PUBLIC COMMENT – PLANNING COMMISSION 8.14.2024

Planning Commission,

I am writing to express several specific concerns with the proposed ordinances- 13.10.327 & 13.10.328 allowing 2 unit developments and urban lot splits.

In general, I support the adoption of this ordinance to implement SB9. However, it appears to me and others in the Land Use Planning, Real Estate and Real Estate Development field that this ordinance will disincentivize the creation of infill housing which is the objective of SB9 .

Maximum size of unit

The ordinance proposes a maximum size of 1200 sf for a new unit proposed in a 2 unit development, 13.10.327 or an urban lot split, 13.10.328. We believe this is too restrictive and will not provide the variety of housing units needed in our community. A more appropriate provision would be to establish a maximum size and/or a floor area ratio(FAR) relative to the lot size.

A 1200 sq ft home can be a very comfortable two bedroom home and a tight 3 bedroom home. A four bedroom home would be very difficult if not impossible to fit into 1200sq ft. Many parcels eligible for an urban lot split may result in two larger parcels in some cases as large as 1 acre or more. These are prime opportunities for the creation of 3-4 bedroom homes suitable for larger families.

SB9 when proposed by Senator Atkins was known as the California Home Act. According to a Web site sponsored by Atkins and others *Senate Bill 9 is the product of a multi-year effort to develop solutions to address our state's housing crisis. The Senate Housing Package of bills, 'Building Opportunities for All,' establishes opportunities to make real progressive and positive changes in our communities to strengthen the fabric of our neighborhoods with equity, inclusivity, and affordability.*

*Provides options for homeowners to build intergenerational wealth**.** SB 9 provides more options for families to maintain and build intergenerational wealth a currency we know is crucial to combatting inequity and creating social mobility. The families who own these properties could provide affordable rental opportunities for other working families who may be struggling to find a rental home in their price range, or who may be looking for their own path to home ownership.*

The requirement for a commitment of 3 years occupancy by the property owner for an urban lot split will prevent developer speculation. The bill is intended for families to create housing opportunities for other family members . My son, for example has 3 children, my nephew 4. If we were intending to propose a SB9 lot split to facilitate one of their families building a new home…a 1200 sq ft limitation on the size of the house would make this an unfeasible option.

SB9 allows for a minimum of 800sqft units on lots as small as 1200 s ft. A maximum FAR of .45 (minimum 800 sq ft) for parcels between 1200 sqft and 8000 sq ft and a maximum size of 3600 square fee for parcels above 8000 sq ft is a reasonable standard.

Parcel ineligibility based on Sensitive Habitat

Based on the proposed ordinances a parcel is not eligible of a 2 unit development or urban lot split if it is within a Sensitive habitat. This has been interpreted by County staff that even if a very small area of the property, not effecting a proposed building site, is within a riparian area or other Sensitive habitat , the parcel is not eligible. This is an overly conservative interpretation of SB9. This is more restrictive than the criteria for a conventional land division. IF a building can be located outside a riparian corridor or other sensitive area not listed in the State legislation, there is no reason to render the property ineligible for an SB9 land division.

The criteria for determining a parcel ineligible is if any site conditions are present as specified in Gov Code Section 65913.4 subdivision (a)(6)(B-K) :

(6) The development is not located on a site that is any of the following:

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within the state responsibility area, as defined in Section 4102 of the Public Resources Code. This subparagraph does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development, including, but not limited to, standards established under all of the following or their successor provisions:

(i) Section 4291 of the Public Resources Code or Section 51182, as applicable. Public Resources Code 4291 requires homeowners in Mountainous, Forest, Brush and Grass Covered lands to develop defensible space by removing ladder fuels within the first 100 feet of a structure, or to the property line.

(ii) Section 4290 of the Public Resources Code. These regulations shall include measures to preserve undeveloped ridgelines to reduce fire risk and improve fire protection.

(iii) Chapter 7A of the California Building Code (Title 24 of the California Code of Regulations).

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

(i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5.

(ii) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination

pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing

with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

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Dear Planning Commissioners:

After reviewing more closely the various ordinances (existing and proposed) that may impact SB9 I came across a number of potential concerns.

GROSS ACREAGE VS. NET ACREAGE

The proposed ordinance regarding SB9 revision relies heavily on codes changed under the Sustainability Update. In particular definitions of "density", "developable land", "Site area, net developable", "Site area, net" contained in 13.10.700.

However, those definitions conflict with State law in that housing density is to be based on Gross Site Area and not net developable area. Please see below excerpt from Shannen West's (Housing Accountability Unit Chief for HCD) letter in regards to a project in Watsonville.

"Gross Acreage vs. Net Acreage

The SDBL requires that base density calculations be performed using gross acreage, rather than net acreage. The distinction is made explicitly in Government Code section 65915, subdivision (f), by the appearance of the word "gross" in the first sentence. The word "gross" was added to the SDBL in 2016 by Assembly Bill 2501 (Chapter 758, Statutes of 2016). HCD recognizes that the City's General Plan2 and Zoning Code3 call for the use of net acreage. However, the provisions of the SDBL supersede those of local governments in the event of a conflict. While there is no ambiguity in this case, HCD would like to further note that even if there were ambiguity, the SDBL contains a directive that it "be interpreted liberally in favor of producing the maximum number of total housing units." (Gov. Code, § 65915, subd. (r)). The use of net acreage in the context of the Project would result in fewer housing units being produced because the area used for the access drive would be subtracted from the site area. HCD would also like to note that net acreage is typically less

than gross acreage depending on a variety of potential site conditions beyond access drives. Examples include riparian areas, wetlands, steep slopes, easements, and any other condition that renders a portion of a site undevelopable."

I suggest that the definitions noted above be revised to be consistent with current State legislation as part of the SB9 ordinance process.

ACCCURATE DEFINITION OF DEVELOPABLE AREA

As currently written in the proposed SB9 ordinance it is now clear that geologic hazards that can be mitigated are developable. However the various definitions noted above eliminate various site areas as developable, including land area in geologic hazards locations. But SB9 allows those areas to be developed as long as the hazards are mitigated as noted in the staff report. The definitions noted above conflict with SB9 and eliminate large portions of the County (for example Rio Del Mar flats, downtown Soquel, Felton Grove, Corralitos Creek, etc.) as developable (and this is just one example).

There are also several other caveats in the recently adopted definitions that are superseded by State legislation. For example, existing residential property located on beaches and coastal bluffs cannot be excluded as not developable which is now recognized in the proposed SB9 ordinance. Yet the definition of "density" (13.10.700) specifically notes that beaches and coastal bluffs cannot count towards "density", which conflicts with SB9 and other State codes. Thus the proposed SB9 ordinance and the existing definition of "density" will conflict.

We recently had the experience of planner Jerry Busch stating a SB9 project could not be approved due to the definition of "density".

Mr. Busch's interpretation of the code highlights that for the public *and* planning staff need to be clear and consistent with State legislation.

I suggest the following revisions to the County definitions contained in 13.10.700 be made:

A. The definition of "developable land" and "Site area, net developable" be eliminated as not relevant towards calculations of Floor Area Ratio and Housing Density. The definitions are superseded by State legislation.

B. The definition of "Site area, net" be consistent with California Public Resources Code – PRC 21099

"(6) "Net lot area" means the area of a lot, excluding publicly dedicated land and private streets that meet local standards, and other public use areas as determined by the local land use authority."

Due to the State becoming much more active in housing regulation, having definitions and ordinances that are not consistent (and internally contradictory) with State legislation will likely create ongoing costly and time-consuming issues for the County and the public.

I suggest that County staff, including County counsel, actively incorporate, and anticipate, specific State legislation in code and use this SB9 ordinance process to revise the definitions I note.

RESIDENTIAL SITES EXCLUDED SB9

The below notes residential properties that are excluded from SB9 based on their physical location.

"The proposed development must be located outside of areas defined in subparagraphs Section 155.660 (B), inclusive, of paragraph (6) of subdivision (a) of California Government Code §65913.4, :

A. 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 Senate Bill (SB) 9 Urban Lot Split Application designated or listed as a city landmark or historic property or district pursuant to a city ordinance.

B. A very high fire hazard severity zone as further defined in Government Code section 65913.4(a)(6)(D). This does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

C. A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

D. A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law and by the city's building department.

E. A regulatory floodway as determined by FEMA in any of its official maps, published by FEMA unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If an applicant is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the county shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the county that is applicable to that site.

F. Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan as further spelled out in Government Code section 65913.4(a)(6)(I).

G. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

*H. Lands under a conservation easement.***"**

I suggest that the language above is clearer than the proposed language contained in the staff report.

BUILDING OFFICIAL AS THE DECISION MAKER

I appreciate that planning staff has made it clearer that it is the Building Official *specifically,* that makes the findings to deny a SB9 application.

"(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."

However I suggest that the proposed ordinance adopt language that makes it clear that appeals of the Building Official determination is to be made consistent with Chapter 12.10.435 (the County's Building Code). I personally have had great difficulty in bringing appeals to the County's building appeals board and are consistently diverted to the Planning Director when the subject matter is technical in nature and specifically require to be presented to the building appeals board. The problem has been so extreme that two suits resulted however in both instances County staff made the issue moot and we were unable to provide the whole of the public with the right to appeal to the building appeals board versus the Planning Director. Technically Chapter 18 appeals to the Planning Director violates Lippman vs. City of Oakland as one is essentially appealing to the very staff that made the definition.

So as said, in my experience I believe it is important to make clear appeals of the Building Official regarding SB9 denials, specifically goes to the building appeals board and not the Planning Director. This is a long running problem.

PROPOSED SB9 SIZE LIMITATION

The proposed SB9 ordinance limitation on the size of the second unit is not consistent with underlaying zoning and is going to be superseded by SB450 (expected to be approved in September). In addition, it is not sensible. It encourages a homeowner to maximize the size of one of the homes versus build two of a more moderate size.

It also should be noted SB450 is *clarifying* the intent of SB9 regarding size limitations. I believe it *is appropriate* for the proposed ordinance to anticipate SB450 approval and recognize that the text of SB9 clearly intended to encourage housing at *all market levels with the assumption that all market levels would be become more affordable*. The justification for the size limitation contained in staff the report is not consistent with SB9 language and intent, nor does it have a practical and beneficial outcome.

VARIANCES

I suggest variances that are going to be axiomatically approved under current State legislation (including SB9) should no longer be variances.

Example:

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Homes in a flood plain must axiomatically be raised up (in other words, increased in height) due to FEMA requirements. This often results in homes being above the height limit.

That technically should not be a variance. It is required by FEMA.

Suggested Code revision:

A. Revise County definitions (13.10.700) to increase the height limit commiserate with the increase due to FEMA requirements.

B. Revise County definitions (13.10.700) that area located in the FEMA flood plain is not “floor area”. This in order to be consistent with FEMA requirements and State legislation.

Thank you for your consideration.

Cove Britton

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VIA ELECTRONIC MAIL

August 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 is submitted on behalf of our clients, Kevin and Sandy Huber, applicants for a Senate Bill 9 ("SB 9") project at 625 Beach Drive, Aptos, CA. During the Planning Commission's June 26, 2024 hearing on the County of Santa Cruz's ("County") proposed SB 9 implementing ordinance ("Ordinance"), a few Commissioners expressed concern over whether the County's draft ordinance is consistent with the State statute and whether the Ordinance would be preempted by upcoming State legislation amending SB 9. We previously detailed the Huber's concerns at length to the Planning Commission in two prior letters dated May 27, 2024 and June 12, 2024. As an initial point, we appreciate the County staff's recent changes to the draft Ordinance, including the removal of the blanket SB 9 exemption for parcels containing coastal bluffs and beaches and linking any coastal bluff mitigation requirements for SB 9 projects to requirements defined in the County Code. We believe these changes will improve the clarity of the Ordinance and help achieve the overall SB 9 goal of increasing opportunities, particularly in the Coastal Zone.

Despite these changes, we still believe the Planning Commission can improve upon the current draft Ordinance. Thus, in anticipation of the August 14, 2024 hearing, we provide the following points we hope can be addressed by the Commissioners during the hearing.

Currently, the State Legislature is considering an amendment to SB 9, via SB 450, that would clarify that a local agency ***may not impose more restrictive standards*** on an SB 9 project that are more restrictive than the "applicable standards within the underlying zone." The County's draft ordinance imposes a 1,200 square foot maximum restriction on all SB 9 projects. In doing so, the County fails to consider the existing development standards for underlying parcels. If adopted, the draft ordinance would greatly restrict the allowable square footage for SB 9 projects on nearly every parcel in the County. In its August 2, 2024 Staff Report ("Staff Report"), County staff states that it considered aligning the draft Ordinance with SB 450 but said it would be "inappropriate to include legislation that has not passed." (Staff Report, at pp. 8-9.) However, considering both the relative imminence of SB 450's potential passage and the

practical impediments that the 1,200 square foot limitation would pose, we ask the County to remove this unnecessary limitation.

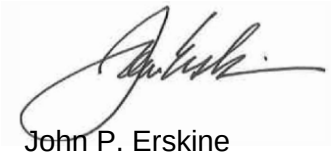
If SB 450 is passed in September 2024, as anticipated, and signed into law, it would likely go into effect in January 2025. Once in effect, any local regulations inconsistent with the clear language of the State law would be void and unenforceable. (See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) As a result, the County's Ordinance (if passed as proposed) may be considered invalid just a few short months after it is adopted. Instead of unnecessarily redoing its efforts at a later date, we encourage the County is simply consider SB 450 now.

The County Staff's reasoning for this square footage restriction appears to be its desire to address its shortage of "missing middle" housing types; however, this is already adequately addressed by the County's floor-area ratio requirements. The County staff states in its Staff Report that it desires the Ordinance to create "missing middle" housing, which "have densities between those of single-family homes and mid-rise apartments." (Staff Report, at p. 2.) However, a 1,200 square foot limitation is even more restrictive than many mid-rise projects. As drafted, the Ordinances does not properly strike the "missing-middle" balance County staff seeks.

In addition, SB 9 applications, while an important tool in the County's ability to increase housing supply, only represent a fraction of its total housing development applications. The County staff recognizes this fact in its Staff Report when it stated "Staff predicts the uptake [in SB 9 applications] will be limited because homeowners already have many of the same rights under ADU law." (County Staff Report, at p. 2.) To impose an overly burdensome, impractical square-foot limitation on a narrow and limited portion of the County's potential future housing stock would be inconsistent with SB 9's purposes and preclude the bill from serving its purpose in the County.

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,



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