

NOW, THEREFORE, the Board of Supervisors of the County of Santa Cruz hereby ordains as follows:

SECTION I

Section 13.10.327 of the Santa Cruz County Code is hereby added, to read as follows:

13.10.327 Two-unit residential developments.

(A) General Purposes. The purpose of this section is to provide for two-unit developments, pursuant to Government Code Section 65852.21. These regulations in this section are promulgated in order to preserve public health, safety and general welfare of the people and environment of the County of Santa Cruz, and to promote orderly growth and development. In cases where a provision of this section directly conflicts with Government Code Section 65852.21, the Government Code shall govern over the conflicting provision, but the remaining provisions shall remain in and be given full force and effect.

(B) Definitions. Solely for the purposes of this section, the following words and phrases shall have the following definitions.

(1) "Census Urban Area" means an urbanized area or urban cluster, as designated by the United States Census Bureau and as mapped in the County Geographic Information System (GIS).

(2) "Dwelling Unit" shall have the same meaning as defined in SCCC 13.10.700-D.

(3) "Major Transit Stop," as defined in Public Resources Code Section 21064.3, means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(4) "Primary Dwelling Unit," means one single-family or multi-family residential unit designated on a single parcel, as defined in the definition of "Dwelling Unit" in SCCC 13.10.700-D;

(C) Property Eligibility Requirements.

(1) An eligible parcel shall be located wholly within a Census Urban Area.

(2) An eligible parcel shall only be located within the SU, R-1, RA, RB, or RR zone districts. A parcel within the SU zone district must have an underlying single family residential General Plan land use designation, including R-MT, R-R, R-S, R-UVL, R-UL, R-UM, or R-UH, to be eligible.

(3) An eligible parcel shall not contain any of the following hazards or environmental features:

(a) ~~Hazard a~~Areas identified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4. ~~Government Code 65913.4(a)(6)(B) – (K).~~

(b) Sensitive habitat areas, as ~~defined~~ defined in SCCC 16.32.040.

~~(c) Coastal bluffs and beaches, or other Environmentally Sensitive Habitat Areas, as defined in SCCC 13.20.040.~~

~~(d)~~(c) Historic district or property included on the State Historic Resources Inventory or designated or listed as a County historic property or historic district in the County's Historic Resources Inventory.

~~(e)~~(d) Critical fire hazard area, as ~~mapped in County GIS~~ defined in SCCC 12.01.040.

(4) A parcel located in any of the following areas as identified in the County General Plan/Local Coastal Program or County Code requires sufficient state and local mitigation to be eligible under this section.

(a) ~~Areas of~~ Geologic Hazards, as defined in SCCC ~~Chapter~~ 16.10.040(T). Parcels within these areas may be required to provide a geologic hazard assessment pursuant to SCCC 16.10.050(B).

(b) Coastal bluffs ~~W~~within the Coastal Zone. Parcels within these areas are only eligible ~~, coastal bluffs,~~ if they are compliant with 100-year bluff erosion stability setback, without the reliance on any proposed or existing coastal armoring, ~~and all criteria~~ consistent with SCCC 16.10.070(H)(1) and (7), and ~~must~~ meet requirements for only allowing resource-dependent uses within Environmentally Sensitive Habitat Area (ESHA), consistent with SCCC 16.32.090(C)(1).

(c) 100-year flood hazard areas and floodways, as defined ~~and mitigated per~~in SCCC ~~Chapter~~ 16.13. Parcels within these areas are only eligible if the flood hazards and floodways are mitigated pursuant to SCCC 16.13.

(d) State Response Areas (SRAs), including very high, high, and moderate fire severity zones.~~,~~ Parcels within these areas are only eligible~~unless~~ if mitigation is provided in compliance with Government Code Section 65913.4(a)(6)(D) and the parcel is located outside Critical Fire hazard areas, as mapped by the California Department of Forestry and Fire Protection (CAL FIRE) and the California Board of Forestry and Fire Protection.

(e) Airport Safety Zones. Parcels within these areas are only eligible~~,~~ if they are compliant with standards~~,~~ and maximum densities established by SCCC ~~Chapter~~ 13.12.

(5) No Ellis Act (Government Code Section 7060 et seq.) evictions(s) have occurred for any existing housing on the parcel in the 15 years prior to submittal of the application.

(D) Project Requirements.

(1) For two-unit residential development only, the project shall contain no more than two primary residential units on a single parcel, plus accessory dwelling units (ADUs) or junior ADUs (JADUs) consistent with SCCC 13.10.681. The total number of units (primary units, ADUs and JADUs combined) may not exceed four units on a single parcel. ADUs and JADUs included in two-unit residential development must comply with the County ADU regulations.

(2) The project will not require demolition or alteration of any the following types of housing:

(a) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(b) Housing that is subject to any form of rent or price control.

(c) Housing that has been occupied by a tenant (whether rent paying or not) in the last three years.

(3) The project does not allow the demolition of existing residences of more than 25 percent of the existing exterior structural walls unless it meets all the following conditions:

(a) Does not fall under the criteria listed in subsection (D)(2) of this section.

(b) Complies with the demolition and conversion of residential structures requirements in SCCC ~~Chapter~~ 12.06.

(c) Would not result in a net loss of housing units; a replacement unit is required if demolition occurs.

(4) All new rental units resulting from any two-unit residential development project shall be rented long term (greater than 30 days).

(E) Objective Development Standards. Two-unit residential development shall comply with the objective development standards below, except that no standard shall preclude the development of a unit up to 800 square feet. In the event that a standard is reduced, the reduction shall be the minimum required to accommodate the unit.

(1) Residential Structure Type.

(a) Attached single-family, detached single-family or multi-family duplex structures are allowed for two-unit residential developments. Duplexes may include either two primary units, or a primary unit and one ADU, or a primary unit and one JADU.

(b) Mobile homes are allowed for two-unit residential developments compliant with the adopted California Building Code. A mobile home is required to be less than 10 years old and placed on a permanent foundation.

(c) Tiny Homes on Wheels (THOW) are allowed for two-unit residential developments as a primary dwelling unit or an ADU pursuant to SCCC 13.10.680.

(d) Existing ADUs on a parcel may be converted into a primary dwelling unit. If an ADU is to be converted, the maximum number of two primary dwellings units for a two-unit residential development will be achieved.

(e) ~~Triplexes or fourplexes~~A combination of three or four units, attached or detached, comprised of primary dwellings plus ADUs and JADUs will be allowed for a two-unit residential development.

(2) Maximum Unit Size. New units constructed in a two-unit development shall be a maximum of 1,200 square feet.

(3) Accessory Structures. Habitable and non-habitable accessory structures shall comply with SCCC 13.10.611.

(4) Lot Standards.

(a) For existing development on two-unit residential development applications, no setback is required for an existing structure or for a structure reconstructed in the same location and to the same dimensions as an existing structure.

(b) Front yard setback, height, lot coverage, and floor area ratio shall meet the standards of the zoning district in SCCC 13.10.323, except as follows:

(i) The minimum side and rear setbacks are four feet, subject to restrictions of any onsite public utility easements.

(ii) Pleasure Point standards. Pleasure Point standards shall apply, except if the required 10-foot second story setbacks are infeasible for an 800 square foot dwelling, the setback may be reduced by the minimum necessary to accommodate the proposed project. Side and rear setbacks for the second story shall be no less than four feet. In the event of a conflict, the standards herein shall prevail.

(5) Parking Standards.

(a) One off-street parking space is required per dwelling unit, except as follows:

(i) If the parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Sections 21155 and 21064.3, no parking shall be required.

(ii) If the parcel is within one block of a car share vehicle rental location, no parking shall be required.

(6) Two-unit residential development projects shall meet the following buildability criteria:

(a) All lots shall have a "Will Serve" letter from a water district or mutual water company, or an Individual Water Service Permit issued by the County Environmental Health Department for a well or other water source prior to issuance of a building permit as described in the current County Lists of Required Information (LORIs).

(b) The parcel shall have or qualify for a compliant sewage disposal system, either a septic system sized for the development and approved by the County Environmental

Health Department, or a sewer connection provided by the wastewater provider, as applicable.

(c) If units are connected to an onsite wastewater treatment system (OWTS), the OWTS must meet or be upgraded to meet current standards in compliance with SCCC ~~Chapter~~ 7.38.

(d) Emergency Vehicle Access. The site access must comply with the fire district access standards applicable to both new and existing roads in SCCC 7.92.503.2.1.

(e) Site Safety. The building site shall be free from geologic hazards to the extent that the safety of the proposed development can be ensured. A geological hazards assessment, full geologic report, soils (also called "geotechnical") report, or hydrologic report may be required to assess or address environmental/safety concerns pursuant to SCCC 16.10.

(f) Legal Access. A parcel may not be used as a building site unless ~~its principal~~ at least one frontage and access is located on a public right-of-way or legally deeded access.

(g) Structures shall comply with ~~minimum~~ required setbacks and buffers from ~~off-site~~ environmentally sensitive habitat areas, geologic hazards, agricultural resource lands, and other environmental protection setbacks as specified in SCCC Title 16 or the setbacks established through a biotic report / geological hazards assessment, respectively.

(F) Application Procedures

(1) Two-unit residential development projects shall be approved ministerially if the application complies with the eligibility requirements and objective development standards herein.

(2) Projects in the Coastal Zone.

(a) Projects located within the Coastal Zone shall ~~be considered "minor development" as defined in SCCC 13.20.040 and shall~~ require a Coastal Development Permit pursuant to SCCC 13.20.100, the approval of which is subject to the required findings found in SCCC 13.20.110, except that no public hearing shall be required to issue said permit.

~~(b) For a two-unit residential development in the Coastal Zone, the project may be denied if the proposed development is inconsistent with the provisions of this section, the certified Santa Cruz County Local Coastal Program, or Chapter 3 of the California Coastal Act.~~

~~(c)~~(b) Nothing in this chapter shall supersede or in any other way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20, commencing with Section 30000, of the Public Resources Code) except that the County shall not

be required to hold public hearings for coastal development permits for a ~~housing~~ development pursuant to this section.

(3) Basis for Project Denial

(a) An application for a two-unit residential development shall be denied if any of the following is found:

(i) The two-unit development fails to comply with any objective development standard imposed by this section. Any such requirement or condition that is the basis for denial shall be specified in writing.

(ii) The Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed development would have a specific, adverse impact, as described in Government Code Section 65589.5(d)(2) and further specified in this ordinance, upon the public health and safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid that specific, adverse impact.

~~(ii)~~(iii) Within the Coastal Zone, the two-unit development fails to meet the provisions of this section or the certified Santa Cruz County Local Coastal Program~~, and if the project is located between the sea and the first through public road, the public access provisions of Chapter 3 of the California Coastal Act~~

SECTION II

Section 13.10.328 of the Santa Cruz County Code is hereby added, to read as follows:

13.10.328 Urban lot split.

(A) General Purposes. The purpose of this section is to provide for urban lot splits, pursuant to Government Code Section 66411.7. These regulations are provided in order to preserve public health, safety and general welfare of the people and environment of the County of Santa Cruz, and to promote orderly growth and development. In cases where a requirement in this section directly conflicts with Government Code Section 66411.7, the provisions of the Government Code shall govern over the conflicting provision herein, but the remaining provisions shall remain in and be given full force and effect.

(B) Definitions.

(1) "Urban lot split" means a subdivision of a parcel within a "Single-Family Residential" zone district, as defined, into two parcels pursuant to Government Code Section 66411.7.

(2) See SCCC 13.10.327(B) for additional definitions relevant to this section.

(C) Nothing in this section shall be construed to supersede or in any other way alter or lessen the effect of application of the California Coastal Act of 1976 (Division 20, commencing with Section 30000, of the Public Resources Code), except that the County shall not be required to hold public hearings for coastal development permits for an urban lot split pursuant to this section.

(1) Urban lot splits located within the Coastal Zone shall require a coastal development permit pursuant to SCCC 13.20.100, the approval of which is subject to the required findings found in SCCC 13.20.110, except that no public hearing shall be required.

~~(C)~~

(D) Additional Eligibility Requirements for an Urban Lot Split. ~~An application must comply with the provisions in SCCC 13.10.327(C).~~

(1) The requirements of SCCC 13.10.327(C) and (D) for two-unit residential developments apply as urban lot split eligibility requirements. Lot splits on parcels requiring mitigation under section 13.10.327(C)(4) shall identify building footprint areas where adequate mitigation can be implemented.

(2) Parcel Map Required. A parcel map is required for all urban lot splits pursuant to Government Code Section 66411.7 and shall comply with parcel map requirements in SCCC 14.01.

(3) No Prior Urban Lot Split:

(a) The parcel has not been established through a prior urban lot split; and

(b) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split.

(4) Property owners are required to sign an affidavit stating the intent to occupy a unit on one of the lots as their primary residence for a minimum of three years.

(5) The site plan shall indicate at least one existing legal dwelling unit on the property or one existing dwelling unit under construction (passed first inspection) at the time of application submittal. Documentation of occupancy status of existing structures may be required.

(6) Both new lots shall be limited to residential uses only.

(7) Urban lot splits shall allow up to two minimum 800 square foot primary units on each lot created. Existing primary dwelling units are not subject to the 800 square foot provision. An accessory dwelling unit (ADU) and a junior accessory dwelling unit (JADU) count toward the two-unit total per lot. Units may be attached or detached. An urban lot split may include the development of two primary dwellings per lot or one primary dwelling and one ADU or one primary dwelling and one JADU per lot, or one primary dwelling on

one lot and no development on the other lot. A maximum of four total units may result from an urban lot split.

(8) ADU and JADUs are subject to SCCC 13.10.681, except as explicitly provided in SCCC 13.10.327 or this section.

~~(9) Existing or proposed common interest developments are not eligible.~~

~~(10)~~(9) No urban lot split shall be allowed that requires a discretionary permit for an exception to objective standards or requires any other discretionary review other than a Coastal Development Permit.

~~(D)~~(E) Objective Development Standards. All urban lot splits shall comply with the objective development standards below, except that no standard shall preclude the development of a unit up to 800 square feet. In the event that a standard is reduced, the reduction shall be the minimum required to accommodate the unit.

(1) Existing Parcel Size. The area of the existing parcel is 2,400 square feet or more (net developable site area).

(2) Number of New Parcels. The urban lot split creates no more than two new parcels.

(3) New parcels shall conform to the following standards:

(a) The gross site area of the larger parcel shall not be more than 60 percent of the gross site area of the existing parcel.

(b) In no case shall the net developable site area of the smaller parcel be less than 1,200 square feet.

(c) Parcels with septic systems shall each comply with gross parcel size pursuant to SCCC ~~Chapter~~ 7.38

(4) The maximum parcel size allowed is 60 percent of the existing parcel's gross site area.

(5) Any parcel proposed for an urban lot split must itself be a legal parcel of record created in compliance with the Subdivision Map Act and applicable provisions of the Santa Cruz County Code.

(6) Any urban lot split involving a vacant parcel shall meet the buildability criteria stated in SCCC 13.10.327(E)(6).

(7) Lots created by an urban lot split shall allow parking according to the standards requirements in SCCC 13.10.327(E)(5).

(8) Access to Public Right-of-way. All newly created parcels shall provide access to, or adjoin, the public right-of-way in a manner sufficient to allow development on the parcel

to comply with all applicable property access requirements under the California Fire Code Ssection 503 (Fire Apparatus Access Roads) and California Code Regulations Title 14, Ssection 1273.00 et seq.

(a) Shared Driveways. Driveway access shall meet the applicable fire agency standard, including driveway width, fire turnaround, turning radius, slope, driveway surface.

(b) The minimum driveway width shall be 12 feet or the applicable standard of the fire agency having jurisdiction over the property, whichever is greater.

(9) Setbacks. Lots created by an urban lot split shall allow for structures to meet the lot standards pursuant to SCCC 13.10.327(E)(4).

(10) Existing Structure on One Parcel. The proposed lot split shall not result in the splitting of any structure between the two parcels and shall not create a new encroachment of an existing structure over a property line.

(11) Floor Area and Lot Coverage. Lots created by an urban lot split shall allow for structures to meet the lot standards pursuant to SCCC 13.10.327(E)(4).

(i) If application of the zone district standard for lot coverage or FAR would preclude a proposed lot split, the standard may be reduced by the minimum amount necessary to allow development per the land division as determined by the Planning Director or their designee.

(12) Compliance with Subdivision Requirements. The parcel map shall satisfy the objective requirements of the Subdivision Map Act and SCCC ~~Chapter~~ 14.01. Non-title site requirements, disclosures and other information may also be required on the Parcel Map documents by the Planning Director.

(13) The site plan shall indicate at least one existing legal dwelling unit on the property or one existing dwelling unit under construction (permitted and passed first inspection) at the time of application submittal. The structure shall be final and occupied by the owner prior to map recordation. Documentation of occupancy status of existing structures may be required.

(14) Any vacant parcel proposed for a two-unit residential development or urban lot split must be a legal lot of record created in compliance with the Subdivision Map Act and Santa Cruz County Code.

~~(E)~~(F) Deed Restrictions. Before obtaining a building permit for a two-unit residential development, the property owner shall file with the Santa Cruz County Recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current owner. The deed restriction shall state that:

(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.

(2) The primary use of the dwelling unit must be residential.

(3) For two-unit residential developments involving an urban lot split with a shared driveway, maintenance and use of the shared driveway must be permanently provided through a reciprocal access easement and maintenance agreement or other comparable mechanism.

(4) The dwelling unit may not be used for vacation rentals as defined in SCCC 13.10.700 V.

(5) The above declarations run with the land and are binding upon all successor in ownership of the property. Lack of compliance shall be cause for code enforcement pursuant to SCCC ~~Chapter~~ 19.01.

(6) The deed restriction shall lapse upon removal of all dwelling units established under this section.

SECTION III

The Board of Supervisors finds and determines in its reasonable discretion on the basis of the entire record before it that the proposed amendments to the Santa Cruz County Code are consistent and compatible with and will not frustrate the objectives, policies, general land uses, and programs specified in the General Plan and Local Coastal Program.

SECTION IV

The Board of Supervisors further finds that Senate Bill 9 established that the local o~~O~~rdinance is not a project under the California Environmental Quality Act, and that projects performed under Senate Bill 9 and implementing ordinances such as this ordinance are ministerial, non-discretionary projects to which the California Environmental Quality Act does not apply. In addition, this ordinance is exempt from CEQA pursuant to the provisions of CEQA Guidelines Section 15061(b)(3).

SECTION V

Should any section, clause, or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

SECTION VI

This ordinance shall take effect on the 31st day following adoption outside the Coastal Zone and shall take effect upon final certification by the California Coastal Commission inside the Coastal Zone.

PASSED AND ADOPTED this _____ day of _____ 2024, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____

CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____

Clerk of the Board

APPROVED AS TO FORM:

_____

Office of the County Counsel

ORDINANCE NO._____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ ADDING NEW SANTA CRUZ COUNTY CODE SECTIONS 13.10.327 AND 13.10.328, ALLOWING TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS IN UNINCORPORATED AREAS OF SANTA CRUZ COUNTY

WHEREAS, the County of Santa Cruz Board of Supervisors recognizes the need for additional affordable housing, particularly promoting missing middle housing to support the local workforce and for essential workers, including but not limited to those working in healthcare, education, public safety, other public sector or non-profit jobs, services, agriculture, hospitality, and tourism; and

WHEREAS, the State of California adopted Senate Bill 9 (Atkins), signed into law by Governor Newsom on September 26, 2021, allowing local jurisdictions to either adopt the state model ordinance or their own local ordinance; and

WHEREAS, the Planning Commission held a public meeting on May 28, 2024, and a duly noticed public hearing on June 26, 2024, which was continued to August 14, 2024, to consider an ordinance to allow two-unit developments and urban lot splits in the unincorporated areas of Santa Cruz County; and

WHEREAS, the Board of Supervisors held a public hearing on _____, 2024, to consider public input on the proposed ordinance allowing two-unit developments and urban lot splits;

NOW, THEREFORE, the Board of Supervisors of the County of Santa Cruz hereby ordains as follows:

SECTION I

Section 13.10.327 of the Santa Cruz County Code is hereby added, to read as follows:

13.10.327 Two-unit residential developments.

(A) General Purposes. The purpose of this section is to provide for two-unit developments, pursuant to Government Code Section 65852.21. These regulations in this section are promulgated in order to preserve public health, safety and general welfare of the people and environment of the County of Santa Cruz, and to promote orderly growth and development. In cases where a provision of this section directly conflicts with Government Code Section 65852.21, the Government Code shall govern over the conflicting provision, but the remaining provisions shall remain in and be given full force and effect.

(B) Definitions. Solely for the purposes of this section, the following words and phrases shall have the following definitions.

(1) "Census Urban Area" means an urbanized area or urban cluster, as designated by the United States Census Bureau and as mapped in the County Geographic Information System (GIS).

(2) "Dwelling Unit" shall have the same meaning as defined in SCCC 13.10.700-D.

(3) "Major Transit Stop," as defined in Public Resources Code Section 21064.3, means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(4) "Primary Dwelling Unit," means one single-family or multi-family residential unit designated on a single parcel, as defined in the definition of "Dwelling Unit" in SCCC 13.10.700-D;

(C) Property Eligibility Requirements.

(1) An eligible parcel shall be located wholly within a Census Urban Area.

(2) An eligible parcel shall only be located within the SU, R-1, RA, RB, or RR zone districts. A parcel within the SU zone district must have an underlying single family residential General Plan land use designation, including R-MT, R-R, R-S, R-UVL, R-UL, R-UM, or R-UH, to be eligible.

(3) An eligible parcel shall not contain any of the following hazards or environmental features:

(a) Areas identified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(b) Sensitive habitat areas, as defined in SCCC 16.32.040.

(c) Historic district or property included on the State Historic Resources Inventory or designated or listed as a County historic property or historic district in the County's Historic Resources Inventory.

(d) Critical fire hazard area, as defined in SCCC 12.01.040.

(4) A parcel located in any of the following areas as identified in the County General Plan/Local Coastal Program or County Code requires sufficient state and local mitigation to be eligible under this section.

(a) Geologic Hazards, as defined in SCCC 16.10.040(T). Parcels within these areas may be required to provide a geologic hazard assessment pursuant to SCCC 16.10.050(B).

(b) Coastal bluffs within the Coastal Zone. Parcels within these areas are only eligible if they are compliant with 100-year bluff erosion stability setback, without the reliance on any proposed or existing coastal armoring, consistent with SCCC 16.10.070(H)(1) and (7), and meet requirements for only allowing resource-dependent uses within Environmentally Sensitive Habitat Area (ESHA), consistent with SCCC 16.32.090(C)(1).

(c) 100-year flood hazard areas and floodways, as defined in SCCC 16.13. Parcels within these areas are only eligible if the flood hazards and floodways are mitigated pursuant to SCCC 16.13.

(d) State Response Areas (SRAs), including very high, high, and moderate fire severity zones. Parcels within these areas are only eligible if mitigation is provided in compliance with Government Code Section 65913.4(a)(6)(D) and the parcel is located outside Critical Fire hazard areas, as mapped by the California Department of Forestry and Fire Protection (CAL FIRE) and the California Board of Forestry and Fire Protection.

(e) Airport Safety Zones. Parcels within these areas are only eligible if they are compliant with standards and maximum densities established by SCCC 13.12.

(5) No Ellis Act (Government Code Section 7060 et seq.) evictions(s) have occurred for any existing housing on the parcel in the 15 years prior to submittal of the application.

(D) Project Requirements.

(1) For two-unit residential development only, the project shall contain no more than two primary residential units on a single parcel, plus accessory dwelling units (ADUs) or junior ADUs (JADUs) consistent with SCCC 13.10.681. The total number of units (primary units, ADUs and JADUs combined) may not exceed four units on a single parcel. ADUs and JADUs included in two-unit residential development must comply with the County ADU regulations.

(2) The project will not require demolition or alteration of any the following types of housing:

(a) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(b) Housing that is subject to any form of rent or price control.

(c) Housing that has been occupied by a tenant (whether rent paying or not) in the last three years.

(3) The project does not allow the demolition of existing residences of more than 25 percent of the existing exterior structural walls unless it meets all the following conditions:

(a) Does not fall under the criteria listed in subsection (D)(2) of this section.

(b) Complies with the demolition and conversion of residential structures requirements in SCCC 12.06.

(c) Would not result in a net loss of housing units; a replacement unit is required if demolition occurs.

(4) All new rental units resulting from any two-unit residential development project shall be rented long term (greater than 30 days).

(E) Objective Development Standards. Two-unit residential development shall comply with the objective development standards below, except that no standard shall preclude the development of a unit up to 800 square feet. In the event that a standard is reduced, the reduction shall be the minimum required to accommodate the unit.

(1) Residential Structure Type.

(a) Attached single-family, detached single-family or multi-family duplex structures are allowed for two-unit residential developments. Duplexes may include either two primary units, or a primary unit and one ADU, or a primary unit and one JADU.

(b) Mobile homes are allowed for two-unit residential developments compliant with the adopted California Building Code. A mobile home is required to be less than 10 years old and placed on a permanent foundation.

(c) Tiny Homes on Wheels (THOW) are allowed for two-unit residential developments as a primary dwelling unit or an ADU pursuant to SCCC 13.10.680.

(d) Existing ADUs on a parcel may be converted into a primary dwelling unit. If an ADU is to be converted, the maximum number of two primary dwellings units for a two-unit residential development will be achieved.

(e) A combination of three or four units, attached or detached, comprised of primary dwellings plus ADUs and JADUs will be allowed for a two-unit residential development.

(2) Maximum Unit Size. New units constructed in a two-unit development shall be a maximum of 1,200 square feet.

(3) Accessory Structures. Habitable and non-habitable accessory structures shall comply with SCCC 13.10.611.

(4) Lot Standards.

(a) For existing development on two-unit residential development applications, no setback is required for an existing structure or for a structure reconstructed in the same location and to the same dimensions as an existing structure.

(b) Front yard setback, height, lot coverage, and floor area ratio shall meet the standards of the zoning district in SCCC 13.10.323, except as follows:

(i) The minimum side and rear setbacks are four feet, subject to restrictions of any onsite public utility easements.

(ii) Pleasure Point standards. Pleasure Point standards shall apply, except if the required 10-foot second story setbacks are infeasible for an 800 square foot dwelling, the setback may be reduced by the minimum necessary to accommodate the proposed project. Side and rear setbacks for the second story shall be no less than four feet. In the event of a conflict, the standards herein shall prevail.

(5) Parking Standards.

(a) One off-street parking space is required per dwelling unit, except as follows:

(i) If the parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Sections 21155 and 21064.3, no parking shall be required.

(ii) If the parcel is within one block of a car share vehicle rental location, no parking shall be required.

(6) Two-unit residential development projects shall meet the following buildability criteria:

(a) All lots shall have a "Will Serve" letter from a water district or mutual water company, or an Individual Water Service Permit issued by the County Environmental Health Department for a well or other water source prior to issuance of a building permit as described in the current County Lists of Required Information (LORIs).

(b) The parcel shall have or qualify for a compliant sewage disposal system, either a septic system sized for the development and approved by the County Environmental Health Department, or a sewer connection provided by the wastewater provider, as applicable.

(c) If units are connected to an onsite wastewater treatment system (OWTS), the OWTS must meet or be upgraded to meet current standards in compliance with SCCC 7.38.

(d) Emergency Vehicle Access. The site access must comply with the fire district access standards applicable to both new and existing roads in SCCC 7.92.503.2.1.

(e) Site Safety. The building site shall be free from geologic hazards to the extent that the safety of the proposed development can be ensured. A geological hazards assessment, full geologic report, soils (also called "geotechnical") report, or hydrologic report may be required to assess or address environmental/safety concerns pursuant to SCCC 16.10.

(f) Legal Access. A parcel may not be used as a building site unless at least one frontage and access is located on a public right-of-way or legally deeded access.

(g) Structures shall comply with required setbacks and buffers from environmentally sensitive habitat areas, geologic hazards, agricultural resource lands, and other environmental protection setbacks as specified in SCCC Title 16 or the setbacks established through a biotic report / geological hazards assessment, respectively.

(F) Application Procedures

(1) Two-unit residential development projects shall be approved ministerially if the application complies with the eligibility requirements and objective development standards herein.

(2) Projects in the Coastal Zone.

(a) Projects located within the Coastal Zone shall require a Coastal Development Permit pursuant to SCCC 13.20.100, the approval of which is subject to the required findings found in SCCC 13.20.110, except that no public hearing shall be required to issue said permit.

(b) Nothing in this chapter shall supersede or in any other way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20, commencing with Section 30000, of the Public Resources Code) except that the County shall not be required to hold public hearings for coastal development permits for a development pursuant to this section.

(3) Basis for Project Denial

(a) An application for a two-unit residential development shall be denied if any of the following is found:

(i) The two-unit development fails to comply with any objective development standard imposed by this section. Any such requirement or condition that is the basis for denial shall be specified in writing.

(ii) The Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed development would have a specific, adverse impact, as described in Government Code Section 65589.5(d)(2) and further specified in this ordinance, upon the public health and safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid that specific, adverse impact.

(iii) Within the Coastal Zone, the two-unit development fails to meet the provisions of this section or the certified Santa Cruz County Local Coastal Program

SECTION II

Section 13.10.328 of the Santa Cruz County Code is hereby added, to read as follows:

13.10.328 Urban lot split.

(A) General Purposes. The purpose of this section is to provide for urban lot splits, pursuant to Government Code Section 66411.7. These regulations are provided in order to preserve public health, safety and general welfare of the people and environment of the County of Santa Cruz, and to promote orderly growth and development. In cases where a requirement in this section directly conflicts with Government Code Section 66411.7, the provisions of the Government Code shall govern over the conflicting provision herein, but the remaining provisions shall remain in and be given full force and effect.

(B) Definitions.

(1) "Urban lot split" means a subdivision of a parcel within a "Single-Family Residential" zone district, as defined, into two parcels pursuant to Government Code Section 66411.7.

(2) See SCCC 13.10.327(B) for additional definitions relevant to this section.

(C) Nothing in this section shall be construed to supersede or in any other way alter or lessen the effect of application of the California Coastal Act of 1976 (Division 20, commencing with Section 30000, of the Public Resources Code), except that the County shall not be required to hold public hearings for coastal development permits for an urban lot split pursuant to this section.

(1) Urban lot splits located within the Coastal Zone shall require a coastal development permit pursuant to SCCC 13.20.100, the approval of which is subject to the required findings found in SCCC 13.20.110, except that no public hearing shall be required.

(D) Additional Eligibility Requirements for an Urban Lot Split.

(1) The requirements of SCCC 13.10.327(C) and (D) for two-unit residential developments apply as urban lot split eligibility requirements. Lot splits on parcels requiring mitigation under section 13.10.327(C)(4) shall identify building footprint areas where adequate mitigation can be implemented.

(2) Parcel Map Required. A parcel map is required for all urban lot splits pursuant to Government Code Section 66411.7 and shall comply with parcel map requirements in SCCC 14.01.

(3) No Prior Urban Lot Split:

(a) The parcel has not been established through a prior urban lot split; and

(b) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split.

(4) Property owners are required to sign an affidavit stating the intent to occupy a unit on one of the lots as their primary residence for a minimum of three years.

(5) The site plan shall indicate at least one existing legal dwelling unit on the property or one existing dwelling unit under construction (passed first inspection) at the time of application submittal. Documentation of occupancy status of existing structures may be required.

(6) Both new lots shall be limited to residential uses only.

(7) Urban lot splits shall allow up to two minimum 800 square foot primary units on each lot created. Existing primary dwelling units are not subject to the 800 square foot provision. An accessory dwelling unit (ADU) and a junior accessory dwelling unit (JADU) count toward the two-unit total per lot. Units may be attached or detached. An urban lot split may include the development of two primary dwellings per lot or one primary dwelling and one ADU or one primary dwelling and one JADU per lot, or one primary dwelling on one lot and no development on the other lot. A maximum of four total units may result from an urban lot split.

(8) ADU and JADUs are subject to SCCC 13.10.681, except as explicitly provided in SCCC 13.10.327 or this section.

(9) No urban lot split shall be allowed that requires a discretionary permit for an exception to objective standards or requires any other discretionary review other than a Coastal Development Permit.

(E) Objective Development Standards. All urban lot splits shall comply with the objective development standards below, except that no standard shall preclude the development of a

unit up to 800 square feet. In the event that a standard is reduced, the reduction shall be the minimum required to accommodate the unit.

(1) Existing Parcel Size. The area of the existing parcel is 2,400 square feet or more (net developable site area).

(2) Number of New Parcels. The urban lot split creates no more than two new parcels.

(3) New parcels shall conform to the following standards:

(a) The gross site area of the larger parcel shall not be more than 60 percent of the gross site area of the existing parcel.

(b) In no case shall the net developable site area of the smaller parcel be less than 1,200 square feet.

(c) Parcels with septic systems shall each comply with gross parcel size pursuant to SCCC 7.38

(4) The maximum parcel size allowed is 60 percent of the existing parcel's gross site area.

(5) Any parcel proposed for an urban lot split must itself be a legal parcel of record created in compliance with the Subdivision Map Act and applicable provisions of the Santa Cruz County Code.

(6) Any urban lot split involving a vacant parcel shall meet the buildability criteria stated in SCCC 13.10.327(E)(6).

(7) Lots created by an urban lot split shall allow parking according to the standards requirements in SCCC 13.10.327(E)(5).

(8) Access to Public Right-of-way. All newly created parcels shall provide access to, or adjoin, the public right-of-way in a manner sufficient to allow development on the parcel to comply with all applicable property access requirements under the California Fire Code Section 503 (Fire Apparatus Access Roads) and California Code Regulations Title 14, Section 1273.00 et seq.

(a) Shared Driveways. Driveway access shall meet the applicable fire agency standard, including driveway width, fire turnaround, turning radius, slope, driveway surface.

(b) The minimum driveway width shall be 12 feet or the applicable standard of the fire agency having jurisdiction over the property, whichever is greater.

(9) Setbacks. Lots created by an urban lot split shall allow for structures to meet the lot standards pursuant to SCCC 13.10.327(E)(4).

(10) Existing Structure on One Parcel. The proposed lot split shall not result in the splitting of any structure between the two parcels and shall not create a new encroachment of an existing structure over a property line.

(11) Floor Area and Lot Coverage. Lots created by an urban lot split shall allow for structures to meet the lot standards pursuant to SCCC 13.10.327(E)(4).

(i) If application of the zone district standard for lot coverage or FAR would preclude a proposed lot split, the standard may be reduced by the minimum amount necessary to allow development per the land division as determined by the Planning Director or their designee.

(12) Compliance with Subdivision Requirements. The parcel map shall satisfy the objective requirements of the Subdivision Map Act and SCCC 14.01. Non-title site requirements, disclosures and other information may also be required on the Parcel Map documents by the Planning Director.

(13) The site plan shall indicate at least one existing legal dwelling unit on the property or one existing dwelling unit under construction (permitted and passed first inspection) at the time of application submittal. The structure shall be final and occupied by the owner prior to map recordation. Documentation of occupancy status of existing structures may be required.

(14) Any vacant parcel proposed for a two-unit residential development or urban lot split must be a legal lot of record created in compliance with the Subdivision Map Act and Santa Cruz County Code.

(F) Deed Restrictions. Before obtaining a building permit for a two-unit residential development, the property owner shall file with the Santa Cruz County Recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current owner. The deed restriction shall state that:

(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.

(2) The primary use of the dwelling unit must be residential.

(3) For two-unit residential developments involving an urban lot split with a shared driveway, maintenance and use of the shared driveway must be permanently provided through a reciprocal access easement and maintenance agreement or other comparable mechanism.

(4) The dwelling unit may not be used for vacation rentals as defined in SCCC 13.10.700 V.

(5) The above declarations run with the land and are binding upon all successor in ownership of the property. Lack of compliance shall be cause for code enforcement pursuant to SCCC 19.01.

(6) The deed restriction shall lapse upon removal of all dwelling units established under this section.

SECTION III

The Board of Supervisors finds and determines in its reasonable discretion on the basis of the entire record before it that the proposed amendments to the Santa Cruz County Code are consistent and compatible with and will not frustrate the objectives, policies, general land uses, and programs specified in the General Plan and Local Coastal Program.

SECTION IV

The Board of Supervisors further finds that Senate Bill 9 established that the local ordinance is not a project under the California Environmental Quality Act, and that projects performed under Senate Bill 9 and implementing ordinances such as this ordinance are ministerial, non-discretionary projects to which the California Environmental Quality Act does not apply. In addition, this ordinance is exempt from CEQA pursuant to the provisions of CEQA Guidelines Section 15061(b)(3).

SECTION V

Should any section, clause, or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

SECTION VI

This ordinance shall take effect on the 31st day following adoption outside the Coastal Zone and shall take effect upon final certification by the California Coastal Commission inside the Coastal Zone.

PASSED AND ADOPTED this _____ day of _____ 2024, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS

ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____

CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____

Clerk of the Board

APPROVED AS TO FORM:

_____

Office of the County Counsel

EXHIBIT C

SB-9 Housing development: approvals. (2021-2022)

Date Published: 09/17/2021 09:00 PM

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and

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conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

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The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of

EXHIBIT D

Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section

21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, 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.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied

in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) "Local agency" means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or,

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for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

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(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, 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.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

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(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

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(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The

EXHIBIT D

extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars ($236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the

EXHIBIT D

lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

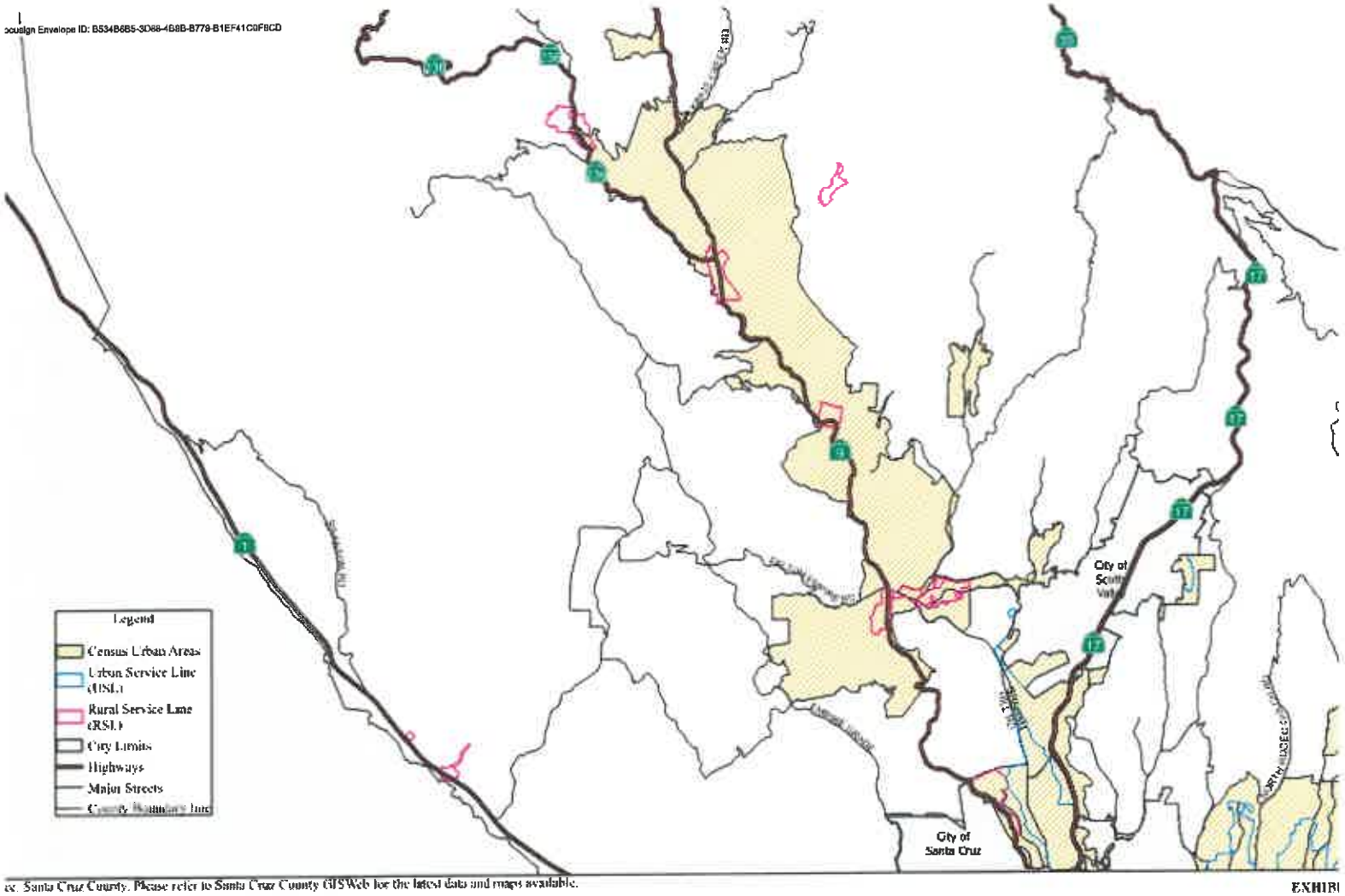
EXHIBIT D

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXHIBIT D



ex. Santa Cruz County. Please refer to Santa Cruz County GIS Web for the latest data and maps available.

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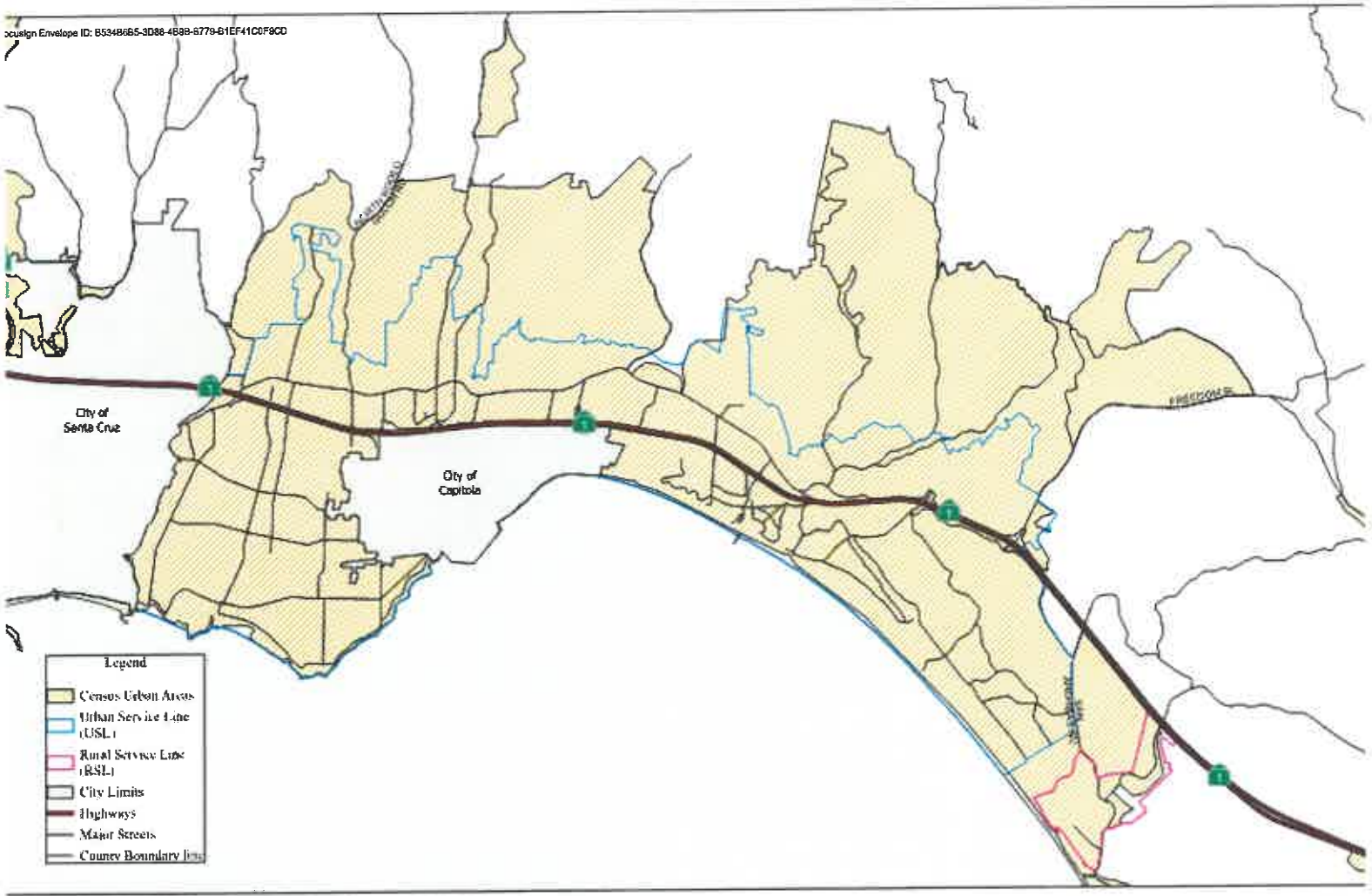

ic. Santa Cruz County. Please refer to Santa Cruz County GISWeb for the latest data and maps available.

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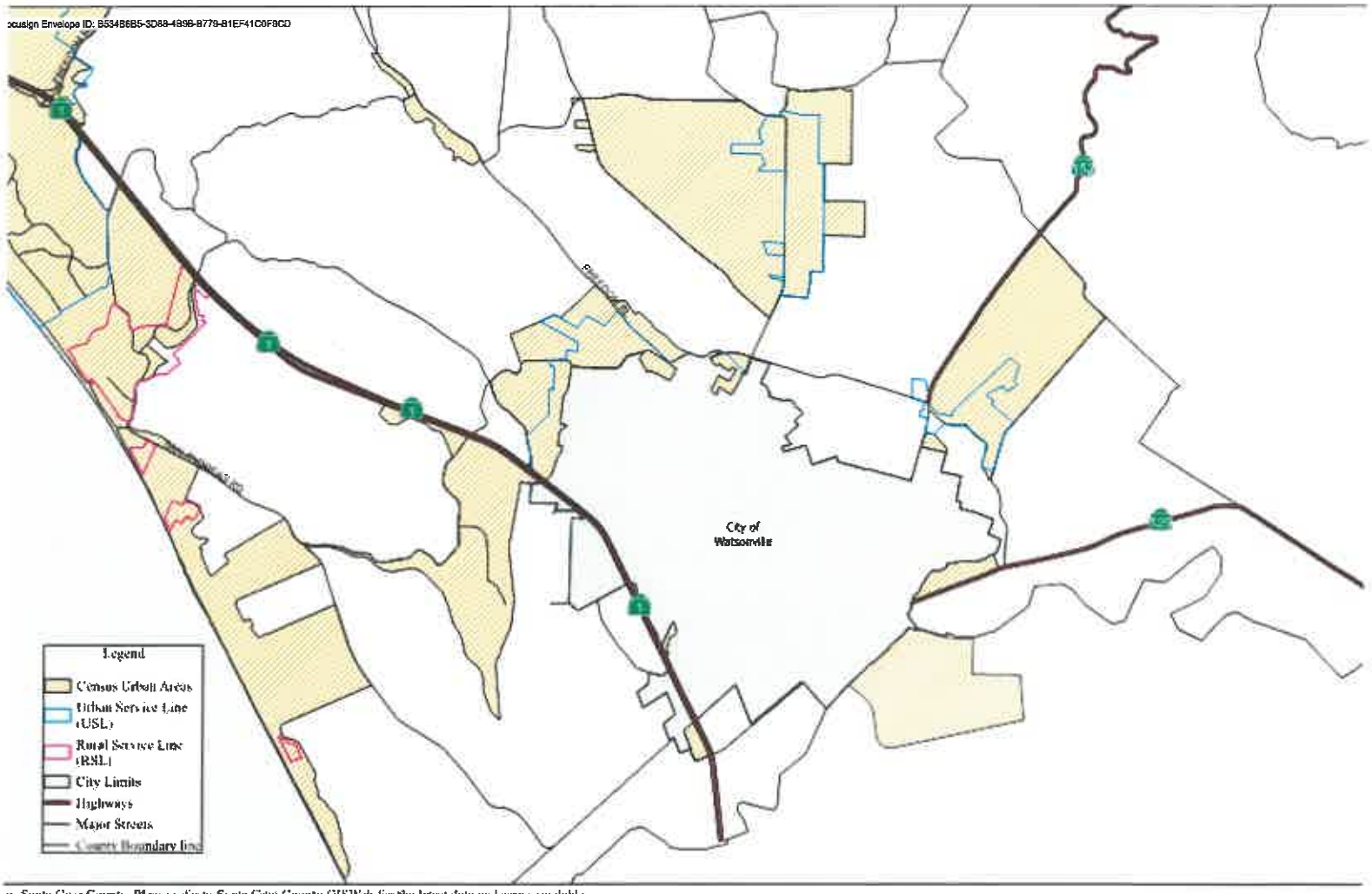

e. Santa Cruz County. Please refer to Santa Cruz County GISWeb for the latest data and maps available.

EXHIBI

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Admitted only in California

May 24, 2024

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

Re: County's Draft S.B. 9 Implementing Ordinances

Dear Chair and Members of the Commission,

This law firm represents Williams and Susan Porter, the owners of the property located at 3030 Pleasure Point Drive.

This letter is in response to the County of Santa Cruz's ("County") May 28, 2024 Planning Commission meeting agenda item no. 7, "a study session to consider an ordinance implementing Senate Bill 9, allowing two-unit developments and urban lot splits." Adopted in 2021, Senate Bill 9 ("S.B. 9") plays a critical role in the State's coordinated effort to address its severe housing crisis, a crisis that is particularly acute in the coastal zone. By its terms, S.B. 9's streamlining provisions expressly apply within the Coastal zone; nevertheless, we appreciate the County's efforts to adopt local coastal program ("LCP") provisions that are consistent with S.B. 9 in order to ensure the bill's seamless, lawful implementation throughout the County.

Based on our review of the County staff's May 10, 2024 report on the proposed ordinances implementing S.B. 9 ("Staff Report"), we have identified the following issues with the ordinances as proposed that must be addressed. These considerations would ensure that the County's implementing ordinances are not only consistent with S.B. 9's purposes, but also do not exceed the scope of the legislation.

I. Do Not Exclude Coastal Bluffs From S.B. 9.

In adopting S.B. 9, the Legislature broadly applied the streamlining provision to projects located on residentially zoned sites. In specifying the types of properties excluded from S.B. 9, the Legislature borrowed a list of exclusions from a separate housing streamlining bill, Senate Bill 35 (S.B. 35). (See Gov. Code, § 65852.21, subd. (a)(2).) S.B. 35's list of exclusions includes, farmland, wetlands, fire hazard zones, and more. (*Id.* § 65913.4, subd. (a)(6)(B)-(K).) Notably however, in borrowing these exclusions for S.B. 9, the Legislature specifically drafted the bill's language in a manner that ***one of S.B. 35's exclusions would not apply to S.B. 9—the coastal zone exclusion.*** S.B. 9 clearly applies within the coastal zone and does not limit the application of its use to projects located near or along the coast.

SC

Despite this clear language in S.B. 9, the County seems to be considering the adoption of an ordinance that would preclude S.B. 9's application altogether on projects located in coastal bluff areas. This language is directly inconsistent with the terms and intent of S.B. 9. Properties located in the coastal zone and on coastal bluffs represent an opportunity for residential densification, including to help meet affordable and market rate housing goals. Thus, any ordinances adopted by the County implementing S.B. 9 should not exclude properties located on coastal bluffs.

II. Add Language Clarifying That Separate Utility Connections Are Not Required for Each Residence.

In the County's proposed ordinance, it states that each lot shall have a "will serve" letter from a water district or mutual water company prior to the issuance of the building permit. Aside from a brief mention of utilities relating to percolation tests, S.B. 9 does not impose any additional utility or connection requirements. Consistent with S.B. 9, no County implementing ordinance should impose any excessive restrictions on utilities, and should expressly permit shared connections between different residential units on the same lot. Such a clarification will help to avoid the imposition of onerous utility requirements that would prevent S.B. 9's successful application.

III. Do Not Permit Excessive Mitigation Requirements.

In the proposed ordinance, the County considers permitting "sufficient mitigation" to be allowed on three specific areas utilizing S.B. 9: (1) geologic hazard areas; (2) qualifying flood hazard areas; and (3) fire hazard areas. As discussed above, the County should not expand upon the Legislature's intentionally drafted, narrow exceptions to S.B. 9's streamlining provisions. These narrow exceptions already exclude S.B. 9's implementation on certain flood and fire hazard areas and should not be further expanded.

Relating to any other project hazards, S.B. 9 already states that in the event a local agency finds that an S.B. 9 project would result in a specific adverse impact to public health and safety, then ***the burden is on the public agency*** and not the project applicant to determine whether there is a means to mitigate the impact. (*Id.* § 65852.21, subd. (d).) Furthermore, S.B. 9 also states that local agencies "shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction" of qualifying S.B. 9 projects.

Thus, the plain language of S.B. 9 already adequately limits and addresses the bill's application to specific at-risk areas and places the burden on the County to demonstrate when other hazards arise. The County should not place any further limiting requirements on S.B. 9-eligible projects.

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

Very truly yours,

John J. Flynn III
Nossaman LLP

JJF:nd3

cc: Jacob Lutz [*Jacob.lutz@santacruzcountyca.gov*]
Matt Machado [*matt.machado@santacruzcounty.us*]
Justin Graham, Assistant County Counsel [*Justin.graham@santacruzcounty.us*]
Jocelyn Drake [*Jocelyn.Drake@santacruzcountyca.gov*]
Mark Connolly [*Mark.Connolly@santacruzcountyca.gov*]
Justin Cummings [*Justin.Cummings@santacruzcountyca.gov*]
Nolan Clark [*Nolan.Clark@coastal.ca.gov*]
Dan Carl [*Dan.Carl@coastal.ca.gov*]
Rainey Graeven [*Rainey.Graeven@coastal.ca.gov*]
Cove Britton [*Cove@matsonbritton.com*]

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Admitted only in California

May 27, 2024

Chair Violante, Vice Chair Gordin, and Commissioners
Santa Cruz County Planning Commission
701 Ocean Street
Santa Cruz, CA 95060

Re: Comments on the County of Santa Cruz's Study Session Regarding Its Draft SB 9 Implementing Ordinances

Dear Chair Violante and Planning Commissioners,

This law firm represents Kevin and Sandy Huber, owners of a partially improved lot located at 625 Beach Drive, Aptos, and current Senate Bill 9 ("SB 9") project applicants. This letter is in response to the County of Santa Cruz's ("County") May 28, 2024 Planning Commission meeting agenda item no. 7, "a study session to consider an ordinance implementing Senate Bill 9, allowing two-unit developments and urban lot splits."

The State Legislature stated that a key factor to solving the housing shortage is the implementation of policy reforms that enhance the approval and ***supply of housing for Californians "of all income levels."*** (Gov. Code, § 65589.5, subd. (a)(2)(B) [emphasis added].) Accordingly, in recent years, the Legislature has passed multiple bills that seek to "significantly increase the approval and construction of new housing for ***all economic segments of California's communities***" by limiting local agency discretion to condition and deny housing projects. (*Id.* § 65589.5, subd. (a)(2)(K) [emphasis added].) Adopted in 2021, SB 9 is one of those bills and plays a critical role in the State's effort to address its historic housing shortage across all income levels, including market-rate housing. By permitting development on existing residentially-zoned lots, SB 9 is also consistent with Coastal Act section 30250, which states that new residential development, "shall be located within, contiguous with, or in close proximity to, existing developed areas . . . ."

SB 9's streamlining provisions expressly apply within the coastal zone. SB 9 states clearly that it authorizes local agencies to "adopt an ordinance to implement [SB 9's] provisions." (*Id.* § 65852.21, subd. (j).) The County is now considering adopting two such ordinances that would add sections 13.10.327 and 13.10.328 to the County code ("Draft Ordinances"). As proposed, the Draft Ordinances go beyond merely implementing SB 9 and instead impose overly restrictive requirements that appear to conflict with SB 9's terms. Such a conflict may result in the Draft Ordinances being determined to be invalid. (See Cal. Const. art. XI, § 7.) In the following, we discuss a number of recommendations and considerations for the County Planning Commission as it further considers the Draft Ordinances at its May 28, 2024 study session.

1. The Draft Ordinances Will Not Apply to Existing SB 9 Project Applications.

First, in its May 10, 2024 report on the Draft Ordinances implementing SB 9 ("Staff Report"),[1] the County notes that there have already been eight formal applications for SB 9 projects in the County. While not expressly addressed in the Staff Report, we would like to remind the Planning Commission that under Government Code, section 65915, the Housing Accountability Act ("HAA"), the County may not retroactively apply local regulations to a housing development project that were not in effect at the time of the project's application, unless otherwise agreed to by the applicant. (See Gov. Code, § 65589, subd. (j)(1).) The HAA protects projects such as the Hubers' application filed with the County pursuant to SB 9. (See *Reznitskiy v. County of Marin* (2022) 79 Cal.App.5th 1016, 1037.) Thus, we want to make the County aware that any existing applications under SB 9 will not be automatically subject to the County's Draft Ordinances unless expressly agreed to by an applicant.

2. The Proposed Ordinance's Square-Footage Limitation is Overly Restrictive.

The Draft Ordinances place a 1,200 square-foot limitation on all new two-unit developments under SB 9. This limitation is overly restrictive and must be removed or expanded in order for the County to effectively implement SB 9. The County already has floor-area-ratio requirements that limit the square footage on such parcels and there is no demonstrated need to limit second primary residences under SB 9 to be even more restrictive. (See Santa Cruz County Code, § 13.10.323, subd. (B).)

As State Housing and Community Development Department ("HCD") has stated, "[a] local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments)." (SB 9 Fact Sheet, at p. 7.)[2] Furthermore, "HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible." (*Ibid.*) The County already adequately provides limitations on a residential unit's size, and thus, there is no reason for the County to impose an even more restrictive limitation.

3. The Prohibition on Properties Containing Coastal Bluffs or Beaches is Vague and Ambiguous.

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." Notably, 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.

---

[1] County of Santa Cruz, Memo re Study Session to Consider an Ordinance Implementing Senate Bill 9, Allowing Two-Unit Developments and Urban Lot Splits (May 10, 2024), available at https://www2.santacruzcountyca.gov/planning/plnmeetings/PLNSupMaterial/PC/agendas/2024/20240528/007.pdf.

[2] Available at: https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf.

4. The County Should Not Prohibit SB 9's Use on Properties Containing Coastal Bluffs or Beaches.

In the Draft Ordinances, the County proposes to exclude projects located on coastal bluffs and beaches; however, such a blanket prohibition is inconsistent with SB 9. In adopting SB 9, the Legislature broadly applied the streamlining provision to projects located on residentially zoned sites. The Legislature utilized a list of exclusions from a separate housing streamlining bill, Senate Bill 35 ("SB 35") in enumerating the excluded properties under SB 9. (See Gov. Code, § 65852.21, subd. (a)(2).) This list of exclusions from SB 35 includes specific properties that include farmland, wetlands, fire and flood hazard zones, hazardous waste sites, earthquake fault zones, and conservation lands. (*Id.* § 65913.4, subd. (a)(6)(B)-(K).)

Relevant here, the only exclusion from SB 35 that the Legislature stated would ***not*** apply to SB 9 is the coastal zone exclusion. Despite the Legislature's refusal to exclude SB 9's use from certain parts of the coastal zone, the County, by placing a wholesale ban of SB 9's use on the properties containing bluffs and beaches, seems to be doing just that. In order to remain consistent with the purpose of SB 9 and its broad application, the Draft Ordinances should not exclude properties containing coastal bluffs or beaches, especially in existing residentially zoned developments where SB 9 housing is not inconsistent with the surrounding homes.

5. The County Should Limit the Mitigation Imposed on SB 9 Projects.

In the Draft Ordinances, the County broadly proposes to allow "sufficient mitigation" to be required on three areas: (1) geologic hazard areas; (2) qualifying flood areas; and (3) fire hazard areas. However, SB 9 already states that in the event a local agency—here, the County—finds that an SB 9 project would result in a specific adverse impact to public health and safety—such as a geologic hazard—then the County must determine whether there is a "***feasible method to satisfactorily mitigate*** or avoid the specific, adverse impact." (Gov. Code § 65852.21, subd. (d) [emphasis added].) Importantly, in such circumstances, the burden of proof for determining both the existence of an adverse impact and the feasibility of the mitigation is on the public agency. (*Ibid.*) Thus, SB 9 already adequately addresses the issue of mitigating adverse impacts. In the event the County wants to include such language in the Draft Ordinances, it should simply adopt the language (including the burden of proof) that SB 9 uses.

We appreciate the County's consideration of the foregoing recommendations and look forward to the successful, lawful implementation of SB 9 throughout the County of Santa Cruz. It is beyond debate that coastal communities—including Santa Cruz—are in critical need of more housing at all economic levels. Thank you for the opportunity to provide our comments.

Very truly yours,

John P. Erskine
Nossaman LLP

JPE:nd3

cc: Nicholas Brown [*Nicholas.Brown@santacruzcountyca.gov*]
Jacob Lutz [*Jacob.Lutz@santacruzcountyca.gov*]
Matt Machado [*Matt.Machado@santacruzcounty.us*]
Kevin and Sandy Huber [*Khuber@grupehuber.com*]
Cove Britton [*Cove@matsonbritton.com*]

Sent: Monday, May 27, 2024 10:46 PM
To: Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; Jocelyn Drake <Jocelyn.Drake@santacruzcountyca.gov>; Mark Connolly <Mark.Connolly@santacruzcountyca.gov>
Subject: SB9 and Coastal Properties in Santa Cruz

To Manu Koenig, Jocelyn Drake and Mark Connolly,
My home is located at 2866 S Palisades Avenue in Santa Cruz and I have recently become aware that Santa Cruz County is evaluating treating coastal properties in Santa Cruz different from non-coastal properties with regards to the implementing ordinances of SB9. My expectation is that my property will be treated the same as any other property would be under SB9. Please keep me informed regarding any proposed changes with regards to the County's implementation of SB9 with respect to coastal properties as compared to non-coastal properties. Furthermore, if County staff believes that SB9 allows coastal properties to be treated differently than non-coastal properties, please provide the legal basis that justifies and supports that position.
Thank you,
Steven Laub

Exhibit F

Jacob Lutz

From: Mark Connolly
Sent: Monday, May 27, 2024 11:44 PM
To: Jacob Lutz
Subject: FW: SB9

Follow Up Flag: Follow up
Flag Status: Flagged

From: Valerie Mishkin <vmishkin@baileyproperties.com>
Sent: Monday, May 27, 2024 6:05 PM
To: Jocelyn Drake <Jocelyn.Drake@santacruzcountyca.gov>; Mark Connolly <Mark.Connolly@santacruzcountyca.gov>; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; koenig@santacruzcountyca.gov
Cc: Justin Cummings <Justin.Cummings@santacruzcountyca.gov>
Subject: SB9

Please keep me informed regarding the implementing ordinances etc. for SB9.
My expectation is that any property will have equal rights under SB9 as any other property. As you may know I care about the property rights of coastal owners.
The public, and in particular those affected by Limiting their property use, have a right to Full Disclosure as to why they may not have an additional unit in our underhoused community.
If for some reason County staff believes otherwise, please provide legal references that specifically address SB9. I hope the Supervisors will consider the greater good to the county in supporting the needs of county residents.

--

Valerie Mishkin
DRE# 02092111 AHWD, C2EX, SFR,
VMishkin@BaileyProperties.com
831 - 238 - 0504
1602 Ocean Street Santa Cruz CA. 95060
Local Government Relations Committee

64

Smart Coast California Board of Directors
Santa Cruz City Master Recyclers

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Exhibit F

Jacob Lutz

From: thomascgoddard@gmail.com
Sent: Tuesday, May 28, 2024 7:50 AM
To: Jacob Lutz
Subject: SB9

Follow Up Flag: Follow up
Flag Status: Completed

Hi Jacob –

I read your report on Senate Bill 9 that allows property owners within a single-family residential zone to build two units and/or to subdivide a lot into two parcels. Thank you for including the map showing the parts of unincorporated Santa Cruz County where this law would apply.

My question is this: The county has residential development standards that call for a maximum parcel coverage, for most properties it is 40%. With the ordinance to implement state law to build more units on single family lots, the lot coverage would likely exceed this existing county standard. Can you tell me how these two goals, 1) maximum lot coverage and 2) building more units on single residential lots would be reconciled? An should it be explicitly addressed in the new ordinance?

Thank you

Toby Goddard

Exhibit F

Jacob Lutz

From: Mark Connolly
Sent: Wednesday, May 29, 2024 4:09 PM
To: Jacob Lutz
Subject: Fw: SB 9

From: Jeri Skipper <jskipper@jeriskipper.com>
Sent: Tuesday, May 28, 2024 9:44 AM
To: Jocelyn Drake <Jocelyn.Drake@santacruzcountyca.gov>; Mark Connolly <Mark.Connolly@santacruzcountyca.gov>; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; Justin Cummings <Justin.Cummings@santacruzcountyca.gov>
Subject: SB 9

Please keep me informed regarding the implementing ordinances etc. for SB9.
My expectation is that my property will have equal rights under SB9 as any other property.
If for some reason County staff believes otherwise, please provide legal references that specifically address SB9.

Thank you for your business!
Sincerely,
Jeri Skipper
Loan Officer
Financial Solutions Home Loans, Inc.
831-818-0299
NMLS # 236901
www.jeriskipper.com

Financial Solutions
Home Loans

Exhibit F

Jacob Lutz

From: Mark Connolly
Sent: Wednesday, May 29, 2024 4:11 PM
To: Jacob Lutz
Subject: Fw: SB9 Planning Commission

Follow Up Flag: Follow up
Flag Status: Flagged

From: Cove Britton <cove@matsonbritton.com>
Sent: Wednesday, May 22, 2024 3:26 PM
To: Jocelyn Drake <Jocelyn.Drake@santacruzcountyca.gov>
Cc: Mark Connolly <Mark.Connolly@santacruzcountyca.gov>; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; Jamie Sehorn <Jamie.Sehorn@santacruzcountyca.gov>
Subject: Re: SB9 Planning Commission

Hi Jocelyn-

Respectfully, SB9 supersedes the general plan and ordinances regarding zoning limitations (density) of two homes on a single family dwelling lot. The Coastal Act does not address the issue nor does the LCP. Therefore the Coastal Act (and the LCP) has no bearing on SB9 in regards to whether or not a second home can be built on a SFD lot because of density. The issue would be if a proposed home precluded beach access etc.

I believe most jurisdictions have recognized this legal fact. Of course the County can take another tack (and appear to be doing so) but I hope it would be very transparent to the Planning Commissioners, Board of Supervisors, and the public that Planning staff may be looking to go around SB9 versus following it. SB9 makes it crystal clear that the burden is on the County when denying and pointing to the local General Plan and Zoning ordinances regarding density is specifically what it overrides. There would be no point to SB9 otherwise.

I know I am not going to resolve this disagreement via email but hopefully we can continue a transparent dialogue with all involved.

Mark-

Nice to meet you via email. Please keep me informed of dates for various hearings and what, if any, public outreach is occuring.

Exhibit F

Regards-

On Wed, May 22, 2024 at 2:58 PM Jocelyn Drake <Jocelyn.Drake@santacruzcountyca.gov> wrote:
Hi Cove,

I am CCing Mark Connolly on my response. Mark is the Principal Planner in Policy and is best positioned to address the SB 9 public hearing timeline/PC/BOS dates.

Regarding processing SB 9 applications in the coastal zone, we are processing all applications that come through the door. A challenge we face is that we are unable to support SB 9 applications in the coastal zone where the proposed density exceeds that allowed pursuant to the General Plan/Zoning Ordinance, in which case we cannot make the Coastal Permit findings – consistency finding with GP/ZO. This issue is being addressed through the SB 9 ordinance Policy is working on.

Thanks,

Jocelyn

Jocelyn Drake

CDI Planning Division – Permit Center
Assistant Director

Phone: 831-454-3127
701 Ocean Street, Room 400

From: Cove Britton <cove@matsonbritton.com>
Sent: Wednesday, May 22, 2024 2:28 PM
To: Jocelyn Drake <Jocelyn.Drake@santacruzcountyca.gov>
Cc: Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; Jamie Sehorn <Jamie.Sehorn@santacruzcountyca.gov>
Subject: SB9 Planning Commission

Hi Jocelyn-

I had a phone conference with HCD this morning and their understanding is that there is a hearing regarding SB at the PC in June? If so, may I get the date and when any staff report will be available?

Also the expectation is that it will go to the BOS in August?

It also sounds like Planning has an internal policy to not follow SB9 until implementing ordinances are in place. If so, please note that, much like ADU legislation, SB9 is in effect now.

Please also note that LCP is not the Coastal Act, however neither prevents a SB9 residence and *only* conflicts with the Coastal Act are applicable. Nothing in the Coastal Act prevents two homes on a single lot. If County staff disagree please let me know specific conflicts.

I realize various jurisdictions, and the CCC, are less than amenable towards SB9 but I believe being transparent regarding that stance would be appropriate. And the specific reasons for that stance.

Regards-

--
Cove Britton
Matson Britton Architects

O. (831) 425-0544

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Cove Britton
Matson Britton Architects

O. (831) 425-0544

Jacob Lutz

From: Mark Connolly
Sent: Wednesday, May 29, 2024 4:12 PM
To: Jacob Lutz
Subject: FW: Please support SB nine for all homes

Follow Up Flag: Follow up
Flag Status: Flagged

-----Original Message-----
From: ronald evans <ron@ronevansandassociates.com>
Sent: Sunday, May 26, 2024 9:06 AM
To: Mark Connolly <Mark.Connolly@santacruzcountyca.gov>
Subject: Please support SB nine for all homes

****CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Please keep me informed regarding the implementing ordinances etc. for SB9.
My expectation is that my property will have equal rights under SB9 as any other property.
If for some reason County staff believes otherwise, please provide legal references that specifically address SB9. Ron

Sent from my iPhone please excuse any typos or spelling errors, often times I'm dictating my response.

Exhibit F

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.

Jacob Lutz

From: Mark Connolly
Sent: Monday, June 10, 2024 1:41 PM
To: Jacob Lutz
Subject: FW: SB9

Follow Up Flag: Follow up
Flag Status: Flagged

FYI

From: Chris Plue <ChrisP@webcor.com>
Sent: Monday, June 10, 2024 11:11 AM
To: Mark Connolly <Mark.Connolly@santacruzcountyca.gov>
Subject: SB9

Mark:

I am a homeowner in Aptos. Please keep me informed on SB9.
My expectation is that my property will have equal rights under SB9 as any other property.
If for some reason County staff believes otherwise, please provide legal references that specifically address SB9.

Chris Plue

Exhibit F

NOSSAMAN LLP

ATTORNEYS AT LAW

18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
T 949.833.7800

John P. Erskine
D 949.833.7800
jerskine@nossaman.com

Admitted only in California

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

77

Exhibit F

JPE:nd3

cc: Jacob Lutz [*Jacob.lutz@santacruzcountyca.gov*]
Matt Machado [*matt.machado@santacruzcounty.us*]
Justin Graham [*Justin.Graham@santacruzcountyca.gov*]
Kevin Huber [*khuber@grupehuber.com*]
Cove Britton [*Cove@matsonbritton.com*]

Jacob Lutz

From: Kevin Huber <khuber@grupehuber.com>
Sent: Tuesday, June 25, 2024 10:56 AM
To: Jacob Lutz; Mark Connolly; Jocelyn Drake
Cc: Cove Britton; John Erskine; Noah DeWitt
Subject: Draft Ordinance in Staff Report

Follow Up Flag: Follow up
Flag Status: Flagged

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
GRUPE HUBER COMPANY
D: (209) 490-2650
E: khuber@grupehuber.com
1203 N. Grant Street
Stockton, CA 95202
grupehuber.com

Jacob Lutz

From: Cove Britton <cove@matsonbritton.com>
Sent: Tuesday, June 25, 2024 11:37 AM
To: Kevin Huber
Cc: Jacob Lutz; Mark Connolly; Jocelyn Drake; John Erskine; Noah DeWitt; Manu Koenig; Jamie Sehorn; Justin Graham
Subject: Re: Draft Ordinance in Staff Report

Follow Up Flag: Follow up
Flag Status: Flagged

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:
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Thank you,

Kevin

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1203 N. Grant Street

Stockton, CA 95202

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--
Cove Britton
Matson Britton Architects

O. (831) 425-0544

Jacob Lutz

From: Cove Britton <cove@matsonbritton.com>
Sent: Tuesday, June 25, 2024 3:51 PM
To: Kevin Huber
Cc: Jacob Lutz; Mark Connolly; Jocelyn Drake; John Erskine; Noah DeWitt; Manu Koenig; Jamie Sehorn; Justin Graham
Subject: Re: Draft Ordinance in Staff Report

Follow Up Flag: Follow up
Flag Status: Flagged

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> wrote:
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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.

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Sent: Tuesday, June 25, 2024 5:02 PM
To: Kevin Huber
Cc: Jacob Lutz; Mark Connolly; Jocelyn Drake; John Erskine; Noah DeWitt; Manu Koenig; Jamie Sehorn; Justin Graham
Subject: Re: Draft Ordinance in Staff Report

Follow Up Flag: Follow up
Flag Status: Flagged

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> wrote:
Hi Jacob, Mark, and Jocelyn-

8C

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.

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DocuSign

Certificate Of Completion

Envelope Id: B534B6B53D884B9BB779B1EF41C0F9CD
Subject: Complete with Docusign: 2024-08-14_SB9_PC Packet.pdf
Source Envelope:
Document Pages: 89
Certificate Pages: 4
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Signatures: 1
Initials: 0

Status: Completed

Envelope Originator:
Jacob Lutz
701 Ocean Street
Santa Cruz, CA 95060
Jacob.Lutz@santacruzcountyca.gov
IP Address: 139.60.73.3

Record Tracking

Status: Original
8/2/2024 1:41:09 PM
Security Appliance Status: Connected
Storage Appliance Status: Connected

Holder: Jacob Lutz
Jacob.Lutz@santacruzcountyca.gov
Pool: FedRamp
Pool: County of Santa Cruz

Location: DocuSign

Location: DocuSign

Signer Events	Signature	Timestamp
Natalie Kirkish Natalie.Kirkish@santacruzcountyca.gov Security Level: Email, Account Authentication (None)	DocuSigned by: Natalie Kirkish D52DC6AA0E74498...	Sent: 8/2/2024 1:46:00 PM Viewed: 8/2/2024 2:30:39 PM Signed: 8/2/2024 2:31:03 PM
	Signature Adoption: Pre-selected Style Using IP Address: 173.8.161.13	

Electronic Record and Signature Disclosure:
Accepted: 8/1/2024 2:49:37 PM
ID: b763e46b-8c75-436f-b147-3f5717480ab2

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	**Status**	**Timestamp**
Agent Delivery Events	**Status**	**Timestamp**
Intermediary Delivery Events	**Status**	**Timestamp**
Certified Delivery Events	**Status**	**Timestamp**
Carbon Copy Events	**Status**	**Timestamp**
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/2/2024 1:46:00 PM
Certified Delivered	Security Checked	8/2/2024 2:30:39 PM
Signing Complete	Security Checked	8/2/2024 2:31:03 PM
Completed	Security Checked	8/2/2024 2:31:03 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact County of Santa Cruz:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: nada.algharib@santacruzcounty.us

To advise County of Santa Cruz of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at nada.algharib@santacruzcounty.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from County of Santa Cruz

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to nada.algharib@santacruzcounty.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to nada.algharib@santacruzcounty.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify County of Santa Cruz as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by County of Santa Cruz during the course of your relationship with County of Santa Cruz.