

Donovan Arteaga

From: Matt Baldzikowski <mjbski1@icloud.com>
Sent: Sunday, October 19, 2025 9:53 PM
To: s.pavonetti@gmail.com; jessenickell3art@gmail.com; Trina Barton; yeseniajduan@gmail.com; renee@reneeSGarden.com; Donovan Arteaga; Jonathan DiSalvo
Subject: Planning Commission Hearing 10/22/2025, Application# 241371, Agenda Item #9
Follow Up Flag: Follow up
Flag Status: Flagged

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RE: Application #241371, Agenda Item #9, 841 Capitola Road, APN 026-491-40
Applicant: Clay Toombs for Workbench

Planning Commissioners,

I urge the Planning Commission to deny this application. I am a 40 year resident of Live Oak, and for over 30 years have resided on Jose Ave. The proposed project is an abomination, so out of character for the Live Oak area, particularly the surrounding neighborhoods of single family one and two story residences. This is evident from the aerial photo in the application packet that shows areas of similar size to the east and west of the proposed project with 5 to 8 single family residences.

The proposed project has aggressively used recent State legislation, and the County's pending Certified Housing Element at the time of application, to propose a project that simply maximizes profit at the expense of the existing community. Was it the State's intent to have excessive incompatible projects like this forced on communities?

The project proposals have dramatically grown since the initial application, outgrowing the project site. The 4 affordable units (out of 57 units) are being leveraged to add the fourth and fifth floors on to the proposed project. These would be the floors with the ocean and surrounding area views that would tower above the surrounding existing residences. The County should do everything possible to deny these obvious excesses shrouded in providing affordable housing.

I have reviewed the proposed project and staff report and offer the following comments.

I disagree with how the consistency with the County Zoning Ordinance, land use designations, and General Plan are discussed in the staff report and related Findings. While there is an acknowledgement that the proposed project is not consistent with County regulations, it references the recent State regulations and the timely pending certification of the County Housing Element to override County regulations. It then concludes consistency. This does not make the project consistent with County regulations. It should be clearly stated that the project is not consistent, period. Not even close. The significant discrepancies should be highlighted.

The proposed project has pushed the limits so far that it also would require multiple waivers; for building height/ number of stories, vehicle parking, setbacks, maintaining existing large trees. Again, these waiver requests are not for minor deviations. The height/stories waiver would allow adding the top two floors of a five story building where only two or three stories would ordinarily be allowed. The parking waiver would allow only 40% of what would be required. The Setback waiver would allow reductions to accommodate five stories of balconies 10 feet from the property lines

above an existing one-story residential Planned Unit Development on Katrina Court. And a waiver from retaining large trees on site would allow the removal of all existing mature trees from the site.

The County should deny the requested waivers for this project.

The staff report and numerous findings discuss how meeting many requirements are infeasible because of the proposed prefabricated modular construction proposed. So What! Can anyone justify and get approval for an excessive building proposal because of a choice they make on construction method? This is just bad precedent.

The Staff report states that granting these waivers is appropriate given the project site is constrained in size relative to the number of multifamily units proposed. This is backwards and should be a red flag. The waivers requested are only necessary because the developers have proposed a project which is grossly excessive given the project site, and is incompatible with the surrounding community.

I ask that the Planning Commissioner's look up at the height of the four story County building on their way in to work, and ponder whether a five story 57 unit residential building belongs in this Live Oak neighborhood.

I urge the Planning Commission to deny this application.

Sincerely,

Matt Baldzikowski

Donovan Arteaga

From: Jonathan DiSalvo
Sent: Monday, October 20, 2025 1:29 PM
To: Donovan Arteaga
Cc: Sheila McDaniel
Subject: FW: 10/22 Planning Commission hearing for 241371 / 841 Capitola - Resident providing comment

Attachments: 20251022 Planning Commission, 841 capitola road - Mike Reis comments and concerns (reference).pdf; 20251022 Planning Commission, 841 capitola road - Mike Reis comments and concerns.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please see public correspondence below and attached for Application No. 241371 for the 10/22/25 PC hearing.

Thank you,



Jonathan DiSalvo

Senior Planner
Community Development & Infrastructure

Phone: 831-454-3157
701 Ocean Street, Room 400



From: Mike Reis <reismj88@gmail.com>
Sent: Monday, October 20, 2025 12:56 PM
To: shane pavonetti <s.pavonetti@gmail.com>; Luke Rizzuto <rizcon@earthlink.net>; Jonathan DiSalvo <Jonathan.DiSalvo@santacruzcountyca.gov>; Matt Machado <Matt.Machado@santacruzcountyca.gov>; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; jessenickell3art@gmail.com; janerbarr@aol.com; Trina Barton <Trina.Barton@santacruzcountyca.gov>; Sandy Brown <Sandy.Brown@santacruzcountyca.gov>; yeseniajduan@gmail.com; kami@davidlyng.com; renee@reneesgarden.com; jagomez173@gmail.com; Jamie Sehorn <Jamie.Sehorn@santacruzcountyca.gov>
Subject: 10/22 Planning Commission hearing for 241371 / 841 Capitola - Resident providing comment

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Hello members of the Planning Commission and Planning Department,

My name is Mike Reis, I live on Grey Seal Road, and I am one of several residents surrounding 841 Capitola road that are concerned with Workbench's 5-story, 57 unit apartment building; this application will be heard on Wednesday 10/22.

The following concerns and talking points will be reiterated during the hearing, but I wanted to provide them ahead of time to be put on the record for reference. I've added everyone that I believe I needed to in order to provide my official comments on the record, but I apologize if anyone is on here by mistake. I've also attached two PDFs - one with the text below, and one with references (images, law citations, measurements) to support.

In short, our concerns can be summarized as follows:

- Traffic, specifically on Grey Seal road - Workbench's proposal uses our safe, kid-friendly, cul de sac (Grey Seal Road) as the main driveway for all 57 unit's worth of traffic (residents, deliveries, guests, etc.). To their credit, Workbench signaled support for our request to move the planned emergency vehicle bollards from their existing location on Capitola Road to our shared property border (at the end of our cul de sac); this is indicated in the minutes from our April community meeting. Workbench (and a representative from Supervisor Koenig's office) informed us that an existing County General Plan policy *discourages* (but not prohibits?) adding more entrances onto main / arterial roads
 - From a traffic perspective, making a left turn onto Grey Seal Road can be challenging given the conditions just after the traffic light (2-1 lane merge, allowable turn lane space, oncoming traffic) - requiring an additional 57 unit's worth of traffic to queue up for that turn will exacerbate the situation. The distance between Grey Seal Road and the entrance for 841 Capitola Road will be more than 100 feet apart (> 1730 Grey Seal lot size), which will allow for their residents to queue outside of the flow of traffic
 - Especially without permit parking, and given the number of provided spaces, there will likely be an additional (significant) amount of unnecessary traffic on Grey Seal as the development's residents enter (and then turn around and leave) as they look for parking
 - The Capitola road entrance should be the main entrance given the property's address (841 **Capitola Road**)
 - Grey Seal Road is currently a dead-end (no through traffic), which is very different from other "side streets" that have through traffic and more street connections (such as Thurber lane, re: the Anton Solana development)
 - For developments with access to these more relevant "side streets", moving the main entrance to those side street has a significantly different impact on the neighborhood at large as compared to this development
- Parking (or lack thereof) - Workbench is only providing 31 spaces for their 57 units. There is nowhere near enough street parking to support the demand that their development will create. Existing (and planned) transit options are insufficient to justify any assumptions related to their resident's lack of vehicle ownership
 - State Density Bonus Law caps the maximum number of spaces at 65 - the property is not eligible for the reduced maximums set in 65915p2 as there are no major transit stops within one-half mile
 - Street parking is extremely limited already on Capitola and 7th, as that real estate is taken up by bike lanes

- Privacy - Workbench's 5-story building will have balconies on every floor from the second up with no meaningful obstructions in the way.
 - The trees they're planning to put in between their 60 foot building and its perimeter fence, when mature, will be at best 30 feet tall. For us, and our neighbors, that means that we will have virtually zero privacy both inside and outside our homes
 - Given the size of their proposed building compared to the surrounding neighborhood, this concern cuts both ways - their apartments will be plainly visible to every surrounding property in the area
 - At 5-stories tall, it will likely be the tallest *structure* in Live Oak, let alone the mostly-residential area that it's being placed in
- Given the net negative impact on the quality of life for the residents of Grey Seal Road (construction, privacy, parking, traffic, kid's safety), we are requesting that the Planning Commission condition approval of the development with a revision to the location of the bollards in order to preserve Grey Seal Road's status as a vehicle dead end; this would go a **long** way in meaningfully helping the residents on Grey Seal Road. We believe that this request is reasonable and would expect Workbench to agree

Thank you for your time - I look forward to discussing this on Wednesday.

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Michael Reis

(e) reismj88@gmail.com

Hello, my name is Mike Reis - I live on Grey Seal road. I would like to summarize the impact that Workbench's proposal will have on our safe, kid-friendly, cul de sac.

- Traffic, specifically on Grey Seal road - Workbench's proposal uses our safe, kid-friendly, cul de sac (Grey Seal Road) as the main driveway for all 57 unit's worth of traffic (residents, deliveries, guests, etc.). To their credit, Workbench signaled support for our request to move the planned emergency vehicle bollards from their existing location on Capitola Road to our shared property border (at the end of our cul de sac); this is indicated in the minutes from our April community meeting. Workbench (and a representative from Supervisor Koenig's office) informed us that an existing County General Plan policy *discourages* (but not prohibits?) adding more entrances onto main / arterial roads
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Traffic / Bollards

80 feet from absolute start of shared turning lane to Grey Seal Road, after stop light

220 feet from absolute start of shared turning lane to 841 Capitola road entrance, after stop light

841 Capitola entrance would be **more than 100ft** from Grey Seal Road (minimum, as dictated by 1730 Grey Seal Road lot size)



Traffic / Bollards

Anton Solana project

Main entrance

Thurber lane is a more relevant “side street” as it already has through-traffic and is connected to other side streets

Emergency access



Traffic / Bollards

841 Capitola Road

Grey Seal is a dead end - less relevant as a "side street"

Requested bollard location

Planned bollard location



Parking

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of parking for persons with a disability and guests, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(D) One bedspace in a student housing development: zero parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low-income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a parking ratio that exceeds 0.5 spaces per unit. Notwithstanding paragraph (1), if a development includes at least 40 percent moderate-income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, is the major transit stop from the development then, upon the request of the developer, a city, county, or city and county shall not impose a parking ratio that exceeds 0.5 spaces per bedroom.

(B) For purposes of this subdivision, "unobstructed access to the major transit stop" means a resident is able to access the major transit stop from the development, and "natural or constructed impediments" includes, but is not limited to, freeways, rivers, mountains, and bodies of water.

(3) Notwithstanding paragraph (1), if a development meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b), then, upon the request of the developer, a city, county, or city and county shall not impose a parking ratio that exceeds the following criteria:

(A) The development is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop.

(B) The development is a for-rent housing development for individuals who are 55 years of age or older that complies with Sections 50675.14 and 50675.15 of the Health and Safety Code, and provides unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) The development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

65915 (State Density Bonus Law) sets a maximum number of spaces that can be required (65915p1)

If the property is within one half-mile of a "major transit stop", that maximum requirement is reduced (65915p2). This is not applicable to 841 Capitola

Parking

There are three main CA State references to “major transit stop”:

- 21064.3 (major transit stop)
- 21060.2 (bus rapid transit)
- 21155 (major transit stop, but also included in the applicable regional transportation plan)

A “major transit stop” can either be a “bus rapid transit station” (21064.3(a)) or an intersection of two major bus routes with a frequency of 20 min or less (21064.3(c)). A “bus rapid transit station” is defined in 21060.2(a).

Bus route 3A and 3B have a frequency of > 20min.

- 3A / 3B, Mon - Fri inbound / outbound: 60min
- 3A / 3B, Saturday - Sunday inbound / outbound: 60min

Bus route 2 has a frequency of 20min

Bus route 1 has a frequency of 20min

“Bus rapid transit station” means a clearly defined bus station served by a bus rapid transit. 21060.2(a) requires all of its criteria be met to count as a “bus rapid transit station”:

- 21060.2(a)(1) requires a frequency of less than 15 min *and* a dedicated transit lane
 - Technical guidance for AB2097 suggests that this requirement needs to be met **at** the qualifying BRT stop (having sections of a route that meet this does not count)
- 21060.2(a)(2) is signal priority for intersections
- 21060.2(a)(3) through (5) are met by bus stops along route 1 and 2

“Public transit” (from 65863.2) “means a major transit stop as defined in Section 21155”. Given it’s specifically referencing how a “major transit stop” is defined in 21155 (and not “high-quality transit corridor”), this then directs to 21064.3 but also any qualifying stops included in the regional transportation plan (future major transit stops)

No individual bus route meets the requirements from 21064.3a or 21060.2.

The nearest intersection of bus routes 1 and 2 (Soquel and Park Way) is >0.5mi (through the air) and >0.6mi (walking)

2024 California Code Public Resources Code - PRC DIVISION 13 - ENVIRONMENTAL QUALITY CHAPTER 4.2 - Implementation of the Sustainable Communities Strategy Section 21155.

Universal Citation: CA Pub Res Code § 21155 (2024) ?

Next >

21155. (a) This chapter applies only to a transit priority project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(b) For purposes of this chapter, a transit priority project shall (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75; (2) provide a minimum net density of at least 20 dwelling units per acre; and (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

CA 21155 does not equate “major transit stop” with “high quality transit corridor”. The only extension to the definition of “major transit stop” is that “ it also includes major transit stops that are included in the applicable regional transportation plan”

Parking

All transit stops with 20 minute service (route 1, 2) are > 0.5mi away

841 Capitola Rd, Santa Cruz, CA 95062

Soquel Ave & La Fonda Ave, Santa Cruz, CA

Add destination

Options

Send directions to iPhone Copy link

via Capitola Road Extension	12 min	0.6 mile
Details	Preview	
via Capitola Rd	13 min	0.6 mile

All routes are mostly flat

841 Capitola Rd, Santa Cruz, CA 95062

Soquel Ave & Park Way, Santa Cruz, CA

Add destination

Options

Send directions to iPhone Copy link

via Capitola Rd	13 min	0.6 mile
Details	Preview	

Mostly flat

841 Capitola Rd, Santa Cruz, CA 95062

Add destination

Options

Send directions to iPhone Copy link

via 7th Ave	13 min	0.6 mile
Details	Preview	
via 7th Ave and Jose Ave	14 min	0.7 mile
via Soquel Ave and Capitola Road Extension	15 min	0.7 mile

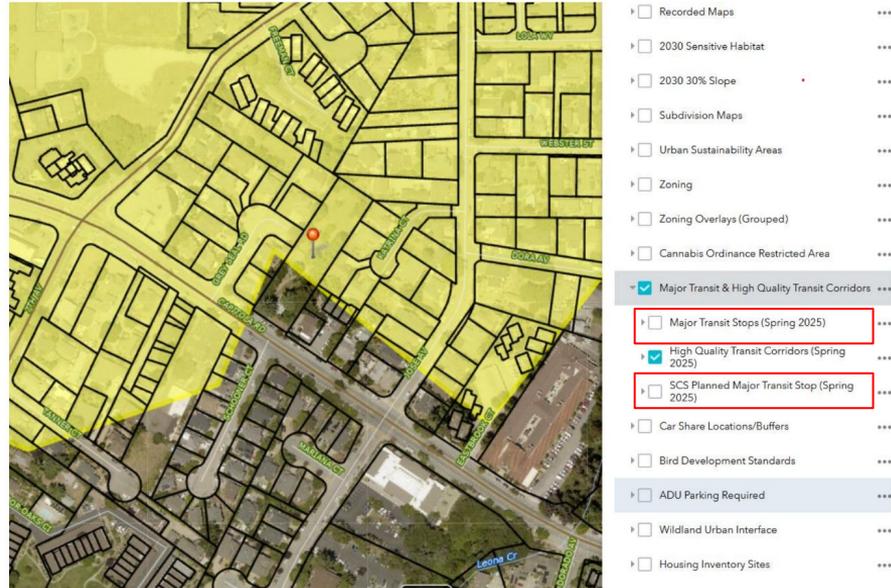
Parking



From the extreme corner of 844 Capitola road to the extreme corner of the nearest "major transit stop" is ~26xx feet (> 0.5mi)

Parking

Figure 1: Subject Site is located within the 1/2-mile walkshed of a high quality transit corridor. (Map from City of Santa Cruz GIS, because County GIS does not include the relevant data layer.)



Workbench application, page 28 / 72,
LTR_241371_v4

Site Check considered the following requirements:

Transit Proximity

Any of the following:

Note, a project is considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area

Check Report - May 8, 2025

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farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor. (See PRC § 21155.)

Existing Major Transit Stop

Within ½ mile of an existing Major Transit Stop as defined in PRC § 21064.3:

"Major transit stop" means a site containing any of the following:

- An existing rail or bus rapid transit station.
- A ferry terminal served by either a bus or rail transit service.
- 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.
- "Bus rapid transit" is defined in PRC § 21060.2.

Planned Major Transit Stop

Within ½ mile of a planned Major Transit Stop as defined in PRC § 21064.3 that is included in the applicable Regional Transportation Plan.

Existing High-Quality Transit Corridor

Within ½ mile of an existing High-Quality Transit Corridor:

A high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

Donovan Arteaga

From: R Gerbs <riley.gerbrandt@gmail.com>
Sent: Monday, October 20, 2025 11:46 PM
To: shane pavonetti; jessenickell3art@gmail.com; Luke Rizzuto; Donovan Arteaga; Trina Barton; kami@davidlyng.com; janerbarr@aol.com; Sandy Brown; yeseniajduan@gmail.com; renee@reneesgarden.com; jagomez173@gmail.com
Cc: Jonathan DiSalvo; Matt Machado; Manu Koenig; Jamie Sehorn; Mike Reis; Oppose Capitola
Subject: 10/22 Planning Commission hearing for 241371 / 841 Capitola - Resident #2 providing comment
Attachments: 841_Capitola_Exhibit_List.pdf; 841_Capitola_Road_Planning_Commission_Letter_Riley_Gerbrandt.pdf
Follow Up Flag: Follow up
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Hello members of the Planning Commission and Planning Department,

I am writing - just like Mike Reis - on Item 241371 of the 10/22 Planning Commission hearing, providing information upon which you should deny the Application as submitted.

I own the property adjacent to 841 Capitola Road. As a directly impacted person and a licensed professional engineer, I am writing to urge the Planning Commission to **deny the 841 Capitola Road application as submitted—or at minimum continue the item** until the County can verify the project's legal status and require compliance with its own objective standards.

The record demonstrates that this project's claimed "Builder's Remedy" status is **legally defective**, that **critical procedural requirements were not met**, and that **specific adverse impacts** remain unresolved under both State and County law.

Additionally, the County Counsel's office was notified months ago of potential statutory and procedural violations in this application, but issued no written opinion. **This omission leaves the County legally exposed** and **undermines the Commission's ability to rely on the staff recommendation** as properly vetted.

1. Application Status and Builder's Remedy Eligibility

1. The developer filed an **SB 330 preliminary application in April 2024**, identifying the project itself as a **Builder’s Remedy** project claiming to submit the application while the Housing Element was uncertified.
2. Because the application was *already* filed as a Builder’s Remedy project, it **cannot “convert” to a Builder’s Remedy project again** under **AB 1893**. That statute allows *non-BR* projects, deemed complete before 1 January 2025, to opt in to Builder’s Remedy 2.0; it does **not** authorize an existing BR project to re-characterize itself post-1/1/25.
3. The applicant more than **doubled the project size—from 28 to 57 units**—a >100 percent increase that far exceeds the 20 percent change permitted by Gov. Code § 65589.5(o)(E). Under State law, such an expansion **terminates the prior vesting** and requires a **new SB 330 preliminary application**. Because any new filing would occur after HCD certified the County’s Housing Element (on Feb 14 2025), the project must now comply with **current zoning and objective standards**.
4. The project therefore **cannot lawfully claim Builder’s Remedy protection** for the expanded 57-unit scheme.
5. **Timing of the April 2024 SB 330 Preliminary Application.** Moreover, the applicant’s SB 330 preliminary application, received in April 2024, was submitted too late to qualify for Builder’s Remedy protections. By that date, both the California Department of Housing and Community Development (HCD) and the County had already determined that Santa Cruz County’s Housing Element met State law.
 - In February 2024, HCD staff formally notified County planners that the Housing Element was in compliance with State Housing Element Law (Gov. Code §65585).
 - In March 2024, County staff internally documented that the Housing Element was complete and compliant, awaiting only HCD’s ministerial certification letter.
 - HCD’s April 12 2024 letter merely confirmed that earlier determination—it did not create compliance status.

At that time, State law did not *require* HCD certification for a Housing Element to take effect; jurisdictions could self-certify compliance once the document met statutory content requirements. (See former Gov. Code §65585(f) [as in effect before AB 434 (2024) amended the process].) Accordingly, the County’s Housing Element was already in effect before April 2024.

Because the Housing Element was operative when the applicant filed its SB 330 preliminary application, the County was no longer out of compliance, and the applicant could not lawfully invoke Builder’s Remedy provisions under Gov. Code §65589.5(d)(5). **The project therefore lacks a valid statutory basis for any Builder’s Remedy claim.**

(Supporting Exhibits A–C: SB 330 Pre-Application, County–HCD correspondence confirming certification date, and applicant statements citing AB 1893 conversion.)

2. Incomplete Application and Procedural Irregularities

1. The County’s **Letter of Incompleteness (1 Nov 2024)** gave the applicant until **30 Jan 2025** to submit *all required materials* under Gov. Code § 65941.1(d)(2). Failure to do so renders the application abandoned.

2. The County’s own **PLG-130 form** required that once signed on 1/30/25, the applicant wait until the following Monday (2/2/25) for an upload appointment. Instead, staff **accepted uploads on 1/30/25 in direct violation of that form**. Soon after, the County **replaced the form** with a new version that omits the waiting-period language. No written justification or extension agreement exists.
3. This departure from the County’s published procedure constitutes a **material procedural defect** and deprived the public of a lawful review window. Under State law, the application should have been **deemed expired** as of 1/30/25.

(Exhibit D: PLG-130 form showing original language and email record of upload acceptance.)

3. Non-Qualifying October 2024 Submission

The October 2024 resubmittal, purportedly within the SB 330 window, did not meet the statutory definition of a “housing development project” for Builder’s Remedy purposes. It included only four affordable units (≈14%) and mixed affordability tiers, falling short of the ≥20% lower-income requirement in Gov. Code § 65589.5(d)(5). That submittal cannot vest Builder’s Remedy rights and should have been processed under ordinary objective standards.

- The **October 3, 2024** filing did **not** meet HAA/BR eligibility at that time because it failed the affordability composition required for a project to be “for very low, low-, or moderate-income households.”
- Result: the project **was not** entitled to displace local zoning/GP standards via BR as of Oct 2024; it should have been processed under ordinary **objective standards**.

(Exhibit E: Applicant’s October 2024 project summary and affordability table.)

4. Objective-Standard Conflicts and Unresolved Health and Safety Impacts

Even aside from the procedural defects, the June 20 2025 “Letter of Completeness” and attached reviews document multiple unresolved violations of objective County standards:

- **Fire flow deficiency** (1,500 gpm × 120 min not demonstrated) and bollard/access non-compliance — California Fire Code Appendix B.
- **Stormwater and freeboard violations** — Design Criteria Part 3, §J.7; “bubble-up” drainage rejected by staff as non-compliant.
- **Tree preservation failure** — removal of all mature trees, contrary to SCCC §16.34.070(A).
- **Parking deficit** — project not within ½ mile of a major transit stop; §65915(p)(2) inapplicable. With 31 spaces for 57 units, it fails both State and County minimums. AMBAG confirms in an email dated 3/5/2025 that the only major transit stops in Santa Cruz County are within the City of Santa Cruz per the attached map. So, the developer would only be able to request onsite parking reductions consistent with Gov Code Section 65915(p)(1). *County may require higher parking ratios per Gov Code Section 65915(p)(7).*

- **CEQA status:** Environmental Planning confirmed no final determination has been made; the project cannot rely on §15061(b)(3) (common-sense exemption) where traffic, stormwater, and privacy impacts remain unmitigated.
- The applicant also failed to conduct the required community meeting consistent with Santa Cruz County Code § 18.10.210. This meeting occurred only after the project design was finalized, preventing meaningful public input as intended by law.

Each constitutes a “**specific, adverse impact upon public health and safety**” within the meaning of Gov. Code § 65589.5(d)(2), providing an independent basis for denial or conditioning.

(Exhibits F–H: County Completeness Packet, Fire District review, Drainage and Environmental comments.)

5. Record Integrity and Due Process Concerns

- Residents submitted hundreds of pages of written comments; the agenda packet contains only 33 pages. Staff should certify the administrative record is complete before any Commission action.
- Across many individual correspondences with County staff, concerned citizens in our group repeatedly requested written documentation of any time extension granted in January 2025; staff did not produce any documentation corroborating a granted time extension, only referring to it in past tense. County staff has not produced any written documentation of the purported January 2025 time extension. Absent a mutually executed agreement, the 90-day deadline controls.
- The record also shows that former Planning Commissioner Tim Gordin, the project’s principal developer, held a financial interest in the 841 Capitola Road property while serving on the Planning Commission. His Form 700 filings, including those filed while acquiring the property in question, appear incomplete and may not meet Political Reform Act disclosure standards, **raising significant appearance-of-bias concerns that must be addressed before proceeding.** This financial interest raises appearance-of-bias concerns and warrants heightened scrutiny for fairness and transparency.
- The applicant also failed to conduct the required community meeting consistent with Santa Cruz County Code § 18.10.210. This meeting occurred only after the project design was finalized, preventing meaningful public input as intended by law.

(Exhibit I: Email correspondence re missing public comments; Exhibit J: Form 700 disclosures.)

6. Traffic Concerns

- Repeated community requests for a traffic study were ignored by County staff.
- There is legal and procedural requirements for a traffic impact evaluation, particularly because of specific deficiencies and foreseeable safety impacts raised by the community and by County staff.
- Failure to analyze or disclose traffic impacts violates CEQA and County policy.

7. Requested Commission Action

For the reasons above, I respectfully request that the Commission:

1. **Deny** the application as submitted under Gov. Code § 65589.5(d)(2) for non-compliance with objective standards and for failing to qualify for Builder's Remedy status; or
2. **Continue the hearing** and direct staff to:
 - a. Produce the complete public record, including all public comments and correspondence received through October 2025;
 - b. Provide written clarification of any extension or procedural waivers granted to the applicant;
 - c. Require submission of a new SB 330 preliminary application reflecting the >20% project increase, processed under the County's certified Housing Element and current zoning standards;
 - d. Complete a full CEQA review addressing traffic, stormwater, tree removal, and neighborhood privacy impacts; and
 - e. Require a full traffic impact study (TIS) consistent with County Design Criteria Part 1, Section D, prepared by a licensed traffic engineer and reviewed by Public Works; release that study to the public for review at least 30 days prior to any future hearing; reopen the completeness determination pending inclusion of the TIS and any resulting design revisions; and reevaluate CEQA review in light of the likely significant impacts revealed by the required traffic analysis.

Absent such actions, any approval of the 841 Capitola Road project would constitute an abuse of discretion and a violation of CEQA's mandate for transparent, evidence-based decision-making.

Closing

Our community supports responsible infill housing, but the process must be lawful, transparent, and protective of public safety. The record shows this project fails those tests. The Commission has both the authority and the duty to insist on compliance with State and County Law.

Additionally, the County Counsel's office was notified months ago of potential statutory and procedural violations in this application but issued no written opinion. This omission leaves the County legally exposed and undermines the Commission's ability to rely on the staff recommendation as properly vetted.

See the attached list of Exhibits (to be provided later) to support our position, as well as **please find a detailed letter from me outlining in much more detail the elements summarized in this email.**

Thank you for your careful attention and for ensuring a fair process for all Live Oak and Santa Cruz County community members.

Respectfully,
Riley Gerbrandt

Comment Letter Regarding Agenda Item #9 – 841 Capitola Road (County Application #241371)

Santa Cruz County Planning Commission
701 Ocean Street, Room 400
Santa Cruz, CA 95060
Attention: Commissioners and Planning Director
CC: Supervisor Manu Koenig

Date: October 20, 2025

Subject: Opposition to Approval of Development Proposal – 841 Capitola Road (Application #241371)

Introduction and Purpose of this Letter

This letter is submitted for inclusion in the administrative record for the Santa Cruz County Planning Commission hearing scheduled for October 22, 2025, concerning Application #241371 (841 Capitola Road). As both an adjoining property owner and a licensed professional engineer, I respectfully request that the Planning Commission deny the application as submitted, or at minimum continue the item pending correction of numerous legal and procedural deficiencies.

The project, as submitted, fails to comply with multiple objective County standards, does not qualify for Builder's Remedy protections, and raises substantial public safety and procedural concerns under State and County law.

The County's own record confirms that the applicant's claimed "Builder's Remedy" status is legally defective, that the County departed from statutory and procedural requirements in processing the application, and that significant health, safety, and environmental impacts remain unresolved under both State and County law.

Approval of this project in its current form would undermine the rule of law, erode public confidence in the County's planning process, and expose the County to litigation risk under CEQA and the Housing Accountability Act (HAA).

Moreover, a former Planning Commissioner (Mr. Gordin) held a financial interest in the 841 Capitola Road project entity during his tenure. His Form 700s appear incomplete in identifying the exact holding entity and related income, and the County has not

demonstrated PRA-compliant recusal and disclosure under Gov. Code §§ 87100 et seq. and §§ 87200 et seq. This alone requires a process cure (Form 700 supplementation, FPPC/County Counsel conflict analysis, Levine Act declarations, and a clean administrative record) before any hearing proceeds. Combined with other anomalies (PLG-130 deviation; missing public comments), approval now would compromise due process and expose the County to avoidable legal risk (*see Section XI for detailed PRA/FPPC analysis*).

I. Application Status and Builder's Remedy Eligibility

The applicant filed an SB 330 preliminary application in April 2024, identifying the project as a Builder's Remedy project. However, this filing came too late to qualify for Builder's Remedy protections because, by that date, both the California Department of Housing and Community Development (HCD) and the County had already determined that Santa Cruz County's Housing Element was in compliance with State Housing Element Law.

- In February 2024, HCD staff formally notified County planners that the Housing Element was compliant with Government Code §65585.
- In March 2024, County staff internally documented that the Housing Element was complete and compliant, awaiting only HCD's ministerial certification letter.
- On April 12, 2024, HCD issued a letter confirming that compliance determination—but the letter did not create compliance; it merely confirmed what was already effective.

At that time, State law did not require HCD certification for a Housing Element to be in effect; counties could self-certify once the required elements were met (see former Gov. Code §65585(f)). Thus, Santa Cruz County's Housing Element was operative before April 2024, rendering the County in compliance and foreclosing any Builder's Remedy eligibility for applications submitted thereafter.

II. Material Project Expansion (>20%) Requires a New SB 330 Application

Even if the Commission were to assume that the April 2024 SB 330 preliminary application established vesting rights, those rights were extinguished when the applicant fundamentally altered the project by doubling its scale. The project increased from 28 units in the April 2024 submittal to 57 units in later versions—a change well beyond the 20 percent threshold that State law defines as a "material modification." (Gov. Code §65589.5(o)(5)(E)).

Once an SB 330 project is modified by more than 20 percent in density, floor area, or building footprint, it loses its vesting protections and must submit a new SB 330 preliminary application subject to the laws and objective standards in effect at the time of reapplication. Because the County's Housing Element was deemed to be in substantial

conformance with state law on February 14, 2025 and later certified by HCD on April 12, 2024, any new filing after that date must comply fully with local zoning, height, setback, and parking requirements.

Therefore, even if the April 2024 filing were valid, the applicant's later expansion of the project terminated that vesting. The current proposal must be processed as a new project under current standards.

III. The April 2024 SB 330 Submittal Was Already a Builder's Remedy Project and Cannot "Convert" Under AB 1893

The applicant submitted an SB 330 preliminary application on April 9, 2024, explicitly identifying the project as a Builder's Remedy project under Government Code §65589.5(d). At that time, the County's Housing Element was considered in substantial conformance with state law and requisite changes had been made by the County, but HCD had not yet issued its certification letter. That April 2024 submittal, therefore, established the project's Builder's Remedy status under the pre-AB 1893 framework.

When Assembly Bill 1893 took effect on January 1, 2025, it created a narrow opportunity for non-Builder's Remedy projects that had already been deemed complete under SB 330 to "convert" into Builder's Remedy projects. But this provision cannot apply to a project that already was a Builder's Remedy project. To permit such a conversion would effectively allow a developer to reset the statutory clock, obtain the benefits of Builder's Remedy twice, and avoid compliance with updated Housing Element and zoning standards—a result contrary to both the text and intent of the statute.

The project was *already* a Builder's Remedy filing under its April 2024 SB 330 submittal, and therefore could not 'convert' to Builder's Remedy status again. Further, the increase from 28 to 57 units—more than a 100% expansion—exceeds the 20% modification limit under Gov. Code §65589.5(o)(5)(E), requiring submission of a new SB 330 preliminary application under current development standards.

In short, the project at 841 Capitola Road was already a Builder's Remedy filing as of April 2024 and therefore cannot rely on AB 1893's conversion clause.

IV. Non-Qualifying October 2024 Submission

The applicant's October 2024 submittal—purportedly the "complete" SB 330 filing—did not qualify as a valid housing development project for Builder's Remedy purposes. It included only four affordable units (approximately 14 percent), divided among very low and extremely low income categories, which fails to meet the statutory threshold of 20 percent lower-income units or 100 percent moderate-income units required by Government Code §65589.5(d)(5).

Because the project failed to meet the affordability threshold, it did not constitute a qualifying housing development project eligible for Builder’s Remedy protections. It should have been processed under the County’s standard objective zoning and design requirements.

V. Incomplete Application and Procedural Irregularities

On November 1, 2024, the County issued a Letter of Incompleteness, requiring the applicant to submit all missing materials within 90 days, or by January 30, 2025, pursuant to Government Code §65941.1(d)(2). That statute provides that failure to submit all requested materials within the specified period results in the application being deemed abandoned.

The County’s own form, PLG-130 (Project Resubmittal Request), explicitly required applicants to wait until the following Monday after signing before scheduling an appointment to upload files. The applicant signed PLG-130 on January 30, 2025, which should have made February 2, 2025 the earliest permissible upload date. However, County staff permitted the applicant to upload all materials immediately on January 30, violating both the letter and the spirit of the County’s procedure.

Shortly thereafter, the County removed the original PLG-130 form from its website and replaced it with a version that omits the waiting-period requirement. **This sequence of events suggests the County retroactively altered its procedures to validate an otherwise expired application.** No written documentation of any formal time extension or waiver has been produced despite repeated public records requests.

This deviation from established procedure constitutes a material irregularity that undermines the validity of the application’s completeness determination. **The Commission should recognize that the application expired on January 30, 2025, and direct the applicant to refile under current standards.**

Under State law, the application should have been deemed expired as of January 30, 2025.

VI. Failure to Honor the Intent and Requirements of the Community Meeting Process

A. The community meeting requirement in the Santa Cruz County Code

Santa Cruz County Code § 18.10.210(A) establishes the County’s requirement for a community meeting prior to acceptance of certain development applications, particularly those involving significant new housing or mixed-use projects. The Code expressly states that the purpose of such a meeting is to:

“Provide an early opportunity for members of the community to review and discuss a development proposal with the applicant and County staff, and to identify community concerns, questions, and suggestions so that the applicant may consider and incorporate revisions into the project design prior to formal submittal.”

This provision codifies a fundamental principle of the County’s planning philosophy: meaningful public participation early in the process—when input can still shape the outcome. The goal is not perfunctory compliance or a box-checking exercise; it is dialogue, transparency, and iterative improvement of proposed development to reflect the needs, constraints, and values of the community it will impact.

B. The timing and conduct of the applicant’s meeting violated the letter and intent of this requirement

Workbench Development, the applicant, disregarded both the letter and the spirit of this requirement. Instead of hosting the community meeting during the formative stage of project design, as the Code intends, they scheduled it after the project was already fully designed and submitted to the County.

At that point, major site planning, building massing, height, and access decisions had been made, architectural drawings completed, and financing structures likely committed. There was no realistic opportunity for the community’s input to be reflected in any meaningful way.

Furthermore, the meeting failed to achieve the interactive purpose contemplated by the Code. According to numerous residents who attended, the applicant did not engage with community questions, offered no substantive responses, and took no follow-up action to revise the design based on concerns raised. No revised plan set or written response to public feedback was ever published or submitted to County staff demonstrating how the project had evolved as a result of public engagement.

This approach transforms what is meant to be a collaborative planning tool into an empty procedural step—directly contrary to the County’s stated intent.

C. Legislative intent and public trust

The legislative intent behind SCCC § 18.10.210 is grounded in California’s broader land use principles promoting early and continuous community engagement. The California Planning and Zoning Law (Gov. Code §§ 65030.1–

65033) emphasizes that “citizen participation in the planning process” is essential to achieving balanced growth and public confidence in local decision-making.

By disregarding this framework, the applicant has eroded public trust. The affected neighborhood—comprised of long-standing residents, families, and small property owners—was denied the opportunity to collaborate with the developer and County staff at the stage when changes could have been made to reduce impacts on parking, traffic safety, privacy, and neighborhood character.

Instead, the applicant treated community outreach as an obstacle rather than an obligation, effectively substituting marketing for participation.

D. Practical consequences of the applicant’s noncompliance

The result is a development that bears no trace of community input and fails to respond to legitimate local concerns. The current proposal still:

- Routes new vehicle traffic through a residential cul-de-sac (Grey Seal Road), endangering children and pedestrians;
- Provides insufficient parking, guaranteeing spillover congestion on neighborhood streets;
- Eliminates all existing trees without replacement planting plans; and
- Constructs a five-story structure immediately adjacent to one- and two-story homes, creating severe privacy and shading impacts.

Each of these design failures could have been mitigated—had the applicant engaged in good faith during the community meeting process, as the County Code envisions.

E. Remedy and requested Commission action

Given this record, the Commission should make a finding that the applicant failed to comply with both the letter and intent of Santa Cruz County Code § 18.10.210, and that this failure deprived residents and staff of the early collaboration necessary to ensure a balanced project design.

As a condition of any future consideration, the applicant should be required to:

- Conduct a new community meeting, duly noticed to surrounding residents, before any further processing or re-submittal;
- Provide a written summary documenting all community feedback and the applicant’s specific responses and plan revisions; and

- Submit those materials as part of a new or amended application, consistent with the County’s certified Housing Element and current objective standards.

Until these steps are completed, the project cannot be said to have undergone the level of public review and collaboration required by law.

VII. Objective Standard Conflicts and Health and Safety Impacts

Even setting aside the procedural irregularities and Builder’s Remedy issues, the record establishes multiple objective standard violations under the County Code and State law:

- Fire Flow and Access:** The Central Fire District’s June 17, 2025 review letter confirms that the project fails to meet the minimum 1,500 gallons-per-minute flow for 120 minutes as required by the 2022 California Fire Code, Appendix B. Required hydrants, Knox boxes, and access routes remain unresolved.
- Stormwater and Drainage:** The project’s stormwater plan relies on a “bubble-up dispersion system” explicitly rejected by the County’s June 13, 2025 drainage review. The County Design Criteria (Part 3, Section J.7) requires adequate freeboard and infiltration design; the project’s proposed reduction in freeboard and reliance on subgrade detention do not meet these standards.
- Height Exceedance:** The applicant’s architectural cross-section (Sheet A2.1) shows a total height of 63.5 feet above finished grade, but measurement from existing grade exceeds 65 feet, violating SCCC §13.10.323(C).
- Tree Preservation:** The landscape plan proposes removal of every mature tree on the site, including native oaks and redwoods, in conflict with SCCC §16.34.070(A), which requires preservation “to the maximum extent feasible.”
- Parking Standards:** The applicant provides 31 on-site spaces for 57 units. Because the site lies more than one-half mile from any major transit stop, the parking reduction standards under Government Code §65915(p)(2) do not apply. AMBAG confirms in a 3/5/2025 email that no “major transit stop” exists within on-half mile of the project site, as the only major transit stops in Santa Cruz County are within the City of Santa Cruz per the attached map. The project therefore fails both State and County minimum parking requirements.
- CEQA:** The project cannot rely on §15061(b)(3) common-sense exemption given unresolved traffic (see next section), stormwater, and privacy impacts.

Each of these deficiencies constitutes a violation of an objective, written standard. Under Gov. Code §65589.5(d)(2), the County may deny or condition approval of a Builder’s Remedy project where such conflicts create a specific, adverse impact upon public health and safety. The record amply supports such a finding here.

VIII. Traffic Safety, Access, and the County’s Failure to Conduct or Disclose a Traffic Study

A. The legal and procedural requirement for traffic impact evaluation

Under CEQA Guidelines §§15125(a) and 15126.2(a), a public agency must analyze and disclose the environmental setting and the project’s potential effects on transportation and circulation. The County’s own Design Criteria Part 1, Section D (“Transportation Impact Review”) further requires that new projects which alter roadway connections, intersection geometry, or access to public streets prepare a traffic operations analysis demonstrating adequate capacity, sight distance, and safety.

The project at 841 Capitola Road proposes a new primary vehicle access through the existing Grey Seal Road cul-de-sac, which currently serves only local residential traffic. This constitutes a substantial alteration of the local circulation network and a significant potential hazard to pedestrians and children in a residential neighborhood.

Accordingly, both State law and County design standards require that a traffic study be conducted — not as an optional extra, but as a mandatory part of the project’s environmental and engineering review.

B. Repeated community requests for a traffic study went ignored

Between November 2024 and July 2025, members of the community—including myself—submitted numerous written requests to the County Planning Department and Public Works staff asking whether a traffic impact study or circulation analysis had been prepared for this project. We also asked how a study could be requested to be performed by County staff, or even what the requirements of a compliant study would be, were we to take the onus of conducting and preparing a study on ourselves due to lack of response by County staff. These requests were made in writing, during public comment, and directly to the assigned planner.

The responses we received were either nonexistent or vague assurances that “traffic has been reviewed internally.” No study, memorandum, or traffic data was ever provided to the public. The County’s own completeness letter (June 20, 2025) references a “traffic memo” prepared by the applicant’s consultant, but this document was not included in the public record, not peer-reviewed, and does not meet the requirements of a formal traffic impact study under CEQA or County policy.

This silence from staff is more than discourteous — it constitutes a failure of disclosure under CEQA. Once members of the public have submitted substantial

evidence (including photographs, circulation maps, and written testimony) suggesting that traffic and safety impacts may occur, the County is obligated to acknowledge that evidence and either (a) produce its own analysis demonstrating that the impacts are less than significant, or (b) prepare an Initial Study leading to a Mitigated Negative Declaration or EIR. The County has done neither.

C. Specific deficiencies and foreseeable safety impacts

The following issues have been repeatedly identified by residents and are supported by photographic and physical evidence:

- **Grey Seal Road Cul-de-Sac Conversion** — The project proposes to break through the cul-de-sac to create a secondary (and likely primary) access for 57 housing units. The road width and turning radius are inadequate for emergency vehicles and simultaneous two-way traffic.
- **Pedestrian and Child Safety** — Grey Seal serves as a walking route for local children to and from nearby schools and parks. Increased through-traffic would create a predictable safety hazard, particularly given limited sidewalks and poor sight distance.
- **Queueing and Sight Distance at Capitola Road** — The project’s proposed driveway on Capitola Road would add turning movements to an already constrained segment with poor visibility and existing congestion, especially during peak hours.
- **Cumulative Effects** — The project would compound traffic from other infill developments in the Live Oak area, yet no cumulative analysis has been conducted.

Each of these conditions represents a potentially significant impact under CEQA and an objective safety deficiency under the County’s circulation standards.

D. Failure to analyze or disclose traffic impacts violates CEQA and County policy

The County’s failure to perform or release a traffic impact study violates its duty under CEQA to base environmental determinations on substantial evidence. CEQA does not allow an agency to rely on speculation or omission to avoid finding significance. (See *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129; *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348.)

Similarly, Santa Cruz County Code §18.10.210 emphasizes early community involvement precisely to allow residents to identify safety and traffic concerns before final design. The County’s decision to proceed without analyzing these concerns nullifies the purpose of that requirement and prevents meaningful mitigation or redesign.

IX. CEQA and Substantial Evidence

The County’s Environmental Planner (June 11, 2025 memo) expressly noted that the project’s CEQA determination remains pending and that further documentation—including soils reports, BMP plans, and tree preservation measures—must be submitted. The applicant nevertheless asserts a categorical exemption under CEQA Guidelines §15061(b)(3) (the “common-sense exemption”). That exemption cannot apply where substantial evidence indicates a possibility of significant environmental effects.

Substantial evidence in the record includes:

- New vehicle access through the Grey Seal Road cul-de-sac, raising child safety and emergency-response concerns;
- Loss of all mature vegetation, altering drainage and neighborhood microclimate;
- Insufficient on-site parking and expected spillover to neighborhood streets; and
- Fire-flow and stormwater deficiencies discussed above.

Under CEQA §15164(a), these issues meet the "fair argument" standard requiring preparation of at least a Mitigated Negative Declaration, if not a full Environmental Impact Report (EIR). Proceeding without environmental review would be unlawful.

X. Record Integrity and Due Process Concerns

As of the publication of the October 22, 2025 agenda packet, the County has released only 33 pages of public comment. Yet residents collectively submitted hundreds of pages of written correspondence and expert statements, as documented in my email threads (Exhibit J). The omission of these materials from the record deprives the Commission and the public of a full evidentiary basis for decision-making.

Moreover, the County has never produced any written evidence of a mutually executed extension agreement under Gov. Code §65941.1(d)(2). Absent such documentation, the application must be deemed expired by operation of law.

XI. Conflict of Interest, Form 700 Deficiencies, and the Appearance of Bias

Finally, the project’s principal, Tim Gordin, filed Form 700 statements (2023 and 2024) showing ownership interest in the property while concurrently serving as a County Planning Commissioner. While the Commission may not adjudicate ethics violations, this conflict underscores the need for heightened transparency and fairness in the review process.

A. Legal framework: impartial decision-makers and the Political Reform Act

California law requires public decisions to be made by impartial decision-makers, free of financial conflicts and the appearance thereof. Two bodies of law are most relevant:

- a. **The Political Reform Act (PRA)** — Gov. Code §§ 87100–87105; §§ 87200–87210; §§ 87300–87302 and FPPC regulations (e.g., Regs. 18700–18707) — requires designated officials to disclose financial interests on Form 700 and to disqualify themselves from decisions in which they have a reasonably foreseeable, material financial effect (§ 87100; Reg. 18702.3). Planning Commissioners are § 87200 filers (or at minimum “designated employees” under a local conflict-of-interest code) and must file assuming office, annual, and leaving office statements (§§ 87202, 87203, 87204).
- b. **Due process/fair hearing** — In quasi-judicial land use matters (like this one), decision-makers must be neutral. A pending or recent financial interest in the subject property or applicant can require recusal; if not, it can taint the proceeding. See, e.g., *Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal.App.4th 81 (2003); *Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152 (1996); *Woody’s Group, Inc. v. City of Newport Beach*, 233 Cal.App.4th 1012 (2015); *Petrovich Development Co. v. City of Sacramento*, 48 Cal.App.5th 963 (2020).

Separately, the Levine Act (Gov. Code § 84308) restricts appointed officials from participating in licensing/permit proceedings involving a party or participant from whom they have received contributions (thresholds apply) and requires disclosure and disqualification where applicable.

B. The undisputed facts from the record

- Ownership/financial interest: Mr. Gordin’s Form 700 filings for 2023 and 2024 disclose a financial interest in the entity tied to 841 Capitola Road / Workbench / 841 Capitola Road LLC.
- Tenure overlap: He held that interest while serving as a County Planning Commissioner, and resigned in mid-2024, after project initiation steps and while County staff were fielding the early submittals.

This is a serious red flag for both actual conflict (PRA disqualification rules) and appearance of bias (due process). Whether or not he cast a vote, his official role and financial interest intersected during a sensitive window in which agenda-setting, staff direction, and process framing can materially shape outcomes.

C. Why the disclosed information appears incomplete or deficient

Based on the Form 700 copies reviewed, and comparing what is required to be disclosed versus what appears in those forms, several likely deficiencies (or, at minimum, gaps that require clarification) arise:

- a. **Specific identification of the interest** — For real property interests (Schedule B) the PRA requires street address or precise parcel description, nature of interest (ownership/lease/etc.), and acquisition/disposition dates. For investments/business positions (Schedule A-1/A-2), the PRA requires the entity name, business position, and fair market value range.
 - a. If the forms list only a parent brand (“Workbench”) without the specific LLC name that holds 841 Capitola Road, that is not compliant. The exact holding entity must be disclosed.
- b. **Income and loans** — Schedule C requires the source of income (including pass-through income from an entity) and, where applicable, loans. If Mr. Gordin received income, distributions, consulting fees, or loan proceeds from any Workbench/841 entity during the reporting period, those must be disclosed with precise source identification and amount ranges.
- c. **Gifts and travel** — Schedule D/E require gifts and travel payments (if any). Any site-related benefits or reimbursements tied to the project or its principals must be disclosed.
- d. **Timing** — The PRA requires assuming office, annual, and leaving office statements within specific deadlines (§§ 87202–87204). The period coverage of each filing must capture the months when the property was acquired and when County actions involving the project were taken. If a filing period misses a material date, the disclosure is incomplete.

These issues do not accuse unlawful conduct — but they do show the forms as filed are insufficiently specific to allow the public or decision-makers to confirm compliance with § 87100 disqualification obligations and § 87200 disclosure duties.

D. Why this matters even if he has already resigned

It is not enough to say, “he resigned.” The relevant period is when staff received direction, process rules were set, and threshold decisions (e.g., how to treat SB 330 submissions, whether to accept uploads on 1/30/25 contrary to PLG-130, whether to treat the project as “in pipeline,” etc.) were being influenced or framed.

- If a sitting Commissioner with a financial stake in the applicant/entity had any hand in shaping staff’s posture, calendaring, or interpretive choices, the proceeding bears the taint of partiality.
- Due process requires the County to cure that taint before proceeding.

E. PRA/FPPC disqualification standards likely triggered

Under Gov. Code § 87100 and FPPC Reg. 18702.3, a public official is disqualified if the governmental decision will have a reasonably foreseeable, material financial effect on the official’s financial interests, including:

- Business entity in which the official is a director, officer, partner, trustee, employee, or holds an investment (Reg. 18702.1), and
- Real property in which the official has a direct or indirect interest (Reg. 18702.2).

A high-density rezoning/permit decision for the official’s own project indisputably has a material, foreseeable effect on his financial interests. Even if he took no formal vote, non-public advocacy, access, or direction to staff during his tenure can violate § 87100 and, at minimum, compromise due process.

F. Levine Act (Gov. Code § 84308) considerations

If Mr. Gordin (or the project entity) made contributions to any Commissioner or Supervisor with a role in this permitting decision within the statutory look-back, § 84308 may require disclosure and disqualification for the recipient. The County should affirmatively verify contribution history and secure Levine Act compliance statements for all decision-makers involved.

G. The practical harm: cascading process defects

The conflict backdrop coincides with several procedural anomalies in this case:

- Acceptance of Jan 30, 2025 uploads contrary to the published PLG-130 waiting rule, followed by the quiet removal of that rule from the form;
- Non-production of any written extension despite repeated requests;
- Omission of hundreds of pages of public comments from the agenda packet; and
- Staff’s willingness to entertain an AB 1893 “conversion” for a project that was already a Builder’s Remedy filing.

Standing alone, each of these is concerning. Together, they create a pattern consistent with preferential treatment, which the Commission must not ratify.

H. Required cure before any hearing can proceed

To protect the integrity of this proceeding and the County’s interests, the Commission should direct the following pre-hearing cures:

- a. Form 700 audit and supplementation

- Require production of all Form 700s (assuming, annual, leaving office) for Mr. Gordin covering the entire period from initial property acquisition through his resignation.
 - Require supplemental filings identifying the precise holding entity (e.g., 841 Capitola Road LLC), the nature of the interest, acquisition dates, FMV ranges, and income/loan sources (Schedules A-1/A-2/B/C/D/E as applicable).
 - Obtain an FPPC advice letter or County Counsel memorandum confirming whether § 87100 disqualification was triggered and whether any participation violated PRA standards.
- b. Levine Act confirmations
- Collect sworn § 84308 declarations from Commissioners/Supervisors on contributions received from the applicant, principals, and agents within the applicable look-back; enforce disqualification where triggered.
- c. Fire-walling staff and re-calibrating the process
- Direct the Planning Director to certify that no staff member took direction from Mr. Gordin related to this application during his tenure; if they did, reassign the file to insulated staff and restart the completeness/CEQA review de novo.
 - Restore PLG-130's operative rule (or acknowledge it was operative at the time) and treat 1/30/25 submissions as non-compliant, absent a written, pre-deadline extension.
- d. Record completion and due process
- Produce the full administrative record, including all timely public comments, correspondence, and staff-applicant communications; recirculate a complete packet and re-notice the hearing.
- e. Independent hearing officer or outside counsel
- Given the appearance concerns, appoint an independent hearing officer or retain conflicts counsel to advise the Commission solely on process and ethics compliance for this item.

I. Remedy if the cure is not feasible

If these cures cannot be achieved promptly, the only lawful course is to continue the item and decline to proceed on the current record. Any approval issued under this cloud would be vulnerable to challenge under CEQA and the due process clause, as well as the PRA.

XII. County Counsel Awareness and Unresolved Legal Concerns

The public record demonstrates that Santa Cruz County Counsel was made aware—on multiple occasions—of potential statutory and procedural violations in the handling of

the 841 Capitola Road application. Yet, no written legal opinion, clarification, or corrective action was issued before staff advanced a recommendation for project approval. This omission leaves the County legally exposed and calls into question the integrity of the process.

A. County Counsel was directly asked to review Planning staff’s handling of the project

In February 2025, Supervisor Koenig’s policy analyst confirmed in writing that she had forwarded detailed community concerns regarding the County’s handling of the SB 330 deadlines and Builder’s Remedy eligibility to County Counsel for review, stating:

“I am sending this to County Counsel. I am asking them to review and provide me with feedback on whether Planning staff is handling this appropriately. We likely won’t get answers until next week at the soonest.”

This contemporaneous record proves that even internal County officials recognized potential legal missteps in Planning staff’s conduct and actions, and that Counsel’s evaluation of compliance was requested. Despite this referral, no written response, memorandum, clarification, or opinion from Counsel was ever released to the public, to the Planning Commission, or incorporated into the administrative record.

B. County Counsel’s silence heightens the County’s exposure

When County Counsel is formally notified that staff may be violating procedural law—such as by accepting an untimely application, disregarding statutory submittal deadlines, or altering official County forms retroactively—and fails to issue a written analysis or correction, the County effectively proceeds without legal cover.

Under Government Code §§ 26525 and 27642, County Counsel’s statutory duty is to “advise the Board of Supervisors and all County officers in all legal matters pertaining to their duties” and to “render written opinions when required by the Board or any County officer.” A written opinion from County Counsel was in fact **warranted here due to known legal uncertainty**. Proceeding without documented legal advice in such a contested matter undermines the County’s ability to show good faith reliance on Counsel if the project approval is later challenged in court.

If this project is later challenged, the absence of any written legal rationale from County Counsel **leaves the County unable to show that it acted upon**

competent legal advice, a central defense under both CEQA and the Housing Accountability Act. Counsel’s silence in this context is not neutral—it is legally consequential.

C. Known but unaddressed Form 700 conflicts involving former Commissioner Gordin

Equally troubling is the undisclosed financial conflict of interest involving former County Planning Commissioner Tim Gordin, who held a financial stake in the very property and entity submitting the 841 Capitola Road application while serving on the Commission.

His Form 700 filings for 2023 and 2024 disclose an interest in “Workbench Development” or related entities but fail to specify the exact holding company, parcel, or income sources tied to this project, as required under the Political Reform Act (Gov. Code §§ 87100–87210). This lack of specificity makes it impossible to determine the full scope of his involvement or to verify compliance with disqualification rules under FPPC Regulation 18702.3.

County Counsel and the Planning Department were both in receipt of those filings, and were made aware of these issues by community members in writing, and thus had actual or constructive notice of the potential conflict, yet no review, advisory opinion, or recusal documentation appears in the record. Counsel’s inaction on a matter of such clear ethical sensitivity compounds the County’s vulnerability.

At a minimum, Counsel should have advised staff and the Commission to:

- a. Obtain amended Form 700 filings identifying the precise property and investment entities involved;
- b. Document whether Mr. Gordin participated—formally or informally—in any staff direction, project briefings, or procedural decisions related to 841 Capitola Road; and
- c. Advise the Commission on whether that participation created an appearance of bias or required mitigation (e.g., independent review or hearing officer appointment).

That none of these steps were taken—despite clear red flags in the public record—demonstrates a profound lapse in oversight.

D. The absence of a written legal opinion or clarification constitutes a process defect

The absence of a written County Counsel opinion addressing these issues—despite multiple community requests, written referrals, and explicit red flags—means the Planning Commission **cannot reasonably rely on the staff recommendation as legally vetted**. This gap in the record creates procedural vulnerability under both CEQA and the Housing Accountability Act (Gov. Code §65589.5), as the Commission cannot demonstrate that it exercised independent judgment based on a complete and accurate legal framework.

E. Apparent inconsistency with County Counsel’s role as neutral advisor

County Counsel’s role is to represent the public interest of the County, not any particular department. However, by allowing Planning staff to proceed while ignoring statutory concerns raised by the public and even by other County officials, Counsel’s office appears to have functioned more as a shield for staff’s chosen course of action than as an independent advisor ensuring compliance with the law.

This appearance of alignment with staff’s position, coupled with the silence in the record, erodes public confidence and reinforces the perception of institutional bias favoring the applicant.

F. Systemic implications and loss of public confidence

The County Counsel’s failure to act decisively in light of known procedural and ethical irregularities has eroded public trust in the integrity of this process. When the County’s own attorney remains silent while serious questions of conflict, compliance, and fairness are raised, the perception is not merely of bureaucratic neglect, but of institutional complicity.

The appearance that Counsel’s office has functioned as a shield for staff’s preselected course of action, rather than as a neutral guardian of lawful governance, undermines both the legitimacy of the current recommendation and the County’s credibility before the public and the courts.

G. Requested Commission action

Given these circumstances, the Planning Commission should:

- a. Direct County Counsel to provide a written memorandum clarifying:
 - Whether accepting the applicant’s January 30, 2025 upload violated the PLG-130 submittal protocol;
 - Whether the application should have been deemed expired under Gov. Code §65941.1(d)(2);

- Whether any legal basis exists for allowing a project already filed as a Builder’s Remedy application to “convert” under AB 1893; and
 - Whether former Commissioner Gordin’s financial interest required disclosure, recusal, or conflict mitigation.
- b. Continue the hearing until County Counsel issues a written opinion addressing these specific questions, and that memorandum is made public and incorporated into the record.
 - c. Direct the Planning Director to obtain amended Form 700 filings for Mr. Gordin and a formal statement from County Counsel verifying whether those disclosures complied with FPPC and Political Reform Act standards at the time of his service.
 - d. Include the written County Counsel memorandum(a) in the public record prior to any further deliberation or vote.

Only with such documentation can the County show that its decisions rest on a sound legal foundation, rather than silence in the face of acknowledged statutory uncertainty.

Until the Commission receives written legal assurance on these issues, any approval of the 841 Capitola Road project would be procedurally defective and legally indefensible.

XIII. Requested Commission Actions

For all the reasons stated above, I respectfully request that the Planning Commission:

1. **Deny** Application #241371 (841 Capitola Road) under Gov. Code §65589.5(d)(2) for noncompliance with objective standards and failure to qualify for Builder’s Remedy status; or
2. **Continue** the hearing and direct staff to:
 - Produce the complete public record, including all public comments and correspondence received through October 2025;
 - Provide written clarification of any extension or procedural waivers granted to the applicant;
 - Require submission of a new SB 330 preliminary application reflecting the >20% project increase, processed under the County’s certified Housing Element and current zoning standards;
 - Complete a full CEQA review addressing traffic, stormwater, tree removal, and neighborhood privacy impacts;

- Require a full traffic impact study (TIS) consistent with County Design Criteria Part 1, Section D, prepared by a licensed traffic engineer and reviewed by Public Works; release that study to the public for review at least 30 days prior to any future hearing; reopen the completeness determination pending inclusion of the TIS and any resulting design revisions; and reevaluate CEQA review in light of the likely significant impacts revealed by the required traffic analysis; and
- Direct County Counsel to provide a written memorandum, with an opinion, clarifying violations of form PLG submission protocol, whether the application should have been deemed expired under Gov. Code §65941.1(d)(2), the improper usage of the AB 1893 “conversion”, and the Form 700 filings for Mr. Gordin, and include this memorandum(a) in the public record prior to any further deliberation or vote.

Absent such actions, any approval of the 841 Capitola Road project would constitute an abuse of discretion and a violation of CEQA’s mandate for transparent, evidence-based decision-making, and any approval of the 841 Capitola Road project would be procedurally defective and legally indefensible.

Conclusion

The community supports responsible housing development, but this project as submitted undermines both public safety and legal process. The 841 Capitola Road proposal is not merely an over-scaled infill project—it represents a fundamental breakdown of the statutory and procedural safeguards that ensure fairness and accountability in land use decisions.

When applicants and staff disregard established timelines, procedural requirements, and objective standards, the credibility of the entire planning process suffers.

The Commission has the duty and authority to ensure that all projects comply with objective standards and are processed transparently. For these reasons, the project should be denied or continued pending full compliance with applicable laws and procedures.

Respectfully submitted,



Riley Gerbrandt

Existing Major Transit Stops - City of Santa Cruz Draft for Review

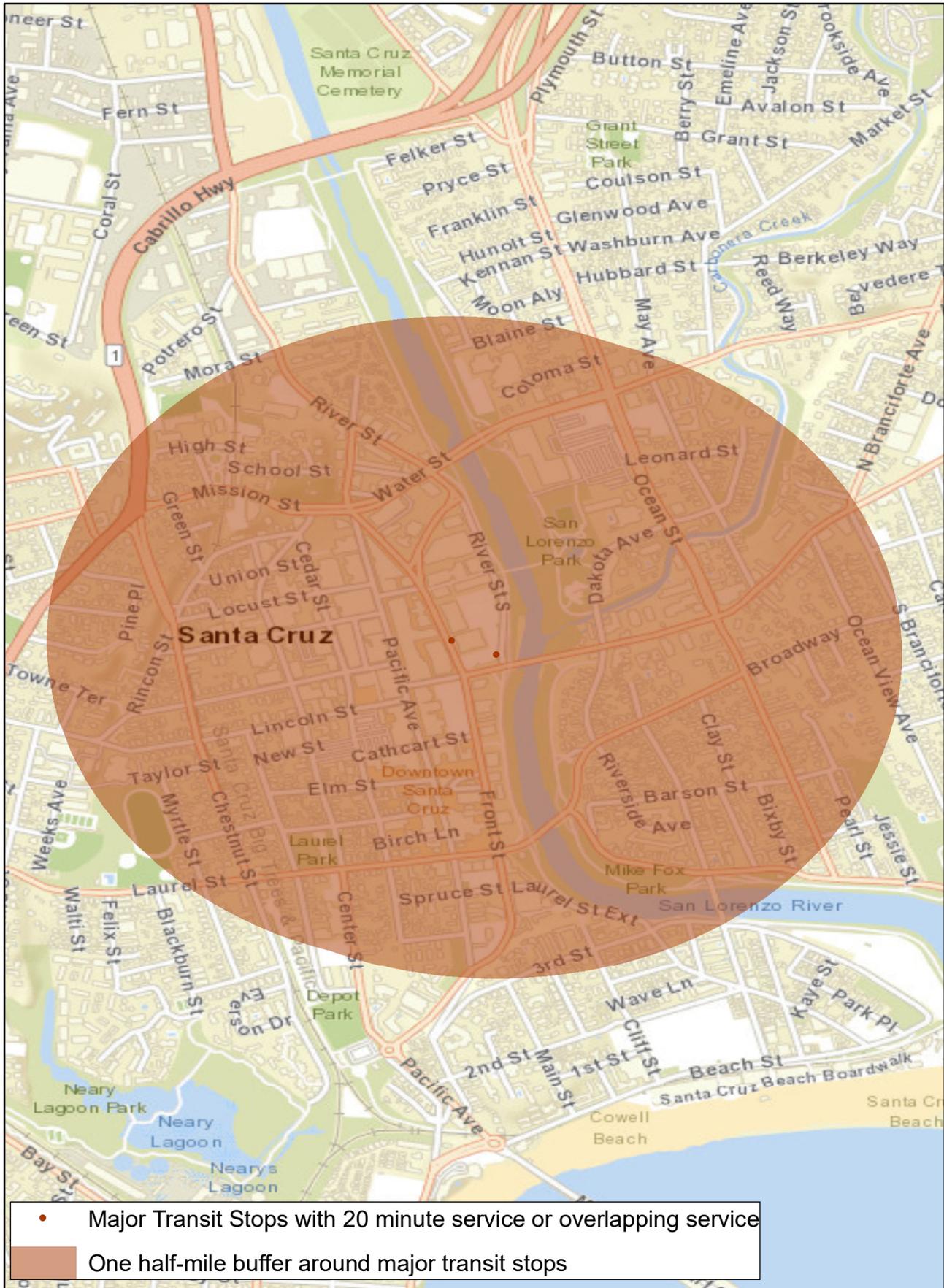


Exhibit List – 841 Capitola Road (County Application #241371)

Submitted by: Riley [Your Full Name]

Exhibit	Description
Exhibit A	SB 330 Preliminary Application (April 2024) – Applicant’s initial filing claiming Builder’s Remedy status.
Exhibit B	County–HCD Correspondence (Feb–Mar 2025) – Confirms Housing Element certification on February 14, 2025.
Exhibit C	Applicant Statements citing AB 1893 'conversion' – Emails acknowledging attempted Builder’s Remedy conversion.
Exhibit D	County PLG-130 Form (Jan 2025) – Demonstrates procedural violation allowing premature upload of submittals.
Exhibit E	October 2024 Project Summary & Affordability Table – Shows project failed to meet ≥20% lower-income requirement.
Exhibit F	County 'Letter of Completeness' (June 20, 2025) – Lists unresolved objective-standard conflicts.
Exhibit G	Fire District Review (June 17, 2025) – Identifies unresolved fire-flow and access deficiencies.
Exhibit H	Drainage & Environmental Comments (June 2025) – Cite stormwater and CEQA compliance deficiencies.
Exhibit I	Resident Correspondence – Proof of missing public comments and requests for full administrative record.
Exhibit J	Form 700 Disclosures (2023–2024, Tim Gordin) – Confirms financial interest in project during Planning Commission tenure.



Date: October 21, 2025

To: Chair Barton, Vice Chair Jimenez , and Commissioners Pavonetti, Nickell, and Shepherd

Planning Commissioners

County of Santa Cruz

Community Development & Infrastructure

701 Ocean St., Room 400

Santa Cruz, CA 95060

c/o Donovan Arteaga donovan.arteaga@santacruzcountyca.gov

Jonathan DiSalvo jonathan.disalvo@santacruzcountyca.gov

RE: App # 241371 (841 Capitola) – Request for SDBL Concessions which Staff has recommended be denied

Dear Planning Commission,

The Applicant for Application # 241371 (841 Capitola) has received the Staff Report in which Staff has recommended that the Planning Commission deny two SDBL concessions/incentives that the Applicant has requested pursuant to State Density Bonus Law. This letter responds to Staff's recommendation. Applicant has revised the two requested concessions/incentives to clarify the requests.

Request: Reduce the parking required by Santa Cruz County Code to ~~zero~~31 spaces

Staff's recommendation:

County Response: Staff recommends denying this concession/ incentive in part. Under the County Code, 72 tenant and 12 guest spaces would be required. Under State Density Bonus Law, this requirement is reduced to 65 spaces. SDBL further permits an Applicant to "request parking incentives or concessions beyond those provided" as an incentive/ concession. (Gov. Code § 65915(p)(5).) The Project is designed to include 31 total vehicle parking spaces. This indicates that any parking reduction below 31 spaces would not result in identifiable and actual cost reductions. Accordingly, Staff recommends granting a reduction in the required number of vehicle parking spaces to 31 spaces.

Applicant's response:

Applicant's concern is that state or federal law may change with respect to parking requirements. For example, the latest change to the CALGreen Code increased both the number and size of required EV parking spaces, which results in a lesser number of parking spaces fitting in a given parking field area.

Applicant revises the Concession request to reduce the parking required to 31 spaces, or a lesser number of spaces if there is no feasible means of providing 31 spaces within the area of the proposed parking field while meeting state and federal law:

Reduce the parking required by Santa Cruz County Code to ~~zero~~31 spaces. The parking required for the project by Santa Cruz County Code shall be reduced to ~~zero spaces~~31 spaces or a lesser number of spaces if there is no feasible means of providing 31 spaces within the area of the proposed parking field while meeting state and federal law. The project owner intends to provide parking as indicated in the project plans, and to provide ADA and EV parking spaces as required by State and Federal law. However, the development permit approval for this Project shall not require the project to provide any more parking spaces than can be feasibly located within the bounds of the proposed parking field area, while complying with state and federal law. The project qualifies for parking reductions in accordance with the State Density Bonus Law. For clarity, and conciseness, in addition to the waiver

requested for parking Applicant chooses to request this concession in addition to other parking reductions and waiver. This concession/incentive will result in identifiable and actual cost reductions to provide for affordable housing costs. This concession/incentive is requested pursuant to Gov. Code Sections 65915(d) and 65915(k)(3). The cost of constructing parking spaces is a major component of a project's cost. If laws change such that providing the 31 proposed parking spaces requires a larger parking field, then the provision of a lesser number of parking spaces would result in identifiable and actual cost savings.

Old Request: Allow conversion ADUs concurrent with construction of the multifamily structure

Revised Request: Define “existing” for purposes of the County’s ADU ordinance to mean “approved by a development permit.”

Staff’s recommendation:

County Response: Staff recommends denying this concession request on the basis that it would be contrary to State Law. Staff have reviewed the Applicant’s requested concession to allow conversion ADUs concurrent with the construction of the proposed multifamily structure. About four or five such non-livable spaces are shown on the proposed floor plans. As prior comments to the Applicant have indicated, this would conflict with requirements for conversion ADUs pursuant to State ADU law, on a site that is currently vacant. Under State Law, only existing multifamily properties can propose conversion of attached non-habitable space to ADUs (Gov. Code § 66323(a)(3)(A).) Conversion of non-habitable space in proposed multifamily projects is explicitly omitted. (Gov. Code § 66323(a)(3)(A).) The State HCD’s recently issued amended ADU Guidelines (2025 ADU Handbook) confirm this. Further, since this is a modular housing project, no conversion would occur, as these ADUs would be produced in the factory just like all other dwelling units in the project as finished dwelling units, and there is not currently, nor would there be at time of permit issuance, any existing non-habitable space in the building, nor any building whatsoever, to be “converted.” The only apparent rationale for the Applicant to pursue this Conversion ADU strategy is to avoid the affordable housing obligations under SDBL and applicable impact fees for these additional units. This would be contrary to State Law. It is noted that the County cannot require the developer remove non-livable spaces from their project.

Applicant’s response:

Applicant removes and replaces the concession/incentive request:

~~Allow conversion ADUs concurrent with construction of the multifamily structure – Applicant requests that the County shall, for the purposes of accessory dwelling units required to be ministerially approved in accordance with Gov. Code Section 66323(a)(3)(A) (“multifamily conversion ADUs”), deem and define the word “existing” to mean that the development permit for the multifamily dwelling structure has been approved, and deem and define the phrase “not used as livable space” to mean that the portions of the multifamily dwelling structure either i) have not been issued a final certificate of occupancy, or ii) are not livable space as defined by Gov. Code Section 66310(e). Applicant requests that the County place a Condition of Approval on the Project instructing the Building Official to follow the definitions of “existing” and “not used as livable space” as stated in this incentive, and requiring County Staff and Decision Bodies to approve building permits for, and constructions of, the multifamily dwelling structure. This concession/incentive is requested pursuant to Gov. Code Sections 65915(d) and 65915(k)(3). Decisions regarding how much space is needed for storage areas, maintenance areas, and resident amenities is often not entirely determined at the planning permit phase, and the spaces may be better used as ADUs. This concession will result in identifiable and actual cost reductions to provide for affordable housing costs. The ability to convert non-livable space at time of building permit issuance and before certificate of occupancy reduces the cost of first constructing the space as non-livable space prior to conversion.~~

Define “existing” for purposes of the County’s ADU ordinance to mean “approved by a development permit.”

— Applicant requests a regulatory incentive, in accordance with Gov. Code Sections 65915(d) and 65915(k)(3), to reduce the cost of creating potential future ADUs in the Project. State law does not define “existing” for purposes of Gov. Code § 66323(a)(3), and the County is using a local definition of the term. We seek a concession to change the local definition to mean Applicant requests that the County define “existing” for the purpose of any potential future ADUs in the Project to mean “approved by a development permit.” Decisions regarding how much space is needed for storage areas, maintenance areas, and resident amenities may change after the planning permit phase, and those spaces may be better used as ADUs to increase the supply of affordable housing. This concession will result in identifiable and actual cost reductions to provide for affordable housing costs. The ability to create ADUs during construction, rather than after certificate of occupancy reduces the cost of first constructing the space as non-livable space prior to conversion.

Staff’s contention that granting the concession “would be contrary to State Law” is incorrect.

Background

Gov. Code § 66323(a)(3) requires the County to ministerially approve building permits for ADUs within “existing multi-family dwelling structures” in the portions of those structures that are not used as “livable space:”

66323. (a) Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

...

(3) (A) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(B) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

...

Once the multifamily dwelling structure is “existing,” any space in that structure that is not livable space can be converted into an ADU. **The term “existing” is not defined in State ADU law.**

The Applicant requests a concession/incentive, for this development project, that the County ...

“... define “existing” for the purpose of any potential future ADUs in the Project to mean “approved by a development permit.”

This concession/incentive affects **nothing but the timing** of potential ADU creation. State law requires the County to allow ADUs to be created in non-livable space within an existing multifamily structure; this concession/incentive would allow the exact same spaces to be created as ADUs **during** construction of the approved multifamily structure.

Point 1: Nothing in the requested concession/incentive is contrary to state law.

SB 477 (2024) was enacted as an urgency statute and took effect immediately on March 25, 2024. Among other amendments, it added Gov. Code § 66325 (emphasis added):

66325. (a) Except as provided in subdivision (b), this article shall supersede a conflicting local ordinance.

(b) **This article does not limit the authority of local agencies to adopt less restrictive requirements** for the creation of an accessory dwelling unit.

(Added by Stats. 2024, Ch. 7, Sec. 20. (SB 477) Effective March 25, 2024.)

The words “this article” refers to the same Article that contains Gov. Code § 66323, and therefore State law explicitly allows the County’s local ADU requirements to be **less restrictive** than Gov. Code § 66323.

The County seems to be defining “existing” is “has received a certificate of occupancy.” If the Building Department will not issue a building permit that includes an ADU until after certificate of occupancy, it will not be possible to create the ADU simultaneously with the creation of the multifamily building.

State law does **not** prohibit the County from providing a definition of “existing” for local ADU purposes. The County **may** adopt less restrictive requirements than the **minimum** state-required ADU allowances. (Gov. Code § 66325.)

A concession or incentive is defined at Gov. Code § 65915(k), and includes “other regulatory incentives or concessions” in paragraph (3) of that subdivision (emphasis added):

(k) For the purposes of this chapter, concession or incentive means any of the following:

- (1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements ...
- (2) Approval of mixed-use zoning in conjunction with the housing project ...
- (3) **Other regulatory incentives or concessions** proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

The Applicant has requested this regulatory incentive/concession. It does what **all** regulatory incentive/concessions do: it modifies the local regulations to allow something that the local code would not otherwise allow.

Point 2: The concession/incentive meets the definition in the SDBL.

The requested concession/incentive meets the definition in Gov. Code § 65915(k)(3):

1. It is a regulatory concession/incentive proposed by the developer.
2. It would result in identifiable and actual cost reductions. Creating an ADU that is created concurrently with the construction of the building is less costly than converting non-livable space later.
3. The cost reductions would provide for affordable housing costs. ADUs are a form of housing that may be considered affordable housing without being deed-restricted. In fact, non-deed-restricted ADUs can count toward a local agency’s RHNA (see HCD’s 2025 ADU Handbook, page 27 and 28).

Gov. Code § 65915(d)(1) requires (emphasis added):

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. **The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:**

- (A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).
- (B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid

the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

This concession/incentive complies with the requirements of the SDLB:

1. The concession/incentive **would** result in identifiable and actual cost reductions to provide for affordable housing costs (i.e., the creation of ADUs, which qualify as affordable housing, at a lower construction cost), as explained above, and in the concession request.
2. The concession/incentive **would not** have a specific adverse impact as defined.
3. The concession/incentive **is explicitly allowed** by the state ADU law, per Gov. Code § 66325.

Point 3: Whether the project is of modular or site-built construction is irrelevant.

Staff's recommendation to deny this concession/incentive notes that the Applicant has expressed intention to use modular construction for the Project:

Further, since this is a modular housing project, no conversion would occur, as these ADUs would be produced in the factory just like all other dwelling units in the project as finished dwelling units, and there is not currently, nor would there be at time of permit issuance, any existing non-habitable space in the building, nor any building whatsoever, to be "converted."

The applicant intends to use modular construction for this project. If the County defines of "existing" as requested by this concession/incentive the conversion of the space in the building that is not livable space will "exist" on the date this development permit is approved. The conversion of the space may happen in the factory or may happen on site. This concession/incentive affects **nothing but the timing** of potential ADU creation.

Point 4: Apparent rationale.

Staff's recommendation to deny this concession/incentive speculates about the "apparent rationale" for the concession/incentive:

The only apparent rationale for the Applicant to pursue this Conversion ADU strategy is to avoid the affordable housing obligations under SDBL and applicable impact fees for these additional units. This would be contrary to State Law. It is noted that the County cannot require the developer remove non-livable spaces from their project.

The Applicant's stated rationale for the incentive is to reduce construction cost, in the event the Applicant does elect to create ADUs within the multifamily dwelling structure, to provide for affordable housing in the form of the ADUs themselves.

The concession/incentive would result in identifiable and actual cost reductions by creating the ADUs during construction instead of after construction has been completed and a certificate of occupancy is issued. There is no change to the density of the project. ADUs do not count toward the density limits of a site. ADUs of less than 750 square feet are not subject to certain impact fees, regardless of whether the ADUs are created while the multifamily structure is being constructed or after the multifamily structure has been completed. This concession/incentive affects **nothing but the timing** of potential ADU creation.

Closing

The concessions/incentives requested by the Applicant are consistent with the State Density Bonus Law, and the County is required by Gov. Code § 65915(d) to approve them. Moreover, these concessions/incentives are entirely consistent with the goals and policies of the County. Developments with reduced parking and higher density promote multimodal transportation options, address housing needs, reduce traffic and greenhouse gas emissions, and concentrate

new development within the urban services line to protect undeveloped wilderness areas. If the project elects to create ADUs, allowing them to be created at the time of construction of the multifamily structure reduces costs and increases the likelihood that additional units will be constructed. Santa Cruz is the least affordable housing market for renters in the nation. ADUs are one way that more affordable housing is being built in the County, and the Planning Commission should approve this request to incentivize ADU creation.

Sincerely,

A handwritten signature in blue ink that reads "Clay Toombs".

Clay Toombs

Sr. Development Mgr.

o. 831.227.2217 ext. 310

c. 323.363.0257

