Joel/Jennifer:

Please find attached for your review and discussion:

1. A marked-up version of HCD's recent SB-9 FactSheet with a couple of points noted. The key one in it that I would like to bring to your attention is: **HR. It Is Single Family.** You have to fix that one.

2. Please also remove the **20 ft Street Frontage requirement**. SB-9 specifically allows easements and a 20 ft width is ridiculous. I have attached San Jose's way of dealing with it - although it could be simplified. Monte Sereno, and Saratoga also allow easements. Los Gatos got this one wrong.

3. Please also remove the **50 yd grading limitation**. Grading (> 50 yds) for an Urban Lot Split can be reviewed by engineering simply from a safety/zoning regs standpoint. If you want to maintain it, then simply allow the exemption for the building pad to also include the driveway. Then you can stop gratuitous grading while still allowing a house to be built.

4. A marked-up version of Your **Urban Lot Split Application checklist** crossing out most of the items that are not needed for an initial CDD review. I am preparing an application for an Urban Lot Split in the R1:10 zoning district and when I reviewed what the "Simplified Planning Application" is asking for it is Way Overkill and requires a homeowner to spend tens of thousands of dollars up front, before getting a yes/no from CDD. Please look seriously at this. I do not want to instruct the Civil Engineer to do all this unnecessary work.

If you approve an Urban Lot Split. And the Parcel Map is recorded. And a residential development unit is proposed. Then you will need some of this for house construction. But don't hit the homeowner up front with all this. It is busy work and not useful in any decision being made.

For the Site Plan I will try to give you as much information as possible to let you know what we might intend to do [eventually], but more often than not, this information is not known at such an early stage.

As to the project that I am preparing to submit, I only plan to have the Survey crew complete what is needed for a realistic CDD evaluation. If I am missing something that is fundamental in the decision process, then we will add it. I plan to put **"N/A"** on the line items that are not needed.

For example:

I do not plan to ask a Title company for the Record Info for the names of all the neighbors.
I do not plan to do a arborist report, but will identify all large trees.
I do not think that you need lot area coverage details at this stage in the application. It is not part of the decision process.

Hope this helps let you know how I really feel.

Thanks

Tony

California Department of Housing and Community Development

SB 9 Fact Sheet

On the Implementation of Senate Bill 9 (Chapter 162, Statutes of 2021)

Housing Policy Development Division
March 2022

This Fact Sheet is for informational purposes only and is not intended to implement or interpret SB 9. HCD does not have authority to enforce SB 9, although violations of SB 9 may concurrently violate other housing laws where HCD does have enforcement authority, including but not limited to the laws addressed in this document. As local jurisdictions implement SB 9, including adopting local ordinances, it is important to keep these and other housing laws in mind. The Attorney General may also take independent action to enforce SB 9. For a full list of statutes over which HCD has enforcement authority, visit HCD's ***Accountability and Enforcement webpage****.*

Executive Summary of SB 9

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require a local agency to modify or eliminate objective development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size. For the purposes of this document, the terms "unit," "housing unit," "residential unit," and "housing development" mean primary unit(s) unless specifically identified as an accessory dwelling unit (ADU) or junior ADU or otherwise defined.

Single-Family Residential Zones Only

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7 subd. (a)(3)(A))

The parcel that will contain the proposed housing development or that will be subject to the lot split must be located in a single-family residential zone. Parcels located in multi-family residential, commercial, agricultural, mixed-use zones, etc., are not subject to SB 9 mandates even if they allow single-family residential uses as a permitted use. While some zones are readily identifiable as single-family residential zones (e.g., R-1 "Single-Family Residential"), others may not be so obvious. Some local agencies have multiple single-family zones with subtle distinctions between them relating to minimum lot sizes or allowable uses. In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses and which are therefore subject to SB 9. Considerations such as minimum lot sizes, natural features **such as hillsides**, or the permissibility of keeping horses should not factor into the determination.

Residential Uses Only

(Reference: Gov. Code, §§ 65852.21, subd. (a))

SB 9 concerns only proposed housing developments containing no more than two residential units (i.e., one or two). The law does not otherwise change the allowable land uses in the local agency's single-family residential zone(s). For example, if the local agency's single-family zone(s) does not currently allow commercial uses such as hotels or restaurants, SB 9 would not allow such uses.

Ministerial Review

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7, subds. (a), (b)(1))

An application made under SB 9 must be considered ministerially, without discretionary review or a hearing. Ministerial review means a process for development approval involving no personal judgment by the public official as to the wisdom of carrying out the project. The public official merely ensures that the proposed development meets all the applicable objective standards for the proposed action but uses no special discretion or judgment in reaching a decision. A ministerial review is nearly always a "staff-level review." This means that a staff person at the local agency reviews the application, often using a checklist, and compares the application materials (e.g., site plan, project description, etc.) with the objective development standards, objective subdivision standards, and objective design standards.

Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they would not physically preclude either of the following:

> **Up to Two Primary Units.** The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.
>
> **Units at least 800 square feet in size.** The local agency must allow each primary unit to be at least 800 square feet in size.

The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified or

waived by the local agency in order to facilitate the development of the project, with the following two exceptions:

Setbacks for Existing Structures. The local agency may not require a setback for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint).

Four-Foot Side and Rear Setbacks. SB 9 establishes an across-the-board maximum four-foot side and rear setbacks. The local agency may choose to apply a lesser setback (e.g., 0-4 feet), but it cannot apply a setback greater than four feet. The local agency cannot apply existing side and rear setbacks applicable in the single-family residential zone(s). Additionally, the four-foot side and rear setback standards are not subject to modification. (Gov. Code, §§ 65852.21, subd. (b)(2)(B); 66411.7, subdivision (c)(3).)

One-Unit Development

(Reference: Gov. Code, §§ 65852.21, subd. (a); 65852.21, subd. (b)(2)(A))

SB 9 requires the ministerial approval of either one or two residential units. Government Code section 65852.21 indicates that the development of just one single-family home was indeed contemplated and expected. For example, the terms “no more than two residential units” and “up to two units” appear in the first line of the housing development-related portion of SB 9 (Gov. Code, § 65852.21, subd. (a)) and in the line obligating local agencies to modify development standards to facilitate a housing development. (Gov. Code, § 65852.21, subd. (b)(2)(A).)

Findings of Denial

(Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d))

SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency’s building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), 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. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

Environmental Site Constraints

(Reference: Gov. Code, §§ 65852.21, subd. (a)(2) and (a)(6); 66411.7, subd. (a)(3)(C) and (a)(3)(E))

A proposed housing development or lot split is not eligible under SB 9 if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K). Examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. SB 9 incorporates by reference these environmental site constraint categories that were established with the passing of the Streamlined Ministerial Approval Process (SB 35, Chapter 366, Statutes of 2017). Local agencies may consult HCD's **Streamlined Ministerial Approval Process Guidelines** for additional detail on how to interpret these environmental site constraints.

Additionally, a project is not eligible under SB 9 if it is located in a historic district or property included on the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or as a historic property or district pursuant to a city or county ordinance.

California Environmental Quality Act (CEQA)

Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (n))

Because the approval of a qualifying project under SB 9 is deemed a ministerial action, CEQA does not apply to the decision to grant an application for a housing development or a lot split, or both. (Pub. Resources Code, § 21080, subd. (b)(1) [CEQA does not apply to ministerial actions]; CEQA Guidelines, § 15268.) For this reason, a local agency must not require an applicant to perform environmental impact analysis under CEQA for applications made under SB 9. Additionally, if a local agency chooses to adopt a local ordinance to implement SB 9 (instead of implementing the law directly from statute), the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA.

Anti-Displacement Measures

(Reference: Gov. Code, §§ 65852.21, subd. (a)(3); 66411.7, subd. (a)(3)(D))

A site is not eligible for a proposed housing development or lot split if the project would require demolition or alteration of any of the following types of housing: (1) 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; (2) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (3) housing that has been occupied by a tenant in the last three years.

Lot Split Requirements

(Reference: Gov. Code, §66411.7)

SB 9 does not require a local agency to approve a parcel map that would result in the creation of more than two lots and more than two units on a lot resulting from a lot split under Government Code section 66411.7. A local agency may choose to allow more than two units, but it is not required to under the law. A parcel may only be subdivided once under Government Code section 66411.7. This provision prevents an applicant from pursuing multiple lot splits over time for the purpose of creating more than two lots. SB 9 also does not require a local agency to approve a lot split if an adjacent lot has been subject to a lot split in the past by the same property owner or a person working in concert with that same property owner.

Accessory Dwelling Units

(Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (f))

SB 9 and ADU Law (Gov. Code, §§ 65852.2 and 65858.22) are complementary. The requirements of each can be implemented in ways that result in developments with both "SB 9 Units" and ADUs. However, specific provisions of SB 9 typically overlap with State ADU Law only to a limited extent on a relatively small number of topics. Treating the provisions of these two laws as identical or substantially similar may lead a local agency to implement the laws in an overly restrictive or otherwise inaccurate way.

"Units" Defined. The three types of housing units that are described in SB 9 and related ADU Law are presented below to clarify which development scenarios are (and are not) made possible by SB 9. The definitions provided are intended to be read within the context of this document and for the narrow purpose of implementing SB 9.

Primary Unit. A primary unit (also called a residential dwelling unit or residential unit) is typically a single-family residence or a residential unit within a multi-family residential development. A primary unit is distinct from an ADU or a Junior ADU. Examples of primary units include a single-family residence (i.e., one primary unit), a duplex (i.e., two primary units), a four-plex (i.e., four primary units), etc.

Accessory Dwelling Unit. An ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the single-family or multifamily dwelling is or will be situated.

Junior Accessory Dwelling Unit. A Junior ADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

The terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an ADU or Junior ADU or otherwise defined. This distinction is critical to successfully implementing SB 9 because state law applies different requirements (and provides certain benefits) to ADUs and Junior ADUs that do not apply to primary units.

Number of ADUs Allowed. ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical.

> *Lot Split*. When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local agency may choose to allow more than two units per lot if desired.
>
> *No Lot Split*. When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local agency must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU Law. It is beyond the scope of this document to identify every combination of primary units, ADUs, and Junior ADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

See HCD’s **ADU and JADU webpage** for more information and resources.

Relationship to Other State Housing Laws

SB 9 is one housing law among many that have been adopted to encourage the production of homes across California. The following represent some, but not necessarily all, of the housing laws that intersect with SB 9 and that may be impacted as SB 9 is implemented locally.

Housing Element Law. To utilize projections based on SB 9 toward a jurisdiction’s regional housing need allocation, the housing element must: 1) include a site-specific inventory of sites where SB 9 projections are being applied, 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute an impediment for additional residential use, 3) identify any governmental constraints to the use of SB 9 in the creation of units (including land use controls, fees,

and other exactions, as well as locally adopted ordinances that impact the cost and supply of residential development), and 4) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. Learn more on HCD's **Housing Elements webpage**.

Housing Crisis Act of 2019. An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. "Reducing the intensity of land use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about **Designated Jurisdictions Prohibited from Certain Zoning-Related Actions**noHCD's website.

Housing Accountability Act. Protections contained in the Housing Accountability Act (HAA) and the Permit Streaming Act (PSA) apply to housing developments pursued under SB 9. (Gov. Code, §§ 65589.5; 65905.5; 65913.10; 65940 et seq.) The definition of "housing development project" includes projects that involve no discretionary approvals and projects that include a proposal to construct a single dwelling unit. (Gov. Code, § 65905.5, subd. (b)(3).) For additional information about the HAA and PSA, see HCD's **Housing Accountability Act Technical Assistance Advisory**.

Rental Inclusionary Housing. Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see HCD's **Rental Inclusionary Housing Memorandum**.

20.30.810 Urban Lot Split Standards

A. Lot design requirements:

1. Lot frontage:

a. Where 55 feet of frontage on a public right-of-way is not proposed for both lots created by an Urban Lot Split, pursuant to Government Code Section 66411.7, each lot shall have a minimum of 30 feet of frontage on a public right-of-way and an average width of 30 feet, or

b. Where 30 feet of frontage on a public right-of-way is not proposed for both lots created by an Urban Lot Split, one of the lots shall be provided with access by a corridor with at least 12 feet but no more than 15 feet of frontage on a public street.

i. Said access corridor shall maintain a width of at least 12 feet but no more than 15 feet for the entire length of the corridor.

ii. The length of said access corridor shall be at minimum the required front setback of the zoning district in which the lot is situated.

iii. The access corridor shall be kept free and clear of building or structures of any kind except for lawful fences and underground or overhead utilities.

c. Where one of the lots created by an Urban Lot Split does not propose frontage on a public right-of-way, direct access to the public right of way must be provided through an easement for ingress and egress and emergency access.

i. Said easement shall be a minimum 12 feet but no more than 15 feet in width for the entire length of the easement.

ii. The length of said easement shall be at minimum the length of the required front setback of the zoning district in which the lot is situated.

iii. Said easement shall be recorded as a Covenant of Easement on the Parcel Map for the Urban Lot Split.

2. Maximum lot depth, as required by Section 19.36.230 of this Code, shall be waived for lots created by an Urban Lot Split.

B. Property line and setbacks:

1. For lots accessed by a corridor of 12 feet to 15 feet in width:

a. Front property line is the property line that abuts the public street.

b. The front setback area is the is the entire length of the 12 foot to 15 foot wide access corridor.

c. The rear property line is any property line that is generally parallel to the public right of way from which the lot gains access, and that abuts properties that are not a part of the Urban Lot Split.

d. The remaining property lines shall be considered side property lines.

2. For lots that do not abut a public street that are accessed by an easement:

a. There shall be no front property line.

b. The rear property line is any property line that is generally parallel to the public right of way from which the lot gains access, and that abuts properties that are not a part of the Urban Lot Split.

THIS SHOWS ONLY WHAT IS REALLY NEEDED

A. GENERAL REQUIREMENTS:

- ☐ 1. Scale on each sheet.
- ☐ 2. North arrow on each sheet as applicable.
- ☐ 3. Sheet size not to exceed 24" x 36" size.
- ☐ 4. Plans fully dimensioned.
- ☐ 5. Address on each sheet.
- ☐ 6. Zoning Designation on cover sheet.

B. PLAT OR SITE PLAN WITH THE FOLLOWING MINIMUM INFORMATION:

- ☐ 1. All property lines (existing and proposed).
- ☐ 2. All building setbacks (existing) ~~and proposed).~~
- ☐ 3. Use of all existing buildings.
- ☐ 4. Table including the following:
  - a. Lot area (existing and proposed);
  - b. Gross floor area of existing buildings;
  - ~~c. Lot area coverage (existing and proposed);~~
  - ~~d. Lot width (existing and proposed);~~
  - ~~e. Lot depth (existing and proposed); and~~
  - ~~f. Lot frontage (existing and proposed).~~
- ☐ 5. Conceptual Grading and drainage plan with grading quantities.
  The 50 yard Limit is Bogus and should not stop a project. See HCA for Grounds for Denial.

C. TENTATIVE MAP REQUIREMENTS:

- ☐ 1. ~~Tract name or designation and~~ property address.
- ☐ 2. Name and address of owner~~, subdivider~~, and registered civil engineer or licensed surveyor.
- ☐ 3. Locations, names, ~~and widths~~ of all adjoining highways, streets or ways, ~~the names of adjacent subdivisions, and the names of all owners of properties adjacent to proposed tract.~~
- ☐ 4. Widths and locations of all existing or proposed easements, whether public or private.
- ☐ 5. ~~Radius of all street curves.~~
- ☐ 6. ~~Total size of property before and after street and right-of-way dedication (gross and net land area calculation).~~ No Dedication – See 4a.
- ☐ 7. Lot layout, including the dimension of each lot line~~, and exact square footage of each lot.~~ Repeat of 4a.
- ☐ 8. Location of all water courses and natural drainage channels, locations of all areas covered by water or subject to inundation, and existing ~~and~~

~~proposed~~ storm drain facilities.

- ☐ 9. ~~Source of water supply, including conceptual design.~~
- ☐ 10. ~~Method of sewage disposal, including conceptual design.~~
- ☐ 11. ~~Location of all buildings in close proximity to the proposed tract.~~
- ☐ 12. Contour lines (existing ~~and proposed~~) ~~showing one (1) foot contours for ground slopes of less than five (5) percent, and five (5) feet horizontal distance, and five foot contours for ground slopes in excess thereof.~~
  (This information can typically be obtained from PPW in PDF form – and the level of detail is sufficient for CDD to approve/deny based on this.)
- ☐ 13. Location or vicinity map, date~~, north arrow, and scale~~. Requested A1,A2
- ☐ 14. Number or letter identification for each lot.
- ☐ 15. Location and outline of each existing building and an accompanying note as to whether or not it is to be removed.
- ☐ 16. ~~Each street shown by its actual street name or by a temporary name or symbol for the purpose of identification.~~
- ☐ 17. Locatlon of all trees shall be accurately ~~identified and~~ plotted ~~with base grade data, dripline, and finished grades within the dripline.~~
- ☐ 18. All fire hydrant locations.
- ☐ 19. ~~Required yards.~~
- ☐ 20. Name of utility providers and location of closest existing services shown, including water, gas, electricity, telephone, cable television, sewage disposal and storm drain.

  Roadways will not be required for SB-*9*
- ☐ 21. ~~If in the Hillside Area, show grading required for **roadway** construction, including location of all cuts and fills, volumes, retaining walls or reinforced earth slopes (with top and base elevations), and existing and proposed contours.~~
  You will be required to add HR to the allowable zones so this can stay.
- ☐ 22. If hillside, show conceptual driveways, building sites, drainage, and sanitary sewers.
- ☐ 23. ~~Interim erosion control measures.~~
- ☐ 24. If it is impossible or impracticable to place upon the tentative map any of the information required above, such information shall be furnished on a separate document, which shall be submitted with the map.

Jennifer [Joel]:

I understand that you are working on a revision to the SB-9 Ordinance to be debated on September 21st. On the whole - with the February revision to the Ordinance I think you got it pretty much right. I do, however, have a couple of questions/comments.

Question 1: The 20 ft Fee Title Corridor.

SB-9 does not really allow you to restrict a flag lot access corridor to being 'Fee Title'. No other Jurisdiction does so - all allow easements to a rear parcel. Additionally it should be in the 12-15 ft width range so as to allow IEE for fire requirements to be met - but no more.

Please look carefully at the attached example. From the existing Ordinance [Section VI.3] the corridor does not count in the 60/40 rule, but it diminishes the rear parcel in net lot size. So you can get some really stupid lots [not intended by SB-9]. This is your chance to fix it.

Question 2: HR Zoning

I assume that this has been fixed - and that you now are accepting HR applications [subject to Fire Access]. Can you confirm this?

Question 3: 50 Yards of Grading

Please tell me you have a better solution for this! Either up the quantities OR Allow the driveway and turnaround area to be 'exempted' in the same way that the area under the house is now.

Question 4: Objective Deign Standards

These should be pared back so that Front Elevation and Side-abutting-street elevations are not encumbered by the 'Privacy' window/deck/balcony restrictions. Additionally you should consider eliminating/easing these restrictions where the house placement is compliant with the setbacks for the zoning district. I do not want to design by 'paint by numbers' for Single Family Homes - in the same way there was concern for Multi-Family developments.

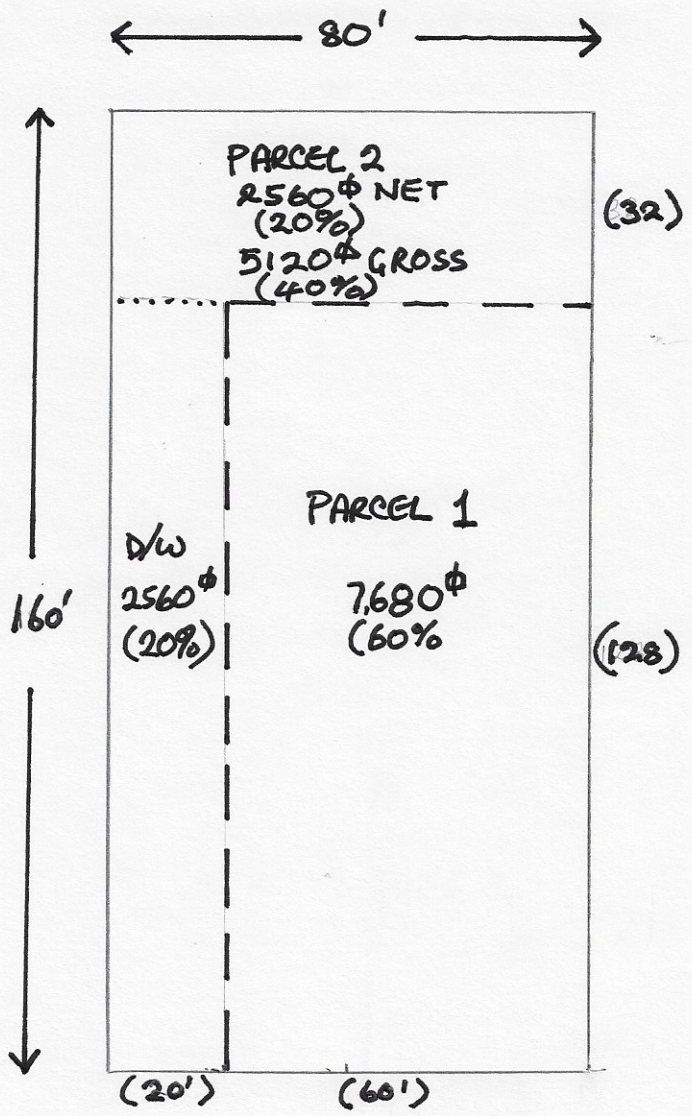
Question 5: The Discretionary Process

Please make it much more clear that this can be used as an alternative to the administrative review process for a lot that has been created by an ULS. I will use it to design a better home, because I do not like the Objective Design Standards in the Ordinance. Please consider eliminating the 'Tech Review' step in the discretionary process to allow me to 'sell' the discretionary process to my clients. This will shave weeks, if not months, off the process. Ray Davis is not with us any more. Also - please clarify whether the discretionary process can be used to bypass the '1,200 max sq ft first unit regulation'. This regulation does not concern me personally, but clarification would be useful.

I will have other comments, I am sure, when I see the Proposed new ordinance.

Thanks
Tony

THE 20' FEE TITLE CORRIDOR RULE.



DOES THIS REALLY MAKE SENSE?

TOTAL LOT SIZE = 12,800¢

60% LOT SIZE = 7,680¢ PARCEL 1

40% LOT SIZE = 5120¢ PARCEL 2

BUT ½ IS CORRIDOR

20% ACCESS CORRIDOR - 2,560

20% NET LOT SIZE - 2,560.

IF YOU INSIST ON THE 20' WIDE "FEE TITLE" THEN IT SHOULD BE DEDUCTED FROM THE 60/40 % CALCULATION OR YOU COULD HAVE STUPID LOTS.

BUT REALLY YOU SHOULD ALLOW/REQUIRE AN EASEMENT TO THE BACK LOT TO SOLVE THIS & MAKE THE EASEMENT WIDTH 12'-15'.

Gm Ryan,

Thanks for your time yesterday.
As discussed, please help to clarify with city attorney on the SB9 guideline - "Intent to Occupy' requirement for a SB9 lot split".

After the SB9 urban lot split, we will end up with an existing home on one lot and the second is a vacant lot.

Can we sell the original residence and keep the newly split vacant lot for three years to meet the SB9 requirement?
or do we have to build a new home on the vacant lot and keep it for three years?

Please help us clarify the 'Intent to Occupy' requirement for a SB9 lot split.

Thank you,
Satya

All:

Now that I have remained unscathed from my first SB-9/HPC dichotomy [16405 Kennedy - a pre-1941 house with no redeeming architectural or historic values], I would wonder whether there might be a way to allow HPC to consider the impact of the reduction in property size of an older/historic home. Not that it mattered here.

I guess it just depends on whether you need/want SB-9 projects to contribute to the housing element - because you do have a 2 for 1 rule?

If they feel that the yard and landscaping are not instrumental to the historic nature of a property then perhaps there might be a path to allowing a lot split while still retaining a home on the historic register?

When do you expect to go back for another bite at the SB-9 apple? [Hillside/50 yards/Easement access/anything else]?

Tony

Jocelyn [Joel/Jennifer added]:

Fire will not talk with applicants other than through a routed application from the Town. [Per Rob Campbell - see below]

Can we either route to fire or require them to talk to applicants once you feel an application is reasonably complete? I sent them exactly the plans you have but below is the response I received.

I specifically do not want to go too far [on any project] and spend client's money only to be turned down later.

Saratoga - for example - has routed a similar submission of mine to various entities [including fire]. They go too far - including routing to Caltrans and WVSD, plus requiring a geotechnical report - which should come later, because - why waste everyone's time before a project is realistic. San Jose also routes to Fire for comments - but they want the entire application complete [including the Parcel Map]. Planning just checks it for the obvious [a pre-screen] and then it is a PPW project. But most of their lots are simpler [and they allow 12-15 ft easements to a back lot, like most other jurisdictions so they screen for that too]

Los Gatos' staff has the knowledge and expertise to look at this and make a reasonable decision as to the best sequencing. I understand Rob's desire not to be inundated with scraps of paper with scribbles on them, so he might be right from that standpoint - but if you can talk with him again to resolve this disconnect, it would be helpful.

Tony

Tony,
I am not available today. I recommend discussing the SB-9 requirements with the city/town planning departments before coming to us. As you know SB-9 is primarily zoning focused legislation. My discussion with Los Gatos planning is that they will be the lead in any such decisions. Where fire concerns arise (e.g. VHFHSZ parcels) they will coordinate with us for requirements. If you have specific questions, please put those in writing so we can be clear on the information you seek.

Thank you,

Rob.

Robert L. Campbell, PE
Sr. Fire Protection Engineer
Santa Clara County Fire Department
[redacted]

Ryan,

I had previously provided public comment / input toward the next draft of Ord 2327. I have two further comments:

1)

a) Ord 2327 says that if SB9-reduced setbacks are used then windows must be clerestory. I think this is fine as in usual suburban neighborhoods you don't want them looking into a neighbor's yard, however clerestory window requirements *should only apply to exterior walls that are closer to the property line than the usual (non-SB9, base zoning) setbacks*. For the rest of the 2nd story walls, they are no closer to the property line as is already allowed today with the base zoning rules, so these walls should be allowed to have whatever window size and arrangement the base zoning district allows today.

b) Where an applicant is ***not*** using reduced SB9 setbacks but just respecting the base zoning's setbacks, Ord 2327 says that second story windows must be of the minimum number and size necessary for egress. That means one small window per room. This does not make sense to apply since it is more restrictive than most (or all?) base zoning districts. At least here in the hillside, without SB9 I could build a second story and put larger windows than that, but if I attempt to use SB9 then my window size and number are restricted -- *even if I still respect the base zoning's setbacks*. This doesn't make sense to me and I would request we just remove this entirely from Ord 2327 and rely on the base zoning's window requirements if the base zoning's setbacks are respected.

2) Ord 2327 says that if there's a roof over the entryway that its roofline must meet the adjacent roofline. This doesn't make sense to me, since today in most (or all?) base zoning districts as far as I know there is no restriction on how a roof over the entryway is supposed to look. Indeed, many high-value homes have a beautiful entryway with a high arch and roof. This can take many forms but here are two examples:


This tall entryway can be a beautiful architectural feature designed to bring value to the home and neighborhood, and as far as I know this entryway is not restricted other than in Ord 2327 (assuming other requirements like overall height are respected). Therefore I would request that we remove this from Ord 2327 and just rely on the base zoning's rules regarding roofs over entryways.

David

Ryan,

Thanks for our discussion today. For two of my questions you said the first step at providing input into a permanent ordinance was to email you.

1)

Ord. 2327 has two restrictions on architectural design: (a) No balconies/terraces on top of 1st floor. (b) 2nd stories must be stepped back 5' from 1st stories.

The restrictions are presumably intended to protect neighbor's privacy when SB9's reduced (4-foot) setbacks are used. Nobody wants a neighbor's 2nd story window or terrace/balcony looking over their fence.

However it is my feeling that the restriction should be waived if the regular zoning setbacks on that side of the house are respected.

To not do so violates state law and strongly limits architectural options. According to HCD's fact sheet on the implementation of SB9, "HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible." Accordingly, it is reasonable for the Town to require a 5' step-back from 1st story elevations if the proposed house is utilizing reduced SB9 setbacks, but no such architectural design restriction should be required if the proposed house utilizes the original zone's setbacks. This to me seems to resolve the concern in a way that leans on existing zoning guidelines.

Leaning on existing zoning guidelines wherever possible is more desirable, since these zoning guidelines are developed over decades of time and well-understood by everyone in the community.

2)

In Ord. 2327 Sec. V B 2, "The finished floor of the first-story shall not exceed 18 inches in height as measured from the finished grade."

Inasmuch as SB9 is (or will) apply to hillside zones, and inasmuch as basements in the hillsides are to be encouraged and incentivized (since they reduce massing), this restriction is overly restrictive and does not incentivize basements in the hillside zone. (For comparison, non-inclusion of basement floor area in FAR does correctly incentivize them.)

On flat land this restriction makes sense -- you don't want your first floor to be 4' out of the ground. On sloping land, very quickly your 18" protruding basement becomes 0" and then your 1st floor becomes below grade, and your original basement ends up buried very deep in the earth, which is expensive and not incentivizing, and the basement becomes very small or very expensive or both.

I think it makes sense to modify this to 4' at least in the hillsides, consistent with the existing definition of basement.

Ryan,

I understand Fire Dept doesn't review my ULS/TUD application until Building Permit phase.

I also understand that Fire will very likely reject my application based on 4290 since I'm in VHFSZ. Talking to friends who are working through this right now, a rejection letter is expected and an important step, as a starting point to petition for exemption from 4290 or discuss alternative methods and means.

So, if fire is going to reject my application I'd like to get to that phase before the Parcel is even split (since at that point there is a permanent change and I can no longer back-pedal on my plans).

I asked SCCFD, and they said they won't review my plans until they come across their desk through the regular procedure.

Can we (a) have Fire do a full review at the Planning stage, or (b) have Fire review at the Building Permit stage as usual, but I start the Building permit phase (submit my Building plans to Town of Los Gatos) even before the Parcel Map is fully recorded, with an at-risk letter saying the Building Permit won't be considered final until the parcels are fully created?

I'd prefer to do (b).
If we did (a) then I lose the advantages of SB9 ministerial review (it turns into a non-ministerial review, which I don't think is allowed).
If we do (b) then it follows the regular procedure, and allows us to finalize all other Planning details and get Planning approval before taking the plan to Fire. But the down-side is that my plans will be further along in time and money before getting the rejection letter -- but that's ok with me.

Thanks,
David

Hi Ryan,
Thanks for your time this afternoon. I'm summarizing below what we discussed along with a follow up question:
What are we looking for?

- To build a 2000-2400 sq feet dwelling at the back of our property.
- We do not want to go with public hearing given the experience in the recent past with our neighbors. Given this we have to go through SB9.

Options:

1. With Split (Not desired but solved our problem wrt building what we want)
    a. In the new lot above we can build a new Primary unit up to 5000 sq feet and an ADU on top (up to 1200 sq feet)
    b. Lot once split cannot be merged back later as there cannot be two Primary units in a Single-family Lot (@Ryan but with SB9 it is supported so that argument may not be valid)
2. Without Split, the Emergency Ordinance on SB9 from the Town of Los Gatos only supports the scenario of building up to 1200 sq feet ADU/Primary Unit. This is too restrictive IMO.

While our ideal and preferred scenario is to go with Option 2 (without split) and build a 2000-2400 sq feet dwelling, it is currently not supported by the Town of Los Gatos. Ryan can you please confirm this again. Based on the FAR ratio that we looked at this afternoon, my property (62000 sq feet with 17% grade) is allowed to have 6200 sq feet without a garage included (and not including 10% increase when you have 2 units). Just based on this I should be allowed to build up to 2700 sq feet for the 2nd unit (6200x1.1 = 6820, subtract existing unit 4120 which leaves 2700 sq feet). Ideally if Planning department can support this scenario as part of SB9 then our problem would be solved ☺

Thanks
Ani

Ryan, Our feedback is pretty simple:
1) Please remove the silly grading disqualification, and
2) The California Legislature did not intend the first unit size restriction to be under 1200 SF as adopted by the Town.

Otherwise, Town Staff has done a good job implementing SB9.
Best regards, Terry
Terence J. Szewczyk. P.E.

Hi Ryan - For the single family residences, I am opposed to the 2nd story setback as written as well as the window regs for the second story.

The regs as written will lead dreadful cookie cutter houses and dismal living spaces upstairs.

-Jay

Ryan,

Thanks for the email. I have to say that I agree with Terry, the grading requirement is in clear violation of the State's intent on these projects, it is an arbitrary restriction. That is a clear no-no. And the Town knows darn well that in even the mildest of sloped sites there will be more than 50 CY of dirt moved. If this is brought to the state it will surely be slapped down. It is a rather clumsy attempt to knock down the number of lots that would be eligible for a split.

It is a mystery to me why the town does not simply adopt the State standards and call it a day. Any number of developers in the town and in the surrounding area are much better funded than the town is and will surely bring provisions like this grading restriction to court or to the office of the State architect. They are not going to be able to just sneak this in.

I get that this is simply another case of 'the Town being the Town' and at some point, it just gets ridiculous. Anyway, thanks for the email and I will try to make the meeting. If nothing else it will be entertaining...

Regards,
David

Ryan,
Our request is the following three aspects of the Ordinance that violate state law:

(1) The Ordinance's exclusion of the Hillside Residential (HR) zoning district from the definition of a "single-family residential zone";
(2) Limitations on grading in connection with the development of residential units under SB 9; and (3) A 1,200 square foot size limitation on the first residential unit constructed on a lot pursuant to SB 9.

Thanks,
Arvin Khosravi

Subject: SB 9 comment from a long-time Los Gatos renter.

EXTERNAL SENDER

As someone who has been renting in Los Gatos for the last 7 years, I hope that SB9 will increase the acceptable amount of "family" housing available to families like mine (a single parent household with two children attending Los Gatos schools). We would love the option to live in a duplex or ADU and have some access to a backyard, instead of being restricted to apartments and townhouses.

To that end, the 1200 sqft MAXIMUM on the size of the ADU is too small for small families. I can understand not wanting to have a large ADU/Duplex on a lot that is too small, but there are many large homes/lots in this area that can indeed accomodate a larger 1600 sqft unit. So the max size of a detached ADU should be based on a percentage of the main house/lot size's area with a minimum of 1200sqft.

I hope that Los Gatos makes special outreach to the tenant/renter community with regard to this proposal, as well as to the land owners who seem to dominate town government meetings (probably because they have more time and are not working second jobs or caring for children during town meeting hours).

Sue Raisty
[redacted], Los Gatos, CA 95032

EXTERNAL SENDER

I have been a resident of Los Gatos for many years. I have watched the changes to the housing landscape change & not for the better. Take The North 40 development as

an example. If that isn't the ugliest over developed housing you ever seen, then I'm sorry for you. The only reason The Town is pushing this is because it needs more funds to handle the mismanaged Town budget that is in dire need of funds. Funds that would be gained from building permits, inspection fees and additional taxes on the land & buildings involved.

I vote no on the SB9 Ordinance.

Melanie Allen

Los Gatos Resident

EXTERNAL SENDER

Hi Los Gatos planning
I'd Like to have the issue of VHFHSZ addressed tonight

I am the first house of the hillside zone at 15 Highland at Jackson at the base of the hill.
I have a fire hydrant in front of my house and I'm about a block up from Main Street.
Is there any way to ask for a variance regarding being removed from the hillside one and high fire zone in order to do a sub division of my property?
If you could address the VHSHSZ tonight that would be very helpful.

Is it be possible to ask for a variance to be moved to a different zone and move out of the hillside high fire zone?

Thank you so much,

Teresa Spalding

Sent from my iPhone

To whom it may concern:

In general most of my concerns with the draft revolve around rules that are more restrictive than the base zone's rules.

- *Page 4, V, A, 1, Building height … in HR zone <16'.* This practically prohibits 2-story buildings in HR. Two-story buildings are often required in hillside, to keep the house footprint small so as not to spread across steep or difficult slopes. This is severely and unnecessarily limiting; there is no reason to effectively prohibit 2-story buildings in HR zones, and this is not consistent with State Law. (Limiting a building to 16' if it's located inside the setbacks of the base zone, however, is reasonable.)
- *Page 5, 5, Max size of first new res unit <1200 sf.* This is unnecessarily limiting and not consistent with State Law.
- *Page 5, 5, Grading 50 c.y.* Many members of the public are not happy with this since it is extremely limiting in HR zones. It's my understanding that grading > 50 c.y. will not only trigger a grading permit but also a full Architectural and Site Review and hearings. I understand that it's meant to avoid someone skipping comprehensive grading review via TUD process. Surely there can be a compromise wherein grading >50 c.y. **only triggers a standalone grading permit and not a full ASA**.
- *Page 5, 8, Building sites, not on lands with avg slope exceeding 30 percent.* It is not clear whether this applies to lots with average slope (over the whole lot) of 30%, or whether it means that a particular house that has some portion of its footprint on a 30% slope, is prohibited. In any case, this restriction is unnecessarily limiting and not consistent with State Law. If a geologist has done the investigation and engineered plans have been prepared, then a site can be buildable even if it is >30% slope in places or on average.
- *Page 7, B, 2, Finished floor: 1st story FF can't exceed 3' in height.* This is unnecessarily limiting in HR zones. On sloping ground you need to bury one side and have the other side of the house protrude, often by more than 3'. This also limits basement options since the basement will be super deep on the former side, in order to have the latter side <3' out of the ground. May I suggest to just remove this; this has already been given consideration in other Town Code, for example in Town Code a story and a basement are adequately defined. As written, Page 7, B, 2, Finished Floor, is unnecessarily limiting and not consistent with State Law or with the realities of building a reasonably-sized house on even slightly sloped ground.
- *Page 7, B, 3, Front Entryway…shall have a roof eave that matches or connects at the level of the adjacent eave line.* This unnecessarily limits architectural options. Often a raised roof over the entryway can be an elegant detail, and raise the value of the neighborhood.
- *Page 7, B, 4, Front Porch >=6' and width >=25% of linear width of front elevation.* This is unnecessarily limiting. Please just apply the porch restrictions (if any) of the base zone.
- *Page 7, B, 5, Step-back. ALL elevations of 2nd story must be stepped back 5'.* In my opinion this is the most architecturally limiting of any of the new TUD ordinance draft. This makes houses look like wedding cakes -- larger on 1st floor, smaller on 2nd floor. Please modify this to make a step-back only necessary on *walls that are closer to the property line than the base zoning district will allow*. I believe this will resolve concerns of people building tall 2-story buildings right up near a neighbor's fence. And it would not limit architectural options more than the base zone, if the applicant did not attempt to use reduced SB9 setbacks.
- *Page 7, B, 6, Garages. Street-facing attached garages not exceed 50% of linear width of front-/side-yard elevation.* This doesn't work well on all lots; I'm particularly thinking of irregular lots

such as in HR zone. Please do not limit the architectural options more than the base zone, unless the applicant is proposing to take advantage of reduced SB9 setbacks.

- *Page 10, A, 2, Lot Lines. New side lines of all lots shall be at right angles to streets.* This doesn't work on all lots; I'm particularly thinking of irregular lots such as in HR zone. Please do not institute a rule that cannot be followed by everyone.
- *Page 10, A, 5, Min Public Frontage, each new parcel shall have min frontage on street of 20'.* Again, this doesn't work on all lots, not only irregular lots, but lots that are on private streets. Putting into effect new rules that not every lot can follow will just lead to more work for Planning, as you will have to consider a number of exceptions, slowing down the permitting process.

To repeat the most important two points:
1) Please, do not limit Los Gatans' options more than the base zone, unless that Los Gatan is taking advantage of the reduced SB9 setbacks. Otherwise please just let us use the base zone's rules.
2) Please, do not institute laws that not every lot can follow (such as Page 10, A, 2)

David Hutchison

Ryan/Jennifer/Joel:

I am not exactly sure who is running 'point' on this, nor whether this meeting is a 'planning fact-finding' meeting or something more significant - such as a 'recommendation to the Council'. Can you you please enlighten me?

I read the new proposed 'draft SB-9 Ordinance' and you have made some good improvements which make sense - as well as a few that don't. But if I ignore those, I do have a couple of questions on items which are unclear. Could you please respond prior to the webinar so that I do not need to wast my time on these.

1A. Section V.A.6. - Grading: This is ambiguous.
"Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or [shall/shall not] require a grading permit. . . ." Does this mean if you need more than 50 yds that you have to get a grading permit OR that the project is not allowed a grading permit to exceed 50 yds?

This could be clarified by re-phrasing: Any Grading activity in excess of 50 yds, cut plus fill, shall require a grading permit. Would this grading permit be administrative if you follow paragraphs 7,8,9?

1B. Section V.A.7/8/9 - Cut and Fill, etc
Now that you have added these paragraphs do clarify allowable grading activities, Section V.A.6 is not longer needed.

2. Section VI.1/5. [and 3] - 20 ft frontage and 20 ft corridor.
I see that you have not modified this section. It is clearly in violation of the text of SB-9 which allows an ULS parcel to either "adjoin" or "have access to" the public right of way.

The problem I have with the way it is written is that moderately long and narrow lots [where a flag-lot would make sense] are pretty much eliminated [because so much of the rear lot is contained in the 20 ft wide flag-pole]. Just do the math on a 60 ft wide lot!

An IEE easement [as required by SCCFD of 12-15 ft would make more sense, in addition to being legal [SB-9], and would make the 40/60 split more reasonable in terms of lot configurations. An easement is probably going to be required by SCCFD anyway for EV access to the rear lot.

Why are you not addressing this issue?

3. Will it be possible to share a screen, or show a slide in some way at the webinar?

Thanks
Tony

T.H.I.S. DESIGN & DEVELOPMENT P.O.Box 1518, Los Gatos, CA 95031

Tel: 408.354.1863 Fax: 408.350.1823

Town of Los Gatos
110 E Main St
Los Gatos, CA 95030
Attn: Planning Commission

September 23rd, 2022

SB-9 DRAFT ORDINANCE

Commissioners:

I understand that you are reviewing the Draft [Permanent] SB-9 Ordinance which will subsequently be recommended to the Town Council for Adoption. I have been working with this Ordinance over the last year and have encountered several issues.

Luckily, staff has already proposed changes to the original Emergency Ordinance and, for the most part, these changes would appear to be going in the right direction. There are a few items that could be improved, but because the discretionary process [DRC/Planning Commission, etc] is retained as an option for the design of any house(s) on a resulting ULS parcel, I am less concerned about the objective design standards for a 'two residential housing unit' development of SB-9.

I do, however, want to draw your attention to the one aspect of the Urban Lot Split portion of SB-9, which I fear will result in very bad neighborhood design and which can easily be avoided if it is considered seriously.

The 20 ft Fee Title Corridor for a Flag Lot.

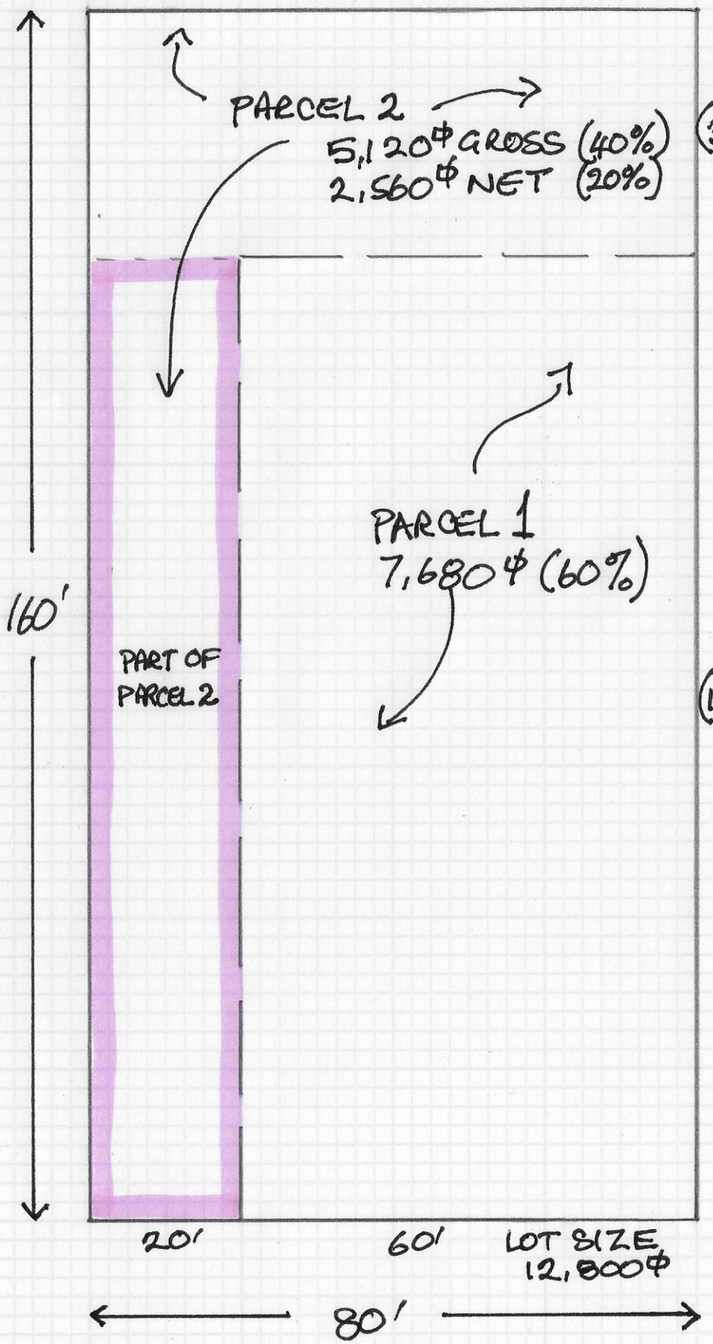
SB-9 does not really allow a jurisdiction to restrict a flag lot access corridor to being 'Fee Title', which the current ordinance does, so there will always be a risk of a legal challenge. All other local jurisdictions make provisions for an ingress/egress easement alternate access the rear parcel. Just because there is a "20 FT Street Frontage Rule" in the code now does not mean that is must stay for SB-9.

With the existing Ordinance you can get some really stupid lot configurations, not intended by SB-9 and not desirable in the Town. This is your chance to correct it. **THE EXAMPLE** shows what a homeowner could ask for "AS IS" and how you could "FIX IT" – 2 vastly different approaches to the same lot.

Thanks

Tony Jeans

CURRENT (DRAFT ORDINANCE)



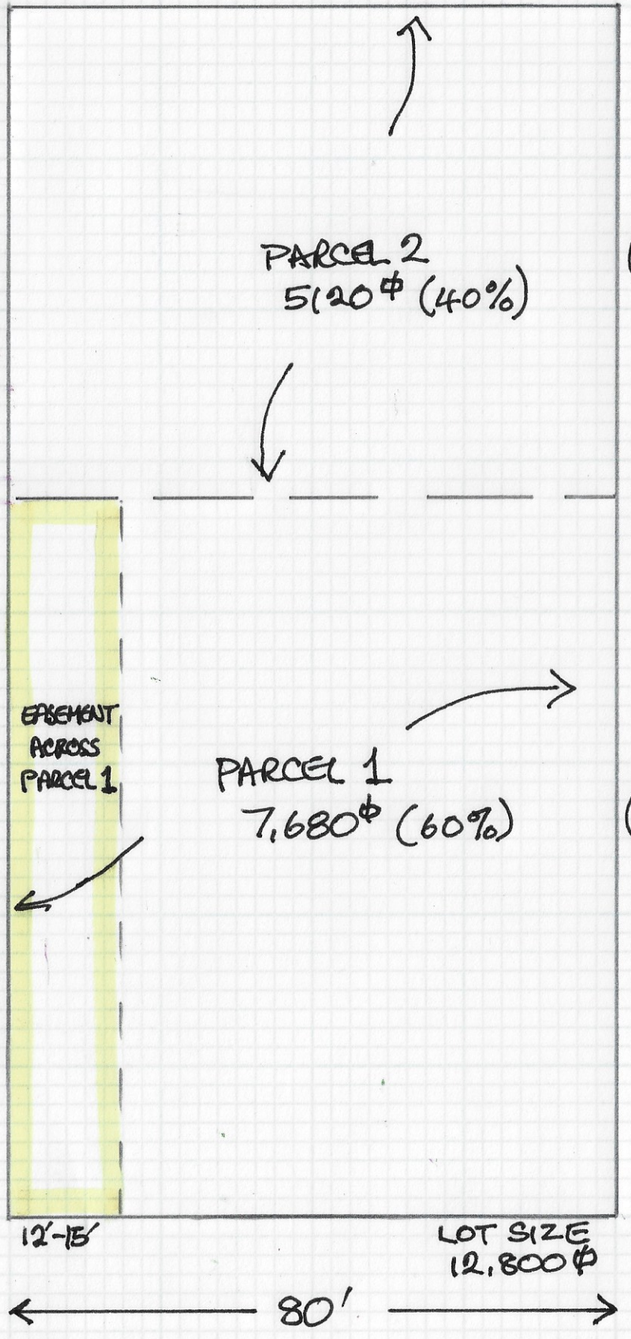
WHICH IS THE BEST WAY TO SPLIT A PROPERTY AND CREATE A FLAG LOT?

PANHANDLE IS PART OF PARCEL 2 AND MUST BE 20' WIDE (+ FRONTAGE)

PROBLEM 1: THIS CAUSES SOME VERY BAD LOT DESIGNS

PROBLEM 2: THIS IS IN VIOLATION OF SB-9 WHICH SAYS A (FLAG) PARCEL MAY ADJOIN OR HAVE ACCESS TO A PUBLIC RIGHT OF WAY

A BETTER SOLUTION



SECTION VI.A §§

1. THE ACCESS CORRIDOR TO A FLAG LOT MAY BE IN FEE OR AN EASEMENT & SHALL HAVE A MINIMUM WIDTH OF 12' OR AS REQUIRED BY SANTA CLARA COUNTY FIRE DISTRICT
5. ELIMINATE FRONTAGE REQUIREMENT OF 20' UPON A STREET.

PANHANDLE IS AN EASEMENT TO REAR LOT & COULD BE 12-15 WIDE FOR FIRE ACCESS + DRIVEWAY

ALL OTHER JURISDICTIONS ALLOW THIS:

MONTE SERENO
SARATOGA
COUNTY OF SANTA CLARA
CITY OF SAN JOSE
•
•
•