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TO: Alameda County Planning Department Staff

FROM: Rodrigo Orduña, Assistant Planning Director

SUBJECT: Senate Bill 9 Implementation within Unincorporated Alameda County

BACKGROUND

Senate Bill (SB) 9 (Atkins), signed into law by Governor Newsom on September 16, 2021, allows property owners within a single-family residential zone to build two units and/ or to subdivide lot into two parcels, for a total of four units. Some details of the legislation are still unclear as some provisions are difficult to interpret and the State is still working on their guidance. The affected State legislation is the additional Government Code Sections 65851.21 and 66411.7, and the amended Government Code Section 66452.6 (Subdivision Map Act).

The bill requires approval of the following development activities:

- **Two-unit housing development** – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).

- **Urban lot split -** A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (unless a jurisdiction decides to allow additional units).

The bill also outlines how jurisdictions may regulate SB 9 projects. The local jurisdictions, including Alameda County, may only apply *objective* zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. The County can conduct objective design review but may not have hearings for units that meet the state rules (with limited exceptions).

The below is a brief description of SB 9 projects and procedure. The County is following the State legislation given that we have not adopted our own local legislation.

For further information, see attached Senate Bill 9 Summary and SB 9 legislation.

SB 9 applies to all single-family (R-1) residential zoned properties (and PD and R-1-L zoned properties based on the R-1 zoning district) within an urbanized area with several key exceptions:

- Environmentally sensitive areas
- Environmental hazard areas if mitigations are not possible (see full list later in this document but note that the law *does* apply, with modifications, in wildfire zones)
- Historic properties and districts
- Properties where the Ellis Act was used to evict tenants at any time in the last 15 years.
- Additionally, demolition is generally not permitted for units rented in the last 3 years, rent-controlled units or units restricted to people of low or moderate incomes.

This law is similar to recent state ADU legislation in that it allows the County to apply local standards as long as they do not prevent the development of a small new home (or multiple homes in the case of lot splits). Market analysis predicts the uptake will be limited in part because homeowners already have many of the same rights under ADU law. The bigger change is likely permitting the splitting and sale of lots by homeowners.

While this new state law may feel like a big shift, the types of homes it supports are actually consistent with many traditional neighborhoods in the Bay Area. These communities had duplexes, triplexes and quads interspersed among single-family homes. While there were more homes on a single lot, they often matched the urban forms of their single-family neighbors. Recent zoning has reduced or eliminated this “missing middle” housing type, leaving only single-family homes and large apartments, but little in between. Previously, a local effort to encourage missing middle housing would have required an analysis under CEQA and potentially an EIR. Because of SB 9, no environmental study is now required.

SB 9 went into effect on January 1, 2022. Alameda County did not adopt an implementing ordinance, but instead defaults to the State Legislation (additional Government Code Sections 65851.21 and 66411.7, and the amended Government Code Section 66452.6 (Subdivision Map Act).). Other jurisdictions have taken various approaches to SB 9. Some have done the minimum required to meet state law while others have used it as an opportunity to promote missing middle housing.

WHAT CAN BE BUILT

New SB 9 Legislation

The new SB 9 legislation is limited to R-1 zones (and L combining and PD zones based on R-1), and properties within an urbanized area or urban cluster, as those terms are defined by the U.S. Census Bureau.

Lots Not Being Subdivided

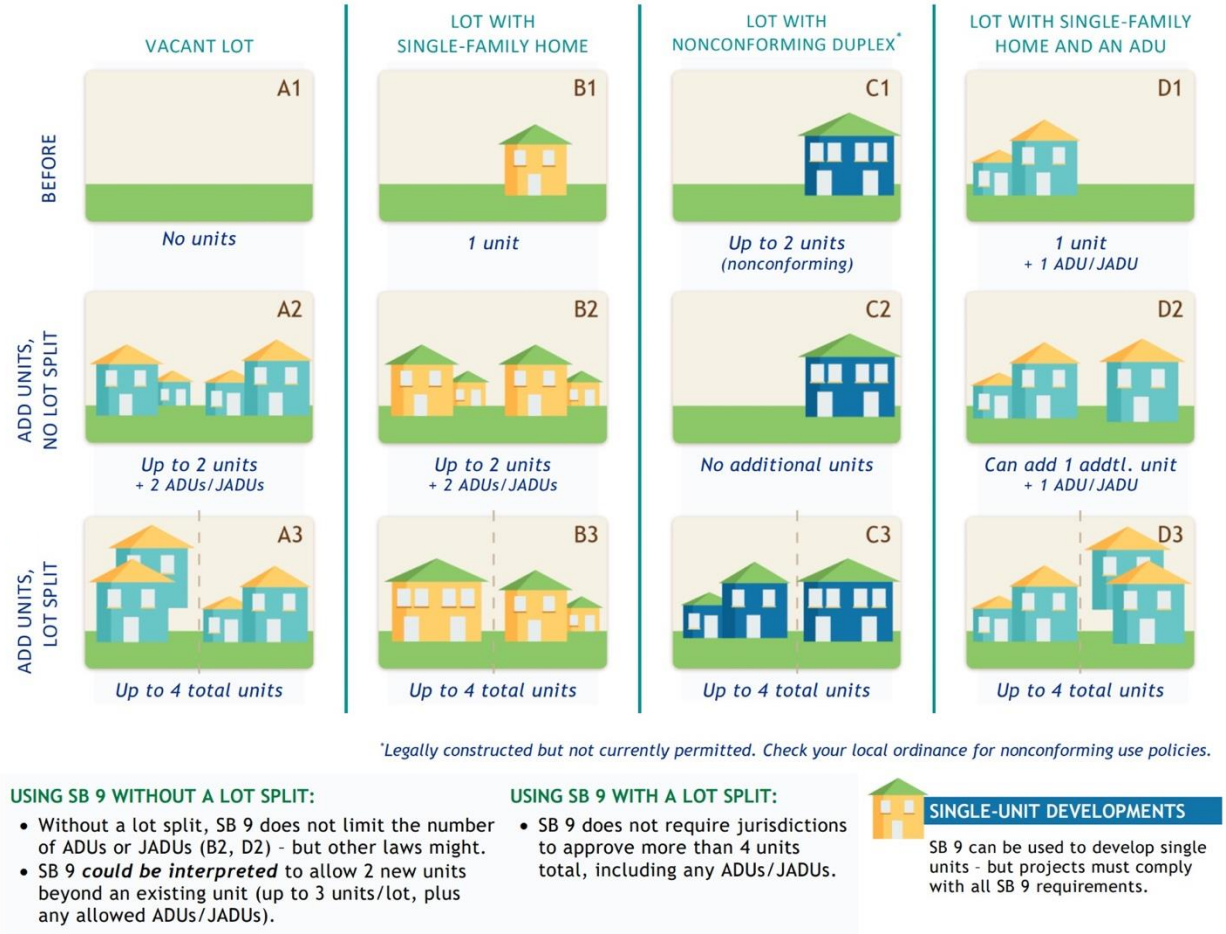
Homeowners can use SB 9 to build two new dwelling units on a vacant lot, including up to one ADU per new dwelling unit, for a total of four units. If there is an existing single-family dwelling, then they can add up to one primary dwelling unit plus up to one ADU for each resulting dwelling unit, for a total of four units.

Lots Being Subdivided

Homeowners that split a lot will be allowed to build two new dwelling units on each of the two new lots, allowing for a total of four units. If there are existing units on the lot, new homes can be added, for a total of four maximum dwelling units. The homes must conform to local objective rules, as long as those rules allow two 800 sf units on each property.

Scenarios

The following graphic illustrates potential scenarios that could occur on a single-family property under SB 9:



REGULATIONS

The SB 9 legislation details which ways the County may regulate SB 9 proposals. There are some actions that the County must take, some decisions that the County can choose to take, and some topics that the County may not regulate.

The following requirements and limitations apply to all two-unit housing development and urban lot split projects under SB 9:

- **Ministerial review –** The County must review and process applications for SB 9 two-unit housing developments and urban lot splits ministerially without any discretionary / subjective review or CEQA.

- **Objective standards –** The County may only impose objective zoning, design, and subdivision standards. Any standards shall not physically preclude the construction of two units of less than 800 square feet each, per property.

- **4-foot rear and side setbacks –** The County may not impose residential setbacks greater than 4 feet for side and rear property lines.

- **Rebuild demolished building with same setback –** The County may not impose any setback requirements for a new residence constructed in the same location and to the same dimensions as a legally existing structure that is demolished.

- **Zero or one parking space –** The County may not require more than one parking space per unit. For properties within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or within one block of a car share vehicle, no parking spaces may be required.

- **Denials for public health and safety exemption –** The County may only deny an SB 9 proposal if the Building Official finds that it would have a "specific, adverse impact [as defined by the State legislation], upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact." Any denials must be based on objective, identified public health and safety standards, policies or conditions that existed when the application was submitted.

- **Attached buildings allowed –** The County may not reject an application because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance. *SB 9 does not define "sufficient to allow separate conveyance."*

The following additional limitations apply to all urban lot split projects under SB 9:

- **Dedications/Improvements –** The County may not require dedications of rights-of-way or the construction of offsite improvements.

- **Easements –** The County may require easements required for the provision of public services and facilities and may require that parcels have access to, provide access to, or adjoin the public right of way.

- **No correction of non-conforming conditions-** The County may not require correction of an existing non-conforming condition as a condition for ministerial approval.

SB 9 includes a few additional rules, including the County's ability to require percolation tests for onsite wastewater treatment in two-unit development projects and the lack of a public hearing requirement for coastal development permit applications. This latter does not apply to the County.

ADDITIONAL INFORMATION ON APPLICABILITY AND RESTRICTIONS

Applicability:

SB 9 applies in all Urban Areas, as defined by the US Census Bureau, except for the following:

- **Environmental Sensitivity/Environmental Hazards -** Properties designated as:

    - Prime farmland or farmland of statewide importance
    - Wetlands
    - Within a very high fire hazard severity zone (with exceptions)
    - A hazardous waste site (with exceptions)
    - Within a delineated earthquake fault zone (with exceptions)
    - Within a flood zone (with exceptions)
    - Identified for conservation or under conservation easement
    - Habitat for protected species

- **Ellis Act** Properties where the Ellis Act was used to evict tenants at any time in the last 15 years.

- **Historic Properties -** Properties located in a state or local historic district, or properties designated historic landmarks.

Other restrictions:

- **Deed restricted affordable housing and rental housing –** SB 9 projects may not demolish housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income. Nor is it allowed for housing that is subject to any form of rent or price control through a

public entity's valid exercise of its police power. Demolition is also not permitted for housing that has been occupied by a tenant in the last three years.

- **No short-term rentals** – Rental terms less than 30 days are not allowed.

- **Limits on demolition** - Projects may not demolish more than 25 percent of existing exterior structural walls unless the property has not been occupied by a tenant for 3 years.

Urban Lot Split-Specific Rules:

- **One use -** Only one lot split allowed under SB 9, but note further splits may be possible under regular subdivision procedures.

- **Residential only -** The uses on the resulting lots are limited to residential uses only.

- **Approximately equal size -** Each new parcel must be "approximately equal" in lot area provided that one parcel shall not be smaller than 40 percent the size of the original parcel.

- **Minimum 1,200 sf parcel** - No parcel shall be less than 1,200 square feet. (The County may, by ordinance, adopt a smaller minimum lot size subject to ministerial approval.)

- **Intention to occupy required only of Subdivisions –** The subdivider must sign an affidavit stating they intend to occupy one of the units for a minimum of three years. The County cannot impose additional owner occupancy standards. Community land trusts and qualified nonprofits are exempted from this requirement.

- **Limits on adjacent urban lot splits -** Neither the subdivider nor any person "acting in concert" with the subdivider has previously subdivided an adjacent parcel using an urban lot split. *SB 9 does not define what "acting in concert" means or how it would be proven.*

APPLICATIONS

SB 9 projects are ministerial review. No public hearing (not even at the MACs).

- SB 9 residential development applications: Same over-the-counter Building Permit submittal process as we currently have for all non-SDR residential development applications.

- SB 9 lot split applications: Same Subdivision application requirements as a Tentative Parcel Map Subdivision application. Same fee deposits, for now. Same fee deposits for PWA as well.

CEQA

Since these are ministerial permits, these are not projects under CEQA and therefore CEQA does not apply.

FEES

- SB 9 residential development applications: No Planning Department review fees. Yes Park Dedication Fees for new dwelling units, and for ADUs over 750 sq. ft.

- SB 9 lot split applications: Same Subdivision application requirements as a Tentative Parcel Map Subdivision application. Same fee deposits, for now. Same fee deposits for PWA as well. Additional fees: Park Dedication Fees for new dwelling units, and for ADUs over 750 sq. ft.

ATTACHMENTS

- Senate Bill 9 Summary
- Senate Bill 9 Graphic Explanation
- Senate Bill 9 – Ministerial Urban Lot Splits & Two-Unit Developments FAQs
- SB 9 legislation – Government Code Sections 65851.21 and 66411.7 and amended Government Code Section 66452.6 (Subdivision Map Act)

Senate Bill 9 Summary

Senate Bill 9 adds Government Code Sections 65851.21 and 66411.7 and amends Government Code Section 66452.6 (Subdivision Map Act). The provisions of SB 9 are effective beginning January 1, 2022. Below is a summary of those provisions.

I. Government Code Section 65851.21 – Ministerial Two-Unit Developments

Under SB 9, local agencies must approve in a ministerial process, without any discretionary review or hearing, certain two-unit developments. Two-unit developments are those that propose either the construction of no more than two new units, or the addition of one new unit to an existing unit.

To qualify for this ministerial process, the two-unit development must be proposed in a single-family residential zone. Other requirements that a project must satisfy to qualify for SB 9's benefits include:

- **Location.** The project must be in an urbanized area or urban cluster, or within a city with boundaries in an urbanized area or urban cluster, as those terms are defined by the U.S. Census Bureau. The project cannot be on a site designated as a local or state historic landmark or within a local or state historic district. The project may not be on prime agricultural land, wetlands, or protected species habitat, but may be in a high or very high fire severity hazard zone, earthquake fault zone, floodplain, floodway, and site with hazardous materials so long as certain mitigation measures (as outlined in Government Code Section 65913.4(a)(6)) have been implemented on those sites.
- **Protected Units.** The two-unit development may not result in the demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from the rental market in the last 15 years, or housing occupied by a tenant in the past 3 years.
- **Limit on Demolition.** The project may not demolish more than 25 percent of the exterior walls of an existing unit unless either the local agency permits otherwise or the site has not been occupied by a tenant in the last 3 years.
- **Residential Uses.** Any units constructed via SB 9 must be used for residential purposes and cannot be used for short-term rentals of less than 30 days.

A project that meets these criteria and otherwise qualifies for the SB 9's ministerial process is exempt from the provisions of the California Environmental Quality Act, as is an ordinance implementing these provisions. However, the provisions of the California Coastal Act of 1976 are applicable to SB 9 two-unit developments, except that a local agency is not required to hold a public hearing for coastal development permit applications.

SB 9 provides narrow parameters for local agencies regarding the standards which they may apply to qualifying two-unit developments and the circumstances under which they may reject an otherwise qualifying two-unit development. As a general matter, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards, so long as those standards do not conflict with the limitations imposed by SB 9 and would not physically preclude the construction of up to two units of at least 800 square feet each. Other limitations in SB 9 include:

- **Setbacks.** A local agency may not require rear and side yard setbacks of more than four feet. No setback may be required for a unit constructed (1) within an existing living area, or (2) in the same location and to the same dimensions as an existing structure.
- **Parking Requirements.** A local agency may only require one off-street parking space per unit. No parking requirements may be imposed if the parcel is located within (1) one-half mile walking

distance of either a statutorily defined high-quality transit corridor or major transit stop, or (2) one block of a car share vehicle.

- **Adjacent or Connected Structures.** A local agency may not deny an application for a two-unit development solely because it proposes adjacent or connected structures, as long as the structures meet building code safety standards and are sufficient to allow separate conveyance.
- **Percolation Test.** For residential units connected to an onsite wastewater treatment system, the local agency may require a percolation test completed within the last 5 years, or if the percolation test has been recertified, within the last ten years.

SB 9 provides that a local agency may deny an otherwise qualifying two-unit development if the local building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, and there is no feasible method by which to satisfactorily mitigate the adverse impact.

II. Government Code Section 66411.7 – Ministerial Urban Lot Splits

Under SB 9, local agencies must also ministerially approve, without discretionary review or hearing, certain urban lot splits. To qualify for ministerial approval under SB 9, the parcel to be split must be in a single-family residential zone, and the parcel map for the urban lot split must meet the following requirements:

- **Location.** The project must be in an urbanized area or urban cluster, or within a city with boundaries in an urbanized area or urban cluster, as those terms are defined by the U.S. Census Bureau. The project cannot be on the site of a designated local or state historic landmark or within a local or state historic district. The project may not be on prime agricultural land, wetlands, or protected species habitat, but may be in a high or very high fire severity hazard zone, earthquake fault zone, floodplain, floodway, and site with hazardous materials so long as certain mitigation measures (as outlined in Government Code Section 65913.4(a)(6)) have been implemented on those sites.
- **Parcel Size.** The parcel map must subdivide an existing parcel to create no more than two new parcels of approximately equal lot area, with neither resulting parcel exceeding 60 percent of the lot area of the original parcel. Additionally, both newly created parcels must be at least 1,200 square feet (unless the local agency adopts a smaller lot size).
- **No Prior SB 9 Lot Split.** The parcel to be split may not have been established through a prior SB 9 lot split. Neither the owner nor anyone acting in concert with the owner may have previously subdivided an adjacent parcel using an SB 9 lot split.
- **Subdivision Map Requirements.** The urban lot split must conform to all applicable objective requirements of the Subdivision Map Act, except those that conflict with SB 9 requirements.
- **Protected Units.** The urban lot split may not result in the demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from the rental market in the last 15 years, or housing occupied by a tenant in the past 3 years.
- **Owner-Occupancy Affidavit.** The applicant must indicate, by affidavit, the applicant's intention to reside in one of the units built on either parcel for at least three years. This requirement does not apply if the applicant is a qualified non-profit or community land trust. A local agency may not impose any additional owner occupancy requirements on units built on a SB 9 lot.
- **Residential Uses.** Any units constructed on a parcel created through via SB 9 must be used for residential purposes and cannot be used for short-term rentals of less than 30 days.

A parcel map application for an urban lot split that meets these criteria and otherwise qualifies for the SB 9's ministerial process is exempt from the provisions of the California Environmental Quality Act, as is an ordinance implementing these provisions. The provisions of the California Coastal Act of 1976 are applicable to SB 9 urban lot splits, except that a local agency is not required to hold a public hearing for coastal development permit applications.

As with two-unit developments under SB 9, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards to an SB 9 urban lot split, so long as those standards do not conflict with the limitations imposed by SB 9 and would not physically preclude the construction of up to two units of at least 800 square feet each. Other limitations in SB 9 include:

- **Setbacks.** A local agency may not require rear and side yard setbacks of more than four feet. No setback may be required for a unit constructed (1) within an existing living area, or (2) in the same location and to the same dimensions as an existing structure.
- **Parking Requirements.** A local agency may only require one off-street parking space per unit. No parking requirements may be imposed if the parcel is located within (1) one-half mile walking distance of either a statutorily defined high-quality transit corridor or major transit stop, or (2) one block of a car share vehicle.
- **Easements, Access, and Dedications.** A local agency may require an application for a parcel map for an urban lot split to include easements necessary for the provision of public services and facilities. The local agency may also require that the resulting parcels have access to, provide access to, or adjoin the public right-of-way. The local agency may not require dedications of rights-of-way or construction of offsite improvements.
- **Number of Units; ADUs and JADUs.** Notwithstanding the provisions of Government Code Sections 65852.1, 65852.21, 65852.22, and 65915, a local agency is not required to permit more than two units on any parcel created through the authority in SB 9, inclusive of any accessory dwelling units or junior accessory dwelling units.
- **Adjacent or Connected Structures.** A local agency may not deny an application for an urban lot split solely because it proposes adjacent or connected structures, as long as the structures meet building code safety standards and are sufficient to allow separate conveyance.

The standard for denying an application for a parcel map for an urban lot split is the same as for denying an SB 9 two-unit development – the local building official must make a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety, or the physical environment, and there is no feasible method by which to satisfactorily mitigate the adverse impact.

III. Government Code Section 66452.6 – Subdivision Map Act Amendment

Currently, an approved or conditionally approved tentative map expires either 24 months after its approval, or after any additional period permitted by local ordinance, not to exceed an additional 12 months. SB 9 extends the limit on the additional period that may be provided by local ordinance from 12 to 24 months. Where local agencies adopt this change by ordinance, an approved or conditionally approved tentative map would expire up to 48 months after its approval if it received a 24-month extension of approval.

SENATE BILL 9 (SB 9): AN OVERVIEW

WHAT IT IS AND HOW IT IMPACTS RESIDENTIAL LAND USE

Senate Bill 9 (SB 9) is a new California State Law taking effect January 1, 2022.

Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 overrides existing density limits in single-family zones. SB 9 is intended to support increased supply of starter, modestly priced homes by encouraging building of smaller houses on small lots.

SB 9 WAIVES DISCRETIONARY REVIEW AND PUBLIC HEARINGS FOR:

BUILDING TWO HOMES
ON A PARCEL IN A SINGLE-FAMILY ZONE

&

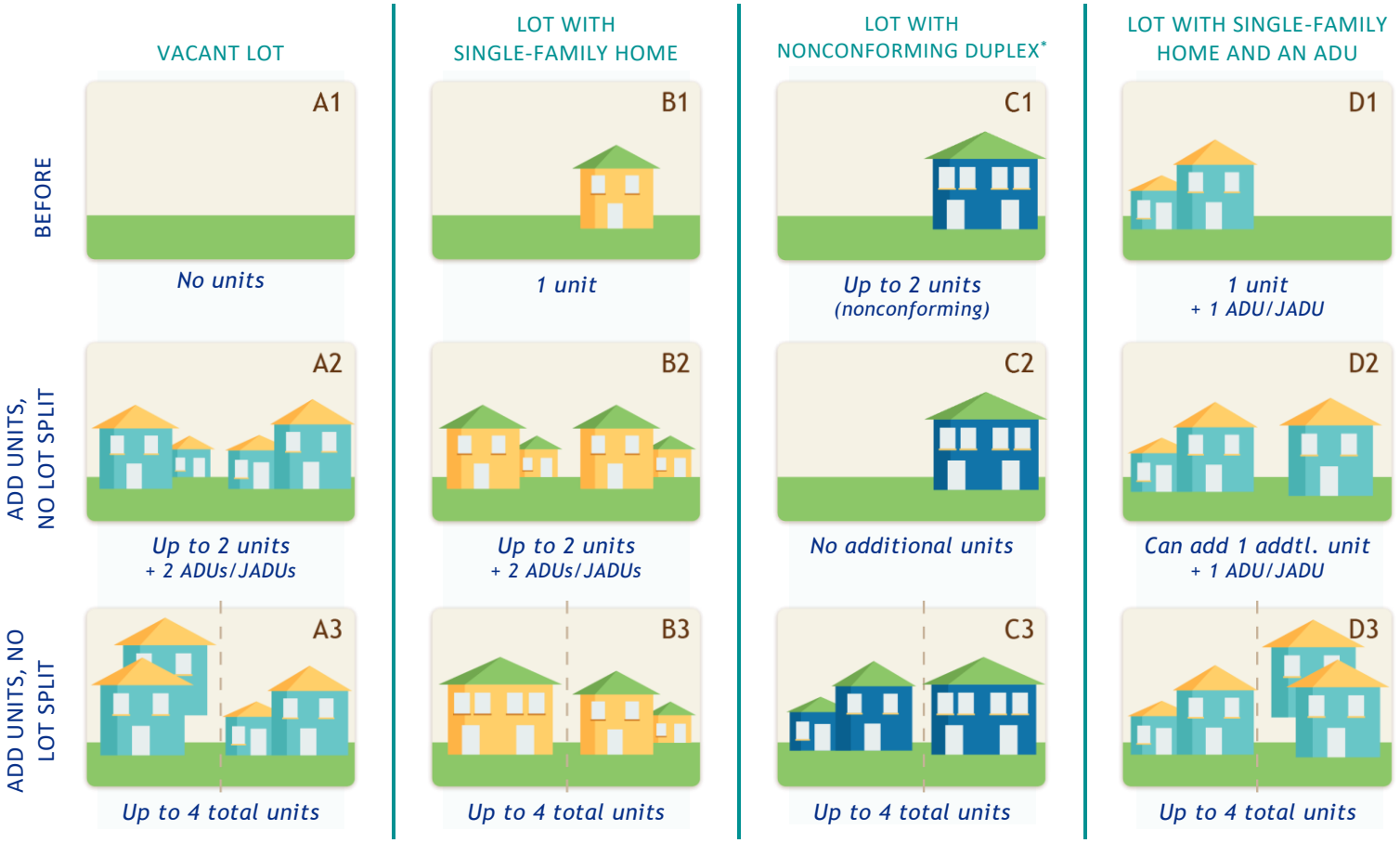
SUBDIVIDING A LOT INTO TWO
that can be smaller than required min. size

Used together, this allows **4 HOMES** where 1 was allowed before.

SB 9 CAN BE USED TO: *Add new homes to existing parcel • Divide existing house into multiple units • Divide parcel and add homes*

WHAT IT CAN MEAN FOR DEVELOPMENT OF NEW HOMES

Illustrations are based on a preliminary analysis of the law. Details are subject to change and are for informational purposes only.



*Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.

USING SB 9 WITHOUT A LOT SPLIT:

- Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) – but other laws might.
- SB 9 ***could be interpreted*** to allow 2 new units beyond an existing unit (up to 3 units/lot, plus any allowed ADUs/JADUs).

USING SB 9 WITH A LOT SPLIT:

- SB 9 does not require jurisdictions to approve more than 4 units total, including any ADUs/JADUs.

SINGLE-UNIT DEVELOPMENTS

SB 9 can be used to develop single units – but projects must comply with all SB 9 requirements.

DOES THE PROPERTY QUALIFY?

2-UNIT DEVELOPMENTS AND LOT SPLITS

- ☐ Single-family lot (usually R-1)
- ☐ Located in an urbanized area or urban cluster[1]
- ☐ Not in state/local historic district, not an historic landmark
- ☐ Meets requirements of SB35 subparagraphs (a)(6)(B)-(K)[2]:

PROPERTY CANNOT BE:

- ☐ Prime farmland or farmland of statewide importance (B)
- ☐ Wetlands (C)
- ☐ Identified for conservation or under conservation easement (I+K)
- ☐ Habitat for protected species (J)

PROPERTY CANNOT BE (UNLESS MEETING SPECIFIED REQUIREMENTS):

- ☐ Within a very high fire hazard safety zone (D)
- ☐ A hazardous waste size (E)
- ☐ Within a delineated earthquake fault zone (F)
- ☐ Within a 100-year floodplain or floodway (G+H)

- ☐ Project would not alter nor demolish:
  - ☐ Deed-restricted affordable housing
  - ☐ Rent-controlled housing
  - ☐ Housing on parcels with an Ellis Act eviction in last 15 yrs
  - ☐ Housing occupied by a tenant currently or in last 3 yrs[3]

Addtl. Qualifications for 2-UNIT DEVELOPMENTS

- ☐ Project does not remove more than 25% of exterior walls on a building that currently has a tenant or has had a tenant in the last 3 yrs *even if the rental unit itself isn't altered*

Addtl. Qualifications for LOT SPLITS

- ☐ Lot is split roughly in half – smaller lot is at least 40% of the original lot[4]
- ☐ Each new lot is at least 1,200ft^2 [5,6]
- ☐ Lot is not adjacent to another lot split by SB 9 by the same owner or "any person acting in concert with the owner"
- ☐ Lot was not created by a previous SB 9 split[7]

LIMITATIONS APPLIED

2-UNIT DEVS. AND LOT SPLITS

- Agencies MUST only impose objective[8] zoning standards, subdivision standards, and design standards (they may impose a local ordinance to set these standards)
  - These standards MUST not preclude 2 units of at least 800ft^2
- Projects must follow local yard, height, lot coverage, and other development standards, EXCEPT:
- A local agency MAY NOT require rear or side setbacks of more than 4 feet, and cannot require any setback if utilizing an existing structure or rebuilding a same-dimensional structure in the same location as an existing structure
- Project MAY be denied if a building official makes a written finding of specific, adverse impacts on public health or safety based on inconsistency with objective standards, with no feasible method to mitigate or avoid impact
- Agency MAY require 1 parking space/unit, unless the project is:
  - Within 1/2 mile of "high-quality transit corridor" or "major transit stop"[9]
  - Within 1 block of a carshare vehicle
- Agency MUST require that units created by SB 9 are not used for short-term rental (up to 30 days)
- Agency MUST allow proposed adjacent or connected structures as long as they comply with building codes and are "sufficient to allow separate conveyance"
- HOAs MAY restrict use of SB 9

2-UNIT DEVS

- Without a lot split, agency CANNOT use SB 9 to limit ADUs/JADUs *e.g., lot can have 2 primary units+1 ADU+1 JADU*
- Agency MUST include # of SB 9 units in annual progress report
- For properties with on-site wastewater treatment, agency MAY require a percolation test w/in last 5 years or recertification within last 10 years

LOT SPLITS

- Agency MAY approve more than 2 units on a new parcel *including ADUs, JADUs, density bonus units, duplex units*
- Project MUST conform to all relevant objective reqs. of Subdivision Map Act
- Agency MAY require easements for provision of public services and facilities
- Agency MAY require parcels to have access to, provide access to, or adjoin public right of way
- Project MUST be for residential uses only
- Applicant MUST sign affidavit stating they intend to live in one of the units for 3+ years[10]
- Agency MUST include number of SB 9 lot split applications in annual progress report
- Agency CANNOT require right-of-way dedications or off-site improvements
- Agency CANNOT require correction of nonconforming zoning conditions

RELATIONSHIPS TO OTHER LAWS

CEQA Does not apply to 2-unit or lot split approvals or ordinances implementing 2-unit or lot split provisions

COASTAL ACT Applies, but no public hearings needed for duplex and lot split coastal development permits

HOUSING CRISIS ACT Local ordinances cannot impose restrictions that reduce the intensity of land use on housing sites *(including total building envelope, density, etc.)*

SB8 SB 9 projects are subject to Permit Streamlining Act deadlines

SB478 Does not apply to single-family zones

[1] Defined by the Census Bureau
[2] See Section 65913.4(a)(6) Exclusions for full details and definitions
[3] Lot can split, then new units added to the lot w/o the Ellis-affected building
[4] Each lot can be smaller than required minimum lot size
[5] This number can be lowered by local ordinance
[6] If min. size is 1,200ft^2, this requires a 2,400ft^2 lot, or 3,000ft^2 if a 60/40 split
[7] This does not apply to previous lot splits taken under usual Map Act procedures
[8] "Objective" as defined by the Housing Accountability Act
[9] See Sections 21155 and 21064.3 of the Public Resources Code for definitions
[10] Unless the applicant is a land trust or qualified non-profit

Senate Bill 9 – Ministerial Urban Lot Splits & Two-Unit Developments
Frequently Asked Questions (FAQ)

DISCLAIMER: *This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this FAQ. Seek the advice of your attorney before acting or relying upon the following information.*

BASICS

1. **When did SB 9 go into effect?**
   January 1, 2022.

2. **What is the definition of an urbanized area or urban cluster?**
   As defined by the U.S. Census Bureau, an urbanized area is an area with 50,000 or more persons, and an urban cluster is an area with at least 2,500 people, but less than 50,000 people. Maps of urbanized areas and urban clusters can be found on the official U.S. Census Bureau website.

3. **Can you use SB 9 in zones that allow single-family development but are zoned primarily for multi-family or mixed-use development?**
   No. The language of the statute is clear that it applies only to parcels in single-family residential zones. Since the intent of the legislation was to upzone or densify areas where only single-family development is currently permitted, it would not serve the purposes of the legislation for it to apply in areas where multi-family or denser uses are already permitted. SB 9 also does not apply to a parcel that is currently developed with a single-family home, if that parcel is located in anything other than a single-family residential zone.

4. **Does SB 9 apply to homeowners' associations (HOAs)?**
   SB 9 overrides local zoning only. It does not address rules or restrictions implemented and adopted by homeowners' associations or included in CC&Rs (covenants, conditions, and restrictions).

5. **Is a lot eligible for an SB 9 lot split if it was split before SB 9?**
   Yes. The language of SB 9 only prohibits an applicant from using SB 9 to subdivide a lot if it was previously split *using the authority contained in SB 9.* Even after using SB 9, the lot could be further split using ordinary procedures under the Subdivision Map Act and local subdivision ordinance subject to minimum lot size and other requirements that apply to the parcel.

6. **Is the restriction on the demolition of 25% of the exterior walls of the building only applicable to deed-restricted affordable units?**
   No. This restriction applies to all units unless (1) the city adopts an ordinance allowing for demolition of more than 25% of the exterior walls of an existing structure, or (2) a tenant has not resided on the property in the last three (3) years.

7. **How do you verify that existing housing has not been rented in the last 3 years?**
   SB 9 does not provide an explicit mechanism for determining whether existing housing has been rented in the last three years. Given that, this is an issue that local agencies will want to address in an implementing ordinance or in their application procedures. Some approaches might include:
   - In jurisdictions with existing records of rental properties, which may include business licenses, rent control registries, or inspection records, using data from the local records to be cross-referenced upon submission of an SB 9 application;
   - Requiring applicants to sign a declaration under penalty of perjury; and/or
   - Providing that it is a violation of the Municipal Code or allowing a private cause of action if inaccurate information is submitted.

8. **When the provisions of SB 9 are unclear, can we seek clarification from the Department of Housing and Community Development?**
   Unlike other recent state laws, such as SB 35 or SB 330, SB 9 does not include any provisions requiring HCD to issue guidelines for the implementation of SB 9. Nonetheless, HCD has indicated that it intends to provide a technical assistance (TA) memo on SB 9 implementation. The timeline for when HCD's TA memo will be available is unclear.

INTERSECTION WITH OTHER LAWS

9. **How does the state Density Bonus Law apply to the 4-unit scenario?**
   State Density Bonus Law would not be applicable to SB 9 projects. Government Code § 65915(i) defines "housing development project," for the purposes of state density bonus, as "a development project for five or more residential units." SB 9 covers up to four units total on two contiguous lots. Additionally, the urban lot split section states specifically that local agencies are not required to allow more than the maximum of two units on each lot notwithstanding any provision of density bonus law.

10. **How do SB 9 urban lot splits relate to the Subdivision Map Act and the fact that the Subdivision Map Act requires general plan conformance?**
    The language in SB 9 overrides any conflicting provisions of the Subdivision Map

Act. Specifically, Government Code § 66411.7(b)(2) provides that "[a] local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act…, except as otherwise expressly provided in this section." General Plan and specific plan conformance is not required if it would preclude lot splits mandated by SB9.

11. **Do minimum frontage requirements apply to restrict lot subdivision?**
Minimum frontage requirements continue to apply unless the requirements would physically preclude the lot split or the construction of two units of at least 800 square feet each. However, SB 9 does allow local agencies to require the resulting parcels to have access to, provide access to, or adjoin the public right-of-way.

12. **How does the Permit Streamlining Act apply if these are ministerial actions?**
SB 8, also effective January 1, 2022, extends the requirements of the Permit Streamlining Act to housing projects of one unit or more that require no discretionary approvals. As a consequence, SB 9 projects are subject to the Permit Streamlining Act's requirements for completeness letters (within 30 days of submittal) and approval deadlines (within 60 days of determining that the project is exempt from CEQA).

QUANTITY/ACCESSORY DWELLING UNITS

13. **SB 9 states that "[a] housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to an existing unit." Why are some people saying that you can add two new units to a parcel with an existing single-family home?**
As the question states, Gov. Code § 65852.21(i) provides that a development contains two residential units if "the development proposes no more than two ***new units*** or if it proposes to add one new unit to one existing unit." This could be interpreted to mean that the statute applies to a two-unit proposal even if those units are proposed for a lot already containing a unit. While the urban lot split section (Gov. Code § 66411.7) clearly allows local agencies to limit total development to two units per lot, including existing units, ADUs, and JADUs, the same language is not present in the two-unit development section. The Legislature's intent regarding a two-unit development on a single lot is not clear. It may be possible for an applicant who only uses the two-unit development provisions, but not the urban lot split provisions, to have more than two units on the lot. LACKING OTHER DIRECTION, THE COUNTY WILL LIMIT THE TOTAL NUMBER OF DWELLING UNITS TO FOUR PER SITE FOR AN UNSUBDIVIDED LOT (TWO SINGLE-FAMILY DWELLING UNITS PLUS UP TO TWO ADUs).

14. **Does SB 9 prohibit ADUs with an urban lot split, or can jurisdictions disallow ADUs with an urban lot split?**
SB 9 does not prohibit accessory dwelling units or junior accessory dwelling units on lots

created by an urban lot split. Under SB9 a local agency "shall not be required to approve" more than two units (including ADUs and JADUs) on a lot created via an SB 9 lot split. Agencies may also prohibit ADUs and JADUs on parcels created by urban lot splits that use the two-unit provision. Given this language, local agencies could choose to limit development on lots created by an urban lot split to two primary units each via adoption of an SB 9 implementing ordinance.

15. Are the two new SB 9 units entitled to an ADU or JADU?

If the two new SB 9 units are not located on a lot created via the urban lot split provision, then ADUs and JADUs are allowed as under existing law. If the applicant used both the SB 9 lot split provisions and the SB 9 two-unit development provisions, then a local ordinance can limit total development to two units per lot, including ADUs and JADUs, or could choose to allow only two primary units on each lot.

16. If there is an existing four-unit building on a parcel in a single-family residential zone, can an applicant still add a duplex?

The existing four-unit building would already be a non-conforming use in a single-family zone. Depending on the jurisdiction's non-conforming use policies, the non-conforming structure may need to be removed if the applicant wishes to add a duplex. However, the urban lot split provision (section 66411.7(i)) prohibits requiring correction of nonconforming zoning conditions for urban lot splits. Nonetheless, the agency can require that no more than two units be located on each lot.

17. Does SB 9 allow an applicant to use the duplex entitlements to build a single unit "monster home" and get around non-objective single-family design guidelines?

Probably, yes. Section 65852.21(a) states, “A proposed housing development containing ***no more than two residential units*** within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing….” Later in the section, in paragraph (i), it also states “[a] housing development contains two residential units if the development ***proposes no more than two new units*** or if it proposes to add one new unit to one existing unit.” Although it is not clear whether the legislature intended to include single-family home development, the "no more than two units" language in SB 9 could be interpreted to cover development projects proposing to construct one single-family home.

18. Are the new units created via the authority in SB 9 condominiums? Does SB 9 facilitate ministerial condominium conversions? Does SB 9 allow for condominium conversion of existing duplexes?

SB9 does not amend laws regarding condominiums. SB9 does not allow denial of attached units so long as their design and construction allow them to be “separately

conveyed," i.e., sold separately as condominiums may be sold. New units created via the authority in SB 9 may be approved as condominiums if the applicant asks for that approval, but the application would need to meet state and local law concerning condominiums. A jurisdiction's regular condominium conversion process would also continue to apply.

OBJECTIVE STANDARDS

19. Can the applicant seek variances from zoning requirements?

SB 9 provides that a local agency may apply its objective zoning standards so long as they do not physically preclude the construction of two units of at least 800 square feet each with four-foot setbacks (no setbacks are required if the unit is constructed in the same location and with the same dimensions as an existing structure). In that situation, the applicant does not need to apply for a variance.

However, if the applicant desires to construct a larger unit which does not meet the agency's zoning standards, it could be denied under SB 9, or the applicant could apply for a variance.

20. My understanding is that SB 330 requires only objective design standards for design standards adopted after Jan 1, 2020, is this the same for SB 9?

SB 330 would apply to an SB 9 implementing ordinance, so any design standards adopted must be objective.

21. For purposes of a duplex, can jurisdictions adopt an objective standard that says the units have to be within, for example, 10 feet of each other?

Yes, a city could adopt this as an objective standard. However, if the standard or requirement would physically preclude the construction of two units or the construction of a unit that is at least 800 square feet, then it cannot be applied to the specific project. Also note that section 66411.7(k) provides that an urban lots split "shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance."

22. Is there a street frontage or lot width requirement for ministerial lot splits?

SB 9 does not contain street frontage or lot width requirements. A local agency may apply an objective frontage or lot width requirement. It must, however, allow lot splits that create lots that are at least 1,200 square feet each where both lots are of approximately equal size. This likely means that the local agency may not be able to apply its minimum lot dimensions or frontage requirements to some urban lot splits.

23. Is the 4-foot setback provision similar to that for ADUs?

Yes. A local agency cannot impose a rear or side setback greater than 4 feet, or less if a structure is in the same location and with the same dimensions as an existing structure.

24. Does the right of way dedication provision require cities to allow for flag lots, provided they meet the 60-40 split?

The agency may require the parcel to have access to, provide access to, or adjoin a public right of way but must allow the lot split. Where a parcel does not front on a public right of way, the options are to allow a flag lot or to provide access to the public right-of-way via an easement through the other lot.

25. Could a jurisdiction define "sufficient to allow separate conveyance" to require separate HVAC systems and separate water connection to meet Title 24 requirements?

Yes. Title 24 is a state law requirement. Therefore, compliance can be mandated assuming that Title 24 requires separate HVAC systems and water connections for units that are separately conveyed.

26. If a jurisdiction doesn't require "dedications" but a property owner wants to put in some improvements in the right-of-way, could the jurisdiction require that those meet the jurisdiction's standards for right of way improvements?

If an applicant includes improvements to the public right of way in its SB 9 application, the jurisdiction can require that those improvements meet objective agency standards.

27. Does the requirement for one parking space/unit supersede other local minimum parking requirements? For example, if local parking standards require two covered spaces per residential unit and additional parking spaces tied to additional bedrooms.

Yes, SB 9 supersedes local standards. A local agency "may require" off-street parking of up to one space per unit, and "shall not impose" parking requirements where the parcel is located within one-half mile walking distance of either a high-quality transit corridor or major transit stop, or where there is a car share vehicle located within one block of the parcel.

28. Can a jurisdiction impose affordability requirements on units created via SB 9?

There is nothing in the statute that would prohibit the imposition of objective affordability requirements. However, agencies should examine the economic feasibility of any affordability requirements to ensure that urban lot splits and two-unit developments remain economically feasible.

29. Can a local jurisdiction impose conditions of approval on an SB 9 project?

A jurisdiction may impose standard objective conditions of approval on an SB 9 project.

FIRE/INFRASTRUCTURE CHALLENGES

30. Is it true that SB 9 cannot be used in high fire hazard severity zones?

No. SB 9 provides that any proposed two-unit development or urban lot split must comply with the requirements of Government Code § 65913.4(a)(6)(D), which excludes projects in high or very high fire hazard severity zones, *unless* either: (1) the site was excluded from the zone by the jurisdiction; or (2) the site has adopted fire hazard mitigation measures "pursuant to existing building standards or state fire mitigation measures applicable to the development." "Fire hazard mitigation measures" and "state fire mitigation measures" are not defined. A local ordinance could specify which "building standards" apply or reference the appropriate "state fire mitigation measures."

An agency may also reject SB 9 proposals on a case-by-case basis where the local building official makes a written finding that the project would have a specific, adverse impact on public health and safety or the physical environment, based on inconsistency with an objective standard, and there is no feasible method to satisfactorily mitigate or avoid the impact.

31. X County has some areas that are identified as "urban" or "urban clusters" and could be a qualifying parcel under SB9. However, those areas do not have access to water or sewer connections and may have to expand an existing leach field and utilize other water sources. If the applicant cannot demonstrate that they can build what's allowed under SB9 with a wastewater treatment system and water source that meets Environmental Health Codes, would the County be able to deny them their application?

Yes. In this scenario, the county could deny the application because it would not meet objective standards. The building official could also likely make a finding that the project would have a specific, adverse impact on public health and safety or the physical environment and that there is no feasible method to satisfactorily mitigate or avoid specific impact.

32. If a jurisdiction has substandard existing sewer infrastructure, can those areas of the jurisdiction be excluded from SB 9 applicability?

The local agency likely could not outright exclude those areas from SB 9 applicability. However, if projects are proposed in these areas, the local building official could deny the application if it would have a specific, adverse impact on public health and safety or the physical environment, by violating an existing objective standard, with no feasible method to satisfactorily mitigate or avoid the impact.

33. Can a jurisdiction prohibit someone from creating a new unit in an existing structure that would be below the Base Flood Elevation?

To qualify for ministerial approval, SB 9 provides that an applicant must comply with all the requirements in Government Code §§ 65913.4(a)(6)(B)-(K). Subparagraphs (G) and (H) exclude development within a flood plain or floodway, respectively, as those sites are determined by maps promulgated by FEMA. However, subparagraphs (G) and (H) also allow development in a flood plain where FEMA has issued a flood plain development permit or meet FEMA criteria and allow development in a floodway where a no-rise certification has been issued or the project otherwise meets FEMA criteria. If these mitigation requirements are met, then it may be possible for the new unit to be built below Base Flood Elevation. Agencies should refer to the text of the statute.

URBAN LOT SPLITS

34. Would the "sufficient to allow separate conveyance" provision allow someone to build an attached duplex but then sell them as two separate lots with their own yard?

"Sufficient to allow separate conveyance" is not defined in the statute. However, "separate conveyance" means that the units can be sold separately. This phrase would seem to require that each unit be built to condominium standards so that they can be sold separately if the local agency approves a condominium application. Agencies may wish to define this in their local ordinances.

35. Should agencies record a deed restriction stating that the lot has been split using SB9 and cannot be split further?

This is not specifically addressed by SB 9. Two possibilities are a recorded deed restriction and a notation on the approved parcel map. It would be good practice for local agencies to include such a requirement in their implementing ordinances.

REPORTING REQUIREMENTS/HOUSING ELEMENT

36. How do jurisdictions account for SB 9 in Housing Elements?

SB 9 requires jurisdictions to report (1) the number of units constructed pursuant to SB 9 and (2) the number of applications for parcel maps for urban lot splits under SB 9 in their annual housing element report. SB 9 itself does not include any reference to housing elements. The HCD TA memo may provide some guidance on how to project SB 9 development in a community's housing element.

37. What can be included in a sites inventory?

There is nothing in SB 9 that prohibits a jurisdiction from using SB 9-eligible parcels in their sites inventory, but there would be limited history to project how many units might be built and what income levels might be served.

38. Could cities use the Terner Center's findings to project above moderate- and moderate-income housing in their Housing Elements?

This may be a reasonable approach. It is not known if HCD will accept it, however.