



**Date:** January 12, 2026

**To:** Jonathan DiSalvo

Senior Planner

County of Santa Cruz

Community Development & Infrastructure

701 Ocean St., Room 400

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(831) 454-3157

**RE: App # 241360 (3500 Paul Sweet) – Planning Commission Appeal Hearing Clarifications, Amplifications, Corrections, or Supplements to Housing Development Permit Application**

**Dear Jonathan,**

App # 241360 (3500 Paul Sweet Road) is scheduled for a Planning Commission hearing on January 14, 2026.

Gov. Code § 65944 provides that an applicant can “clarify, amplify, correct, or otherwise supplement” the application after it is accepted as complete. Having reviewed the Staff Report, Applicant would like to provide the following clarifications, amplifications, corrections, or supplements to the application.

### **SB 330 Preliminary Application**

The Staff Report refers to an SB 330 preliminary application dated April 22, 2024. However, an SB 330 preliminary application was submitted for the Project and the associated fee was paid on April 9, 2024 (see attached). A full development permit application was submitted and the associated fee was paid on October 2, 2024, meeting the 180-day deadline for submittal of the full development permit application. Each resubmittal of the application was made within 90 days of the receipt of written notice that the application was incomplete, or by a mutually agreed extension of the 90-day deadline.

The second SB 330 preliminary application was submitted on April 22, 2024, with the intention of providing the Applicant additional time to meet the 180-day deadline as well as provide an alternative base density if needed. This later SB 330 preliminary application was not needed, because the full development permit application was submitted on October 2, 2024, meeting the 180-day deadline for the first SB 330 preliminary application, and the Project is a builder’s remedy project for which the base density in the SB 330 preliminary application is irrelevant. (Gov. Code § 65589.5(f)(7)(B).) So that earlier preliminary application had not expired and is the operable preliminary application that vests the builder’s remedy Project pursuant to Gov. Code § 65589.5(h)(11)(B).

The Applicant inadvertently referenced the date of the second SB 330 preliminary application on Sheet GP0.01, and the **Applicant has attached a corrected Sheet GP0.01 reflecting the correct date for the SB 330 preliminary application of April 9, 2024.** Please correct the dates in the Staff Report (page 5, primarily) from April 22, 2024 to April 9, 2024.

### **Project elects not to be subject to Gov. Code § 65589.5(f)(6)(G)(ii)**

Among the changes to the Housing Accountability Act that became effective on January 1, 2025, is the requirement at Gov. Code § 65589.5(f)(6)(G)(ii):

(ii) Affordable units in the development project shall have a comparable bedroom and bathroom count as the market rate units.

Applicant interprets this provision **not** to apply to the Project, because the County does not have a local affordable housing requirement that applies to the Project, and read **in context** the above provision applies only “If the local agency had a local affordable housing requirement” that applied to the project. (Gov. Code § 65589.5(f)(6)(G)(i)(I).)

The County Counsel has interpreted this provision to apply to the Project, and the Staff Report includes this Condition of Approval II.M.:

M. All affordable units in the project shall comply with Government Code Section 65598.5(f)(6)(G)(ii): “Affordable units in the development project shall have a comparable bedroom and bathroom count as the market rate units”.

Because the Project is a builder’s remedy project that submitted an SB 330 preliminary application prior to January 1, 2025, in accordance with Gov. Code § 65589.5(f)(7)(A), the project “may choose to be subject to **any or all** of the provisions of [the Housing Accountability Act] applicable as of January 1, 2025.” A builder’s remedy project may elect **not** to be subject to all of the provisions of the Housing Accountability Act that became effective on January 1, 2025.

**The Project hereby elects not to be subject to Gov. Code § 65589.5(f)(6)(G)(ii).** This resolves the difference in our interpretations, and the County may not impose the requirement at Gov. Code § 65589.5(f)(6)(G)(ii). Please make a correction on Page 5 under Project Conformance with Builder’s Remedy 2.0, to state that “The proposed project elects the provisions of Builder’s Remedy 2.0, except that the project elects not to be subject to Gov. Code § 65589.5(f)(6)(G)(ii),” and **remove Condition II.M.**

### **SDBL Concession / Incentive Regarding Parking**

The Staff Report notes that the County intends to partially reject the Concession requested for Parking, to require the 68 parking spaces indicated as proposed. To bring the County and Applicant into alignment on the parking Concession, the Applicant would like to revise the request for a Concession / Incentive related to parking, as follows:

**Reduce the parking required by Santa Cruz County Code to 68 spaces.** The parking required for the project by Santa Cruz County Code and the State Density Bonus Law, subdivision (p), shall be reduced to 68 spaces or a lesser number of spaces if there is no feasible means of providing 68 spaces within the surface 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 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. Applicant chooses to request this concession in addition to other parking reductions and SDBL waivers. 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 68 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.

**A corrected Sheet GP0.01 reflecting this revised concession request is attached.**

The Applicant takes no issue with the County’s approach to the requested Waiver for parking.

### **New SDBL Concession / Incentive Request Regarding Tree Replacement**

The County’s biotic report review letter dated October 15, 2025 reviewed three reports:

1. An arborist report by Aesculus Arboricultural Consulting dated August 15, 2025

2. A biotic report by EMC dated February 25, and revised March 4, 2025
3. A technical report memorandum summarizing the results of vegetation mapping by Dudek, dated September 12, 2025.

Regarding sensitive habitat, the Aesculus report concluded (page 7):

#### *Oak Woodlands and Sensitive Habitat*

According to the United States Department of Agriculture (USDA) Forest Service, oak woodlands are a type of forest cover [footnote omitted] and the minimum area for classification of forest land is 1 acre (0.4 ha) in size and 120 feet (36.6 m) wide measured stem-to-stem from the outer-most edge [footnote omitted]. The parcel in question is approximately 0.4 acres (0.16 ha) of contiguous oak lands, thus disqualifying it as oak woodland/forest land. These parcels are both classified as part of the Urban Services Line, and the County GIS does not designate the parcels as Sensitive Habitat.

Regarding sensitive habitat, the EMC report concluded (page 7):

#### **Sensitive Habitats**

The project site does not contain sensitive habitats. An oak grove is located to the north of the site and borders the project to the north and west. The project will remove trees within this grove. The United States Forest Service requires a minimum area of one acre to categorize forest land (USFS 2025). The grove of oaks is not considered an oak woodland, as the size of the grove 0.54 acres. Due to the small size of the oak grove and distance and isolation from the nearest occurrences of continuous oak woodland, the oak grove is not considered oak woodland.

After reviewing these reports and findings, the County requested, and the Applicant provided, the Dudek report to further characterize the oak grove and determine whether or not it constituted sensitive habitat. The Dudek report characterized the oak grove (page 2):

The coast live oak woodland alliance has a state Rarity Rank of S4 and is not considered a sensitive natural community by CDFW (CDFW 2025), although some associations of this alliance (e.g., coast live oak – California bay woodland) do meet the definition of sensitive (i.e., have a Rarity Rank of S3 or lower). No sensitive associations of the coast live oak woodland alliance were observed on the site. In the project site, this vegetation community comprises 0.11 acres.

The Dudek report concluded (page 4):

The on-site coast live oak woodland is part of a grove that meets the definition of an oak woodland under § 1361(h) of the California Fish and Game Code (i.e., it has greater than 10% canopy cover), but does not meet the vegetation criteria for classification as sensitive on the California Natural Community List (CDFW 2025) (i.e., it does not belong to one of the 10 sensitive associations under the coast live oak woodland and forest alliance). In addition, the degraded condition of the woodland (i.e., understory vegetation removed for fire protection, presence of invasive species such as French broom) reduces its habitat value. Therefore, it is our opinion that the stand of oak woodland that overlaps the project site is not a high-quality occurrence of this community, nor is it considered a sensitive natural community by CDFW. Although the project would involve removal or trimming of existing coast live oaks, we believe this would be a less-than significant-impact under CEQA because of the low habitat quality of the oak woodland. It is surrounded by development and contains many invasive species. The project would not result in a conversion of oak woodlands that will have a significant effect on the environment.

The County reviewed all of these reports and their conclusions in the biotic report review letter dated October 15, 2025, and the County made the preliminary CEQA determination required by Public Resources Code § 21080.1 in a letter dated December 16, 2025, that “the project appears to meet qualifications for a Statutory Exemption pursuant to Public Resources Code (PRC) Section 21080.66.”

PRC § 21080.66(a)(6) requires that “(6) The project satisfies the requirements specified in paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code.” Gov. Code § 65913.4(a)(6)(J) prevents the PRC § 21080.66 statutory exemption from being applied to a development on a site that is:

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

The County has determined, after a thorough review of the three reports and applying the County’s independent judgment that the Project site is **not** “habitat” pursuant to Gov. Code § 65913.4(a)(6)(J).

Therefore, for the purposes of CEQA, the Project site does not contain “habitat,” the Project is exempt from CEQA, and no mitigations are required.

Despite the foregoing, the County imposed certain standard and project-specific Conditions of Approval, because:

Adherence to these conditions will ensure that proposed development is consistent with County policies that require minimization of impacts to sensitive habitats and adequate compensation for unavoidable permanent impacts to sensitive habitats.

Since the County has concluded that there is no “habitat” for CEQA purposes, the “impacts to sensitive habitats” in the above quotation and throughout the text under the heading **Conditions of Approval** in the biotic review letter must be interpreted to mean impacts that have been determined to be less than significant under CEQA or only relevant for the purposes of local code and policy.

Under roman numeral IV of the Conditions of Approval, the biotic review letter begins:

To comply with Santa Cruz County General Plan Policy ARC-3.1.6 and Santa Cruz County Code Sections 16.32.090 (B)(1), to compensate for permanent impacts to sensitive oak woodland habitat, oak trees removed or otherwise permanently impacted as a result of the project shall be compensated for through in-kind replacement plantings at a 3:1 ratio through one of the options listed below.

This requirement is solely a local development standard, and not a CEQA mitigation. Again, the Dudek report concluded (page 4):

Therefore, it is our opinion that the stand of oak woodland that overlaps the project site is not a high-quality occurrence of this community, nor is it considered a sensitive natural community by CDFW. Although the project would involve removal or trimming of existing coast live oaks, we believe this would be a less-than significant-impact under CEQA because of the low habitat quality of the oak woodland.

The County has accepted the conclusion that the oak grove is not “considered a sensitive natural community” and “removal or trimming of existing coast live oaks ... would be a less-than significant-impact under CEQA” and found that the project is exempt from CEQA.

Under roman numeral V of the Conditions of Approval the biotic review letter requires a “Habitat Mitigation Plan ... focused on identifying and outlining the strategy for complying with Condition IV above.” Thus, Conditions IV and V are both solely related to local development standards and are not related to CEQA.

The Conditions under roman numeral IV and V in the biotic review letter have been incorporated into the proposed Conditions of Approval II.F.4. and II.F.5. in the Staff Report

Pursuant to Gov. Code § 65915(d)(2)(B) and § 65589.5(f)(6)(C)(i), this project is entitled to four incentives / concessions, and the project previously used three of those incentives / concessions. Gov. Code § 65915(k) defines an incentive / concession:

(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 that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results 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).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(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).

In accordance with Gov. Code § 65915(o)(2):

(2) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation that is adopted by the local government or that is enacted by the local government's electorate exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local government.

Since Conditions of Approval II.F.4. and II.F.5 are, as stated in the biotic review letter, "To comply with Santa Cruz County General Plan Policy ARC-3.1.6 and Santa Cruz County Code Sections 16.32.090 (B)(1)" they are development standards, as defined, and the following request for an SDBL concession meets the definition of a concession under Gov. Code § 65915(k)(1) and (3).

The Applicant requests a Concession / Incentive related to tree replacement, as follows:

**Reduce the ratio of tree replacement requirements to 0:1.** The Project shall not be required to comply with Santa Cruz County General Plan Policy ARC-3.1.6 and Santa Cruz County Code Sections 16.32.090 (B)(1), and shall not be required to provide replacement plantings, nor pay into a County in-lieu fee program, nor provide offsite habitat preservation. No Habitat Mitigation Plan shall be required. The Project is exempt from CEQA, the Project site does not contain sensitive CEQA habitat, and no CEQA mitigations are required for the less-than-significant impacts to an oak grove that extends onto the fringe of the Project site. This concession/incentive will result in identifiable and actual cost reductions (for tree replacement, in-lieu fees, or offsite habitat preservation) to provide for affordable housing costs. This concession/incentive is requested pursuant to Gov. Code Sections 65915(d) and 65915(k)(1) and (3).

**Please remove Conditions II.F.4. and II.F.5 from the recommended Conditions of Approval.**

## Indemnification and Hold Harmless

AB 712 (2025) added Gov. Code § 65914.2. **Please revise Condition V. in the recommended Conditions of Approval** to comply with Gov. Code § 65914.2(c):

(c) (1) A public agency shall not require an applicant for a housing development project to indemnify, defend, or hold harmless the public agency in any manner with respect to an action brought by the applicant, or any other person, alleging that the public agency violated the applicant's rights or deprived the applicant of the benefits or protections provided by a housing reform law.

(2) A requirement, condition of approval, or agreement in violation of paragraph (1) is against public policy and void and unenforceable.

(3) This subdivision shall not be construed to derogate any claim that a requirement as described in paragraph (1) is or was unlawful under previously existing law.

## **The Imposition of an AHIF is Unconstitutional and Would Render the Project Infeasible**

The Applicant has reviewed the Staff Report and recommended Conditions of Approval, which recommend that the Project be required to pay an Affordable Housing Impact Fee (AHIF), despite the project providing deeply affordable, deed-restricted units that the County confirmed "would offset the AHIF in full" in the reviews contained in the incompleteness letters for the Project, and that it "would offset the entire AHIF" in this paragraph in the Staff Report (page 10):

The Applicant has not requested credit against the Affordable Housing Impact Fee (AHIF) for the six affordable units they propose to qualify for the density bonus and/or Builder's Remedy 2.0. If they accepted that option, the available credit would offset the entire AHIF otherwise due for the project. Instead, the Applicant has opted to decline that available credit and pay the AHIF in full, under protest, as allowed by the state Mitigation Fee Act. The Applicant has stated that they intend to protest the AHIF on the basis that they believe that the fee is unconstitutional. Staff disagrees with the Applicant's contention. The AHIF is constitutionally valid because the fee has an essential nexus to the impact of market rate units on affordable housing in the County, as supported by the County's nexus study conducted in 2014. Moreover, it is proportional as it is based on the square footage of the market rate units, and the current fee rate is a relatively modest \$2 per square foot.

Applicant has, in several letters accompanying submittals for this Project and another builder's remedy project (841 Capitola), thoroughly explained that the imposition of the AHIF on the Project, in addition to the required affordable units, violates the Takings Clause of the Fifth Amendment to the U.S. Constitution. The County cannot require the project to **both** provide affordable units that **offset the impact** that the AHIF purports to mitigate **and** pay the AHIF. Such a taking violates the Fifth Amendment, and is contrary to the *Nollan, Dolan, and Sheetz* case law.

**Furthermore**, the Applicant has evaluated the added cost of the AHIF, on top of the requirement in this Project to provide six (6) extremely low income units, and the Applicant has determined that the AHIF would render the Project financially **infeasible**.

In accordance with Gov. Code § 65589.5(f)(6)(B):

(B) (i) Except as authorized by paragraphs (1) to (4), inclusive, of subdivision (d), a local agency shall not apply any individual or combination of objective, quantifiable, written development standards, conditions, and policies to the project that do any of the following:

(I) Render the project infeasible.

(II) Preclude a project that meets the requirements allowed to be imposed by subparagraph (A), as modified by any density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915, from being constructed as proposed by the applicant.

(ii) The local agency shall bear the burden of proof of complying with clause (i).

Unless the County can prove that the Project **is** financially feasible with the imposition of the AHIF, in addition to the affordable units, the AHIF cannot be imposed on the Project, because Gov. Code § 65589.5(f)(6)(B) prohibits the County from applying “conditions ... that ... [r]ender the project infeasible.”

**Finally**, in the County’s several review letters (see, for example County’s incompleteness letter dated April 3, 2025) for this Project and the other builder’s remedy project (841 Capitola), the County urged the Applicant to voluntarily participate in the County’s local affordable housing requirement, and if the Project did voluntarily participate, the Project would not be subject to the AHIF, but if the Applicant did not voluntarily participate, the Project would be subject to the AHIF. Note that the County’s **completeness** letter for this project dated June 13, 2025, which is the only compliance documentation that meets the requirements of Gov. Code § 65589.5(j), did **not** include any compliance comments regarding the AHIF. The Project as proposed, clearly stating that the Project would not pay an AHIF, was therefore **deemed compliant** with the County’s provisions related to the AHIF. The Staff Report is not timely for purposes of the compliance review deadline at Gov. Code § 65589.5(j)(2)(A)(i).

However, even if the project was not deemed compliant with the AHIF requirement, the record for the other builder’s remedy project (841 Capitola), shows that the County is using the threat of the AHIF to coerce the Project into providing “Measure J” inclusionary units that are not required for this Project, which contains no for-sale units. “Alternative C” in the completeness letter for the other builder’s remedy project (841 Capitola), the County stated:

... Many of these remaining provisions in 17.10 (“Measure J”) are nearly identical to provisions in the applicable state laws, so it would not add much to the regulatory agreement, other than the label of “Measure J units” and having the affordable units counted in the County’s Measure J rental housing inventory.

**This is a builder’s remedy project**, and the County cannot impose the “remaining provisions” of Measure J on a builder’s remedy project. Even if the County’s local affordable housing requirement applied to a rental housing project (which it does not) **the County could not impose any provision of the local affordable housing requirement other than the percentage and affordability level** of the affordable units, per Gov. Code § 65589.5(f)(6)(G)(i)(I):

... the local agency may require a housing development for mixed-income households to comply with an otherwise lawfully applicable local affordability percentage or affordability level. The local agency **shall not require housing for mixed-income households to comply with any other aspect** of the local affordable housing requirement.

In the 841 Capitola completeness letter, the County contended that the AHIF is being imposed in addition to the affordability percentage or affordability level that the County has determined to satisfy Measure J (“... the 3 ELI and 1 VL units would offset the AHIF in full ...”), because the project chose not to participate in **other provisions** of the County’s local affordable housing program (“... these remaining provisions ... are nearly identical to provisions in the applicable state laws, so it would not add much ...”). The County is prohibited from applying those other provisions to a builder’s remedy project by Gov. Code § 65589.5(f)(6)(G)(i)(I) (“... shall not require housing for mixed-income households to comply with any other aspect ...”).

**The County cannot use the AHIF to coerce the Project into “voluntarily” agreeing to participate in aspects of the local affordable housing requirement that Gov. Code § 65589.5(f)(6)(G)(i)(I) explicitly prohibits the County from applying to a builder’s remedy project.**

**Please remove Condition of Approval II.Q. which cannot legally be imposed on the Project.**

## Condition Added by Planning Commission with respect to Affordable Housing Impact Fee

The Planning Commission added a Condition of Approval to the other builder's remedy project (841 Capitola), which is stated in the minutes of the October 22, 2025, Planning Commission hearing as:

If the applicant or its successor does not pay the AHIF, the applicant or successor shall be required to provide 15% of the project units as deed restricted affordable units in accordance with SCCC 17.10.034 and 17.10.039.

The County cannot legally impose this Condition (on either of the projects). In addition to the fact that the County had already determined that "... the 3 ELI and 1 VL units would offset the AHIF in full ...," **the imposition of this Condition of Approval is prohibited by at least two provisions of state law.**

**First**, the imposition of this condition is prohibited by the Mitigation Fee Act.

The County does not have a local affordable housing requirement that applies to the Project, and Gov. Code § 65589.5(f)(6)(G)(i)(I) reads, in relevant part:

If the local agency had a local affordable housing requirement, as defined in Section 65912.101 ... the local agency may require a housing development for mixed-income households to comply with an otherwise lawfully applicable local affordability percentage or affordability level. The local agency shall not require housing for mixed-income households to comply with any other aspect of the local affordable housing requirement.

There is no local affordability percentage or affordability level that is lawfully applicable to this Project. The County's local affordable housing requirement applies **only** to for-sale housing.

The definition at Gov. Code § 65912.101 is:

(k) "Local affordable housing requirement" means either of the following:

(1) A local government requirement, as a condition of development of residential units, that a housing development project include a certain percentage of units affordable to, and occupied by, extremely low, very low, lower, or moderate-income households as a condition of development of residential units.

(2) A local government requirement allowing a housing development project to be a use by right if the project includes a certain percentage of units affordable to, and occupied by, extremely low, very low, lower, or moderate-income households as a condition of development of residential units.

The County's Affordable Housing Impact Fee (AHIF) does not meet the definition of "Local affordable housing requirement." **The AHIF is not a component of a local affordable housing requirement. It is a "fee" as defined in the Mitigation Fee Act** at Gov. Code § 66000.

In addition to the fact that the AHIF would render the Project financially infeasible, and therefore the Project cannot be required to pay the AHIF, per Gov. Code § 65589.5(f)(6)(B), the Applicant has the right to protest the imposition of the AHIF in accordance with Gov. Code § 66020(a):

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

**The County may not withhold approval** of the project on the basis of a protest made in accordance with the above subdivision (a). Gov. Code § 66020(b):

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

The Applicant must file the protest with the statements prescribed by Gov. Code § 66020(a), and within the time period prescribed by § 66020(d):

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

The County has not yet provided the Applicant the written notice, and the 90-day approval period has not yet begun.

**The County cannot, by imposing a Condition of Approval, circumvent the right of the Applicant to protest the imposition of a fee in accordance with the Mitigation Fee Act.** Nor can a Condition of Approval impose a mitigation fee that (as the fee protest will contend) is not compliant with the Mitigation Fee Act. (Gov. Code § 66001(a) and (b).)

**Second**, the County has not made the written findings that would be necessary for the County to impose the affordability percentage or affordability level, as required by Gov. Code § 65589.5(f)(6)(G)(i)(IV):

(IV) A local agency may only require housing for mixed-income households to comply with the local percentage requirement or affordability level described in subclause (I) if it **first makes written findings**, supported by a preponderance of evidence, that compliance with the local percentage requirement or the affordability level, or both, would not render the housing development project infeasible. **If a reasonable person could find compliance with either requirement, either alone or in combination, would render the project infeasible, the project shall not be required to comply with that requirement.**

Gov. Code § 65589.5(f)(6)(G)(i)(IV) prohibits the imposition of the Condition of Approval added by the Planning Commission, because it requires a percentage of affordability for which the County has made no findings and provided no evidence that the imposition of the 15% affordability percentage (on top of the six (6) extremely low income units that the Project is providing) would not render the Project infeasible.

The County cannot impose a Condition of Approval on this Project that is similar to the Condition the Planning Commission unlawfully imposed on the other builder's remedy project (841 Capitola), which again reads:

If the applicant or its successor does not pay the AHIF, the applicant or successor shall be required to provide 15% of the project units as deed restricted affordable units in accordance with SCCC 17.10.034 and 17.10.039.

**The County cannot impose a Condition of Approval similar to the above, to circumvent the requirement to "first make written findings, supported by a preponderance of evidence, that compliance with the local percentage requirement or the affordability level, or both, would not render the housing development project infeasible."**

## Closing

Thank you for your diligent and professional work to process housing development permit application. The Applicant requests that the issues and points raised in this letter be addressed and resolved prior to or during the Planning Commission hearing scheduled for January 14.

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

[clay@workbenchbuilt.com](mailto:clay@workbenchbuilt.com)

