Late Mail 2
Item 9

Donovan Arteaga

From: Cove Britton <cove@matsonbritton.com>
Sent: Tuesday, July 22, 2025 11:43 AM
To: Donovan Arteaga; Jerry Busch
Subject: apn: 043-152-54 625 Beach Drive

Follow Up Flag: Follow up
Flag Status: Flagged

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

Hearing Date: 7/23/25

Dear Commissioners,

THE DOCUMENTED FACTS

1. California Coastal Commission Local Coastal Program Update Guide (2020):
"The Commission discourages policies that impose 'no development' or 'zero density' designations based solely on landform (e.g., bluff, flood zone, or beach), absent site-specific study."

2.. Coastal Act Requires Site-Specific Findings, Not Blanket Categories
The Coastal Act and LCPs allow local governments to:

- Deny development *if* there is an **unmitigable, site-specific safety hazard**;
- But **not** to create **de facto zoning exclusions**.

3. SB 9 applies in the Coastal Zone — LCP rules and County codes are valid *only insofar as they are consistent with both the Coastal Act and SB 9's limits on exclusionary zoning*.

SIMPLY PUT, THE FACT THAT THIS PROPOSED HOME IS SURROUNDED BY EXISTING HOMES, AND THAT HOMES CONTINUE TO BE BUILT HERE INDICATES THAT THIS PROJECT SHOULD BE APPROVED.

- **The proposed project site specific hazards have been mitigated and is similar in all substantive ways to adjacent homes that have been built to current code. Thus under the Coastal Act and SB9 the project SHOULD BE APPROVED.**

✅ **4. The Planning Commission has been Given Incomplete and Misleading Information**

- Staff **did not disclose the 2020 CCC guidance** to the Planning Commission;
- Staff **misrepresented LCP Policy 6.2.17** as prohibiting any "new building site," while omitting that Policy 6.2.15 explicitly allows development on **existing lots of record**;
- Staff **withheld relevant definitions and policy interpretations**, including those which support project eligibility under County code or SB 9.
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THE QUESTION IS WHY?

THERE IS NO PUBLIC BENEFIT.

THERE IS NO PUBLIC HEALTH AND SAFETY RISK

YET STAFF IS LIMITING HOUSING OPPORTUNITIES FOR LOGICAL REASON

Thank you for the Planning Commission's consideration.

--
Cove Britton
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Refer To File # 504802-0001

VIA E-MAIL

July 22, 2025

Chair Barton and Planning Commissioners
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: **Applicants' Response to Staff Report to Planning Commission – Planning Department's Recommended Denial of Application No. 241334, APN 043-152-54; Applicant: Cove Britton; Owner: Kevin and Sandy Huber**

Dear Chair Barton and Planning Commissioners:

Our firm represents the owners of the existing beachfront lot located at 625 Beach Drive (Rio Sand & Surf Community) in the County of Santa Cruz ("County") (APN 043-152-54), Kevin and Sandy Huber ("Owner"), and architect/applicant, Cove Britton (collectively, "Appellant") are appealing Planning Staff and the Zoning Administrator's recommended denial of a single-family home and accessory dwelling unit ("ADU") being processed pursuant to Senate Bill 9 ("SB 9") on the Owner's previously subdivided beachfront lot ("Project"). This letter responds to the County's July 14, 2025 staff report regarding this appeal and incorporates by reference all comments highlighted in Appellant's prior appeal letter of June 10, 2025.

This appeal is directed to the County Planning Commission, who may "either deny the application, approve the application, or approve the application with modifications, subject to such conditions as it deems advisable." (County Code, § 18.10.330, subd. (D).) Because County Staff's recommended denial of the appeal is unsupported by the record and arbitrary and capricious, Appellant requests that the Planning Commission approve the application with any appropriate conditions and/or modifications, consistent with the facts and law set forth herein.

I. The Project Has Sufficient Developable Area to Meet the County's Density Requirement.

The County improperly states that Appellant does not challenge the application of the County Code provisions excluding "coastal bluff" areas from density, lot coverage, and floor area calculations and that Appellant only challenges the interpretations of "beach" and "coastal bluff." That is false. Appellant challenges both (a) the unreasonable and unequal application of County Code sections 13.10.323(B)(1) and 13.10.700-D; and (b) the County's arbitrary determination that a residential infill bluff constitutes "beach" or "coastal bluff"—rather than a pre-Coastal Act beachfront lot—and is therefore prohibited from development.

Throughout this process, Appellant has repeatedly asserted objections to the County's unequal and arbitrary exclusion of the Appellant's entire property from having any developable site area on his existing lot of record. This is especially true because the County has a history of approving other single family homes along Beach Drive that are similarly situated to Appellant's property (see, e.g., APN 043-095-14 [2021 approval for 3-story, 2,600 sq/ft, single-family home with non-habitable garage]; APN 043-152-27 [approval of 2-story 4,728 sq/ft single-family home on beach side of Beach Drive]; APN 043-095-38 [2019 approval of 3-story single family home]; APN 043-152-71 [2017 approval of 3-story single-family home].)

County Staff states it has a longstanding practice of considering the area seaward of the bluff above Beach Drive as "beach"; however, this ignores that the Project site is immediately adjacent to and surrounded by a long line of over 30 existing homes. To ignore the Project site's existing conditions and label the site "beach" or "coastal bluff" is to arbitrarily ignore the existing conditions and the obvious fact that this is not a "new site." (See *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 930 ["An agency's interpretation of a regulation or statute does not control if an alternative reading is compelled by the plain reading of the provision."].)

Further, even if the Planning Commission upholds County Staff's erroneous exclusion of developable area from Appellant's parcel, a variance would be the appropriate way to address this issue. County Staff wrongly states that the "residential density limitation is not subject to a variance . . . because density is not classified as a site or structural standard." (County Staff Report, at p. 5.) Such an assertion is contrary to the plain language of the County's Zoning Code. The Zoning Code defines a variance as "a discretionary authorization of the exceptions to the zoning district site and ***development standards*** for the property." (County Code, § 13.10.230, subd. (A) [emphasis added].) The Zoning Code provision governing site area for dwelling units is County Code, section 13,10.323, titled "***Development standards*** in residential districts." (*Id.* § 13.10.323, subd. (B).)[1] Thus, if necessary, the County could lawfully grant a variance for the Project's applicable site area.

II. The Project Site Is Not Considered a "New Building Site" Under the County Local Coastal Program.

County Staff contends that the County Local Coastal Program ("LCP") prohibits development of "new building sites" in areas subject to coastal hazards. First, Appellant disagrees with County Staff's unreasonable position that Appellant's pre-Coastal, existing, residentially zoned lot is considered a "***new*** building site." Appellant's property is an infill parcel located within an existing residential neighborhood and is clearly an "***existing*** building site," not subject to the LCP's broad exclusion.

Instead, for existing building sites, the LCP states that the County should "[a]llow development activities in areas subject to storm inundation or beach or bluff erosion on ***existing lots of record***, within ***existing developed neighborhoods***," where the project can demonstrate adequate hazard mitigation. (County LCP, § 6.2.15 [emphasis added].) Further, County LCP section 6.4.3 states that the County shall "[a]llow development in areas immediately adjacent to costal bluffs and beaches" if the Project demonstrates adequate mitigation from any hazards. Here, the Project is raised to comply with FEMA flood mitigation

[1] The variance to the County's density limitation would also directly address the County Staff's concerns over the Project's alleged inconsistency with General Plan Policy 6.2.18.1.

standards and thus demonstrates the necessary mitigation to find LCP consistency with this Project.

In the event the Planning Commission upholds County Staff's interpretation that ***no*** new development can occur on Appellant's property surrounded by single-family homes, Appellant is concerned that such an interpretation results in a blatant example of discriminatory land use legislation. (*Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 960.)

III. County Staff Has Mistakenly Identified the Project's "Storage" Area as a "Garage."

County Staff appears to mistakenly identify the portion of the Project labeled "storage" as a garage. In reality, the only part of the Project designed for vehicular parking are the off-street parking spaces that are partially tucked-under the raised ADU. As County Staff states, the tucked-under carports provide "sufficient area to provide the [Project's] required parking." (County Staff Report, at p. 8.) The County Code states that a "garage" is defined as "a non-habitable accessory structure or a portion of a main structure, having a permanent roof, and ***designed for the storage of motor vehicles*** . . . ." (County Code, § 13.10.700 [emphasis added].) The mere fact that a storage area is large enough to fit a car does not make it a "garage". Further, Appellant has previously agreed during dialogue with County Staff that the area labeled as "storage" in the Project plans can be unfinished to comply with the County's underfloor requirements. (See Applicant Appeal Letter, at p. 6.) Thus, contrary to County Staff's position, the floor in the storage area is not designed for vehicle storage and thus does not qualify as a garage.

IV. Additional Issues Addressed from County's Staff Report.

In addition to the larger issues with County's Staff Report above, Appellant briefly addresses and dispels the County Staff's remaining issues.

A. <u>The Project's Underfloor Does Not Contain a Garage.</u>

Appellant agrees with County Staff's position that the County Code permits underfloor areas to be used for storage but not garages. (County Code, § 13.10.700 [defining "underfloor" as a space that "may be used for storage but cannot have a finished floor, insulation, or a conditioned space"].) As stated above in Section III, the Project's storage area will be unfinished and is ***not*** designed for vehicular storage. The mere fact that the height of the storage area matches the tucked-under parking area does not mean it is a "garage" as County Staff contends.

B. <u>County Staff's Requirements for a CUP for the Project's Height Have Been Inconsistent</u>.

In County Staff's February 26, 2025 letter to Appellant addressing the Project application's completeness determination, Staff stated that the Project would be permitted to achieve a height of 22 feet with conditional use permit ("CUP") approval. (Incompleteness Letter, at p. 4.) In order to comply with this requirement, Appellant agreed to limit the Project height to 22 feet and obtain a CUP. (Applicant Appeal Letter, at p. 6.)

C. The Project Has Adequate Floor-Area.

As discussed in Section I above, the Project site does not fall within the meaning of "beach" or "coastal bluff" and therefore, has sufficient floor-area-ratio to meet the County's requirements.

D. The Applicable Version of SB 9.

The California Coastal Commission submitted comments on the Project and largely stated that the Project would be inconsistent with the County's proposed SB 9 implementing ordinance, which as of the date of this hearing, is not in effect. As County Staff confirms in its letter, Appellant locked in the standards governing its project via Senate Bill 330, and thus, the County's SB 9 implementing ordinance does not apply to the Project.

E. The County Is Required to Base Denial on "Specific, Adverse Impacts."

SB 9 requires the local agency to base its denial of a project on a finding that a project would have a "specific, adverse impact . . . upon public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact." (Gov. Code, § 65852.21, subd. (d).) Here, the County Staff Report contains no reference to any findings related to the Project's public health and safety impacts, and thus, the denial is improper.

V. Conclusion.

Contrary to County Staff's contentions, Appellant does not contend that it should be able to "construct an unlimited number" of dwelling units on the Project site, but that it should be able to develop its property in a manner substantially similar to the properties surrounding it. Appellant does not believe the County Staff's recommended denial is supported by the record before this Planning Commission. Therefore, Appellant requests that the Planning Commission approve the application, or otherwise approve the application with appropriate conditions and/or modifications.

Thank you very much for your review and consideration of our appeal.

Sincerely,

John J. Erskine
Nossaman LLP

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