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February 6, 2022

Kevin Bryant
Town Manager
The Town of Woodside
2955 Woodside Road
Woodside, CA 94062

**RE: VIOLATIONS OF GOVERNMENT CODE SECTIONS 65852.21 AND 66411.7
AND THE CALIFORNIA CONSTITUTION**

Dear Mr. Bryant:

It has come to our attention that the Town of Woodside has declared itself categorically exempt from SB 9's requirement that local agencies provide a ministerial approval process for certain housing developments. We have reviewed the January 27, 2022 memorandum by Jackie Young, the Planning Director for Woodside, that attempts to justify the exemption. Addressed to all Woodside residents as well as permit applicants, the memorandum declares that no parcel in Woodside "is currently eligible for an SB 9 project" because "Woodside – in its entirety – is habitat" for mountain lions. Woodside has also adopted an urgency ordinance that appears designed to blunt the impact of SB 9. These positions are contrary to law.

**A. Woodside Cannot Categorically Exempt All of Its Parcels from State Law
by Declaring Itself a Habitat for Protected Species**

Under SB 9, local agencies must provide a ministerial approval process for any proposed housing development consisting of two residential units within a single-family residential zone, and for any proposed subdivision of an existing parcel within a single-family residential zone into no more than two parcels. (Gov. Code, §§ 65852.21, subd. (a), 66411.7, subd. (a).) Both of these provisions apply to parcels satisfying certain requirements identified in section 65913.4 of the Government Code. One requirement is that an eligible parcel cannot constitute habitat "for protected species identified as a candidate, sensitive, or species of special status by state or federal agencies." (Gov. Code, § 65913.4, subd. (a)(6)(J).)

Woodside declared itself exempt from SB 9 after adopting an urgency ordinance that is inconsistent with section 65913.4, subdivision (a)(6)(J). While that statute exempts parcels actually serving as a habitat for protected species from SB 9, Woodside's ordinance exempts "lands identified as habitat for protected species." (Municipal Code, § 153.983.A.5, italics

added.) Woodside’s Planning Director then identified the entire Town of Woodside as habitat for a protected species in her January 27 memorandum.

There is no valid basis to claim that the entirety of Woodside is a habitat for mountain lions, a candidate for protection under the California Endangered Species Act. Habitat is land that has the capacity to support that species, including providing food and shelter. Land that is *already* developed—with, for example a single-family home—is not, by definition, habitat. That mountain lions appear in Woodside from time to time does not make any of its individual parcels mountain lion *habitat*. Rather, it demonstrates the *range* of the mountain lion—where the species may be found in its lifetime. In other words, “habitat” is a separate concept from “range.” The enclosed map, by the California Interagency Wildlife Task Group of the California Department of Fish and Wildlife, shows that the range of mountain lions includes the vast majority of the San Francisco Bay Area. That breadth does not make nearly every single parcel in the San Francisco Bay Area a habitat for mountain lions, nor could the range of mountain lions, or any endangered species, be used to justify a local government’s attempt to categorically prohibit a class of housing development within its local boundaries.

In addition, any exemption under SB 9 requires examination of the attributes of the individual parcel. (Gov. Code, §§ 65852.21, subd. (a)(2), 66411.7, subd. (a)(3)(C).) If a proposed housing development or a lot split under SB 9 is on a parcel that is indeed a habitat for a protected species, however unlikely that may be, a local agency can support that determination with substantial evidence. Of course, the memorandum cites to no evidence indicating that every individual SB 9-eligible parcel in the Town is habitat for mountain lions.

Beyond SB 9, we note that Woodside’s ordinance and memorandum may implicate and/or violate other state housing production laws. We leave that inquiry to the Department of Housing and Community Development, who may be contacting you shortly.

In summary, Woodside’s attempt to exempt itself from SB 9 appears entirely unjustified. Passing an ordinance ostensibly in the name of wildlife protection, without more, cannot exempt Woodside from state housing laws.

B. Woodside’s Urgency Ordinance Does Not Bear a Real and Substantial Relationship to the Welfare of Those It Impacts

Under the California Constitution, local restrictions that limit the development of housing must bear a real and substantial relationship to the welfare of those whom they affect. (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 607.) To satisfy this requirement, any locally imposed limitation on growth must confer a net beneficial impact to *the entire region* affected by the limitation. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 413.)

By prohibiting project applicants whose properties are not actually mountain lion habitat from supplying more housing, Woodside is deliberately attempting to shutoff the supply of new housing opportunities within its borders. Woodside’s policy is presumed to impact the regional

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supply of housing. (See Evid. Code, § 669.5, subd. (a).) Ironically, by restricting housing production, implementing the policy would increase the likelihood of exurban sprawl that will adversely affect the habitat of mountain lions. This policy does not confer a net beneficial impact on the regional welfare. It can only be assumed that the ordinance is intended to undermine the Legislature's efforts to combat the crisis-level housing shortage.

As outlined above, we have concluded that Woodside's policy abrogating the application of SB 9 appears to be in violation of Government Code sections 65852.21, 66411.7, and the California Constitution. We request that you address this matter at the Town Council meeting on February 22, 2022 (if not earlier), amend the urgency ordinance to be consistent with state law, and withdraw the January 27 memorandum.

Sincerely,



MATTHEW T. STRUHAR
Deputy Attorney General

For ROB BONTA
 Attorney General