

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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February 19, 2025

John Smith, Acting Community Development Director
Community Development Department
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

Dear John Smith:

RE: City of Fort Bragg Senate Bill 9 Ordinance-Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Fort Bragg (City) regarding Ordinance 986-2023 (Ordinance), adopted on March 25, 2024, and which amended the Inland Land Use Development Code and implemented provisions of Senate Bill (SB) 9 (Chapter 162, Statutes of 2021)¹. Additionally, this letter also provides technical assistance on the City's pending Local Coastal Program Amendment 2-23 (LCPA), which is proposed to amend the Coastal Land Use Development Code to implement SB 9 in the Coastal Zone portions of the City.

The California Department of Housing and Community Development (HCD) conducted a review of the City's LCPA² sections 17.42.200 (Coastal-Urban Unit Development) and 17.84.045 (Coastal-Urban Lot Split), along with Ordinance sections 18.42.200 (Inland-Urban Unit Development)³ and 18.84.045 (Inland-Urban Lot Split)⁴, and finds the LCPA and Ordinance do not comply with state law in the following respects:

¹ Gov. Code, §§ 65852.21, 66411.7 et seq.

² <https://cityfortbragg.legistar.com/View.ashx?M=F&ID=12517837&GUID=4C798BE8-F409-4FA1-8607-81FB6A3F2AA8>.

³

<https://www.codepublishing.com/CA/FortBragg/#!/LUC18/FortBraggLUC184/FortBraggLUC1842.html#18.42.200>.

⁴

<https://www.codepublishing.com/CA/FortBragg/#!/LUC18/FortBraggLUC188/FortBraggLUC1884.html#18.84.045>.

1. Sections 17.42.200 and 18.42.200 - *Limitations on Location for Urban Unit Development* - The LCPA and Ordinance, respectively, contain site exclusions applicable to urban lot splits⁵ in Sections 17.84.045 (Coastal Urban Lot Splits) and 18.84.045 (Inland Urban Lot Splits) but do not reference those same site exclusions under Sections 17.42.200 and 18.42.200 (Urban Unit Development). Under SB 9 and as amended by SB 450, “A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially...if the proposed housing development meets all of the following requirements:... (2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 as that section read on September 16, 2021”⁶; “(3) the proposed housing development would not require demolition or alteration of any of the following types of housing...”⁷ and “(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner’s rights...”⁸ Therefore, the City must amend the LCPA and Ordinance to specify that the site exclusions also apply to units developed pursuant to Government Code Section 65852.21. Please note that exclusions should match the modified exclusion language resulting from Comment #7 below in addition to this specific finding. Government Code Section 65913.4, subdivision (a)(6) (B) to (K), as it read on September 16, 2021 is included as Enclosure 1.
2. Sections 17.42.20-0 and 18.42.200(A) - *Purpose* - The LCPA and Ordinance, respectively, state, “This Section establishes standards to implement California Government Code § 66411.7 which requires ministerial approval up to 2 units of housing (see Subsection (D)(2) of this Section) on a parcel created through an urban lot split and up to 4 units (see Subsection (D)(1) of this Section) on a single parcel that was not created through an urban lot split.” However, Government Code Section 65852.21 also provides for ministerial approval of SB 9 units. Therefore, the City must modify the LCPA and Ordinance to also reference the applicability of ministerial approvals pursuant to Government Code Section 65852.21.
3. Sections 17.42.200(A) and 18.42.200(D) - *Density, Size and Number of Units allowed* - The LCPA and Ordinance, respectively, state, “A maximum of 2 units is permissible on each lot created by an urban lot split...One primary unit of any size and 1 ADU [Accessory Dwelling Unit] of 800 square feet or less...” However, Government Code Section 66321 states, “...a local agency shall not establish by ordinance any of the following: (2) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (A) Eight hundred fifty square feet... (B) One thousand square feet for an accessory dwelling unit that provides more than one bedroom”⁹. Therefore, the City must modify the LCPA and Ordinance to remove conflicts with state law.

⁵ Gov. Code, § 66411.7, subd. (a)(3)(C).

⁶ Gov. Code, § 65852.21, subd. (a)(2).

⁷ Gov. Code, § 65852.21, subd. (a)(3).

⁸ Gov. Code, § 65852.21, subd. (a)(4).

⁹ Gov. Code, § 66321, subd. (b)(2).

The City may want to consider maintaining all standards specific to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU), in the City's ADU/JADU Ordinance and the applicable ADU/JADU section(s) of the Local Coastal Program.

4. Sections 17.42.200(F) and 18.42.200(F)-*Objective Design Review Standards*- The LCPA and Ordinance contain requirements related to private open space and storage space. However, Government Code Section 65852.21, subdivision (b)(3), as amended by SB 450 specifies that, "A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards **that do not apply uniformly to development within the underlying zone...**" (emphasis added). The LCPA and Ordinance appear to include development standards (e.g. at a minimum, private open space) that are required of multi-family residential units but not single-family residential units. As SB 9 units are located in single-family zones, development standards cannot be more restrictive than those required in single-family zones. Therefore, the City must review all development standards applicable to SB 9 units to confirm they apply uniformly to development within the underlying zone.
5. Sections 17.42.200(E) and 18.42.200(H) - *Exceptions to Development Standards* - The LCPA and Ordinance, respectively, state, "Exceptions to accommodate at least 2 800-square-foot units: The Community Development Director shall modify or eliminate objective development standards if they prevent the construction of up to 2 units of at least 800 square feet in on each lot. The following objective development standards shall be modified last (and only if no other combination of modified standards permits at least 2800-square-foot units): parking requirement, front setback, height limit." However, Government Code Section 66411.7, subdivision (c)(2) specifies that, "A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet".¹⁰ While the LCPA and Ordinance include the physical preclusion language under 17.42.200 and 18.42.200 (Urban Unit Development), it must also be included as applicable to urban lot splits. Therefore, the City must modify the LCPA and Ordinance to include the physical preclusion language for urban lot splits pursuant to Government Code section 66411.7.
6. Sections 17.42.200(G)(1) and 18.42.200(J)(1) - *Utilities* - The LCPA and Ordinance, respectively, state, "The project shall include separate gas, electric and water utility connection directly between each dwelling unit and the utility." The LCPA and Ordinance specify that "*Unit*" means a primary unit or one unit of a duplex, an ADU or a JADU. However, "For an accessory dwelling unit described in paragraph (1) of subdivision (a) of [Government Code] Section 66323...a local agency...shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility..."¹¹

¹⁰ Gov. Code, §§ 65852.21, subd. (b)(2)(A) and 66411.7, subd. (c)(2).

¹¹ Gov. Code, § 66324, subd. (d).

Therefore, the City must modify the LPCA and Ordinance to remove conflicts with ADU law.

7. Sections 17.84.045(A) and 18.84.045(B) - *Site Exclusion Language* - The LPCA and Ordinance, respectively, state that for urban lot splits, “The applicant shall undertake proper mitigation if the parcel is in a Fire, Flood, or Earthquake Hazard Zone per the appropriate section of this code.” The Ordinance also states that urban lot splits are not permitted “On a parcel located in a historic site or district, listed on the State Historic Resources Inventory or designated as a Historic Landmark...On a parcel located on prime farmland, a hazardous waste site listed pursuant to Section 65962.5, or within a 100-year flood zone”. This language is similar to but not identical to language contained in SB 9.¹² The site exclusion language contained in the Ordinance appears to reflect City specific conditions and applicability. While it is not required that the City include Government Code¹³ language verbatim, the City should generally make reference to the applicability of Government Code Section 65913.4, as that section read on September 16, 2021, in both the LPCA and Ordinance.
8. Sections 17.84.045(A)(2) and 18.84.045(B)(2) - *Earthquake Hazard Zones* - The LPCA and Ordinance, respectively, state, “The applicant shall undertake proper mitigation if the parcel is in a ... Earthquake Hazard Zone per the appropriate section of this code.” However, SB 9 provides the following exclusion language, “...within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies...”¹⁴ The LPCA and Ordinance fault zone exclusion language substantively differ from the state law in light of the fact that the City has locally mapped fault lines in the Local Coastal Program that are not mapped by the State Geologist. Therefore, the fault zone exclusion language in both the LPCA and Ordinance must be amended to be consistent with state law.
9. Sections 17.84.045(A)(4) and 18.84.045(B)(4) - *Rental and Affordable Housing Protections* - The LPCA and Ordinance, respectively, state, “Urban lot splits are not permitted...(g) On a parcel where the urban lot split would require demolition of affordable or rental housing...” However, SB 9 specifies that “[t]he proposed urban lot split would not require demolition **or alteration** of any of the following types of housing...”¹⁵ (emphasis added). The City’s LPCA and Ordinance currently addresses limitations on demolition of residential structures but does not include the same limitations on alteration to residential structures. Therefore, the LPCA and Ordinance must be modified to include the limitations on alterations of residential structures as well.

¹² Gov. Code, §§ 66411.7, subd. (a); 65852.21, subd. (a); 65913.4, subd. (a)(6)(B) through (K), as it read on September 16, 2021.

¹³ Gov. Code, § 65913.4, subd. (a)(6)(B) through (K).

¹⁴ Gov. Code, § 65913.4, subd. (a)(6)(F).

¹⁵ Gov. Code, § 66411.7, subd. (a)(3)(D), 65852.21, subd. (a)(3) and (4).

10. Section 17.84.045(A)(4)(h) - *Limitations on Location for Urban Lot Splits in Coastal Zone* - The LCPA states, “Urban Lot Splits are not permitted...On a parcel located within areas mapped in the Coastal General Plan on any of the following Coastal General Plan maps: Map OS-1 Open Space and Environmentally Sensitive Habitat Areas; Map OS-2 Special Review and Runoff Sensitive Areas; and/or Map SF-2 Flood Hazards”. However, SB 9, as amended by SB 450, requires that for a pending urban lot split, “The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 as that section read on September 16, 2021 .”¹⁶ Therefore, the City must demonstrate in the LCPA that additional site exclusions included under Section 17.84.045 (A)(4)(h), are equivalent to, and do not exceed, site exclusions under Government Code section 65913.4, subdivision (a)(6)(B) to (K) as that section read on September 16, 2021.
11. Sections 17.84.045(D)(2)(b) and 18.84.045(E)(2)(b) - *Short-Term Rentals* - The LCPA and Ordinance, respectively, state that for urban lot splits, “Units shall not be rented for periods of less than 31 days”. The LCPA and Ordinance do not contain similar language for SB 9-unit developments. State law provides that “... A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days”.¹⁷ Therefore, the City must modify the LCPA and Ordinance to specify that SB 9 units, constructed independent of an urban lot split, are required to be rented for a term longer than 30 days (i.e. for periods not less than 31 days).
12. Sections 17.84.045(I) and 18.42.200(L) - *Findings for Denial* - The LCPA and Ordinance, respectively, state, “The denial of a proposed urban lot split requires the Building Official to make the following finding...” However, the Ordinance does not include similar language for denial of an SB 9-unit development. State law, as amended by SB 450, provides, “... a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact”.¹⁸ Therefore, the City must modify the LCPA and Ordinance to specify the required Findings for Denial for SB 9 unit developments.

¹⁶ Gov. Code, § 66411.7, subd. (a)(3)(C) and 65852.21, subd. (a)(2).

¹⁷ Gov. Code, §§ 65852.21, subd. (e) and 66411.7, subd. (h).

¹⁸ Gov. Code, § 65852.21, subd. (d).

Conclusion

HCD looks forward to assisting the City with its implementation of SB 9 and in its compliance with state housing laws. HCD would like to remind the City that HCD has enforcement authority over SB 9, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.¹⁹ If you have questions or need additional information, please contact Mindy Wilcox at mindy.wilcox@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief

¹⁹ Gov. Code, § 65585, subd. (j).