MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. ________

AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR CALIFORNIA STATE SENATE BILL 35

* *

WHEREAS, Senate Bill 35 (SB 35) first went into effect in 2018 but was substantially amended by Senate Bill 168 (SB 168), which went into effect in 2020; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a public hearing to take public testimony and adopted a Resolution recommending that the Board adopt an Ordinance to implement SB 35; and

WHEREAS, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments under SB 35 until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 35; and

NOW, THEREFORE, THE MARIN COUNTY BOARD OF SUPERVISORS DOES SO ORDAIN as follows:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County, which would continue to apply following the adoption of this Ordinance, except that when they conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance does not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for a development subject to the terms of this Ordinance to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division and Planning Commission in consultation with other responsible agencies. Both phases of an application, the preliminary application and the formal application, shall take place under the umbrella of a Housing Development Review. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews, and state mandates for public hearings, except as modified by the provisions of this ordinance and SB 35. The information required for such an application shall be listed in guidance published by the Planning Division. The Planning Division shall charge the regular retainer fee due for a

Design Review. The Planning Commission shall hold a public hearing and shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in SB 35 and this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 35 and this Ordinance.

A. Applicability.

(1) This Ordinance applies to housing development projects applying for approval under Government Code Section 65913.4 and replaces the County's procedures for reviewing discretionary applications.

(2) The California Environmental Quality Act (CEQA) does not apply to projects eligible under Senate Bill 35.

B. Definitions. Terms defined in Government Code Section 65913.4 shall apply to this Section and shall control in the event of a conflict between definitions in the Development Code and definitions in Government Code Section 65913.4.

C. Application Filing. Applications shall be filed under the umbrella of a "Housing Development Regulation Compliance Review" (Housing Development Review), as described in finding 3 above. The two phases of a Housing Development Review for SB 35 projects are the preliminary application and the formal application.

(1) Preliminary Application Filing. An applicant shall file a notice of intent to submit an SB 35 application in the form of a preliminary application consistent with Government Code Section 65941.1. Complete Building Permit applications for the project shall be submitted concurrently with the Preliminary Application.

(a) Form, Fee, and Information. A preliminary application shall be filed on a form provided by the County with the required fee and all required information.

An applicant for a housing development project under this Ordinance shall be deemed to have submitted and filed a preliminary application upon providing all of the following information about the proposed project to the County:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.
(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.
(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.
(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.
(5) The proposed number of parking spaces.
(6) Any proposed point sources of air or water pollutants.
(7) Any species of special concern known to occur on the property.
(8) Whether a portion of the property is located within any of the following:

(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.
(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.
(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.
(9) Any historic or cultural resources known to exist on the property.
(10) The number of proposed below market rate units and their affordability levels.
(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
(14) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
(15) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.
(16) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b) Timeline. Within 180 calendar days after filing a preliminary application, an applicant shall submit a formal Senate Bill 35 application, provided scoping consultation has concluded consistent with Subsection (c), below.

(c) Scoping Consultation

i. Upon receipt of the preliminary application, the County shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that should be noticed. The County shall provide a formal notice of the applicant's intent to submit a formal application to each required California Native American tribe within 30 days of preliminary application submittal. The formal notice shall be consistent with Government Code Section 65913.4(b).

ii. If, within 30 days of receipt of the formal notice, any California Native American tribe that was formally noticed accepts the invitation to engage in scoping consultation, the County shall commence scoping consultation within 30 days of receiving that response.

iii. The scoping consultation shall be conducted consistent with Government Code Section 65913.4(b). If, after scoping consultation is concluded, a development is not eligible for Senate Bill 35 streamlining, the County shall provide written documentation as required by Government Code Section 65913.4(b) to the applicant and any California Native American tribe that is a party to that scoping consultation.

iv. Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code section 65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Government Code section 65913.4(b)(2)(D)(ii)).

(2) Formal Application. If the development remains eligible to apply under Senate Bill 35 after scoping consultation consistent with Government Code Section 65913.4(b) has concluded, an applicant may file a formal Senate Bill 35 application.

D. Completeness Review. The County shall review an application for compliance consistent with Subsection E; there shall be no separate or additional timeframe for completeness review. Only the items necessary to determine compliance with the provisions contained in Government Code Section 65913.4(a) shall be required.

E. Compliance Review

(1) Scope of Review. The County's scope of review is limited to all of the provisions contained in Government Code Section 65913.4(a) and the objective standards in effect at the time of preliminary application submittal.

(2) Public Oversight and Application Review Timelines. The review of a formal application shall be done by the Planning Commission during a hearing to determine if the application complies with all of the provisions contained in this Ordinance, Government Code Section 65913.4(a), and applicable objective standards, and shall occur within the following timeframes:

i. Within 90 calendar days of formal application submittal for applications that include 150 or fewer housing units.

ii. Within 180 calendar days of formal application submittal for applications that include 151 or more housing units.

(3) Compliance Determination.

(a) Compliant Application. If the application complies with all of the provisions contained in this Ordinance, the County shall complete any application review, Planning Commission hearing and any subdivision approval within the timeframes listed in Subsection E.

(b) Non-Compliant Application. If the application does not demonstrate compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards, the County shall provide the applicant with written documentation of

which standards the development conflicts with and an explanation of the reasons the development conflicts with each standard. If the application can be brought into compliance with minor changes to the proposal, the Planning Commission may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in E(2) above.

i. Resubmitted Application. If the project was found to be non-compliant, the applicant may resubmit the application for Senate Bill 35 streamlining, and the County shall review it for compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards subject to the same timelines in Subsection (2) above.

ii. Project Ineligible. If the project is ineligible for Senate Bill 35 streamlined processing, the applicant may elect to submit an application for the applicable discretionary approval.

F. A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by SB 35 and this Ordinance and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more primary residential units.

(2) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Government Code Section 65915, is consistent with objective R1:B3 (Single Family, Residential, with the B3 combining district, minimum lot size 20,000 square feet) zoning district standards, except that multifamily development is required, with the number of residential units allowable per lot being the maximum allowable by the governing Countywide Plan land use designation. In addition, the development shall not occur within a Stream Conservation Area or a Wetland Conservation Area and shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(3) The development is located on a site that satisfies all of the following:

(A) A site that is a legal lot or lots wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, lots that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(4) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(5) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant

to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

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

(K) Lands under conservation easement.

(6) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(7) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the County, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the County pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(8) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(9) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

G. Decision on Project

(1) Project Approval and Findings. The Planning Commission is the review authority for SB 35 projects. The Planning Commission shall approve the application if it finds that the proposed development is compliant with all of the provisions contained in this Ordinance.

(2) Conditions of Approval. The Planning Commission may impose conditions of approval provided those conditions of approval are objective and broadly applicable to development within the County.

H. Post-decision Procedures.

(1) Subsequent Permits. Any necessary subsequent permits shall be issued on a ministerial basis subject to applicable objective standards. If a public improvement is necessary to implement a development subject to this Section, and that public improvement is located on land owned by the County, the County shall process any approvals needed as required by Government Code Section 65913.4(h).

(2) Post-Approval Modifications.

(a) Post-Approval Modification Request. An applicant or the County may request a modification to an approved development if that request is made prior to the issuance of the final building permit.

(b) Applicability of Objective Standards to Modifications. The County shall only apply objective standards in effect when the original application was submitted, except that objective standards adopted after the date of original submittal may be applied in any of the following instances:

i. The total number of residential units or total square footage of construction changes by 15 percent or more; or

ii. The total number of residential units or total square footage of construction changes by five percent or more, and it is necessary to subject the development to an objective standard beyond those in effect when the application was submitted in order to mitigate or avoid a specific adverse impact upon public health of safety, for which there is no feasible alternative method to satisfactorily mitigate or avoid.

iii. Objective building standards contained in the California Building Code, as adopted by the County, may be applied to all modifications.

(c) Post-Approval Modification Review Timeframe and Decision. The County shall determine if the modification is consistent with objective planning standards and issue a decision on the applicant's modification request within 60 days after submittal unless Housing Development Review is required, in which case a decision shall be made within 90 days.

(3) Expiration. An application approved consistent with this Ordinance shall remain valid for three years; however, an application approval shall not expire if the development includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income consistent with Government Code Section 65913.4(e).

(4) Extension. At the discretion of the Director, a one-year extension may be granted consistent with Government Code Section 65913.4(e).

EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be and is hereby declared to be in full force and effect as of thirty days from and after the date of its passage and shall be published once before the expiration of fifteen days after its passage, with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 10th day of May, 2022, by the following vote to wit:

AYES: SUPERVISORS

NOES:

ABSENT:

____
SUPERVISOR RICE, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:

____
Matthew H. Hymel
Clerk of the Board of Supervisors

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. ________

AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO RESIDENTIAL PROPERTY DEVELOPMENT

* *

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a public hearing to take public testimony and adopted a Resolution recommending that the Board adopt an Ordinance to implement the portions of SB 9 related to development of residential units, and through a separate Resolution recommended an Ordinance to implement the portions of SB 9 relating to urban lot splits; and

WHEREAS, the provisions of this Ordinance are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, adoption of this Ordinance is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments under SB 9 until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

NOW, THEREFORE, THE MARIN COUNTY BOARD OF SUPERVISORS DOES SO ORDAIN as follows:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform

to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for Design Review and the standards of this Ordinance. The Planning Division shall charge the regular retainer fees due for a Design Review for Accessory Structures. The Planning Division shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 9 and this Ordinance.

   If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval.

   (a) 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, if the proposed housing development meets all of the following requirements:

   (1) The site subject to the proposed housing development is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

   (2) The development is not located on a site that is any of the following:

   (A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

   (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   (C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

   (D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

   (E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building

Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this Ordinance, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the County.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this ordinance, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

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

(I) Lands under conservation easement.

(3) Notwithstanding any provision of this ordinance or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The lot subject to the proposed housing development is not a lot on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any other County ordinance and except as provided in paragraph (2), the County imposes the development standards of the R2 zoning district (two family, residential), to the extent that they do not conflict with this Ordinance and SB 9. In addition, except as provided in paragraph (2), the maximum floor area of any newly constructed primary residential unit authorized under this Ordinance shall not exceed 1,000 square feet, the residential units are not allowed to be built within a Stream Conservation Area or Wetland Conservation Area, and the development shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(2) (A) Notwithstanding paragraph (b)(1), the County shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two primary units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), Marin County requires minimum side and rear setbacks of four feet.

(c) In addition to any standards established in accordance with subdivision (b), the County requires that all of the following standards be satisfied in an application for two residential units, as provided for in this ordinance:

(1) Off-street parking of one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), the County shall deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, 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.

(e) The County shall require that a rental of any unit created pursuant to this ordinance be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

(f) The County shall not allow the creation of an Accessory Dwelling Unit as part of the development subject to this Ordinance and SB 9 if the lot on which the development is to occur was created by an Urban Lot Split approval and SB 9 (both the authority contained with Government Code section 65852.21 related to development projects and the authority in Government Code section 66411.7 related to urban lot splits).

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application 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.

(h) For purposes of this Ordinance, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units (including just one unit on a vacant lot) or if it proposes to add one new unit to one existing unit.

(2) 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. These standards may be embodied in alternative objective land use specifications adopted by the County or another local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be and is hereby declared to be in full force and effect as of thirty days from and after the date of its passage and shall be published once before the expiration of fifteen days after its passage, with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 10th day of May, 2022, by the following vote to wit:

AYES: SUPERVISORS

NOES:

ABSENT:

SUPERVISOR RICE, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:

Matthew H. Hymel
Clerk of the Board of Supervisors

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. ________

AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO URBAN LOT SPLITS

* *

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a public hearing to take public testimony and adopted a Resolution recommending that the Board adopt an Ordinance to implement the portions of SB 9 related to urban lot splits, and through a separate Resolution recommended an Ordinance to implement the portions of SB 9 relating to residential development; and

WHEREAS, the provisions of this Ordinance are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, adoption of this Ordinance is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed urban lot splits under SB 9 until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

NOW, THEREFORE, THE MARIN COUNTY BOARD OF SUPERVISORS DOES SO ORDAIN as follows:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for an urban lot split that is subject to the terms of this Ordinance to obtain approval of an "Urban Lot Split Compliance Review" (Lot Split Review) for their Parcel Map to be conducted by the Marin County Planning Division in consultation with other

responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for a Tentative Map Waiver and the standards in this Ordinance. The Planning Division shall charge the regular retainer fee due for a Tentative Map Waiver. The Planning Division shall issue an approval, approval with conditions, or denial of a Lot Split Review based on the project's conformance with the standards and requirements provided for in this Ordinance and applicable requirements of the Subdivision Map Act.

4. The procedures, standards, and requirements enumerated below apply to urban lot splits proposed under the provisions of SB 9 and this Ordinance.

   If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval.

   (a) Notwithstanding any other provision of this Ordinance, the County shall ministerially approve, as set forth in this section, an urban lot split only if the County determines that the urban lot split meets all of the following requirements:

   (1) The lot split subdivides an existing lot to create no more than two new lots of approximately equal lot area provided that one lot shall not be smaller than 40 percent of the lot area of the original lot proposed for subdivision.

   (2) Both newly created lots are no smaller than 1,200 square feet.

   (3) The lot being subdivided meets all the following requirements:

   (A) The lot is located within a single-family residential zone.

   (B) The lot subject to the proposed urban lot split is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

   (4) The development is not located on a site that is any of the following:

   (A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

   (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   (C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that

have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the County.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

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

(l) Lands under conservation easement.

(5) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) A lot or lots on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(D) Housing that has been occupied by a tenant in the last three years.

(6) The lot is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(7) The lot has not been established through prior exercise of an urban lot split as provided for in this Ordinance.

(8) Neither the owner of the lot being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent lot using an urban lot split as provided for in this Ordinance.

(b) An application for a Lot Split Review for an urban lot split shall be approved in accordance with the following requirements:

(1) The County shall approve or deny an application for an urban lot split ministerially without discretionary review.

(2) The County shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this Ordinance.

(3) Notwithstanding Subdivision Map Act Section 66411.1, the County shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the lots being created as a condition of approving a Lot Split Review for an urban lot split pursuant to this ordinance.

(c) (1) Except as provided in paragraph (2), notwithstanding any other County Ordinance, the County imposes the standards of the R2 zoning district (two family residential) to the extent that they do not conflict with this Ordinance and SB 9.

(2) Notwithstanding paragraph (c)(1), the County shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that

would have the effect of physically precluding the construction of two primary units on either of the resulting lots or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), the County shall require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), the County shall deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any standards established in accordance with this Ordinance, the County shall require that the project satisfy the following requirements when considering an application for an Urban Lot Split Review:

(1) Easements required for the provision of public services and facilities.

(2) Both lots adjoin a public right-of-way, except that if a lot is already developed with a residence it can adjoin a private street.

(3) Off-street parking of up to one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(f) The County shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) The County shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.
(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(h) The County shall require that a rental of any unit on a lot created pursuant to this section be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

(i) The County shall not require, as a condition for ministerial approval of a Lot Split Review the correction of nonconforming zoning conditions.

(j) Notwithstanding paragraph (3) of subdivision (c), an application 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.

(k) For purposes of this Ordinance, both of the following shall apply:

(1) "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. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Public right of way" means a street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public.

EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be and is hereby declared to be in full force and effect as of thirty days from and after the date of its passage and shall be published once before the expiration of fifteen days after its passage, with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 10th day of May, 2022, by the following vote to wit:

AYES: SUPERVISORS

NOES:

ABSENT:

SUPERVISOR RICE, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:

Matthew H. Hymel
Clerk of the Board of Supervisors

Tejirian, Jeremy

From:	Mosher, Ana Hilda
Sent:	Wednesday, April 13, 2022 11:22 AM
To:	[redacted]
Subject:	FW: SB 9 Strategies
Attachments:	Duplex Housing Law Met With Fierce Resistance By California Cities - LAist 04-11-2022.pdf

Please see message below from Susan Kirsch.

. . . .

ANA HILDA MOSHER
SENIOR SECRETARY/PLANNING COMMISSION SECRETARY

County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
415 473 6278T
415 473 7880 F
415 473 2255 TTY
CRS Dial 711
amosher@marincounty.org

STAY CONNECTED:

"Please consider the environment before printing this email or attachments"

From: Susan Kirsch <susan@susankirsch.com>
Sent: Wednesday, April 13, 2022 8:56 AM
To: PlanningCommission <PlanningCommission@marincounty.org>; BOS <BOS@marincounty.org>
Cc: Marin IJ - Richard Halstead <rhalstead@marinij.com>
Subject: Fwd: SB 9 Strategies

Thank you for your deliberations on housing mandates and urging a "tough line" as reported in today's IJ. I'm forwarding an example of how a city near LA is adding to a tough

***BOS* ATTACHMENT #4**

Damazyn, Michele

From:	Tejirian, Jeremy
Sent:	Tuesday, May 3, 2022 2:45 PM
To:	Reed, Michelle; Damazyn, Michele
Subject:	FW: Follow up Re: Questions re Interim Ordinances for SB-9 & SB-35
Attachments:	Sustainable TamAlmonte letter to Marin County PC re Interim Ordinances for SB-35 & SB-9 4-7-22.pdf

From: Sharon Rushton <sharonr@tamalmonte.org>
Sent: Thursday, April 28, 2022 5:02 PM
To: Tejirian, Jeremy <JTejirian@marincounty.org>
Subject: Follow up Re: Questions re Interim Ordinances for SB-9 & SB-35

Hi Jeremy,

Thank you for your response.

Please reconsider your finding pertaining to an EIR analysis of potential SB-9 projects.

I hope you will read my article regarding SB-9 to better understand the law. During my research, I contacted Assembly Member Levine's office and their staff helped me to understand the law. Below is a link to my article:

https://marinpost.org/blog/2021/10/16/misguided-housing-bill-bans-single-family-zoning-here-are-the-nitty-gritty-details-about-sb-9

Also, please read Sustainable TamAlmonte's letter regarding the interim ordinance that implements SB-9. Our letter is attached.

Here is an important excerpt from our letter:

"C. Prohibit SB-9 housing projects in hazardous areas. To do so, complete a cumulative Environmental Impact Report for all potential SB-9 projects in all single-family zones throughout Unincorporated Marin in order to prove that the projects would have a specific, adverse impact upon public health and safety or the physical environment and for which there is no feasible method to mitigate the impact.

Marin County can deny SB-9 projects and protect hazardous properties from the increased risk of environmental impacts caused by the overly dense development of SB-9 by complying with the following section of the bill.

Excerpt from the text of SB-9 (in blue):
"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

For every single proposal to up-zone a single-family parcel to 4 units (via SB-9), Marin County would have to make a written finding, based upon a preponderance of evidence, that the proposed housing development project would have a specific, adverse impact 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. This could be very costly.

Moreover, the evaluation of just one single-family parcel (at which a single-family home would be converted into 4 units) at a time, won't show the true adverse impacts of housing development per SB-9. Cumulative impacts would most likely be necessary. So, the County would need to do some sort of environmental or safety assessment for all its single-family zones.

We strongly recommend that all potential SB-9 housing developments be evaluated by the Environmental Impact Report that will be completed for the Housing Element Update. This will give the County the means to deny SB-9 projects in hazardous areas in accordance with the law."

It is very important that the County includes SB-9 projects in the Housing Element's EIR. The EIR will provide the proof the County will need to deny hazardous SB-9 projects. The County will need an analysis of cumulative impacts, like an EIR, in order to make a written finding, based on a preponderance of the evidence, that the proposed housing development project would would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

Thank you in advance for your kind consideration.

Very truly yours,
Sharon Rushton

Sharon Rushton
President | **Sustainable TamAlmonte**

sharonr@tamalmonte.org
tamalmonte.org

On 4/28/22 4:03 PM, Tejirian, Jeremy wrote:

> Hi Sharon, my apologies for the delay, but your email somehow ended up in my junk mail and I just realized it was there. The Board's hearing on these interim ordinances is scheduled for May 10th. The ordinances are not projects under CEQA because they implement state law, which indicates that they are exempt. Thanks.
>
> **From:** Sharon Rushton <sharonr@tamalmonte.org>
> **Sent:** Wednesday, April 13, 2022 11:55 AM
> **To:** Tejirian, Jeremy <JTejirian@marincounty.org>
> **Subject:** Questions re Interim Ordinances for SB-9 & SB-35
>
> Hi Jeremy,

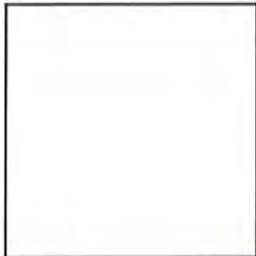
Would you please answer the below questions?

1. When will the Supervisors' hearing regarding the Interim Ordinances for implementing SB-9 & SB-35 take place?
2. Will all potential SB-9 projects be evaluated by the Housing Element Update's EIR?

Thank you kindly,

Sharon Rushton

--



Sharon Rushton

President | **Sustainable TamAlmonte**

sharonr@tamalmonte.org

tamalmonte.org

Email Disclaimer: https://www.marincounty.org/main/disclaimers

SUSTAINABLE TAMALMONTE

215 Julia Ave
Mill Valley, CA 94941

April 7, 2022

Marin County Planning Commission
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
planningcommission@marincounty.org

Re: Interim Ordinances to implement Senate Bill 35 and Senate Bill 9

Dear Marin County Planning Commission,

We urge you to design the Interim Ordinances, which implement Senate Bill 35 and Senate Bill 9, in such a way that they restrict the bills and maintain the integrity of single-family neighborhoods to the greatest extent possible. By doing so, you will protect public health and safety, preserve the environment, and maintain quality of life.

I. About Senate Bill 35 and Senate Bill 9

Both SB-35 and SB-9 are atrocious, fundamentally flawed laws that take away local control of land use, streamline the review of housing projects, endanger public health and safety, harm the environment, and ruin residents' quality of life. In addition, Senate Bill 9 destroys single-family neighborhoods. These laws were written to line the pockets of Big Wall Investment Firms, Big Real Estate, and Big Tech and do little to promote affordable housing. Indeed, there is absolutely no requirement for any affordable housing to be built in SB-9.

To understand the potential profound adverse consequences of Senate Bill 9, please read Sharon Rushton's article entitled; "**Misguided Housing Bill Bans Single-Family Zoning Forever: Here are SB-9's nitty gritty details**". This analysis examines the fine print of the final version of Senate Bill 9 and sheds light on misinformation that mainstream media has propagated. Below are a link to and an important excerpt from the piece. We have also attached the article in **Addendum I** of this letter.

Link to article:

https://marinpost.org/blog/2021/10/16/misguided-housing-bill-bans-single-family-zoning-here-are-the-nitty-gritty-details-about-sb-9

Excerpt from Sharon Rushton's article entitled; ""Misguided Housing Bill Bans Single-Family Zoning Forever: Here are SB-9's nitty gritty details":

"SB-9 Significantly Increases The Risk Of Adverse Impacts

SB-9's vast up-zoning, without any environmental review of potential adverse impacts and cumulative effects, is reckless.

The 2007 Marin Countywide Plan's (CWP's) Environmental Impact Report (EIR) projected potential growth of 14,043 more housing units (more than the current number of homes in Sausalito and Mill Valley combined) and 29,759 more residents, if land vacant in 2006 were fully developed according to zoning designations of the cities in Marin County and the Countywide Plan. This didn't include density bonuses. Alarmingly, the EIR concluded that "land uses and development consistent with the CWP would result in 42 significant unavoidable adverse impacts", including worse traffic congestion and insufficient water supplies.

There are more than 61,200 single-family dwellings in Marin, according to a 2006 report by the County Assessor-Recorder. The County's average household size is 2.35 people (per the CWP's EIR). So, potential growth consistent with SB-9, in which single-family homes turn into duplexes or four homes, could be up to 183,600 more homes and 431,460 more residents, over and above the CWP EIR's forecast. Such expansion is unsustainable.

SB-9's subsequent housing density, population growth and changes to development standards would increase the risk of adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (water supply), public services (schools), views, sunlight, privacy, neighborhood character, and quality of life."

II. Sustainable TamAlmonte's Recommendations

Although some of Staff's recommendations are good, many more of Staff's recommendations embrace SB-9 and are completely out of touch with the vast majority Marin residents' viewpoints.

We urge you to do the following to restrict SB-35 and SB-9 to the greatest extent possible:

A. Prohibit SB-35 and SB-9 housing projects in Stream Conservation Areas (SCA) and Wetland Conservation Areas (WCA).

B. Prohibit SB-35 housing projects in all locations that are exempt, according to the law.

SB-35 states; "(6) The development is not located on a site that is any of the following..." and then lists many locations (E.g. Coastal Zone, wetlands, hazardous waste site, flood hazard area, etc.) where SB-35 projects are not allowed. Please disallow SB-35 housing projects in all of these specified locations.

C. Prohibit SB-9 housing projects in hazardous areas. To do so, complete a cumulative Environmental Impact Report for all potential SB-9 projects in all single-family zones throughout Unincorporated Marin in order to prove that the projects would have a specific, adverse impact upon public health and safety or the physical environment and for which there is no feasible method to mitigate the impact.

Marin County can deny SB-9 projects and protect hazardous properties from the increased risk of environmental impacts caused by the overly dense development of SB-9 by complying with the following section of the bill.

Excerpt from the text of SB-9 (in blue):
"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

For every single proposal to up-zone a single-family parcel to 4 units (via SB-9), Marin County would have to make a written finding, based upon a preponderance of evidence, that the proposed housing development project would have a specific, adverse impact 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. This could be very costly.

Moreover, the evaluation of just one single-family parcel (at which a single-family home would be converted into 4 units) at a time, won't show the true adverse impacts of housing development per SB-9. Cumulative impacts would most likely be necessary. So, the County would need to do some sort of environmental or safety assessment for all its single-family zones.

We strongly recommend that all potential SB-9 housing developments be evaluated by the Environmental Impact Report that will be completed for the Housing Element Update. This will give the County the means to deny SB-9 projects in hazardous areas in accordance with the law.

D. Prohibit lots and housing projects created under SB-9 in the Wildlands Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones, and Constrained Areas with unsafe access and evacuation routes.

SB-9 endangers communities in the Wildlands Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones, and Constrained Areas with unsafe access and evacuation routes. This is because the law dramatically increases potential housing density and population (potentially tripling the population) in these hazardous communities, while reducing or eliminating off-street parking requirements. This will lead to streets being overcrowded. **Dire consequences could result during an emergency when residents are unable to evacuate and fire trucks/paramedics are unable to reach their destinations.**

Therefore, SB-9 lot splits and housing projects should be prohibited in these dangerous communities. Please see **Section B** of this letter in order to know how SB-9 provides for the County to do this.

E. Require owner occupancy for three years after an urban lot split. If possible, require owner occupancy in perpetuity after an urban lot split.

Marin County should give priority to the wellbeing of Marin residents over the profits of corporate landlords. Marin residents cherish their single-family neighborhoods and do not want them destroyed by corporate greed.

Moreover, unaccountable corporate landlords are notorious for squeezing renters in every imaginable way, setting up byzantine ownership and management structures that harm tenants and neighborhoods.

Excerpt from NPR article entitled; "Amid a housing crisis, renters challenge firms they say are being exploitive":

"Ellen Davidson is a housing attorney with the Legal Aid Society in New York City. Davidson says corporate landlords often take the value out of a building. 'They raise rents, cut costs as severely as possible, which usually means deferred maintenance, neglect, failure to make repairs, making buildings more dangerous...' "

Please read the Atlantic article by Alexander Ferrer entitled; "**The Real Problem With Corporate Landlords**"; the NPR article by Marisa Penaloza entitled; "**Amid a housing crisis, renters challenge firms they say are being exploitive";** and the Hedgeclippers article entitled; **"Billionaire Corporate Landlords Are Exacerbating California's Housing Crisis"**

Links to articles:

- https://www.theatlantic.com/ideas/archive/2021/06/real-problem-corporate-landlords/619244/
- https://www.npr.org/2022/02/10/1078968784/amid-a-housing-crisis-renters-challenge-firms-they-say-are-being-exploitative
- https://hedgeclippers.org/hedge-papers-no-69-billionaire-corporate-landlords-are-exacerbating-californias-housing-crisis/

F. Prohibit the development of Accessory Dwelling Units (ADUs) after an SB-9 urban lot split or housing project.

State law allows the County to prohibit ADUs on properties that have undergone an urban lot split under SB-9 and therefore your Commission should include this requirement in the Ordinance. If the Ordinance is revised to prohibit ADUs after urban lot splits, then a lot could be divided into two and then two primary units would be allowed on each resulting lot for a maximum total of four units.

We strongly disagree with Staff's recommendation to allow ADUs. Allowing a further increase in density and population will only exacerbate environmental impacts. We also strongly disagree with Staff's assessment that units subject to size limits create more opportunities for developing housing that is affordable by design. A housing unit will only be affordable if the unit's rent or sale price is restricted or if the income of the tenant or owner is subsidized.

There is absolutely no requirement for SB-9 to provide affordable housing and no evidence that higher density lowers housing costs. In fact, housing costs increase when housing stock changes from individual home ownership to rental units owned by Wall Street. Forbes (12/2/21) describes California housing legislation as *California Scheming*.

G. Per Staff's recommendation, the Planning Commission should be the review authority for SB-35 applications and the Planning Commission's decisions should be appealable to the Board of Supervisors.

Sending SB-35 applications to the Planning Commission provides the public with an opportunity to voice their opinions about a project.

H. In order to maintain the traditional size of homes in single-family zones, do not limit the floor area of new residences allowed under the provisions of SB-9 to 1800 sq. ft. or 800 sq.

ft, per Staff's recommendations. However, we agree that the total Floor Area Ratio should be maintained at 30%.

III. Conclusion

We urge you to design the Interim Ordinances, which implement Senate Bill 35 and Senate Bill 9, in such a way that they restrict the bills and maintain the integrity of single-family neighborhoods to the greatest extent possible. By doing so, you will protect public health and safety, preserve the environment, and maintain quality of life.

Thank you in advance for your conscientious consideration.

Very truly yours,
/s/
Sharon Rushton, President
Sustainable TamAlmonte

Enclosure

ADDENDUM I

https://marinpost.org/blog/2021/10/16/misguided-housing-bill-bans-single-family-zoning-here-are-the-nitty-gritty-details-about-sb-9

Misguided Housing Bill Bans Single-Family Zoning Forever: Here are SB-9's nitty gritty details

By Sharon Rushton, The Marin Post, October 16, 2021

Senate Bill 9 (Atkins), a controversial and fundamentally flawed housing bill, was signed into law by Governor Newsom on September 16th. The bill is an unprecedented taking of local planning powers that hands county, city and community decision-making directly to housing developers. Overtime, the legislation will ruin treasured single-family neighborhoods.

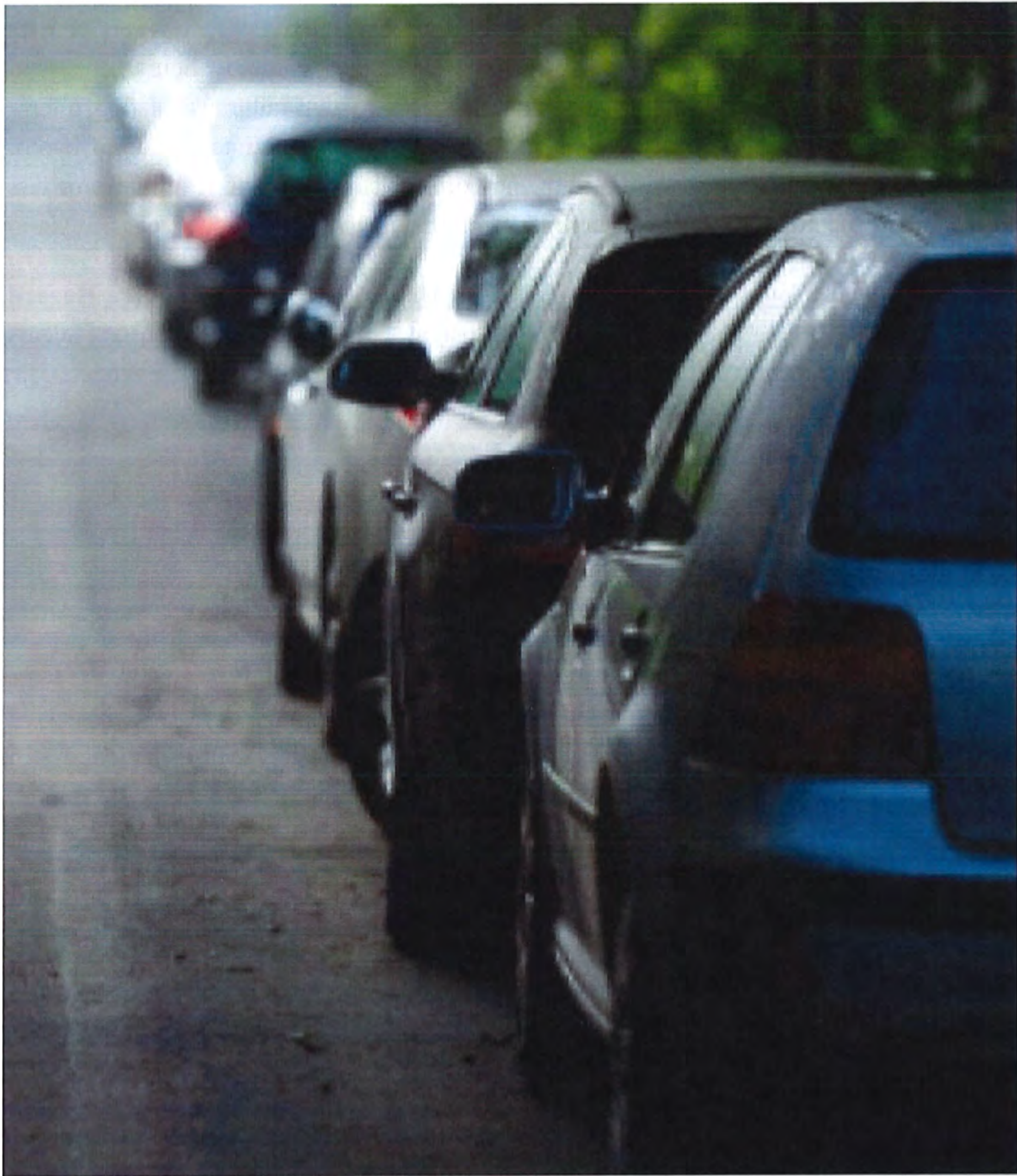
SB-9 ends single-family zoning and requires local governments to let property owners split single-family parcels (as small as 2400 sq. ft.) into two lots (each as small as 1200 sq. ft.) and then build duplexes on each lot. The result would be four homes, where there used to be only one. Side and rear setbacks are restricted to only four feet and off-street parking requirements are significantly reduced or eliminated.

"Ministerial" approval streamlines the permit process and eliminates discretionary review, environmental review in compliance with the California Environmental Quality Act (CEQA), and public hearings, thereby stifling public engagement, democracy, high-quality development, and environmental protections.

The Office of the Governor and the authors of the bill claim these provisions will expand housing options for people of all incomes. However, there is absolutely no requirement for any affordable housing to be built in the legislation.

This article examines the fine print of the final version of Senate Bill 9 and sheds light on misinformation that mainstream media has propagated.

SB-9 Severely Lowers Off-Street Parking Requirements



SB-9 lowers parking requirements to just one space per home and totally eliminates parking requirements on developments located within one-half mile walking distance of either a "high-quality transit corridor" or a "major transit stop" or if there is a car share vehicle located within one block of the parcel.

- A "high-quality transit corridor" means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.
- A “Major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

SB-9 Endangers Communities in the Wildland Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones, and Constrained Areas with inadequate access and evacuation routes

Burning Vehicle - Flickr

SB-9 endangers communities in the Wildland Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zone, and Constrained Areas with inadequate and unsafe access and evacuation routes in the event of a fire or other emergency. As housing density and population significantly increase, the access and evacuation routes of these hazardous neighborhoods will become even more congested. Dire consequences could result during

an emergency when residents are unable to evacuate and fire trucks/paramedics are unable to reach their destinations.

Moreover, the bill makes it very difficult for local jurisdictions to protect these hazardous areas.

Numerous articles incorrectly claim that SB-9 exempts High and Very High Fire Hazard Severity Zones. However, the fine print tells a different story.

SB-9 does **not** directly protect fire hazard severity zones with inadequate and unsafe access and evacuation routes in the event of a fire or other emergency due to the below clause (in blue & bold) from **Government Code Section 65913.4**, which SB-9 incorporates.

Excerpt from the text of SB-9 (in blue):

"Section 1 (a) (2)

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of **Section 65913.4."**

This references the below Section 65913.4 in the Government Code regarding the specific prohibited sites:

Excerpt from CHAPTER 4.2 Housing Development Approvals: Government Code Section 65913.4 (in blue):

"(a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(6) The development is not located on a site that is any of the following: ...

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. **This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard**

mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development."

Any new development would need to comply with fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures. Building standards don't mandate off-street parking or improve street conditions. So, this section of the bill, which incorporates Government Code Section 65913.4, does nothing to protect hazardous communities with inadequate and unsafe emergency access and evacuation routes.

The only way a jurisdiction can possibly protect hazardous properties with inadequate and unsafe emergency access and evacuation routes is to comply with the following new section that was recently added to the bill.

Excerpt from the text of SB-9 (in blue):

"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

So, for every single proposal to up-zone a single-family parcel to 4 units (via SB-9), a jurisdiction would have to make a written finding, based upon a preponderance of evidence, that the proposed housing development project would have a specific, adverse impact 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. This could be very costly.

Moreover, the evaluation of just one single-family parcel (at which a single-family home would be converted into 4 units) at a time, won't show the true adverse impacts of housing development per SB-9. Cumulative impacts would most likely be necessary. So, a jurisdiction would need to do some sort of environmental or safety assessment for all its single-family zones. Again, this type of broad assessment would be very time consuming and expensive.

Communities in the Wildland Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones and Constrained Areas should be automatically exempt from SB-9 but they are not.

SB-9 Endangers Communities In Earthquake Fault Zones

San Andreas Fault - Wikipedia

Similar to the exclusion of fire risk areas, SB-9's exemption for earthquake fault zones is meaningless. The fault zone exemption doesn't apply if the duplexes (or fourplexes) comply with applicable seismic protection building code standards, which any new development would abide by.

Excerpt from the text of SB-9 (in blue):

"Section 1 (a) (2)

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of **Section 65913.4."**

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(6) The development is not located on a site that is any of the following: ...

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, **unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission** under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2."

Like fire risk areas, the only way a jurisdiction can protect hazardous properties in earthquake fault zones is to comply with the following new section that was recently added to the bill, which would be time consuming and costly for a jurisdiction.

Excerpt from the text of SB-9 (in blue):

"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical

environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

SB-9 Limits Side & Rear Setbacks To Just 4 Feet

BEFORE NEW ADU LEGISLATION:
Lush Gardens

AFTER NEW ADU LEGISLATION:
Side & Rear Setbacks Are Limited To Just 4 Feet

On September 17th, a Bay Area News Group published an article by Maggie Angst entitled; "What California's new SB9 housing bill means for single-family zoning in your neighborhood". The article states: "Developments must still follow local zoning rules such as those governing height and yard size requirements." This is false.

Excerpt from the text of SB-9 regarding setbacks (in blue):

"(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section...

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines."

Per the above excerpt, a jurisdiction may require side and rear setbacks of up to 4 feet but no larger. This is the same as the setback requirements in the new Accessory Dwelling Unit (ADU) legislation.

Therefore, SB-9 eliminates the following aesthetic and functional benefits that proper setbacks provide:

- **Better protection of public safety:** Having space between houses and streets, etc., ensures that in the case of a fire or other emergencies, first responders can access the property and residents can evacuate rapidly and safely.
- **Better preservation of the environment:** For residential properties that are located adjacent to streams, wetland, forests, and other natural habit, proper setbacks are critical for the wellbeing of the habitat and wildlife, including endangered species, that live there.
- **Better services:** Proper setbacks ensure that maintenance personnel can safely and easily access the property for such services as sewer, utilities, and cable, etc.
- **Better ventilation and public health:** Not having a house squished up against another house or roadways gives residents cleaner air. This means residents won't be breathing in toxic exhaust or a neighbor's smoking habit.
- **Better lighting:** Property setbacks ensure that there is plenty of space around dwellings to bring in natural light and better visual access.
- **Better sound insolation:** Property setbacks help ensure better sound insulation by building away from busy intersections and other noisy environments.
- **Better landscape:** Landscaping makes a home more inviting and gives a sense of ease. Gardens provide residents with a place to enjoy the outdoors and commune with nature. They give children a place to play. Trees remove carbon from the air and help to cool our communities. Permeable ground cover helps to replenish groundwater resources, restore hydrologic balance and reduce runoff volume.
- **Additional benefits:** Property setbacks help ensure buildings don't fall over each other in the case of a natural disaster, like an earthquake or fire. They encourage outdoor activities in public areas, and help keep the sanity of society by giving people enough room to roam.

SB-9 Reduces The Ability To Achieve The American Dream – Owning A Single-Family Home In A Single-Family Neighborhood

Single Family Home - Flickr

A 2019 Redfin survey found that regardless of where people live within the US, more than 85% of home buyers and sellers (including millennials) prefer single-family homes with more space, privacy, and gardens over a unit in a triplex that has a shorter commute.

Moreover, realtors report a recent trend of city dwellers wanting to move to single-family neighborhoods in the suburbs to escape dense living conditions, which contribute to the spread of COVID-19.

Over time, the bill will cause the supply of single-family homes to diminish due to conversions to duplexes or "fourplexes" and the price for the remaining single-family dwellings will become even more expensive. This will make it more difficult for residents to attain their preferred lifestyle.

SB-9 Restricts Who Can Apply For A Lot Split And/Or Duplex

Wall Street - Wikipedia

SB-9 restricts who can apply for a lot split and/or duplex, in accordance with the bill.

Excerpt from the text of SB-9 (in blue):

"(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. (2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code."

So, either the applicant will reside on the property for 3 years or else the applicant is a "community land trust" or a "qualified nonprofit corporation".

What is a "Community Land Trust"? https://codes.findlaw.com/ca/revenue-and-taxation-code/rtc-sect-402-1.html

"(ii) "**Community land trust**" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:
(I) Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.
(II) All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income.
(III) The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years."

What is a "Qualified Nonprofit Corporation"? https://codes.findlaw.com/ca/revenue-and-taxation-code/rtc-sect-214-15.html

Here's a description of a "**qualified nonprofit corporation**" as described in Section 214.15 of the Revenue and Taxation Code:

"(a) Property is within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution if that property is owned and operated by a nonprofit corporation, otherwise qualifying for exemption under Section 214 , that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low-income families, with financing in the form of a zero interest rate loan and without regard to religion, race, national origin, or the sex of the head of household."

Therefore, for the time being, the bill seems to hinder for-profit Big Wall Street Investment Firms or Big Real Estate Developers from buying up single-family residences and turning them into fourplexes for profit. However, it would be easy for the legislators to make a minor edit to the legislation next year and allow for this to happen in the near future.

SB-9 Significantly Increases The Risk Of Adverse Impacts

Sewage Spill - Wikipedia

SB-9's vast up-zoning, without any environmental review of potential adverse impacts and cumulative effects, is reckless.

The 2007 Marin Countywide Plan's (CWP's) Environmental Impact Report (EIR) projected potential growth of 14,043 more housing units (more than the current number of homes in Sausalito and Mill Valley combined) and 29,759 more residents, if land vacant in 2006 were fully developed according to zoning designations of the cities in Marin County and the Countywide Plan. This didn't include density bonuses. Alarmingly, the EIR concluded that "land uses and development consistent with the CWP would result in 42 significant unavoidable adverse impacts", including worse traffic congestion and insufficient water supplies.

There are more than 61,200 single-family dwellings in Marin, according to a 2006 report by the County Assessor-Recorder. The County's average household size is 2.35 people (per the CWP's EIR). So, potential growth consistent with SB-9, in which single-family

homes turn into duplexes or four homes, could be up to 183,600 more homes and 431,460 more residents, over and above the CWP EIR's forecast. Such expansion is unsustainable.

SB-9's subsequent housing density, population growth and changes to development standards would increase the risk of adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (water supply), public services (schools), views, sunlight, privacy, neighborhood character, and quality of life.

SB-9 Will Create Unfunded Mandates

Bankruptcy - Flickr

SB-9 will create unfunded mandates. There is no funding for dealing with the above listed impacts and the bill provides an official sidestep of addressing this issue, per the below excerpt. Local jurisdictions and taxpayers will be responsible for paying the costs.

Excerpt from the text of SB-9 (in blue):

"**SEC. 5.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act..."

National Law Review Article About Senate Bill 9

For more specifics about Senate Bill 9 and other recently enacted housing legislation, please click **HERE** to read the National Law Review article entitled; "**California Enacts New Legislation to Combat Growing Housing Crisis, But Not Without Controversy**".

TAKE ACTION!

Please support the **Californians for Community Planning Initiative**. This ballot measure will amend the State Constitution to ensure zoning, land-use and development decisions are made at the local level, and to stop the multitude of legislative bills like SB-9, emanating from Sacramento that seek to override municipal and county control over land-use and development. They hope to put this measure on the ballot for the General Election on November 8, 2022.

To learn more about the initiative and to donate your time or money to the cause, please click on the below links:

Link to More Information: www.communitiesforchoice.org

Link to the Video: https://youtu.be/rXyValtxDQ0

Link to the Initiative Text: https://www.communitiesforchoice.org/initiative-text/

Link to FAQs: https://www.communitiesforchoice.org/faq/

Link to Donate Money to the Cause: https://www.communitiesforchoice.org/support/

Link to Volunteer: https://www.communitiesforchoice.org/volunteer/

approach. Marin could be a northern CA leader if it were to do even more. Thanks again for your thoughtfulness.

Susan Kirsch
Catalysts, Director
www.catalystsca.org
www.susankirsch.com/
415-686-4375

The attached article had an interesting take on SB9 strategies.

Temple city enacted the following measures for any individual looking to implement SB9. It touches on every stated pro-development objective we have ever heard:

- Property owners must get rid of their garage or driveway before getting a building permit
- Residents of the new unit will be banned from obtaining street parking passes.
- New tenants can't own a vehicle and must intend to walk, bike or take Ubers around the suburb
- All new units meet the highest level of LEED certification, a designation typically held by premium office buildings like Facebook's Headquarters in Menlo Park.
- New homes can be no larger than 800 square feet — also the minimum set by state law — and must be rented at below-market value to be affordable to low-income families for 30 years
    - A family of four would need to make $94,600 or less to qualify, and could only be charged 30% of their total income in rent, or $2,365 a month

LAist

Duplex Housing Law Met With Fierce Resistance By California Cities

By Manuela Tobias | CalMatters | 04-11-2022
https://laist.com/news/housing-homelessness/duplex-housing-law-met-with-fierce-resistance-by-california-cities

The state housing department is gearing up to send stern warnings to cities trying to skirt a new housing law advocates hope will bring more affordable housing.

Senate Bill 9, a state law that went into effect Jan. 1, allows property owners to build duplexes and in some cases, fourplexes, on most single-family parcels across the state. Cities, more than 240 of which opposed the bill, have pushed back against the state with ordinances that would severely curb what property owners can build.

The Housing and Community Development Department confirmed it has received complaints about 29 such cities it told CalMatters it plans to investigate. If it determines cities are indeed defying state housing laws, the department will send letters that offer technical assistance, and request a plan to fix those issues within 30 days.

The first of those letters will be sent out "relatively soon," according to David Zisser, who leads the housing department's newly created Housing Accountability Unit. Zisser said he hopes the department won't have to issue letters to all the cities they investigate.

"By the time we send out a few letters, my hope is that jurisdictions will start to see themselves in those letters and start to make corrections to their own ordinances," he said.
If a second warning letter fails, the state attorney general's office, with whom they have been coordinating closely, would step in.

In fact, Attorney General Rob Bonta has intervened twice already. Pasadena carved out exemptions for landmark districts within the new law, which could apply to vast swaths of the city. Bonta told the city last month they could face a lawsuit if they didn't reverse course. In a response letter, the city's mayor said they are in full compliance with the law.

In February, Bonta also called out Woodside, a wealthy Silicon Valley town that claimed its entirety was protected mountain lion habitat and therefore couldn't accommodate duplexes. It quickly reversed course following the state's warning.

Both cities were on the housing department's list of 29 cities.
The state housing department doesn't have authority to enforce the duplex law, according to Zisser, which is why the cities on their list will be investigated for defying the 16 housing statutes under their purview, one of which limits a city's ability to restrict the development of new housing.

Who's on the naughty list?

Temple City, a Los Angeles suburb of 36,000 with a median home value of nearly $1 million, crafted an ordinance in December — ahead of the law going into effect — with a list of more than 30 development and design standards property owners must meet in order to develop new homes under the state's new duplex-friendly law. The purpose of the ordinance was not a secret.

"What we're trying to do here is to mitigate the impact of what we believe is a ridiculous state law," said councilmember Tom Chavez during a Dec. 21 city council meeting, in which they unanimously adopted an urgency ordinance limiting the effect of the duplex law in the city. He acknowledged the state may push back.

Traditional single-family zoning — with room for one house for a single family with a front yard and a backyard — is what has always attracted people to Temple City, said William Man, another councilmember.

"SB 9, at least in principle, is dismantling that before our eyes," he said.

Temple's ordinance says property owners must get rid of their garage or driveway before getting a building permit, and residents of the new unit will be banned from obtaining street parking passes. New tenants can't own a vehicle and must intend to walk, bike or take ubers around the suburb, according to a planning memo.

The city is also demanding that all new units meet the highest level of LEED certification, a designation typically held by premium office buildings like Facebook's Headquarters in Menlo Park.

Finally, the new ordinance says new homes can be no larger than 800 square feet — also the minimum set by state law — and must be rented at below-market value to be affordable to low-income families for 30 years, a standard that is echoed across multiple cities' anti-duplex law ordinances. A family of four would need to make $94,600 or less to qualify, and could only be charged 30% of their total income in rent, or $2,365 a month.

The affordability requirement threatens the viability of these projects, according to Muhammad Alameldin, a policy associate at UC Berkeley's Terner Center for Housing Innovation who has been reviewing multiple ordinances for an upcoming analysis.

While developers who build affordable housing usually rely on subsidies from the federal and state governments to operate, "These are just homeowners who have no assistance from their localities or from anyone, and lack technical expertise," he said.

Another city on the housing department's list: Sonoma, a historic city north of San Francisco known for its ritzy wineries. Besides requiring similar affordability covenants for new housing, Sonoma now requires that any prospective duplex property have at least three mature trees and 10 shrubs. The new duplex unit or singular house would have a maximum area of 800 square feet, and at least 600 square feet of shared yard space.

What we're trying to do here is to mitigate the impact of what we believe is a ridiculous state law.
— Tom Chavez, Temple City Councilmember

The count of cities with restrictive ordinances is higher among some pro-housing advocacy organizations, like the California Renters Legal Advocacy and Education Fund. They identified more than 55 cities by following city council and planning

department meetings in which "it's pretty clear the intent is to limit the use of SB 9 as much as possible," said the group's executive director Dylan Casey.

The typical median income across the 55 cities was $129,000, while the average home cost $1.9 million.

"With few exceptions, these are mostly the very expensive, very high- income suburbs that are rushing to prevent implementation of SB 9," Casey said.

A few other cities have engineered creative strategies to work around the law without catching heat from the state yet.

Absent from the state's watch list is Laguna Beach, a surf town in Orange County, which is playing with geometry to ensure property owners don't split their lots, according to Isaac Schneider, co-founder of Homestead, a startup that helps homeowners develop Accessory Dwelling Units and more recently, split their lots under the new duplex law.

Schneider said the law's power lies in lot splits, whereby property owners can cut their land in half to create smaller, more affordable parcels and thus spur homeownership. Laguna Beach's ordinance says the owner can't do that, unless the new lot is a perfect rectangle.

That presents an issue, Schneider explained, because the line for most lots would need to be drawn behind an existing house — in the backyard. But in order to have street access, as required by law, planners normally create a flag shape, with a driveway or other access point to reach the new house without demolishing the existing structure. (Sonoma's ordinance also bans flag lots.)

The ordinance also requires the new lot to border the road for at least 30 consecutive feet. However, the typical lot is 50 feet wide in Laguna Beach, Schneider's group found. That means if a house is situated in the center of the lot, a lot split would require demolishing the existing home.

"They've made a math problem you cannot solve," Schneider said.

When CalMatters asked if these restrictions would render most projects infeasible, Laguna Beach Community Development Director Marc Wiener wrote in an email: "The intent is that subdivided lots have standard property boundaries and that there is adequate vehicle access to both parcels. Most lots are rectangular and meet the 30-foot frontage requirement, therefore it is not viewed as a limiting factor."

With few exceptions, these are mostly the very expensive, very high- income suburbs that are rushing to prevent implementation of SB 9.

— Dylan Casey, executive director of the California Renters Legal Advocacy and Education Fund

While the duplex law was a nail-biter in the Legislature, and continues to incite resistance among cities, it has barely made a dent in housing production. Planners in Bay Area cities haven't heard a peep from property owners looking to split their parcels or build a duplex.

Sen. Scott Wiener, a Democrat from San Francisco, says the law has only been in effect for 90 days, and resistance from cities is just a feature of housing legislation in the state.

"It's not surprising at all that there will be resistance and cities will try to find loopholes," he said. "We just need to enforce the law, and we now have the attorney general and (the housing department) willing to do that plus private litigants who will sue if need be. And if it turns out that there are loopholes that need to be closed, we can do that."

But cities are also reverting to legal challenges. A group of four LA County cities, led by wealthy Redondo Beach, filed a lawsuit March 29 in Los Angeles County Superior Court against the attorney general's office, claiming the state "eviscerated" cities' land use control.

Bonta's office issued a statement in response: "We look forward to defending this important law in court and we will not be deterred from our ongoing efforts to enforce SB 9 and other state housing laws."

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC22-003

A RESOLUTION RECOMMENDING ADOPTION OF AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR CALIFORNIA STATE SENATE BILL 35

* *

WHEREAS, Senate Bill 35 (SB 35) first went into effect in 2018 but was substantially amended by Senate Bill 168 (SB 168), which went into effect in 2020; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement SB 35, as amended; and

WHEREAS, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 35; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement SB 35, as amended, that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County, which would continue to apply following the adoption of this Ordinance, except that when they conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance does not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for a development subject to the terms of this Ordinance to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division and Planning Commission in

consultation with other responsible agencies. Both phases of an application, the preliminary application and the formal application, shall take place under the umbrella of a Housing Development Review. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews, and state mandates for public hearings, except as modified by the provisions of this ordinance and SB 35. The information required for such an application shall be listed in guidance published by the Planning Division. The Planning Division shall charge the regular retainer fee due for a Design Review. The Planning Commission shall hold a public hearing and shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in SB 35 and this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 35 and this Ordinance.

A. Applicability.

(1) This Ordinance applies to housing development projects applying for approval under Government Code Section 65913.4 and replaces the County's procedures for reviewing discretionary applications.

(2) The California Environmental Quality Act (CEQA) does not apply to projects eligible under Senate Bill 35.

B. Definitions. Terms defined in Government Code Section 65913.4 shall apply to this Section and shall control in the event of a conflict between definitions in the Development Code and definitions in Government Code Section 65913.4.

C. Application Filing. Applications shall be filed under the umbrella of a "Housing Development Regulation Compliance Review" (Housing Development Review), as described in finding 4 above. The two phases of a Housing Development Review for SB 35 projects are the preliminary application and the formal application.

(1) Preliminary Application Filing. An applicant shall file a notice of intent to submit an SB 35 application in the form of a preliminary application consistent with Government Code Section 65941.1. Complete Building Permit applications for the project shall be submitted concurrently with the Preliminary Application.

(a) Form, Fee, and Information. A preliminary application shall be filed on a form provided by the County with the required fee and all required information.

An applicant for a housing development project under this Resolution shall be deemed to have been submitted and filed a preliminary application upon providing all of the following information about the proposed project to the County:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.
(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.
(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.
(5) The proposed number of parking spaces.
(6) Any proposed point sources of air or water pollutants.
(7) Any species of special concern known to occur on the property.
(8) Whether a portion of the property is located within any of the following:
(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.
(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.
(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.
(9) Any historic or cultural resources known to exist on the property.
(10) The number of proposed below market rate units and their affordability levels.
(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
(14) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
(15) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.
(16) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b) Timeline. Within 180 calendar days after filing a preliminary application, an applicant shall submit a formal Senate Bill 35 application, provided scoping consultation has concluded consistent with Subsection (c), below.

(c) Scoping Consultation

i. Upon receipt of the preliminary application, the County shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe

that should be noticed. The County shall provide a formal notice of the applicant's intent to submit a formal application to each required California Native American tribe within 30 days of preliminary application submittal. The formal notice shall be consistent with Government Code Section 65913.4(b).

ii. If, within 30 days of receipt of the formal notice, any California Native American tribe that was formally noticed accepts the invitation to engage in scoping consultation, the County shall commence scoping consultation within 30 days of receiving that response.

iii. The scoping consultation shall be conducted consistent with Government Code Section 65913.4(b). If, after scoping consultation is concluded, a development is not eligible for Senate Bill 35 streamlining, the County shall provide written documentation as required by Government Code Section 65913.4(b) to the applicant and any California Native American tribe that is a party to that scoping consultation.

iv. Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code section 65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Government Code section 65913.4(b)(2)(D)(ii)).

(2) Formal Application. If the development remains eligible to apply under Senate Bill 35 after scoping consultation consistent with Government Code Section 65913.4(b) has concluded, an applicant may file a formal Senate Bill 35 application.

D. Completeness Review. The County shall review an application for compliance consistent with Subsection E; there shall be no separate or additional timeframe for completeness review. Only the items necessary to determine compliance with the provisions contained in Government Code Section 65913.4(a) shall be required.

E. Compliance Review

(1) Scope of Review. The County's scope of review is limited to all of the provisions contained in Government Code Section 65913.4(a) and the objective standards in effect at the time of preliminary application submittal.

(2) Public Oversight and Application Review Timelines. The review of a formal application shall be done by the Planning Commission during a hearing to determine if the application complies with all of the provisions contained in this Resolution, Government Code Section 65913.4(a), and applicable objective standards, and shall occur within the following timeframes:

i. Within 90 calendar days of formal application submittal for applications that include 150 or fewer housing units.

ii. Within 180 calendar days of formal application submittal for applications that include 151 or more housing units.

(3) Compliance Determination.

(a) Compliant Application. If the application complies with all of the provisions contained in this Ordinance, the County shall complete any application review, Planning Commission hearing and any subdivision approval within the timeframes listed in Subsection E.

(b) Non-Compliant Application. If the application does not demonstrate compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards, the Planning Commission shall provide the applicant with written documentation of which standards the development conflicts with and an explanation of the reasons the development conflicts with each standard. If the application can be brought into compliance with minor changes to the proposal, the Planning Commission may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in E(2) above.

i. Resubmitted Application. If the project was found to be non-compliant, the applicant may resubmit the application for Senate Bill 35 streamlining, and the County shall review it for compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards subject to the same timelines in Subsection (2) above.

ii. Project Ineligible. If the project is ineligible for Senate Bill 35 streamlined processing, the applicant may elect to submit an application for the applicable discretionary approval.

F. A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by SB 35 and this Ordinance and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more primary residential units.

(2) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Government Code Section 65915, is consistent with objective R1:B3 (Single Family, Residential, with the B3 combining district, minimum lot size 20,000 square feet) zoning district standards, except that multifamily development is required, with the number of residential units allowable per lot being the maximum allowable by the governing Countywide Plan land use designation. In addition, the development shall not occur within a Stream Conservation Area or a Wetland Conservation Area and shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(3) The development is located on a site that satisfies all of the following:

(A) A site that is a legal lot or lots wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, lots that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(4) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(5) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

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

(K) Lands under conservation easement.

(6) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(7) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial

Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the County, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the County pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(8) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(9) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

G. Decision on Project

(1) Project Approval and Findings. The Planning Commission is the review authority for SB 35 projects. The Planning Commission shall approve the application if it finds that the proposed development is compliant with all of the provisions contained in this Resolution.

(2) Conditions of Approval. The review authority may impose conditions of approval provided those conditions of approval are objective and broadly applicable to development within the County.

H. Post-decision Procedures.

(1) Subsequent Permits. Any necessary subsequent permits shall be issued on a ministerial basis subject to applicable objective standards. If a public improvement is necessary to implement a development subject to this Section, and that public improvement is located on land owned by the County, the County shall process any approvals needed as required by Government Code Section 65913.4(h).

(2) Post-Approval Modifications.

(a) Post-Approval Modification Request. An applicant or the County may request a modification to an approved development if that request is made prior to the issuance of the final building permit.

(b) Applicability of Objective Standards to Modifications. The County shall only apply objective standards in effect when the original application was submitted, except that objective standards adopted after the date of original submittal may be applied in any of the following instances:

i. The total number of residential units or total square footage of construction changes by 15 percent or more; or

ii. The total number of residential units or total square footage of construction changes by five percent or more, and it is necessary to subject the development to an objective standard beyond those in effect when the application was submitted in order to mitigate or avoid a specific adverse impact upon public health of safety, for which there is no feasible alternative method to satisfactorily mitigate or avoid.

iii. Objective building standards contained in the California Building Code, as adopted by the County, may be applied to all modifications.

(c) Post-Approval Modification Review Timeframe and Decision. The County shall determine if the modification is consistent with objective planning standards and issue a decision on the applicant's modification request within 60 days after submittal unless Housing Development Review is required, in which case a decision shall be made within 90 days.

(3) Expiration. An application approved consistent with this Ordinance shall remain valid for three years; however, an application approval shall not expire if the development includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income consistent with Government Code Section 65913.4(e).

(4) Extension. At the discretion of the Director, a one-year extension may be granted consistent with Government Code Section 65913.4(e).

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: MARGARETT CURRAN; CHRISTINA L. DESSER; DON DICKENSON; REBECCA LIND; PETER THERAN

ABSENT: MARGOT BIEHLE

NOES: NONE

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 22-004

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO RESIDENTIAL PROPERTY DEVELOPMENT

* *

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement the portions of SB 9 related to development of residential units, and through a separate Resolution to recommend an Ordinance to implement the portions of SB 9 relating to urban lot splits; and

WHEREAS, the provisions of this Resolution are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement the portions of SB 9 relating to the development of residential units that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for Design Review and the standards of this Ordinance. The Planning Division shall charge the regular retainer fees due for a Design Review for Accessory Structures. The Planning Division shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 9 and this Ordinance.

   If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval.

   (a) 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, if the proposed housing development meets all of the following requirements:

   (1) The site subject to the proposed housing development is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

   (2) The development is not located on a site that is any of the following:

   (A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

   (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   (C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this ordinance, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

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

(I) Lands under conservation easement.

(3) Notwithstanding any provision of this ordinance or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The lot subject to the proposed housing development is not a lot on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any other County ordinance and except as provided in paragraph (2), the County imposes the development standards of the R2 zoning district (two family, residential), to the extent that they do not conflict with this Ordinance and SB 9. In addition, except as provided in paragraph (2), the maximum floor area of any newly constructed primary residential unit authorized under this Ordinance shall not exceed 1,000 square feet, the residential units are not allowed to be built within a Stream Conservation Area or Wetland Conservation Area, and the development shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(2) (A) Notwithstanding paragraph (b)1, the County shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two primary units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), Marin County requires minimum side and rear setbacks of four feet.

(c) In addition to any standards established in accordance with subdivision (b), the County requires that all of the following standards be satisfied in an application for two residential units, as provided for in this ordinance:

(1) Off-street parking of one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), the County shall deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, 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.

(e) The County shall require that a rental of any unit created pursuant to this ordinance be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

(f) The County shall not allow the creation of an Accessory Dwelling Unit as part of the development subject to this Ordinance and SB 9 if the lot on which the development is to occur was created by an Urban Lot Split approval and SB 9.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application 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.

(h) For purposes of this Ordinance, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units (including just one unit on a vacant lot) or if it proposes to add one new unit to one existing unit.

(2) 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. These standards may be embodied in alternative objective land use specifications adopted by the County or another local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: MARGARETT CURRAN; CHRISTINA L. DESSER; DON DICKENSON; REBECCA LIND; PETER THERAN

ABSENT: MARGOT BIEHLE

NOES: NONE

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. PC-22-005

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO URBAN LOT SPLITS

****

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement the portions of SB 9 related to urban lot splits, and through a separate Resolution to recommend an Ordinance to implement the portions of SB 9 relating to residential development; and

WHEREAS, the provisions of this Resolution are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed urban lot splits until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement the portions of SB 9 relating to urban lot splits that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

***BOS* ATTACHMENT #7**

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for an urban lot split that is subject to the terms of this Ordinance to obtain approval of an "Urban Lot Split Compliance Review" (Lot Split Review) for their Parcel Map to be conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for a Tentative Map Waiver and the standards in this Ordinance. The Planning Division shall charge the regular retainer fee due for a Tentative Map Waiver. The Planning Division shall issue an approval, approval with conditions, or denial of a Lot Split Review based on the project's conformance with the standards and requirements provided for in this Ordinance and applicable requirements of the Subdivision Map Act.

4. The procedures, standards, and requirements enumerated below apply to urban lot splits proposed under the provisions of SB 9 and this Ordinance.

   If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval.

   (a) Notwithstanding any other provision of this Ordinance, the County shall ministerially approve, as set forth in this section, an urban lot split only if the County determines that the urban lot split meets all of the following requirements:

   (1) The lot split subdivides an existing lot to create no more than two new lots of approximately equal lot area provided that one lot shall not be smaller than 40 percent of the lot area of the original lot proposed for subdivision.

   (2) Except as provided in subparagraph (B), both newly created lots are no smaller than 1,200 square feet.

   (3) The lot being subdivided meets all the following requirements:

   (A) The lot is located within a single-family residential zone.

   (B) The lot subject to the proposed urban lot split is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

   (4) The development is not located on a site that is any of the following:

   (A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development

proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

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

(I) Lands under conservation easement.

(5) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) A lot or lots on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(D) Housing that has been occupied by a tenant in the last three years.

(6) The lot is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(7) The lot has not been established through prior exercise of an urban lot split as provided for in this section.

(8) Neither the owner of the lot being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent lot using an urban lot split as provided for in this section.

(b) An application for a Lot Split Review for an urban lot split shall be approved in accordance with the following requirements:

(1) The County shall approve or deny an application for an urban lot split ministerially without discretionary review.

(2) The County shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Subdivision Map Act Section 66411.1, the County shall not impose regulations that require dedications of rights-of-way or the construction of offsite

improvements for the lots being created as a condition of approving a Lot Split Review for an urban lot split pursuant to this ordinance.

(c) (1) Except as provided in paragraph (2), notwithstanding any other County Ordinance, the County imposes the standards of the R2 zoning district (two family residential) to the extent that they do not conflict with this Ordinance and SB 9.

(2) Notwithstanding paragraph (c)(1), the County shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two primary units on either of the resulting lots or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), the County shall require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), the County shall deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any standards established in accordance with this Ordinance, the County shall require that the project satisfy the following standards when considering an application for an Urban Lot Split Review:

(1) Easements required for the provision of public services and facilities.

(2) Both lots adjoin a public right-of-way, except that if a lot is already developed with a residence it can adjoin a private street.

(3) Off-street parking of up to one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(f) The County shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) The County shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(h) The County shall require that a rental of any unit on a lot created pursuant to this section be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

(i) The County shall not require, as a condition for ministerial approval of a Lot Split Review the correction of nonconforming zoning conditions.

(j) Notwithstanding paragraph (3) of subdivision (c), an application 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.

(k) For purposes of this Ordinance, both of the following shall apply:

(1) "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. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Public right of way" means a street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: MARGARETT CURRAN; CHRISTINA L. DESSER; DON DICKENSON; REBECCA LIND; PETER THERAN

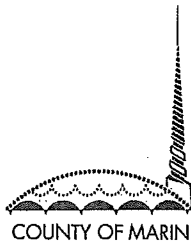
ABSENT: MARGOT BIEHLE

NOES: NONE

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION

Interim Ordinances for SB 35 and SB 9

	Recommendation:	**Recommend Adoption to Board of Supervisors**	
	Hearing Date:	**April 11, 2022**	
Agenda Item: 4		Project Planner:	Jeremy Tejirian Planning Manager 415-473-3798 JTejirian@marincounty.org
		Signature:	Jeremy Tejirian

PROJECT SUMMARY

This is a County-initiated program to develop three interim Ordinances to implement Senate Bill 35 and Senate Bill 9, which mandate that local government streamline the review of housing projects. Senate Bill 35 (SB 35) mandates a streamlined ministerial planning process for multifamily housing projects that meet certain specific criteria. Senate Bill 9 (SB 9) is divided into two related parts, one which mandates a ministerial planning process for residential development and another which mandates a ministerial planning process for urban lot splits. All projects eligible for consideration under SB 9 must meet strict criteria for both subdivision and development. Neither SB 35 nor SB 9 is applicable in the Coastal Zone.

The interim Ordinances are intended to be temporary in nature. Permanent amendments to the Development Code (Marin County Code Title 22) will be proposed as part of the Housing and Safety Element updates to the Countywide Plan and presented for consideration to the Planning Commission and Board of Supervisors later this year.

SENATE BILL 35

Senate Bill 35 first went into effect in 2018 but was substantially amended by SB 168, which went into effect in 2020. Senate Bill 35 is intended to streamline the review of larger developments that would provide a substantial amount of affordable housing to an area. There are potential benefits to applicants from SB 35 because no discretionary review is allowable as long as the applications meet the mandates of the law. However, the criteria to meet those mandates are strict, including

requirements for 50 percent of the housing to be affordable, requirements limiting the applicability of the statute to urbanized areas, requirements to pay workers a prevailing wage, and prohibitions on development in wetlands and habitats for special status species of plants and animals.

In addition to the criteria stipulated in the law, SB 35 also allows the County to establish ministerial requirements related to the siting and design of development proposed under SB 35 that must be objective. The Community Development Agency (CDA) staff has been working with consultants from Opticos Design Inc. on a comprehensive form based code, which will provide detailed design standards for ministerial review of multifamily housing development. This form based code is still under development, and will be included with the aforementioned Development Code amendments that will be part of the Housing and Safety Element updates.

On an interim basis, staff recommends applying the standards from the R1:B3 (Single-family Residential, B3 Combining) zoning district to SB 35 applications. The standards include:

- Floor Area Ratio – 30 percent

- Maximum Heights
  - Main Buildings – 30 feet
  - Accessory Buildings – 16 feet

- Minimum Setbacks
  - Front – 30 feet
  - Sides – 15 feet
  - Rear – 20 percent of the average lot depth to a maximum of 25 feet

In addition, staff recommends imposing ministerial standards preventing development in Stream Conservation Areas or Wetland Conservation Areas and preventing the removal of protected and heritage trees. Although application of these restrictions is intended to promote well-designed projects, it is important to note that the State Density Bonus law allows applicants for projects with more than four units to receive waivers of development standards if they can demonstrate that those standards would make the development infeasible, so these standards may be functionally restricted with application of the density bonus law. For example, although the proposed standards would prohibit development in Stream Conservation Areas (SCAs) and Wetland Conservation Areas (WCAs), there are circumstances where an applicant could request a waiver of these standards under the density bonus law and the County would be required to approve the request.

The statutes and the State Housing and Community Development Department's (HCD) implementation guidelines set forth specific requirements for processing SB 35 applications, which include both procedural steps and informational requirements to which the County must adhere. Those procedural steps include a preliminary application, which must undergo tribal review and consultation, and a formal application, which must undergo ministerial review before a decision is issued on the project's compliance with SB 35 and local standards.

Although most of the procedural steps are mandated with little flexibility, SB 35 does allow local jurisdictions to determine the review authority responsible for issuing decisions on SB 35 projects. Typically, ministerial decisions are issued by the Planning Division staff on behalf of the Director. Under SB 35, the Planning Commission or the Board could be identified as the review authority responsible for issuing decisions on SB 35 applications. Staff recommends that the Planning

Commission be the review authority for SB 35 applications, and that the Planning Commission's decisions be appealable to the Board. Senate Bill 35 allows only ninety days for decisions to be issued for most projects, so the Planning Commission would need to render a decision quickly enough for an appeal to be forwarded to the Board within that timeframe. This approach would provide the public with an opportunity to voice their opinions about a project.

Sending SB 35 applications to the Planning Commission would be a significant departure from existing practice in that the Commission would only be able to apply objective standards to the projects and would not be able to apply the discretion normally used in the review of planning applications.

As an alternative, your Commission may elect to modify the Resolution to indicate that decisions on SB 35 applications shall be issued on an administrative basis by staff on behalf of the Director. In this case, staff would still request the opportunity to bring SB 35 projects to your Commission for informational workshops where the public would have the opportunity to provide their input.

SENATE BILL 9

Senate Bill 9 (SB 9) went into effect at the beginning of 2022. Senate Bill 9 streamlines the review of duplexes and lot splits to encourage what is often called "missing middle" housing, meaning housing that is in the mid-range of density between detached single-family homes and larger apartment buildings often found in more urban settings. Senate Bill 9 is also intended to address historical patterns of housing segregation, which limited housing development in many communities.

Similar to other State legislation to address the housing crisis, such as SB 35 and the laws around Accessory Dwelling Units (ADUs), SB 9 encourages housing development by removing a local jurisdiction's authority to require discretionary review. Senate Bill 9 contains two related sets of provisions, one applicable to residential development and the other applicable to urban lot splits, as further discussed below.

Residential Development

While SB 9 is widely viewed as a law to allow duplexes on lots in single family zoning districts, it also applies to single family homes. Properties that may be eligible for SB 9 development must meet a variety of criteria specified in the law, including being in an urbanized area, as mapped by the US Census, in a single-family residential zoning district, as well as not being located in a historic district, conservation easement, wetland, or habitat for special status species of plants or animals. In most circumstances, each SB 9 residence must have one off-street parking space. Senate Bill 9 mandates that residential development with no lot split allow ADUs in addition to the new primary residences. However, SB 9 prohibits units created under its provisions from being used as short-term rentals.

Senate Bill 9 also allows the County some limited ability to establish ministerial standards which apply to SB 9 residences that exceed 800 square feet in size. Staff recommends using the standards from the R2 (Two-family Residential) zoning district to such SB 9 applications. The standards include:

- Floor Area Ratio – 30 percent

- Maximum Heights
  - Main Buildings – 30 feet
  - Accessory Buildings – 16 feet

- Minimum Setbacks
  - Front – 25 feet
  - Sides – 6 feet
  - Rear – 20 percent of the average lot depth to a maximum of 25 feet

In addition, staff recommends imposing ministerial standards limiting the floor area of new residences allowed under the provisions of SB 9 to 1,800 square feet, prohibiting development in SCAs or WCAs and prohibiting the removal of protected and heritage trees.

Although imposition of these standards will encourage well-designed, more modest homes, it is important to note that SB 9 limits the standards that the County can apply to proposals for up to two homes with a maximum size of 800 square feet each. In these instances, the development would be subject to the following standards:

- Maximum Heights
  - Main Buildings – 30 feet
  - Accessory Buildings – 16 feet

- Minimum Setbacks
  - Front – 25 feet
  - Sides – 4 feet
  - Rear – 4 feet

If the proposal is only for 800 square foot homes, the County is not allowed to prevent the development of two units even if they exceed a floor area ratio of 30 percent, would be built in SCAs or WCAs, or would result in the removal of protected or heritage trees.

Urban Lot Splits

Urban lot splits would be subject to many of the same requirements as residential development, but each lot must be at least 1,200 square feet in area and the two lots are required to be approximately the same size. The proposed Ordinance would allow the development of each new lot with two moderately sized primary units and one ADU, which are the same standards applied to lots being developed under SB 9 that have not undergone an urban lot split. Lots created under SB 9 provisions cannot be further subdivided using those provisions.

Senate Bill 9 also allows the County to require lots created under an urban lot split to have access to a public right of way, which represents a basic means of protecting public safety by ensuring that adequate emergency access and evacuation routes are provided to the new lots. Since the law does not include a definition of the term "public right of way", staff recommends the following definition:

> "Public right of way" means a street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public.

It is also important to note that SB 9 prohibits the County from imposing off-site improvement requirements, such as road improvements.

SB 9 Alternatives

The recommended requirements for SB 9 projects will result in well-designed developments that protect natural resources and provide for the safety of residents. Further, SB 9 developments have the potential to increase the diversity of both ownership and rental housing opportunities to individuals and families in a manner that is consistent with the objectives of the Countywide Plan Housing Element update. However, there are a number of provisions in the proposed Ordinance that SB 9 leaves to the discretion of the County, and your Commission may wish to consider them as alternatives. Among those are the following:

1. Increase or decrease the maximum floor area allowed for a new residence.

   Staff recommends establishing a maximum floor area of 1,800 square feet for new SB 9 residences. This floor area typically provides enough space for three bedrooms and two bathrooms, while also ensuring that the residences will be modest in size. The 1,800 square foot limit also reflects the maximum floor area allowed by applying a 30 percent Floor Area Ratio standard to the smallest required lot size of 6,000 square feet in the conventional zoning districts (specifically, the R1:B1 zoning district).

   However, this area could be reduced to 1,200 square feet, or less, which would make them a similar size as many ADUs. This area could also be increased to 2,000 square feet, or more, to accommodate larger families. While no maximum size limit is required by law, staff recommends imposing one to prevent undue speculation and further the underlying intent of the Ordinance to provide more "missing middle" housing opportunities.

2. Eliminate the requirement for access to a public right of way for urban lot splits.

   State law does not mandate that the County impose this requirement and therefore your Commission can consider removing it from the Ordinance. However, staff recommends imposing it on lot splits under SB 9 as a safety precaution. While the quality of both public and private roads varies throughout the County, public roads are held to higher engineering standards than private roads. This results in public roads generally providing superior emergency access and evacuation routes.

3. Require owner occupancy for three years after an urban lot split.

   State law allows the County to impose an owner occupancy requirement for urban lot splits and therefore your Commission can consider including this requirement in the Ordinance. There is a common stereotype that property owners who live on their property will maintain it better than a landlord or renter. While this may be true in individual cases, there is little evidence that deferred maintenance is a common problem for rental homes. Further, setting the owner occupancy requirement for three years limits its effectiveness at preventing deferred maintenance because of the short time period it would apply. Rental homes can also diversify the types of available housing for people of all income brackets, especially in areas of Marin that are short on rental supply.

4. Prohibit the development of Accessory Dwelling Units after an urban lot split.

State law allows the County to prohibit ADUs on properties that have undergone an urban lot split under SB 9 and therefore your Commission can consider including this requirement in the Ordinance. If the Ordinance is revised to prohibit ADUs after urban lot splits, then a lot could be divided into two and then two primary units would be allowed on each resulting lot for a maximum total of four units.

Under the proposed Ordinance, ADUs would be allowed on properties that have undergone an urban lot split, increasing the potential number of units that could be built on a property from four to six. As proposed, all new units being built under the provisions of either SB 9 or the ADU law would be subject to size limits, creating more opportunities for developing housing that is affordable by design.

Staff recommends that your Commission consider the alternatives listed above before adopting a recommendation to the Board regarding SB 9.

RECOMMENDATION

Review and approve the proposed Resolutions recommending that the Board of Supervisors adopt stand-alone interim Ordinances to implement SB 35 and SB 9.

Attachments:
1. SB 35 Resolution
2. SB 9 Residential Development Resolution
3. SB 9 Lot Split Resolution
4. HCD Guidance for SB 35
5. HCD Advisory for SB 168
6. ABAG Senate Bill 9 Summary
7. Senate Bill 35
8. Senate Bill 168
9. Senate Bill 9

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. ________

A RESOLUTION RECOMMENDING ADOPTION OF AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA STATE SENATE BILL 35

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WHEREAS, Senate Bill 35 (SB 35) first went into effect in 2018 but was substantially amended by Senate Bill 168 (SB 168), which went into effect in 2020; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement SB 35, as amended; and

WHEREAS, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 35; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement SB 35, as amended, that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County, which would continue to apply following the adoption of this Ordinance, except that when they conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance does not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for a development subject to the terms of this Ordinance to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division and Planning Commission in

consultation with other responsible agencies. Both phases of an application, the preliminary application and the formal application, shall take place under the umbrella of a Housing Development Review. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews, and state mandates for public hearings, except as modified by the provisions of this ordinance and SB 35. The information required for such an application shall be listed in guidance published by the Planning Division. The Planning Division shall charge the regular retainer fee due for a Design Review. The Planning Commission shall hold a public hearing and shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in SB 35 and this Ordinance. The Planning Commission's decision is appealable to the Board of Supervisors following the procedures set forth in Development Code Chapter 22.114 (Appeals).

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 35 and this Ordinance.

A. Applicability.

(1) This Ordinance applies to housing development projects applying for approval under Government Code Section 65913.4 and replaces the County's procedures for reviewing discretionary applications.

(2) The California Environmental Quality Act (CEQA) does not apply to projects eligible under Senate Bill 35.

B. Definitions. Terms defined in Government Code Section 65913.4 shall apply to this Section and shall control in the event of a conflict between definitions in the Development Code and definitions in Government Code Section 65913.4.

C. Application Filing. Applications shall be filed under the umbrella of a "Housing Development Regulation Compliance Review" (Housing Development Review), as described in finding 4 above. The two phases of a Housing Development Review for SB 35 projects are the preliminary application and the formal application.

(1) Preliminary Application Filing. An applicant shall file a notice of intent to submit an SB 35 application in the form of a preliminary application consistent with Government Code Section 65941.1. Complete Building Permit applications for the project shall be submitted concurrently with the Preliminary Application.

(a) Form, Fee, and Information. A preliminary application shall be filed on a form provided by the County with the required fee and all required information.

An applicant for a housing development project under this Resolution shall be deemed to have been submitted and filed a preliminary application upon providing all of the following information about the proposed project to the County:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.
(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.
(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.
(5) The proposed number of parking spaces.
(6) Any proposed point sources of air or water pollutants.
(7) Any species of special concern known to occur on the property.
(8) Whether a portion of the property is located within any of the following:
(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.
(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.
(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.
(9) Any historic or cultural resources known to exist on the property.
(10) The number of proposed below market rate units and their affordability levels.
(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
(14) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
(15) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.
(16) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b) Timeline. Within 180 calendar days after filing a preliminary application, an applicant shall submit a formal Senate Bill 35 application, provided scoping consultation has concluded consistent with Subsection (c), below.

(c) Scoping Consultation

i. Upon receipt of the preliminary application, the County shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that should be noticed. The County shall provide a formal notice of the applicant's intent to submit a formal application to each required California Native American tribe within 30 days of preliminary application submittal. The formal notice shall be consistent with Government Code Section 65913.4(b).

ii. If, within 30 days of receipt of the formal notice, any California Native American tribe that was formally noticed accepts the invitation to engage in scoping consultation, the County shall commence scoping consultation within 30 days of receiving that response.

iii. The scoping consultation shall be conducted consistent with Government Code Section 65913.4(b). If, after scoping consultation is concluded, a development is not eligible for Senate Bill 35 streamlining, the County shall provide written documentation as required by Government Code Section 65913.4(b) to the applicant and any California Native American tribe that is a party to that scoping consultation.

iv. Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code section 65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Government Code section 65913.4(b)(2)(D)(ii)).

(2) Formal Application. If the development remains eligible to apply under Senate Bill 35 after scoping consultation consistent with Government Code Section 65913.4(b) has concluded, an applicant may file a formal Senate Bill 35 application.

D. Completeness Review. The County shall review an application for compliance consistent with Subsection E; there shall be no separate or additional timeframe for completeness review. Only the items necessary to determine compliance with the provisions contained in Government Code Section 65913.4(a) shall be required.

E. Compliance Review

(1) Scope of Review. The County's scope of review is limited to all of the provisions contained in Government Code Section 65913.4(a) and the objective standards in effect at the time of preliminary application submittal.

(2) Public Oversight and Application Review Timelines. The review of a formal application, Planning Commission hearing, and Board of Supervisors hearing, to determine if the application complies with all of the provisions contained in this Resolution, Government Code Section 65913.4(a), and applicable objective standards, shall occur within the following timeframes:

i. Within 90 calendar days of formal application submittal for applications that include 150 or fewer housing units.

ii. Within 180 calendar days of formal application submittal for applications that include 151 or more housing units.

(3) Compliance Determination.

(a) Compliant Application. If the application complies with all of the provisions contained in this Ordinance, the County shall complete any application review, Planning Commission hearing, Board of Supervisors appeal and any subdivision approval within the timeframes listed in Subsection E.

(b) Non-Compliant Application. If the application does not demonstrate compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards, the Planning Commission shall provide the applicant with written documentation of which standards the development conflicts with and an explanation of the reasons the development conflicts with each standard. If the application can be brought into compliance with minor changes to the proposal, the Planning Commission may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in E(2) above.

i. Resubmitted Application. If the project was found to be non-compliant, the applicant may resubmit the application for Senate Bill 35 streamlining, and the County shall review it for compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards subject to the same timelines in Subsection (2) above.

ii. Project Ineligible. If the project is ineligible for Senate Bill 35 streamlined processing, the applicant may elect to submit an application for the applicable discretionary approval.

F. A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by SB 35 and this Ordinance and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more primary residential units.

(2) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Government Code Section 65915, is consistent with objective R1:B3 (Single Family, Residential, with the B3 combining district, minimum lot size 20,000 square feet) zoning district standards, except that multifamily development is required, with the number of residential units allowable per lot being the maximum allowable by the governing Countywide Plan land use designation. In addition, the development shall not occur within a Stream Conservation Area or a Wetland Conservation Area and shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(3) The development is located on a site that satisfies all of the following:

(A) A site that is a legal lot or lots wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, lots that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(4) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(5) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

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

(K) Lands under conservation easement.

(6) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(7) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial

Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the County, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the County pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(8) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(9) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

G. Decision on Project

(1) Project Approval and Findings. The Planning Commission is the review authority for SB 35 projects, but the Planning Commission's decision is appealable to the Marin County Board of Supervisors following the standard procedures set forth in Development Code Chapter 22.114 (Appeals). The review authority shall approve the application if it finds that the proposed development is compliant with all of the provisions contained in this Resolution.

(2) Conditions of Approval. The review authority may impose conditions of approval provided those conditions of approval are objective and broadly applicable to development within the County.

H. Post-decision Procedures.

(1) Subsequent Permits. Any necessary subsequent permits shall be issued on a ministerial basis subject to applicable objective standards. If a public improvement is necessary to implement a development subject to this Section, and that public improvement is located on land owned by the County, the County shall process any approvals needed as required by Government Code Section 65913.4(h).

(2) Post-Approval Modifications.

(a) Post-Approval Modification Request. An applicant or the County may request a modification to an approved development if that request is made prior to the issuance of the final building permit.

(b) Applicability of Objective Standards to Modifications. The County shall only apply objective standards in effect when the original application was submitted, except that objective standards adopted after the date of original submittal may be applied in any of the following instances:

i. The total number of residential units or total square footage of construction changes by 15 percent or more; or

ii. The total number of residential units or total square footage of construction changes by five percent or more, and it is necessary to subject the development to an objective standard beyond those in effect when the application was submitted in order to mitigate or avoid a specific adverse impact upon public health of safety, for which there is no feasible alternative method to satisfactorily mitigate or avoid.

iii. Objective building standards contained in the California Building Code, as adopted by the County, may be applied to all modifications.

(c) Post-Approval Modification Review Timeframe and Decision. The County shall determine if the modification is consistent with objective planning standards and issue a decision on the applicant's modification request within 60 days after submittal unless Housing Development Review is required, in which case a decision shall be made within 90 days.

(3) Expiration. An application approved consistent with this Ordinance shall remain valid for three years; however, an application approval shall not expire if the development includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income consistent with Government Code Section 65913.4(e).

(4) Extension. At the discretion of the Director, a one-year extension may be granted consistent with Government Code Section 65913.4(e).

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

____

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

____

Ana Hilda Mosher
Planning Commission Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. ________

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO RESIDENTIAL PROPERTY DEVELOPMENT

****

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement the portions of SB 9 related to development of residential units, and through a separate Resolution to recommend an Ordinance to implement the portions of SB 9 relating to urban lot splits; and

WHEREAS, the provisions of this Resolution are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement the portions of SB 9 relating to the development of residential units that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for Design Review and the standards of this Ordinance. The Planning Division shall charge the regular retainer fees due for a Design Review. The Planning Division shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 9 and this Ordinance.

(a) 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, if the proposed housing development meets all of the following requirements:

(1) The site subject to the proposed housing development is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The development is not located on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water

Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this ordinance, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

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

(I) Lands under conservation easement.

(3) Notwithstanding any provision of this ordinance or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The lot subject to the proposed housing development is not a lot on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any other County ordinance and except as provided in paragraph (2), the County imposes the development standards of the R2 zoning district (two family, residential), to the extent that they do not conflict with this Ordinance and SB 9. In addition, except as provided in paragraph (2), the maximum floor area of any newly constructed primary residential unit authorized under this Ordinance shall not exceed 1,800 square feet, the residential units are not allowed to be built within a Stream Conservation Area or Wetland Conservation Area, and the development shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(2) (A) Notwithstanding paragraph (b)1, the County shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two primary units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), Marin County requires minimum side and rear setbacks of four feet.

(c) In addition to any standards established in accordance with subdivision (b), the County requires that all of the following standards be satisfied in an application for two residential units, as provided for in this ordinance:

(1) Off-street parking of one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), the County shall deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, 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.

(e) The County shall require that a rental of any unit created pursuant to this ordinance be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

(f) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application 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.

(g) For purposes of this Ordinance, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units (including just one unit on a vacant lot) or if it proposes to add one new unit to one existing unit.

(2) 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. These standards may be embodied in alternative objective land use specifications adopted by the County or another local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. ________

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO URBAN LOT SPLITS

****

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement the portions of SB 9 related to urban lot splits, and through a separate Resolution to recommend an Ordinance to implement the portions of SB 9 relating to residential development; and

WHEREAS, the provisions of this Resolution are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed urban lot splits until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement the portions of SB 9 relating to urban lot splits that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for an urban lot split that is subject to the terms of this Ordinance to obtain approval of an "Urban Lot Split Compliance Review" (Lot Split Review) for their Parcel Map to be conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for a Tentative Map Waiver and the standards in this Resolution. The Planning Division shall charge the regular retainer fee due for a Tentative Map Waiver. The Planning Division shall issue an approval, approval with conditions, or denial of a Lot Split Review based on the project's conformance with the standards and requirements provided for in this Ordinance and applicable requirements of the Subdivision Map Act.

4. The procedures, standards, and requirements enumerated below apply to urban lot splits proposed under the provisions of SB 9 and this Ordinance.

   (a) Notwithstanding any other provision of this Ordinance, the County shall ministerially approve, as set forth in this section, an urban lot split only if the County determines that the urban lot split meets all of the following requirements:

   (1) The lot split subdivides an existing lot to create no more than two new lots of approximately equal lot area provided that one lot shall not be smaller than 40 percent of the lot area of the original lot proposed for subdivision.

   (2) Except as provided in subparagraph (B), both newly created lots are no smaller than 1,200 square feet.

   (3) The lot being subdivided meets all the following requirements:

   (A) The lot is located within a single-family residential zone.

   (B) The lot subject to the proposed urban lot split is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

   (4) The development is not located on a site that is any of the following:

   (A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

   (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

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

(I) Lands under conservation easement.

(5) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) A lot or lots on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(D) Housing that has been occupied by a tenant in the last three years.

(6) The lot is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(7) The lot has not been established through prior exercise of an urban lot split as provided for in this section.

(8) Neither the owner of the lot being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent lot using an urban lot split as provided for in this section.

(b) An application for a Lot Split Review for an urban lot split shall be approved in accordance with the following requirements:

(1) The County shall approve or deny an application for an urban lot split ministerially without discretionary review.

(2) The County shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Subdivision Map Act Section 66411.1, the County shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the lots being created as a condition of approving a Lot Split Review for an urban lot split pursuant to this ordinance.

(c) (1) Except as provided in paragraph (2), notwithstanding any other County Ordinance, the County imposes the standards of the R2 zoning district (two family residential) to the extent that they do not conflict with this Ordinance and SB 9.

(2) Notwithstanding paragraph (c)(1), the County shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two primary units on either of the resulting lots or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), the County shall require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), the County shall deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any standards established in accordance with this Ordinance, the County shall require the following standards when considering an application for an Urban Lot Split Review:

(1) Easements required for the provision of public services and facilities.

(2) Both lots adjoin a public right-of-way, except that if a lot is already developed with a residence it can adjoin a private street.

(3) Off-street parking of up to one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(f) The County shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) The County shall not require, as a condition for ministerial approval of a Lot Split Review the correction of nonconforming zoning conditions.

(h) Notwithstanding paragraph (3) of subdivision (c), an application 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.

(i) For purposes of this Ordinance, both of the following shall apply:

(1) "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. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Public right of way" means a street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

____

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

____

Ana Hilda Mosher
Planning Commission Recording Secretary

Updated Streamlined Ministerial Approval Process

Government Code Section 65913.4

Guidelines

State of California
Governor Gavin Newsom

Lourdes M. Castro Ramírez, Secretary
Business, Consumer Services and Housing Agency

Gustavo Velasquez, Director
California Department of Housing and Community Development

Megan Kirkeby, Deputy Director
Division of Housing Policy Development

Division of Housing Policy Development
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833

Originally issued November 29, 2018
March 30, 2021

PC ATTACHMENT 4

The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

Quasi-legislative regulations ... have the dignity of statutes ... [and]... delegation of legislative authority includes the power to elaborate the meaning of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999)

The Department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Government Code section 65913.4, subdivision (j)

Government Code section 65913.4 relates to the resolution of a statewide concern and is narrowly tailored to limit any incursion into any legitimate municipal interests, and therefore the provisions of Government Code section 65913.4, as supplemented and clarified by these Guidelines, are constitutional in all respects and preempt any and all inconsistent laws, ordinances, regulations, policies or other legal requirements imposed by any locality.

Streamlined Ministerial Approval Process
Program Guidelines

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INTRODUCTION

Chapter 366, Statutes of 2017 (SB 35, Wiener) was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need. Eligible developments must include a specified level of affordability, be on an infill site, comply with existing residential and mixed-use general plan or zoning provisions, and comply with other requirements such as locational and demolition restrictions. The intent of the legislation is to facilitate and expedite the construction of housing. In addition, as part of the legislation, the Legislature found ensuring access to affordable housing is a matter of statewide concern and declared that the provisions of SB 35 would apply to all cities and counties, including a charter city, a charter county, or a charter city and county. Please note, the California Department of Housing and Community Development (Department) may take action in cases where these Guidelines are not adhered to under its existing accountability and enforcement authority. In addition, please also be aware that these Guidelines do not fully incorporate statutory changes to the law made by Chapter 166, Statutes of 2020 (AB 168) and Chapter 194, Statutes of 2020 (AB 831) at this time, which require, among other things, pre-application tribal scoping consultation. Changes required by AB 168 and AB 831 will be more fully incorporated in a subsequent version of these Guidelines, which are expected to be prepared and circulated in 2021. Developers and local governments using these Guidelines should refer to Government Code section 65913.4 to comply with these new mandates.

Guidelines for the Streamlined Ministerial Approval Process are organized into five Articles, as follows:

Article I. General Provisions: This article includes information on the purpose of the Guidelines, applicability, and definitions used throughout the document.

Article II. Determination Methodology: This article describes the methodology for which the Department shall determine which localities are subject to the Streamlined Ministerial Approval Process.

Article III. Approval Process: This article describes the parameters of the approval process, including local government responsibilities, approval processes, and general provisions.

1) Local Government Responsibility – This section specifies the types of requirements localities may require a development to adhere to in order to determine consistency with general plan and zoning standards, including objective standards, controlling planning documents, and parking.
2) Development Review and Approval – This section details the types of hearings and review allowed under the Streamlined Ministerial Approval Process, timing provisions for processing and approving an application, denial requirements, and timeframes related to the longevity of the approval.

Article IV. Development Eligibility: This article describes the requirements for developments in order to apply for streamlining, including type of housing, site requirements, affordability provisions, and labor provisions.

Article V. Reporting: This article describes reporting requirements specific to the Streamlined Ministerial Approval Process in the locality's Annual Progress Report on the general plan.

ARTICLE I. GENERAL PROVISIONS

Section 100. Purpose and Scope

(a) These Guidelines (hereinafter "Guidelines") implement, interpret, and make specific the Chapter 366, Statutes of 2017 (SB 35, Wiener), and subsequent amendments (hereinafter "Streamlined Ministerial Approval Process") as authorized by Government Code section 65913.4.

(b) These Guidelines establish terms, conditions, and procedures for a development proponent to submit an application for a development to a locality that is subject to the Streamlined Ministerial Approval Process provided by Government Code section 65913.4. Nothing in these Guidelines relieves a local government from the obligation to follow state law relating to the availability of the Streamlined Ministerial Approval Process.

(c) It is the intent of the Legislature to provide reforms and incentives to facilitate and expedite the construction of affordable housing. Therefore these Guidelines shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply.

(d) These Guidelines shall remain in effect until January 1, 2026, and as of that date are repealed.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65582.1 and 65913.4(n) and (o).

Section 101. Applicability

(a) The provisions of Government Code section 65913.4 are effective as of January 1, 2018.

(b) These Guidelines are applicable to applications submitted on or after January 1, 2019, including applications submitted for modification to a development per Section 301(c). Subsequent updates to the Guidelines are applicable to applications submitted on or after the date adopted as shown on the cover page. Nothing in these Guidelines may be used to invalidate or require a modification to a development approved through the Streamlined Ministerial Approval Process prior to the effective date.

(c) These Guidelines are applicable to counties and cities, including both general law and charter cities, including a charter city and county.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(k)(6).

Section 102. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meaning of terms described in Government Code section 65913.4

(a) "Annual Progress Report (APR)" means the housing element Annual Progress Report required by Government Code section 65400, and due to the Department April 1 of each year, reporting on the prior calendar year's permitting activities and implementation of the programs in a local government's housing element.

(b) "Application" means a submission requesting Streamlined Ministerial Approval pursuant to Government Code section 65913.4 and these Guidelines, which contains information pursuant to Section 300(b) describing the development's compliance with the criteria outlined in Article IV of these Guidelines.

(c) "Area Median Income (AMI)" means the median family income of a geographic area of the state, as determined annually by the Department within the state income limits: http://www.hcd.ca.gov/grants-funding/income-limits/index.shtml.

(d) "Car share vehicle" is an automobile rental model where people rent cars from a car-sharing network, or an exclusive car provided by the project, to be located in a designated area within the project, for roundtrip or one-way, where vehicles are returned to a dedicated or reserved parking location. An example of such a service is Zipcar or car(s) provided by the project. If the project provides an exclusive car, it shall do so at a ratio of at least one car per every 50 units.

(e) "Density Bonus" has the same meaning as set forth in Government Code section 65915.

(f) "Department" means the California Department of Housing and Community Development.

(g) "Determination" means the published identification, periodically updated, by the Department of those local governments that are required to make the Streamlined Ministerial Approval Process available per these Guidelines.

(h) "Development proponent" or "applicant" means the owner of the property, or person or entity with the written authority of the owner, that submits an application for streamlined approval.

(i) "Fifth housing element planning period" means the five or eight-year time period between the due date for the fifth revision of the housing element and the due date for the sixth revision of the housing element pursuant to Government Code section 65588(f).

(j) "Infill" means at least 75 percent of the linear measurement of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this definition, parcels that are only separated by a street or highway shall be considered to be adjoined.

(k) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(l) "Low-income" means households earning 50 to 80 percent of AMI.

(m) "Lower-income" means households earning 80 percent or less of AMI pursuant to Health and Safety Code section 50079.5.

(n) "Ministerial processing" or "ministerial approval" means a process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," and "objective design review standards" in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision.

(o) "Moderate-income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income pursuant to Health and Safety Code section 50093.

(p) "Multifamily" means a housing development with two or more attached residential units. This includes mixed-use projects as stated in Section 400(a). The definition does not include accessory dwelling units unless the project is for new construction of a single-family home with attached accessory dwelling units. Please note, accessory dwelling units have a separate permitting process pursuant to Government Code section 65852.2.

(q) "Objective standards" or "objective planning standards" means an objective zoning, objective subdivision and objective design review standard as those terms are defined in Section 102(r).

(r) "Objective zoning standard", "objective subdivision standard", and "objective design review standard" means 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 applicant or development proponent and the public official prior to submittal, and includes only such standards as are published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application.

(s) "Project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of section 2500 of the Public Contract Code.

(t) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge a set fare, run on fixed routes, and are available to the public.

(u) "Public works project" means developments which meet the criteria of Chapter 1 (commencing with section 1720) of Part 7 of Division 2 of the Labor Code.

(v) "Regional housing need" means the local government's share of the regional housing need allocation as determined by Article 10.6 of the Government Code.

(w) "Related facilities" means any manager's units and any and all common area spaces that are included within the physical boundaries of the housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and parking areas that are exclusively available to residential users, except any portions of the overall development that are specifically commercial space.

(x) "Reporting period" means the timeframe for which APRs are utilized to create the determination for which a locality is subject to the Streamlined Ministerial Approval Process. The timeframes are calculated in relationship to the planning period of the housing element pursuant to Government Code section 65588 and are cumulative through the most recent calendar year.

(y) "San Francisco Bay Area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

(z) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with section 2600) of Part 1 of Division 2 of the Public Contract Code.

(aa) "Subsequent permit" means any permit required subsequent to receiving approval under Section 301, and includes, but is not limited to, demolition, grading, encroachment permits, approval of sign programs, and tree removal permits, building permits, and final maps, as necessary.

(bb) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code. A local agency shall not reduce maximum rent below that specified in Health and Safety Code sections 50079.5 and 50105.

(cc) "Tenant" means a person who occupies land or property rented or leased for use as a residence.

(dd) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(ee) "Very low-income" means households earning less than 50 percent or less of AMI pursuant to Health and Safety Code section 50105.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4.

ARTICLE II. STREAMLINED MINISTERIAL APPROVAL PROCESS DETERMINATION

Section 200. Methodology

(a) The Department will calculate the determination, as defined in Section 102(g), based on permit data received through the most recent APRs provided to the Department for the mid-point of the housing element planning period pursuant to Government Code section 65488 and at the end point of the planning period.

(1) APRs, as defined in Section 102(a), report on calendar years, while housing element planning periods may begin and end at various times throughout the year. When a planning period begins after July, the APR for that year is attributed to the prior housing element planning period. When the planning period ends before July 1, the APR for that year will be attributed to the following housing element planning period.

(b) The determination is based on permitting progress toward a pro-rata share of the regional housing need for the reporting period.

(1) Determinations calculated at the mid-point of the planning period are based upon permitting progress toward a pro-rata share of half (50 percent) of the regional housing need, while determinations calculated at the end of the planning period are based upon permitting progress towards the entirety (100 percent) of the regional housing need.

(2) For localities, as defined in Section 102(k), on a 5-year planning period, the mid-point determination is based upon a pro-rata share of the regional housing need for the first three years in the planning period, and 60 percent of the regional housing need.

(3) The determination applies to all localities beginning January 1, 2018, regardless of whether a locality has reached the mid-point of the fifth housing element planning period. For those local governments that have achieved the mid-point of the fifth housing element planning period, the reporting period includes the start of the planning period until the mid-point, and the next determination reporting period includes the start of the planning period until the end point of the planning period. In the interim period between the effective date of the Streamlined Ministerial Approval Process, until a locality reaches the mid-point in the fifth housing element planning period, the Department will calculate the determination yearly. This formula is based upon the permitting progress towards a pro-rata share of the regional housing need, dependent on how far the locality is in the planning period, until the mid-point of the fifth housing element planning period is reached. See example below.

Example Calculation
For a locality two years into the reporting period, the determination is calculated at two out of eight years of the planning period and will be based upon a pro-rata share of two-eighths, or 25 percent, of the regional housing need, and the following year, for the same locality, the determination will be calculated at three out of eight years of the planning period based upon a pro-rata share of three-eighths, or 37.5 percent, of the regional housing need, and the following year for the same locality the determination will be calculated at four out of eight years of the planning period based upon a pro-rata share of four-eighths, or 50 percent, of the regional housing need. At that point, the locality will reach its mid-point of the planning period and the determination, the pro-rata share, and the permitting progress toward the pro-rata share will hold until the locality reaches the end-point of the planning period.

(c) To determine if a locality is subject to the Streamlined Ministerial Approval Process for developments with 10 percent of units affordable to lower-income households or the 20 percent moderate income option if the site is located in the San Francisco Bay Area as defined in Section 102(y), the Department shall compare the permit data received through the APR to the pro-rata share of their above-moderate income regional housing need for the current housing element planning period. If a local government has permitted less than the pro-rata share of their above-moderate income regional housing need, then the jurisdiction will be subject to the Streamlined Ministerial Approval Process for developments with 10 percent affordability or the 20 percent moderate income option if the site is located in the San Francisco Bay Area.

(d) Local governments that do not submit their latest required APR prior to the Department's determination are subject to the Streamlined Ministerial Approval Process for developments with 10 percent of units affordable to lower-income households or the 20 percent moderate income option if the site is located in the San Francisco Bay Area.

(e) To determine if a locality is subject to the Streamlined Ministerial Approval Process for developments with 50 percent of units affordable to lower-income households, the Department shall compare the permit data received through the APR to the pro-rata share of their independent very low- and low-income regional housing need for the

current housing element planning period. If a local government has permitted the pro-rata share of their above-moderate income regional housing need, and submitted their latest required APR, but has permitted less than the pro-rata share of their very low- and lower-income regional housing need, they will be subject to the Streamlined Ministerial Approval Process for developments with 50 percent affordability. For purposes of these Guidelines, as the definition of lower-income is inclusive of very low-income units, very low-income units permitted in excess of the very low-income need may be applied to demonstrate progress towards the lower-income need. However, as the definition of very low-income units does not include low-income units, low-income units permitted in excess of the low-income need shall not be applied to demonstrate progress towards the very low-income need.

(f) To determine if a locality is not subject to the Streamlined Ministerial Approval Process, the permit data from the APR shall demonstrate that the locality has permitted the entirety of the pro-rata share of units for the above moderate-, low-, and very low-income categories of the regional housing need for the relevant reporting period, and has submitted the latest APR.

(g) The Department's determination will be in effect until the Department calculates the determination for the next reporting period, unless updated pursuant to Section 201. A locality's status on the date the application is submitted determines whether an application is subject to the Streamlined Ministerial Approval Process, and also determines which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a)(4).

Section 201. Timing and Publication Requirements

The Department shall publish the determination by June 30 of each year, accounting for the APR due April 1 of each year, though this determination may be updated more frequently based on the availability of data, data corrections, or the receipt of new information. The Department shall publish the determination on the Department's website.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a)(4).

ARTICLE III. APPROVAL PROCESS

Section 300. Local Government Responsibility

(a) After receiving a notice of intent to submit an application for a Streamlined Ministerial Approval Process, and prior to accepting an application for a Streamlined Ministerial Approval process, the local government must complete the tribal consultation process outlined in Government Code section 65913.4(b). The notice of intent shall be in the form of a preliminary application that includes all of the information described in Government Code section 65941.1.

(b) A local government that has been designated as subject to the Streamlined Ministerial Approval Process by the Department shall provide information, in a manner readily accessible to the general public, about the locality's process for applying and receiving ministerial approval, materials required for an application as defined in Section 102(b), and relevant objective standards to be used to evaluate the application. In no case shall a local government impose application requirements that are more stringent than required for a final multifamily entitlement or standard design review in its jurisdiction. The information provided may include reference documents and lists of other information needed to enable the local government to determine if the application is consistent with objective standards as defined by Section 102(q). A local government may only require information that is relevant to and required to determine compliance with objective standards and criteria outlined in Article IV of these Guidelines. This may be achieved through the use of checklists, maps, diagrams, flow charts, or other formats. The locality's process and application requirements shall not in any way inhibit, chill, or preclude the Streamlined Ministerial Approval Process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects in Article IV of these Guidelines.

(1) Where a local government has failed to provide information pursuant to subsection (a) about the locality's process for applying and receiving ministerial approval, the local government shall accept any application that meets the requirements for a standard multifamily entitlement submittal and that contains information showing how the development complies with the requirements of Article IV. The application may include use of a list of the standards, maps, diagrams, flow charts, or other formats to meet these requirements.

(c) Determination of consistency

(1) When determining consistency with objective zoning, subdivision, or design review standards, the local government shall only use those standards that meet the definition referenced in Section 102(q). For example, design review standards that require subjective decision-making, such as consistency with "neighborhood character," shall not be applied as an objective standard unless "neighborhood character" is defined in such a manner that is non-discretionary.

Example Objective Design Review
Objective design review could include use of specific materials or styles, such as Spanish-style tile roofs or roof pitches with a slope of 1:5. Architectural design requirements such as "craftsman style architecture" could be used so long as the elements of "craftsman style architecture" are clearly defined (e.g., "porches with thick round or square columns and low-pitched roofs with wide eaves"), ideally with illustrations.

(2) A standard that requires a general plan amendment, the adoption of a specific plan, planned development zoning, or another discretionary permit or approval does not constitute an objective standard. A locality shall not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis.

(3) Modifications to objective standards granted as part of a density bonus, concession, incentive, parking reduction, or waiver of development standards pursuant to Density Bonus Law Government Code section 65915, or a local density bonus ordinance, shall be considered consistent with objective standards.

(4) Project eligibility for a density bonus concession, incentive, parking reduction, or waiver of development standards shall be determined consistent with Density Bonus Law.

(5) Objective standards may include objective land use specifications adopted by a city or county, including, but not limited to, the general plan, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(6) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective standards pursuant to Section 400(c) of these Guidelines if the development is consistent with the standards set forth in the general plan.

(A) In no way should this paragraph be used to deem an application ineligible for the Streamlined Ministerial Approval Process when the project's use is consistent with Section 401(a)(3).

(7) Developments are only subject to objective zoning standards, objective subdivision standards, and objective design review standards enacted and in effect at the time that the application is submitted to the local government.

(8) Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. For example, design review standards or other objective standards that serve to inhibit, chill, or preclude the development of housing under the Streamlined Ministerial Approval Process are inconsistent with the application of state law.

(d) Density calculation

(1) When determining consistency with density requirements, a development that is compliant with up to the maximum density allowed within the land use element designation of the parcel in the general plan is considered consistent with objective standards. For example, a development on a parcel that has a multifamily land use designation allowing up to 45 units per acre is allowed up to 45 units per acre regardless of the density allowed pursuant to the zoning code. In addition, the development may request a density of greater than 45 units per acre if eligible for a density bonus under Density Bonus Law.

(2) Growth, unit, or other caps that restrict the number of units allowed in the proposed development or that expressly restricts the timing of development may be applied only to the extent that those caps do not inhibit the development's ability to achieve the maximum density allowed by the land use designation, and any density bonus the project is eligible for, and do not restrict the issuance of building permits for the project.

(3) Additional density, floor area, or units granted as a density bonus shall be considered consistent with maximum allowable densities.

(4) Development applications are only subject to the density standards in effect at the time that the development is submitted to the local government.

(e) Parking requirements

(1) Automobile parking standards shall not be imposed on a development that meets any of the following criteria:

(A) The development is located where any part of the parcel or parcels on which the development is located is within one-half mile of any part of the parcel or parcels of public transit, as defined by Section 102(t) of these Guidelines.

(B) The development is located within a district designated as architecturally or historically significant under local, state, or federal standards.

(C) When on-street parking permits are required, but not made available to the occupants of the development.

(D) When there is a car share vehicle, (i.e., a designated location to pick up or drop off a car share vehicle as defined by Section 102(d),) within one block of the development. A block can be up to 1,000 linear feet of pedestrian travel along a public street from the development.

(2) For all other developments, the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, or rent levels other than what is defined for very-low income, lower-income, and moderate-income in Section 102, that applies to a project solely or partially on the basis that the project is eligible to receive streamlined processing.

(1) A local government shall not deny a project access to local housing funds, including housing trust funds, or state housing funds solely on the basis that the project is eligible to receive streamlined processing.

(2) This section should not be construed to preclude a jurisdiction from waving, reducing, or otherwise reducing fees and other costs for the project in an effort to facilitate lower project costs.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a), (e), and (n).

Section 301. Development Review and Approval

(a) Ministerial processing

(1) Ministerial approval, as defined in Section 102(n), of a project that complies with Article IV of these Guidelines shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval.

(2) Ministerial design review or public oversight of the application, if any is conducted, may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate.

(A) Design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local government before submission of the development application, and shall be broadly applicable to development within the locality.

(B) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards, it shall provide the development proponent, as defined in Section 102(h), written documentation in support of its denial identifying with specificity the standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframe specified in Section 301(b)(2) below. If the application can be brought into compliance with minor changes to the proposal, the local government may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in Section 301(b)(4) below.

(C) When determining consistency, a local government shall find that a development is consistent with the objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective standards. The local government may only find that a development is inconsistent with one or more objective planning standards, if the local government finds no substantial evidence in favor of consistency and that, based on the entire record, no reasonable person could conclude that the development is consistent with the objective standards.

(3) A determination of inconsistency with objective planning standards in Section 301(b)(3)(A) does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamlined review, or from applying for the project under other local government processes. If the development proponent elects to resubmit its application for streamlined review under that Section, the timeframes specified in Section 301(b) below shall commence on the date of resubmittal.

(4) Approval of ministerial processing does not preclude imposing standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality, regardless of streamlined approval, and such conditions implement objective standards that had been adopted prior to submission of a development application. This includes any objective process requirements related to the issuance of a building permit. However, any further approvals, such as demolition, grading and building permits or, if required, final map, shall be issued on a ministerial basis subject to the objective standards.

(A) Notwithstanding Paragraph (5), standard conditions that specifically implement the provisions of these Guidelines, such as commitment for recording covenant and restrictions and provision of prevailing wage, may be included in the conditions of approval.

(5) The California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) does not apply to the following in connection with projects qualifying for the Streamlined Ministerial Approval Process:

(A) Actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to lease, convey, or encumber land or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible transit oriented development project, as defined pursuant to section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease.

(B) Actions taken by a state agency or local government to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income.

(C) Approval of improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section where such development is to be used for housing for persons and families of very low, low, or moderate income, as defined in section 50093 of the Health and Safety Code.

(D) The determination of whether an application for a development is subject to the Streamlined Ministerial Approval Process.

(b) Upon a receipt of an application, the local government shall adhere to the following:

(1) An application submitted hereunder shall be reviewed by the agency within the timeframes required under paragraph (2) below whether or not it contains all materials required by the agency for the proposed project, and it is not a basis to deny the project if either:

(A) The application contains sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards (outlined in Article IV of these Guidelines); or

(B) The application contains all documents and other information required by the local government as referenced in Section 300(a) of these Guidelines.

(2) Local governments shall make a determination of consistency, as described in Section 301(a)(3), as follows:

(A) Within 60 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.

(C) Documentation of inconsistency(ies) with objective standards must be provided to the development proponent within these timeframes. If the local government fails to provide the required documentation determining consistency within these timeframes, the development shall be deemed to satisfy the objective planning standards and shall be deemed consistent.

(3) Notwithstanding Section 301(b)(2), design review or public oversight may be conducted by the local government's city council, board of supervisors, planning commission, or any equivalent board or commission, as described in Section 301(a)(2), and shall be completed as follows:

(A) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.

(C) Although design review may occur in parallel with or as part of the consistency determination set forth in paragraphs (1) and (2) above, failure to meet subjective design review standards or obtain design review approval from the oversight board shall not in any way inhibit, chill, stall, delay, or preclude a project from being approved for development pursuant to these Guidelines if objective design review standards are met. This means that discussion or consideration of the application shall only relate to design standards that meet the definition of objective pursuant to Section 102(r). If the local government fails to complete design review within the timeframes provided above, the project is deemed consistent with objective design review standards.

(4) Approval timelines: Local government must determine if an application for a Streamlined Ministerial Approval complies with requirements and approve or deny the application pursuant to these Guidelines as follows:

(A) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.

(5) Timeframes for determining project eligibility for a density bonus concession, incentive, parking reduction, or waiver of development standards or protections of the Housing Accountability Act (Government Code section 65589.5) shall be subject to the timeframes outlined in paragraph (2) and (3) above.

(c) Modifications to the development subsequent to the approval of the ministerial review, but prior to issuance of a final building permit, shall be granted in the following circumstances:

(1) For modification initiated by the development proponent.

(A) Following approval of an application under the Streamlined Ministerial Approval Review Process, but prior to issuance of the final building permit required for construction of the development, an applicant may submit a written request to modify the development. The modification must conform with the following:

i. The change is consistent with the Streamlined Ministerial Approval Process Guidelines.

ii. The change is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.

iii. The change will not conflict with a plan, ordinance or policy addressing community health and safety.

iv. If the change results in modifications to the concessions, incentives or waivers to development standards approved pursuant to Density Bonus Law, then the modified concession, incentive, or waiver must continue to meet the standards of the Density Bonus Law.

v. The local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:

I. The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more.

II. The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more, and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety, and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

III. Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, may be applied to all modifications.

(B) Upon receipt of the request, the local agency shall determine if the requested modification is consistent with the local agency's objective standards in effect when the original application for the development was submitted. The local agency shall not reconsider consistency with objective planning standards that are not affected by the proposed modification. Approval of the modification request must be completed within 60 days of submittal of the modification or 90 days if design review is required. A proposed modification shall not cause the original approval to terminate.

(C) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

(2) For modification initiated by the local agency.

(A) Following approval of an application under the Streamlined Ministerial Approval Process, but prior to issuance of a building permit for the development, a local agency may require one-time changes to the development that are necessary to comply with the objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, or to mitigate a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without modifying the development. A "specific, adverse impact" has the meaning defined in Government Code section 65589.5(d)(2). Any local standard adopted after submission of a development application, including locally adopted construction codes, shall not be considered an "objective zoning standard," "objective subdivision standard," or "objective design review standard" that is applicable to a development application.

(B) A determination that a change is required is a ministerial action. If a revised application is required to address these modifications, the application shall be reviewed as a ministerial approval within 60 days of re-submittal of the application.

(d) If a local government approves a development under the Streamlined Ministerial Approval Process, notwithstanding any other law, the following expiration of approval timeframes apply:

(1) If the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the AMI, then that approval shall not expire.

(2) If the project does not include public investment in housing affordability (including local, state, or federal government assistance) beyond tax credits, and at least 50 percent of the units are not affordable to households making at or below 80 percent of the AMI, that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval,

from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. "In progress" means one of the following:

(A) The construction has begun and has not ceased for more than 180 days.

(B) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(3) The development may receive a one-time, one-year extension if the project proponent provides documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and processes set forth in this section.

(e) A local government shall issue subsequent permits as defined in Section 102(aa) required for a development approved under the Streamlined Ministerial Approval Process if the application for those permits substantially complies with the development as it was approved. Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved using the Streamlined Ministerial Approval Process. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this subsection "unreasonable delay" means permit processing times that are longer than other similar permit requests for projects not approved using the Streamlined Ministerial Approval Process.

NOTE: Authority cited: Government Code section 65913.4(-l). Reference cited: Government Code section 65913.4(a), (b), (c), (d), (g), (h), (j), and (m).

ARTICLE IV. DEVELOPMENT ELIGIBILITY

Section 400. Housing Type Requirements

To qualify to apply for the Streamlined Ministerial Approval Process, the development proponent shall demonstrate the development meets the following criteria:

(a) Prior to submitting an application for the Streamlined Ministerial Approval Process, the development proponent must submit to the local government a notice of intent to submit an application and the local government must have completed the tribal consultation process outlined in Government Code section 65913.4(b). The notice of intent shall be in the form of a preliminary application that includes all of the information described in Government Code section 65941.1.

(b) Is a multifamily housing development. This includes mixed-use projects when the project satisfied the requirement under subsection (b). The development offers units for rental or for-sale.

(c) At least two-thirds of the square footage of the development shall be designated for residential use:

(1) For purposes of these Guidelines, the two-thirds calculation is based upon the proportion of gross square footage of residential space and related facilities, as defined in Section 102(w), to gross development building square footage for an unrelated use such as commercial. Structures utilized by both residential and non-residential uses shall be credited proportionally to intended use.

(A) Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law shall be included in the square footage calculation.

(B) The square footage of the development shall not include non-habitable underground space, such as basements or underground parking garages.

(2) Both residential and non-residential components of a qualified mixed-use development are eligible for the Streamlined Ministerial Approval Process. Additional permitting requirements pertaining to the individual business located in the commercial component (e.g., alcohol use permit or adult business permit) are subject to local government processes.

(3) When the commercial component is not part of a vertical mixed-use structure, construction of the residential component of a mixed-use development shall be completed prior to, or concurrent with, the commercial component.

(d) The development is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time of the development application submittal per Section 300 of these Guidelines, provided that any modifications to density or other concessions, incentives, or waivers granted pursuant to the Density Bonus Law shall be considered consistent with such objective zoning standards, objective subdivision standards, and objective design review standards.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a) and (b).

Section 401. Site Requirements

(a) The development proponent shall demonstrate in the application that, as of the date the application is submitted, the proposed development is located on a site that meets the following criteria:

(1) The site is a legal parcel, or parcels, located in either:

(A) A city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or

(B) An unincorporated area where the area boundaries are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The site meets the definition of infill as defined by Section 102(j) of these Guidelines.

(3) The site must be zoned for residential use or residential mixed-use development or have a general plan designation that allows residential use or a mix of residential and nonresidential uses.

(A) To qualify for the Streamlined Ministerial Approval Process, the site's zoning designation, applicable specific plan or master plan designation, or general plan designation must permit residential or a mix of residential and nonresidential uses by right or with a use permit.

(b) The development proponent shall demonstrate that, as of the date the application is submitted, the development is not located on a legal parcel(s) that is any of the following:

(1) Within a coastal zone, as defined in Division 20 (commencing with section 30000) of the Public Resources Code.

(2) Prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that locality.

(3) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21,1993).

(4) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code section 4202.

(A) This restriction does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to Government Code section 51179(b), or sites that are subject to adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(B) This restriction does not apply to sites that have been locally identified as fire hazard areas, but are not identified by the Department of Forestry and Fire Protection pursuant to Government Code section 51178 or Public Resources Code section 4202.

(5) A hazardous waste site that is currently listed pursuant to Government Code section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code section 25356.

(A) This restriction does not apply to sites the California Department of Public Health, California State Water Resources Control Board, or the Department of Toxic Substances Control has cleared for residential use or residential mixed uses.

(6) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist.

(A) This restriction does not apply if the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(7) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

(A) This restriction does not apply if the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local government.

(B) This restriction does not apply if the development proponent can demonstrate that they will be able to meet the minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

i. If the development proponent demonstrates that the development satisfies either subsection (A) or (B) above, and that the development is otherwise eligible for the Streamlined Ministerial Approval Process, the local government shall not deny the application for the development on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site related to special flood hazard areas.

ii. If the development proponent is seeking a floodplain development permit from the local government, the development proponent must describe in detail in the application for the Streamlined Ministerial Approval Process how the development will satisfy the applicable federal qualifying criteria necessary to obtain the floodplain development permit. Construction plans demonstrating these details shall be provided to the locality before the time of building permit issuance, however construction plans shall not be required for the local jurisdiction to take action on the application under the Streamlined Ministerial Approval Process.

(8) Within a regulatory floodway, as determined by the Federal Emergency Management Agency, in any official maps published by the Federal Emergency Management Agency.

(A) This restriction does not apply if the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(B) If the development proponent demonstrates that the development satisfies subsection (A) above and that the development is otherwise eligible for the Streamlined Ministerial Approval Process, the local government shall not deny the application for development on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site related to regulatory floodways.

(9) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), a habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or another adopted natural resource protection plan.

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

(A) The identification of habitat for protected species discussed above may be based upon information identified in underlying environmental review documents for the general plan, zoning ordinance, specific plan, or other planning documents associated with that parcel that require environmental review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(11) Lands under conservation easement.

(12) An existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(c) The development proponent shall demonstrate that, as of the date the application is submitted, the development is not located on a site where any of the following apply:

(1) The development would require the demolition of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a locality's valid exercise of its police power.

(C) Housing that has been occupied by tenants, as defined by Section 102(*cc*), within the past 10 years.

(2) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under the Streamlined Ministerial Approval Process.

(A) When property with a building that was demolished in the past 10 years has been zoned for exclusively residential use, there is a presumption that it was occupied by tenants, unless the development proponent provides verifiable documentary evidence from a government or independent third party source to rebut the presumption for each of the 10 years prior to the application date.

(B) When property with a building that was demolished in the past 10 years has been zoned to allow residential use in addition to other uses, the developer proponent shall include in its application a description of the previous use and verification it was not occupied by residential tenants.

(3) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register prior to the submission of an application.

(4) The property contains housing units that are occupied by tenants and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(d) A development that involves a subdivision of a parcel that is, or, notwithstanding the Streamlined Ministerial Approval Process, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land is not eligible for the Streamlined Ministerial Approval Process.

(1) Subdivision (d) does not apply if the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received, or will receive, financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to Section 403 of these Guidelines.

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used.

(2) An application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) for a development that meets the provisions in (1) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). Such an application shall be subject to a ministerial process as part of the Streamlined Ministerial Approval Process.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a), (c), (d).

Section 402. Affordability Provisions

(a) A development shall be subject to a requirement mandating a minimum percentage of units be affordable to households making at or below 80 percent Area Median Income (AMI), based on one of the following categories:

(1) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200(c), the development shall dedicate either:

(A) A minimum of 10 percent of the total number of units prior to calculating any density bonus to housing affordable to households making at or below 80 percent of the AMI. If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the AMI, that local affordable housing requirement applies.

(B) Or, if located in the San Francisco Bay Area pursuant to Section 200 (x), the project may elect to dedicate 20 percent of the total number of units to housing affordable to households making below 120 percent of the AMI. However, to satisfy this requirement and be eligible to proceed under these provisions, the average income of the tenant income restrictions for those units must equal at or below 100 percent of the AMI. A local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the AMI, or requires that any of the units be dedicated at a level less than 120 percent.

(i) In order to comply with subparagraph (A), the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the AMI shall not exceed 30 percent of the gross income of the household.

(C) Developments of 10 units or less are not subject to either affordability provision outlined in subparagraphs (A) and (B), above.

(D) A development proponent may satisfy the affordability requirements of this subsection with a unit that is restricted to households with incomes lower than those prescribed under subparagraph (A) and (B).

(2) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (e), the development shall dedicate a minimum of 50 percent of the total number of units prior to calculating any density bonus to housing affordable to households making at or below 80 percent of the AMI.

(A) If the locality has adopted a local ordinance that requires greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the AMI, that local affordable housing requirement applies.

(3) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (d), the development shall dedicate a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the AMI.

(A) If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the AMI, that local affordable housing requirement applies.

(B) A development proponent may satisfy the affordability requirements of this subsection with a unit that is restricted to households with incomes lower than 80 percent of AMI.

(b) A covenant or restriction shall be recorded against the development dedicating the minimum percentage of units to housing affordable to households making at or below 80 percent of the AMI pursuant to Section 402 (a)(1-3).

(1) The recorded covenant or restriction shall remain an encumbrance on the development for a minimum of either:

(A) 55 years for rental developments or

(B) 45 years for owner-occupied properties.

(2) The development proponent shall commit to record a covenant or restriction dedicating the required minimum percentage of units to below market housing prior to the issuance of the first building permit

(3) The percentage of units affordable to households making at or below 80 percent of the AMI per this section is calculated based on the total number of units in the development exclusive of additional units provided by a density bonus.

(4) The percentage of units affordable to households making at or below 80 percent of the AMI per this section shall be built on-site as part of the development.

(c) The percentage of units affordable to households making at or below 80 percent of the AMI per this section is calculated based on the total number of units in the development exclusive of additional units provided by a density bonus.

(d) The percentage of units affordable to households making at or below 80 percent of the AMI per this section shall be built on-site as part of the development.

(e) If the locality has adopted an inclusionary ordinance, the objective standards contained in that ordinance apply to the development under the Streamlined Ministerial Approval Process. For example, if the locality's adopted ordinance requires a certain percentage of the units in the development to be affordable to very low-income units, the development would need to provide that percentage of very low-income units to be eligible to use the Streamlined Ministerial Approval Process.

(f) All affordability calculations resulting in fractional units shall be rounded up to the next whole number. Affordable units shall be distributed throughout the development, unless otherwise necessary for state or local funding programs, and have access to the same

common areas and amenities as the market rate units. Identification in the development application of the location of the individual affordable units is not required for ministerial approval but distribution of units per this subsection can be included as a condition of approval per Section 301(a)(5), and the methods to achieve distribution is recorded through an affordable housing agreement or as part of a recorded covenant or restriction, unless providing location of affordable units at time of application is required by ordinance or as an adopted objective standard.

(g) Affordability of units to households at or below 80 percent of the AMI per this Section is calculated based on the following:

(1) For owner-occupied units, affordable housing cost is calculated pursuant to Health and Safety Code Section 50052.5.

(2) For rental units, affordable rent is calculated pursuant to Health and Safety Code Section 50053.

(h) Units used to satisfy the affordability requirements pursuant to this Section may be used to satisfy the requirements of other local or state requirements for affordable housing, including local ordinances or the Density Bonus Law, provided that the development proponent complies with the applicable requirements in the other state or local laws. Similarly, units used to satisfy other local or state requirements for affordable housing may be used to satisfy the affordability requirements of this Section provided that the development proponent complies with all applicable requirements of this Section.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a).

Section 403. Labor Provisions

The Labor Provisions in the Streamlined Ministerial Approval Process, located in paragraph (8) of subdivision (a) of Government Code section 65913.4, contain requirements regarding payment of prevailing wages and use of a skilled and trained workforce in the construction of the development.

The development proponent shall certify both of the following to the locality to which the development application is submitted:

(a) The entirety of the development is a public work project, as defined in Section 102(s) above, or if the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.

(1) The Department of Industrial Relations posts on its website letters and decisions on administrative appeal issued by the Department in response to requests to determine whether a specific project or type of work is a "public work" covered under the state's Prevailing Wage Laws. These coverage determinations, which are advisory only, are indexed by date and project and available at: https://www.dir.ca.gov/OPRL/pwdecision.asp

(2) The general prevailing rate is determined by the Department of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. General prevailing wage rate determinations are posted on the Department of Industrial Relations' website at: https://www.dir.ca.gov/oprl/DPreWageDetermination.htm.

(3) Apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. To find out if an apprentice is registered in an approved program, please consult the Division of Apprenticeship Standards' "Apprenticeship Status and Safety Training Certification" database at https://www.dir.ca.gov/das/appcertpw/appcertsearch.asp.

(4) To find the apprentice prevailing wage rates, please visit the Department of Industrial Relations' website at: https://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp. If you are interested in requesting an apprentice, a list of approved programs is available at: https://www.dir.ca.gov/databases/das/aigstart.asp. General information regarding the state's Prevailing Wage Laws is available in the Department of Industrial Relations' Public Works website (https://www.dir.ca.gov/Public-Works/PublicWorks.html) and the Division of Labor Standards Enforcement Public Works Manual (https://www.dir.ca.gov/dlse/PWManualCombined.pdf).

(5) For those portions of the development that are not a public work, all of the following shall apply:

(A) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(B) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(C) All contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

i. The obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

ii. The payroll record and Labor Commissioner enforcement provisions in (C) and (C)(i), above, shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement, as defined in Section 102(r) above, that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.

(D) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Sections 511 or 514 of the Labor Code.

(b) For developments for which any of the following conditions in the charts below apply, that a skilled and trained workforce, as defined in Section 102(y) above, shall be used to complete the development if the application is approved.

Developments Located in Coastal or Bay Counties

Date	Population of Locality to which Development Submitted pursuant to the last Centennial Census	Number of Housing Units in Development
January 1, 2018, until December 31, 2021	225,000 or more	75 or more
January 1, 2022, until December 31, 2025	225,000 or more	50 or more

Developments Located in Non-Coastal or Non-Bay Counties

Date	Population of Locality to which Development Submitted pursuant to the last Centennial Census	Number of Housing Units in Development
January 1, 2018, until December 31, 2019	Fewer than 550,000	75 or more
January 1, 2020, until December 31, 2021	Fewer than 550,000	More than 50
January 1, 2022, until December 31, 2025	Fewer than 550,000	More than 25

(1) Coastal and Bay Counties include: Alameda, Contra Costa, Del Norte, Humboldt, Los Angeles, Marin, Mendocino, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma and Ventura.

(2) Non-Coastal and Non-Bay Counties include: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba.

(3) The skilled and trained workforce requirement in this subparagraph is not applicable to developments with a residential component that is 100 percent subsidized affordable housing.

(4) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(A) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(B) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(C) The applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

i. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided.

ii. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

iii. The requirements in (C), (C)(i), and (C)(ii), above, do not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

(c) Notwithstanding subsections (a) and (b), a development is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(1) The project includes 10 or fewer housing units.

(2) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(d) Offsite fabrication is not subject to this Section if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular development. However, offsite fabrication performed at a temporary facility that is dedicated to the development is subject to Section 403.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a), Subdivision (d) of Section 2601 of the Public Contract Code, *Sheet Metal Workers' International Association, Local 104, v. John C. Duncan* (2014) 229 Cal.App.4th 192 [176 Cal.Rptr.3d 634].

Section 404. Additional Provisions

(a) A local government subject to the Streamlined Ministerial Approval Process shall allow for a development proponent's use of this process. However, the ability for a development proponent to apply for the Streamlined Ministerial Approval Process shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including, but not limited to, the use by right provisions of Housing Element Law Government Code section 65583.2(i), local overlays, or ministerial provisions associated with specific housing types.

(b) A development qualifying for the Streamlined Ministerial Approval Project does not prevent a development from also qualifying as a housing development project entitled to the protections of the Housing Accountability Act (Government Code section 65589.5).

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(i).

ARTICLE V. REPORTING

Section 500. Reporting Requirements

As part of the APR due April 1 of each year, local governments shall include the following information. This information shall be reported on the forms provided by the Department. For forms and more specific information on how to report the following, please refer to the Department's Annual Progress Report Guidelines at http://www.hcd.ca.gov/community-development/housing-element/index.shtml

(a) Number of applications submitted under the Streamlined Ministerial Approval Process.

(b) Location and number of developments approved using the Streamlined Ministerial Approval Process.

(c) Total number of building permits issued using the Streamlined Ministerial Approval Process.

(d) Total number of units constructed using the Streamlined Ministerial Approval Process by tenure (renter and owner) and income category.

NOTE: Authority cited: Government Code section 65400(a)(2)(B). Reference cited: Government Code section 65400(a)(2)(E).

AB 168: Tribal Scoping Consultation Requirements for Projects Seeking Review Under the Streamlined Ministerial Approval Process (SB 35)

AB 168 (Aguiar-Curry, 2020) created a process for tribal scoping consultation ("consultation") for housing development proposals seeking review under the streamlined ministerial approval process created by SB 35 (Wiener, 2017). Developers are now required to submit a preliminary application with key project details (found in Government Code §65913.4(b)(1)(A)) and engage in tribal scoping consultation that potentially influences the project's eligibility for ministerial approval.

This document provides an overview of this new process pursuant to AB 168 and answers some common questions related to this new law. This document specifically focuses on the scoping consultation requirement related to SB 35's streamlined ministerial approval process and not consultation requirements that may be required by other laws unless otherwise noted.

This document provides guidance only and should not be construed as legal advice. OPR provides this technical advisory as a resource for the public to use at their discretion. OPR is not enforcing or attempting to enforce any part of the recommendations or information contained herein.

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When does AB 168 take effect?

Immediately. AB 168 contained an urgency clause, which means that the bill took effect on **September 25, 2020**, when the Governor signed the bill. This law does not apply to any projects that obtained ministerial approval under SB 35 by the local government prior to this date (Government Code §65913.4(b)(8)).

The Governor's Office of Planning and Research (OPR) advises that projects with pending applications under review should engage in this tribal consultation to ensure compliance with the requirements of AB 168.

What information must be included in a preliminary application?

Before submitting an application for SB 35 approval, development proponents must now submit a notice of intent to submit an application, which includes a preliminary application. The preliminary application and its requirements are described in existing statute (Government Code §65941.1); it is also the same preliminary application referenced in SB 330 (Statutes of 2019).

The California Department of Housing and Community Development (HCD) has developed a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form. The form and more information on the SB 330 preliminary application can be found at https://www.hcd.ca.gov/community-development/accountability-enforcement/statutory-determinations.shtml

A preliminary application must include all of the following information:

1. The project's location, including the parcel number, a legal description, and address, as applicable
2. The existing uses of the site and the identification of major physical alterations to the property
3. A site plan showing the location of the property; as well as the massing, height, approximate square footage, and elevations showing design, color, and material of each building to be occupied
4. The proposed land uses by number of units and square feet of residential and nonresidential development using the applicable categories in the applicable zoning ordinance
5. The proposed number of parking spaces
6. Any proposed point sources of air or water pollutants

7. Any species of special concern known to occur on the property
8. Whether a portion of the property is located within any of the following:
   a. A very high wildfire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code Section 51178
   b. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)
   c. A hazardous waste site listed pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356
   d. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency
   e. A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2
   f. A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code
9. Any historic or cultural resources known to exist on the property
10. The number of proposed below market rate units and their affordability levels
11. The number of bonus units and any incentives, concessions, waivers, or parking reductions pursuant to Density Bonus Law (Government Code Section 65915)
12. Whether any approvals under the Subdivision Map Act (Division 2 of Title 7 (commencing with Section 66410) of the Government Code), including, but not limited to, a parcel map, tentative map, or condominium map, are being requested
13. The applicant's contact information, and, if the applicant does not own the property, the property owner's consent to submit the application

14. For a housing development proposed to be located within the coastal zone, whether any portion of the property contains any of the following:
    a. Wetlands, as defined by subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations
    b. Environmentally sensitive habitat areas, as defined by Public Resources Code Section 13577
    c. A tsunami run-up zone
    d. Use of the site for public access to or along the coast
15. The number of existing residential units on the project site that will be demolished and whether each unit is occupied or unoccupied
16. A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands
17. The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way

How are Tribes identified for scoping consultation?

Upon receipt of a development proponent's preliminary application, the local government must "engage in ... consultation regarding the proposed development with any California Native American Tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code" and "contact the Native American Heritage Commission for assistance in identifying any California Native American Tribe" (Government Code §65913.4(b)(1)(A)(ii)).

What is the timeline for consultation?

The statute adopts a 30-30-30 timeline. Within **30 calendar days** of receiving the developer's preliminary application, the local government must provide formal notice for each Tribe traditionally and culturally affiliated with the geographic area of the project site (Government Code §65913.4(b)(1)(A)(ii)). The formal notice must include the location and a description of the proposed development, and an invitation to engage in scoping consultation (Government Code §65913.4(b)(1)(A)(iii)(I)(ia-ic)).

Each Tribe that receives this notice has **30 calendar days** to accept the invitation to engage in consultation (Government Code §65913.4(b)(1)(A)(iii)(II)).

The local government must initiate consultation within **30 calendar days** of a Tribe's acceptance of the invitation to engage in consultation (Government Code §65913.4(b)(1)(A)(iii)(III)).

Who participates in the consultation?

The local government and any California Native American Tribe that is traditionally or culturally affiliated with the geographic area of the project site may participate in the consultation. In cases where more than one Tribe participates in consultation, the local government must grant separate consultation with a Tribe if individual consultation is requested (Government Code §65913.4(b)(1)(C)).

The development proponent and its consultants may participate in consultation if they agree to respect the principles established in AB 168, engage in good faith, and the Tribe approves of the proponent's participation. **The Tribe may revoke this approval at any time during the consultation process** (Government Code §65913.4(b)(1)(C)).

AB 168 requires that consultation must recognize that California Native American Tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue, and shall take into account the cultural significance of the resource to the Tribe (Government Code §65913.4(b)(1)(B)).

What confidentiality requirements apply to the consultation process?

Consultation must comply with the confidentiality requirements established in Government Code Section 6254(r), Government Code Section 6254.10, Public Resources Code Section 21082.3(c), and California Code of Regulations, Title 14, Section 15120(d). Additionally, the Tribe may adopt any additional confidentiality requirements applicable to the consultation (Government Code §65913.4(b)(1)(D)).

Does the California Environmental Quality Act (CEQA) apply to the consultation process?

No, the tribal consultation required pursuant to AB 168 is not considered a project under CEQA (Government Code §65913.4(b)(1)(E)).

When does tribal consultation conclude?

Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code §65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, **acting in good faith and after a reasonable effort**, conclude that a mutual agreement cannot be achieved (Government Code §65913.4(b)(2)(D)(ii)).

What are the potential outcomes of the tribal consultation?

If the parties participating in tribal consultation determine that there is no potential impact to tribal cultural resources resulting from the project, then the development proponent may submit an application for ministerial approval pursuant to SB 35 (Government Code §65913.4(b)(2)(A)).

If the tribal consultation identifies a potential impact to tribal cultural resources resulting from the project, then the parties must document an enforceable agreement regarding the methods, measures, and conditions for treatment of tribal cultural resources. **This agreement must be a condition of approval** for the project application for SB 35 approval (Government Code §65913.4(b)(2)(B)).

If the parties are unable to reach an enforceable agreement regarding treatment of tribal cultural resources that may be present on the project site, then the development proponent is ineligible for ministerial approval under SB 35 (Government Code §65913.4(b)(2)(C)).

What is now required for a project to qualify for SB 35 ministerial approval?

A project is **eligible** for the ministerial approval established under SB 35 if **any** of the following conditions apply:

1. A Tribe that received notice of the developer's submission of a pre-application did not respond to the invitation to engage in consultation within 30 days (Government Code §65913.4(b)(3)(A));

2. A Tribe accepted an invitation to engage in tribal consultation but failed to engage after repeated attempts by the local government to initiate consultation (Government Code §65913.4(b)(3)(B));
3. The consultation concluded that there is no potential harm to tribal cultural resources resulting from the project (Government Code §65913.4(b)(3)(C)); OR
4. The consultation identified potential impacts to tribal cultural resources, and the parties committed to a documented, enforceable agreement regarding the treatment of potential resources (Government Code §65913.4(b)(3)(D))

Pursuant to AB 168, what might disqualify a project from ministerial approval under SB 35?

A project would be **ineligible** for ministerial approval pursuant to SB 35 if **any** of the following conditions apply:

1. The project site contains a tribal cultural resource that is listed on a national, tribal, state, or local historic register (Government Code §65913.4(b)(4)(A));
2. The parties to scoping consultation do not agree on whether the project will impact tribal cultural resources (Government Code §65913.4(b)(4)(B)); OR
3. A potential tribal cultural resource would be affected by the proposed project, and the parties to scoping consultation were unable to document an enforceable agreement regarding the treatment of potential tribal resources (Government Code §65913.4(b)(4)(C))

What documentation is required upon conclusion of the tribal consultation?

If the consultation concludes that the project would not affect potential tribal cultural resources, **no further documentation is required** and the development proponent may proceed with submission of its application for ministerial approval under SB 35 (Government Code §65913.4(b)(2)(A)).

If the consultation results in documentation of an enforceable agreement regarding the treatment of potential tribal resources, that **agreement must be attached** to the local government's approval of the application for SB 35 ministerial approval (Government Code §65913.4(b)(20(B)).

If the consultation results in disqualification of the project from SB 35's streamlined ministerial approval process, the **local government must provide written documentation** of the fact, with an explanation for the project's ineligibility, to the development proponent and the Tribe or Tribes participating in the consultation (Government Code §65913.4(b)(5)(A)). The documentation provided to the development proponent must also include information on how to seek a conditional use permit or other discretionary approval of the project from the local government (Government Code §65913.4(b)(5)(B)).

What happens if the project changes after the conclusion of tribal consultation?

If the development or environmental setting substantially changes after the consultation, the local government must notify the Tribe of the change and engage in a **subsequent consultation if requested** by the Tribe or Tribes (Government Code §65913.4(b)(2)(E)).

While the bill does not specify a timeline for this subsequent notification and consultation, OPR recommends adhering to the 30-30-30 timeline required for the initial consultation.

For the purposes of this consultation, OPR advises that a project or environmental setting may "substantially change" if 1) those changes will require major revisions to the environmental impact report, or 2) if new information that was not available or could not have been known during preparation of the environmental impact report becomes available (see Public Resources Code §21166).

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 No. 35

CHAPTER 366

An act to amend Sections 65400 and 65582.1 of, and to add and repeal Section 65913.4 of, the Government Code, relating to housing.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 35, Wiener. Planning and zoning: affordable housing: streamlined approval process.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. The Planning and Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs. Existing law requires the housing element portion of the annual report to be prepared through the use of forms and definitions adopted by the department pursuant to the Administrative Procedure Act.

This bill would require the housing element portion of the annual report to be prepared through the use of standards, forms, and definitions adopted by the department. The bill would eliminate the requirement that the forms and definitions be adopted by the department pursuant to the Administrative Procedure Act and would instead authorize the department to review, adopt, amend, and repeal the standards, forms, or definitions, as provided. The bill would also require the planning agency to include in its annual report specified information regarding units of net new housing, including rental housing and for-sale housing that have been issued a completed entitlement, building permit, or certificate of occupancy. The bill would also require the Department of Housing and Community Development to post an annual report submitted pursuant to the requirement described above on its Internet Web site, as provided.

(2) Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law

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provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This bill would authorize a development proponent to submit an application for a multifamily housing development, which satisfies specified planning objective standards, that is subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit. The bill would require a local government to notify the development proponent in writing if the local government determines that the development conflicts with any of those objective standards by a specified time; otherwise, the development is deemed to comply with those standards. The bill would limit the authority of a local government to impose parking standards or requirements on a streamlined development approved pursuant to these provisions, as provided. The bill would provide that if a local government approves a project pursuant to that process, that approval will not expire if that project includes investment in housing affordability, and would otherwise provide that the approval of a project expire automatically after 3 years, unless that project qualifies for a one-time, one-year extension of that approval. The bill would provide that approval pursuant to its provisions would remain valid for three years and remain valid thereafter so long as vertical construction of the development has begun and is in progress, and would authorize a discretionary one-year extension, as provided. The bill would prohibit a local government from adopting any requirement that applies to a project solely or partially on the basis that the project receives ministerial or streamlined approval pursuant to these provisions. The bill would repeal these provisions as of January 1, 2026.

(3) The bill would make findings that ensuring access to affordable housing is a matter of statewide concern and declare that its provisions would apply to all cities and counties, including a charter city, a charter county, or a charter city and county.

(4) By imposing new duties upon local agencies with respect to the streamlined approval process and reporting requirement described above, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would incorporate additional changes to Section 65400 of the Government Code proposed by AB 879 to be operative only if this bill and AB 879 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 65582.1 of the Government Code proposed by AB 73 to be operative only if this bill and AB 73 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) or Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

The report may include the number of units that have been substantially rehabilitated, converted from nonaffordable to affordable by acquisition, and preserved consistent with the standards set forth in paragraph (2) of subdivision (c) of Section 65583.1. The report shall document how the units meet the standards set forth in that subdivision.

(C) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(D) The number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing, including both rental housing and housing designated for

home ownership, satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale housing units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier, which must include an assessor's parcel number, but may also include street address or other identifiers.

(E) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (b) of Section 65913.4, the total number of building permits issued pursuant to subdivision (b) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (b) of Section 65913.4.

(F) The Department of Housing and Community Development shall post a report submitted pursuant to this paragraph on its Internet Web site within a reasonable time of receiving the report.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

SEC. 1.5. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

The report may include the number of units that have been substantially rehabilitated, converted from nonaffordable to affordable by acquisition, and preserved consistent with the standards set forth in paragraph (2) of subdivision (c) of Section 65583.1. The report shall document how the units meet the standards set forth in that subdivision.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory required by paragraph (1) of subdivision (c) of Sections 65583 and 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier which

must include the assessor's parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (b) of Section 65913.4, the total number of building permits issued pursuant to subdivision (b) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (b) of Section 65913.4.

(J) The Department of Housing and Community Development shall post a report submitted pursuant to this paragraph on its Internet Web site within a reasonable time of receiving the report.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

SEC. 2. Section 65582.1 of the Government Code is amended to read:

65582.1. The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the approval and construction of affordable housing. Those reforms and incentives can be found in the following provisions:

(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).

(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).

(c) Restrictions on disapproval of housing developments (Section 65589.5).

(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).

(e) Least cost zoning law (Section 65913.1).

(f) Density bonus law (Section 65915).

(g) Accessory dwelling units (Sections 65852.150 and 65852.2).

(h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).

(i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).

(j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).

(k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5).

(*l*) Limiting moratoriums on multifamily housing (Section 65858).

(m) Prohibiting discrimination against affordable housing (Section 65008).

(n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3).

(o) Community redevelopment law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413).

(p) Streamlining housing approvals during a housing shortage (Section 65913.4).

SEC. 2.5. Section 65582.1 of the Government Code is amended to read:

65582.1. The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).

(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).

(c) Restrictions on disapproval of housing developments (Section 65589.5).

(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).

(e) Least cost zoning law (Section 65913.1).

(f) Density bonus law (Section 65915).

(g) Accessory dwelling units (Sections 65852.150 and 65852.2).

(h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).

(i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).

(j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).

(k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5).

(*l*) Limiting moratoriums on multifamily housing (Section 65858).
(m) Prohibiting discrimination against affordable housing (Section 65008).
(n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3).
(o) Community redevelopment law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413).
(p) Streamlining housing approvals during a housing shortage (Section 65913.4).
(q) Housing sustainability districts (Chapter 11 (commencing with Section 66200)).

SEC. 3. Section 65913.4 is added to the Government Code, to read:

65913.4. (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:
(1) The development is a multifamily housing development that contains two or more residential units.
(2) The development is located on a site that satisfies all of the following:
(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.
(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.
(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.
(3) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:
(A) Fifty-five years for units that are rented.
(B) Forty-five years for units that are owned.
(4) The development satisfies both of the following:
(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period. A locality shall be subject to this subparagraph if it has not submitted an annual housing element report

to the department pursuant to paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years before the development submitted an application for approval under this section.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that zoning ordinance applies.

(ii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of housing affordable to households making below 80 percent of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (i) or (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning 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. These standards may be embodied in alternative objective land use specifications adopted by a

city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

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

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall

not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a

monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special

Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(c) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(1) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(2) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, shall not impose parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making below 80 percent of the area median income.

(2) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making below 80 percent of the area median income, that approval shall automatically expire after three years except that a project may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and process set forth in this section.

(f) A local government shall not adopt any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(g) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(h) For purposes of this section:

(1) "Department" means the Department of Housing and Community Development.

(2) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(3) "Completed entitlements" means a housing development which has received all the required land use approvals or entitlements necessary for the issuance of building permit.

(4) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(5) "Production report" means the information reported pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Section 65400.

(6) "Subsidized" means units that are price or rent restricted such that the units are permanently affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(7) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(8) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(i) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair. Therefore, the changes made by this act are applicable to a charter city, a charter county, and a charter city and county.

SEC. 5. Each provision of this measure is a material and integral part of this measure, and the provisions of this measure are not severable. If any provision of this measure or its application is held invalid, this entire measure shall be null and void.

SEC. 6. (a) Section 1.5 of this bill incorporates amendments to Section 65400 of the Government Code proposed by both this bill and Assembly Bill 879. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65400 of the Government Code, and (3) this bill is enacted after Assembly Bill 879, in which case Section 1 of this bill shall not become operative.

(b) Section 2.5 of this bill incorporates amendments to Section 65582.1 of the Government Code proposed by both this bill and Assembly Bill 73. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 65582.1 of the Government Code, and (3) this bill is enacted after Assembly Bill 73, in which case Section 2 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O

Assembly Bill No. 168

CHAPTER 166

An act to amend Sections 65400, 65913.4, and 65941.1 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2020. Filed with Secretary of State September 25, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 168, Aguiar-Curry. Planning and zoning: annual report: housing development: streamlined approvals.

(1) The Planning and Zoning Law requires a city or county to adopt a comprehensive, long-term general plan for the physical development of the city or county and specified lands outside its boundaries that includes, among other things, a housing element. That law requires the planning agency of a city or county to provide by April 1 of each year an annual report to the legislative body of the city or county, the Office of Planning and Research, and the Department of Housing and Community Development that includes, among other specified information, the status of the general plan and progress in its implementation.

This bill would additionally require that this annual report include information on the progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes, and to identify and protect, preserve, and mitigate impacts to specified places, features, and objects, pursuant to specified law.

(2) Existing law, until January 1, 2026, authorizes a development proponent to submit an application for a multifamily housing development that is subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit, if the development satisfies specified objective planning standards. Under existing law, the objective planning standards include, among others, (A) a requirement that the development not be located on specified sites, including those within a coastal zone, very high fire hazard severity zone, delineated earthquake fault zone, or special flood hazard area, and sites designated as prime farmland, wetlands, or a habitat for a protected species, and (B) a requirement that the development be consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to

carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. Prior to the release of a negative declaration, mitigated negative declaration, or an EIR for a project, CEQA requires the lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, as provided.

Under existing law, a development subject to the streamlined, ministerial approval process described above is not subject to CEQA.

This bill would require a development proponent, before submitting an application for streamlined approval described above, to submit notice of its intent to submit an application under these provisions, which must be in the form of a preliminary application, as described below. The bill would revise the above-described provisions to instead require the development to be consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government or at the time the notice of intent is submitted, whichever occurs earlier. The bill would require, after that notice is received by the local government, a local government to provide formal notice, as provided, to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development and to engage in a scoping consultation, as provided, regarding the potential effects the proposed development could have on a potential tribal cultural resource. The bill would exempt a scoping consultation conducted pursuant to its provisions from CEQA.

This bill would deem a project ineligible for the streamlined, ministerial approval process described above, and thereby subject to CEQA, if (A) the site of the proposed development is a tribal cultural resource that is on a national, state, tribal, or local historic register list, (B) the local government and the California Native American tribe do not agree that no potential tribal cultural resource would be affected by the proposed development, or (C) the local government and California Native American tribe find that a potential tribal cultural resource could be affected by the proposed development and the parties do not document an enforceable agreement regarding the methods, measures, and conditions for treatment of those tribal cultural resources, as provided. If the proposed development is not eligible for streamlined, ministerial approval because the parties do not agree that a potential tribal cultural resource would be affected or do not document an enforceable agreement regarding methods, measures, and conditions for tribal cultural resource treatment, the bill would require the local government to provide written documentation of that fact to the development proponent and to any California Native American tribe that is a party to that scoping consultation, as provided. The bill would require a local government to notify a California Native American tribe if the development or environmental setting substantially changes after the completion of the scoping consultation, and would require the local

government to engage in a subsequent scoping consultation if requested by the California Native American tribe.

The bill would specify that its provisions do not apply to any project that is approved under the streamlined, ministerial approval process described above before the bill's effective date.

(3) The Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each state agency and each local agency to compile one or more lists that specify in detail the information that will be required from any applicant for a development project. That act, until January 1, 2025, provides that an applicant for a housing development project, as defined, is deemed to have submitted a preliminary application upon providing specified information about the proposed project to the city, county, or city and county from which approval for the project is sought. Under existing law, the Housing Accountability Act, a housing development may only be subject to the ordinances, policies, and standards adopted and in effect when a preliminary application was submitted, except as specified.

This bill would provide that submission of a preliminary application pursuant to these provisions does not preclude the listing of a tribal cultural resource on a national, state, tribal, or local historic register list on or after the date that the preliminary application is submitted. For purposes of the Housing Accountability Act or any other law, the bill would provide that the listing of a tribal cultural site on a national, state, tribal, or local historic register on or after the preliminary application was submitted is not a change to the ordinances, policies, and standards adopted and in effect at the time that the preliminary application was submitted.

(4) This bill would incorporate additional changes to Section 65400 of the Government Code proposed by AB 2345 and SB 1085 to be operative only if this bill and either or both AB 2345 and SB 1085 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 65913.4 of the Government Code proposed by AB 831 to be operative only if this bill and AB 831 are enacted and this bill is enacted last.

(5) By imposing new requirements on local planning officials with respect to the annual report and the streamlined, ministerial approval process, as described above, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) There was an oversight in Senate Bill 35 (Chapter 366 of the Statutes of 2017), in that it did not consider the potential destruction of tribal cultural resources, listed on registers or potential.

(b) The Legislature desires to correct that oversight without losing any of the protections of the Assembly Bill 52 (Chapter 532 of the Statutes of 2014) process, which is contained within the California Environmental Quality Act.

(c) Tribal cultural resources can be found in both rural and urban environments and are often located off tribal reservations due to forced removals of California Native American tribes from their traditional lands.

(d) California Native American tribes with Tribal Historic Preservation Officers are responsible for the administration of any and all of the functions of a State Historic Preservation Officer with respect to tribal land and may maintain historic registers of resources within their traditional lands.

(e) Some tribal cultural resources have already been placed on federal, state, tribal, and local register lists and these register lists, including the recognized cultural value of those historic properties, should be properly considered when reviewing a proposed housing development project.

(f) Many tribal cultural resources are not on historic registers or lists for a variety of reasons, including the need to keep the location and use of these places confidential to protect their spiritual integrity and to help protect them from damage and desecration and because previous nomination and listing efforts may not have considered tribal cultural values.

(g) California Native American tribes have special expertise to identify, evaluate, and interpret tribal cultural resources because of their traditional aboriginal ties to their tribal homelands and the traditional cultural, ecological, and tribal knowledge that comes from those ancestral ties.

(h) Tribal cultural resources are critical to tribal government sovereignty and self-determination, and are essential elements in tribal cultural traditions, heritages, and identities, and as such the full consideration of them in all development processes is entitled to elevated scrutiny and protection.

(i) Existing law provides protection for Native American sacred places and tribal cultural resources, including, but not limited to, places of worship, religious or ceremonial sites, and sacred shrines.

(j) Avoidance and preservation in place is the preferred method for addressing potential tribal cultural resources and can often be better achieved through early identification of tribal cultural resources, which can then be integrated into development planning, including prior to project designs being finalized.

(k) Mitigation of impacts to, and culturally appropriate treatment of, listed or potential tribal cultural resources shall be the product of informed, meaningful, collaborative, and timely consultation between local governments and California Native American tribes that reflects the tribes' values and preferences for treatment.

(*l*) Existing legislation and state policy recognizes the government status of California Native American tribes and their expertise concerning tribal cultural resources, and encourages early consultation with tribes regarding

identification of potential tribal cultural resources and the development of methods to avoid and protect them.

(m) Senate Bill 35 (Chapter 366 of the Statutes of 2017) was a reaction to the housing affordability crisis in California.

(n) California Native American tribes do not support a weakening of the California Environmental Quality Act relative to tribal cultural resources or the government status of California Native American tribes, but are not opposed to affordable housing solutions that retain the intention and legal protections of Assembly Bill 52 (Chapter 532 of the Statutes of 2014).

(o) To correct the oversight of not considering the potential destruction of tribal cultural resources, it is the intent of the Legislature in enacting this act to do both of the following:

(1) Require local governments, California Native American tribes, and development proponents to engage in a scoping consultation process before the development proponent may submit an application for streamlined, ministerial approval and reach an agreement on the methods, measures, and conditions to address the treatment of tribal cultural resources.

(2) As part of the objective planning standards provided under Senate Bill 35 (Chapter 366 of the Statutes of 2017), provide that a housing development project is not eligible for streamlined, ministerial approval if there is a tribal cultural resource presently listed on a federal, state, tribal, or local historic register list that will be affected by the proposed development project.

(p) Early coordination between a development proponent and the California Native American tribe regarding potential concerns about the project details and location of the proposed project prior to the submission of a preliminary application or an application for streamlined development may also occur, and is not precluded.

SEC. 2. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) (i) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(ii) The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and

definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

(iii) The report may include the number of units that have been completed pursuant to subdivision (c) of Section 65583.1. For purposes of this paragraph, committed assistance may be executed throughout the planning period, and the program under paragraph (1) of subdivision (c) of Section 65583.1 shall not be required. The report shall document how the units meet the standards set forth in that subdivision.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor's parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (c) of Section 65913.4, the total number of building

permits issued pursuant to subdivision (c) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (c) of Section 65913.4.

(J) If the city or county has received funding pursuant to the Local Government Planning Support Grants Program (Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code), the information required pursuant to subdivision (a) of Section 50515.04 of the Health and Safety Code.

(K) The progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes, and to identify and protect, preserve, and mitigate impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, pursuant to Chapter 905 of the Statutes of 2004.

(L) The Department of Housing and Community Development shall post a report submitted pursuant to this paragraph on its internet website within a reasonable time of receiving the report.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

SEC. 2.3. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) (i) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(ii) The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

(iii) The report may include the number of units that have been completed pursuant to subdivision (c) of Section 65583.1. For purposes of this paragraph, committed assistance may be executed throughout the planning period, and the program under paragraph (1) of subdivision (c) of Section 65583.1 shall not be required. The report shall document how the units meet the standards set forth in that subdivision.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units

and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor's parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (c) of Section 65913.4, the total number of building permits issued pursuant to subdivision (c) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (c) of Section 65913.4.

(J) If the city or county has received funding pursuant to the Local Government Planning Support Grants Program (Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code), the information required pursuant to subdivision (a) of Section 50515.04 of the Health and Safety Code.

(K) The progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes, and to identify and protect, preserve, and mitigate impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, pursuant to Chapter 905 of the Statutes of 2004.

(L) The following information with respect to density bonuses granted in accordance with Section 65915:

(i) The number of density bonus applications received by the city or county.

(ii) The number of density bonus applications approved by the city or county.

(iii) Data from a sample of projects, selected by the planning agency, approved to receive a density bonus from the city or county, including, but not limited to, the percentage of density bonus received, the percentage of affordable units in the project, the number of other incentives or concessions granted to the project, and any waiver or reduction of parking standards for the project.

(M) The Department of Housing and Community Development shall post a report submitted pursuant to this paragraph on its internet website within a reasonable time of receiving the report.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court

determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

SEC. 2.5. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) (i) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(ii) The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

(iii) The report may include the number of units that have been completed pursuant to subdivision (c) of Section 65583.1. For purposes of this paragraph, committed assistance may be executed throughout the planning period, and the program under paragraph (1) of subdivision (c) of Section 65583.1 shall not be required. The report shall document how the units meet the standards set forth in that subdivision.

(iv) The planning agency shall include the number of units in a student housing development for lower income students for which the developer of

the student housing development was granted a density bonus pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 65915.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor's parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (c) of Section 65913.4, the total number of building permits issued pursuant to subdivision (c) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (c) of Section 65913.4.

(J) If the city or county has received funding pursuant to the Local Government Planning Support Grants Program (Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code), the information required pursuant to subdivision (a) of Section 50515.04 of the Health and Safety Code.

(K) The progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes, and to identify and protect, preserve, and mitigate impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, pursuant to Chapter 905 of the Statutes of 2004.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

(c) The Department of Housing and Community Development shall post a report submitted pursuant to this section on its internet website within a reasonable time of receiving the report.

SEC. 2.7. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) (i) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(ii) The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of

the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

(iii) The report may include the number of units that have been completed pursuant to subdivision (c) of Section 65583.1. For purposes of this paragraph, committed assistance may be executed throughout the planning period, and the program under paragraph (1) of subdivision (c) of Section 65583.1 shall not be required. The report shall document how the units meet the standards set forth in that subdivision.

(iv) The planning agency shall include the number of units in a student housing development for lower income students for which the developer of the student housing development was granted a density bonus pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 65915.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor's parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (c) of Section 65913.4, the total number of building permits issued pursuant to subdivision (c) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (c) of Section 65913.4.

(J) If the city or county has received funding pursuant to the Local Government Planning Support Grants Program (Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code), the information required pursuant to subdivision (a) of Section 50515.04 of the Health and Safety Code.

(K) The progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes, and to identify and protect, preserve, and mitigate impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, pursuant to Chapter 905 of the Statutes of 2004.

(L) The following information with respect to density bonuses granted in accordance with Section 65915:

(i) The number of density bonus applications received by the city or county.

(ii) The number of density bonus applications approved by the city or county.

(iii) Data from a sample of projects, selected by the planning agency, approved to receive a density bonus from the city or county, including, but not limited to, the percentage of density bonus received, the percentage of affordable units in the project, the number of other incentives or concessions granted to the project, and any waiver or reduction of parking standards for the project.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

(c) The Department of Housing and Community Development shall post a report submitted pursuant to this section on its internet website within a reasonable time of receiving the report.

SEC. 3. Section 65913.4 of the Government Code is amended to read:

65913.4. (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit

if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower or moderate income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower or moderate income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies subparagraphs (A) and (B) below:

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production

report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project does either of the following:

(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.

(II) (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.

(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances

or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.

(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).

(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. For purposes of this paragraph, "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 before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) It is the intent of the Legislature that the objective zoning standards, objective subdivision standards, and objective design review standards described in this paragraph be adopted or amended in compliance with the requirements of Chapter 905 of the Statutes of 2004.

(D) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

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

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and

provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) (A) (i) Before submitting an application for a development subject to the streamlined, ministerial approval process described in subdivision (c), the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of the information described in Section 65941.1, as that section read on January 1, 2020.

(ii) Upon receipt of a notice of intent to submit an application described in clause (i), the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development. In order to expedite compliance with this subdivision, the local government shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development.

(iii) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

(I) The local government shall provide a formal notice of a development proponent's notice of intent to submit an application described in clause (i) to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

(ia) A description of the proposed development.

(ib) The location of the proposed development.

(ic) An invitation to engage in a scoping consultation in accordance with this subdivision.

(II) Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

(III) If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate in a scoping consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(i) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(ii) The development proponent and its consultants engage in the scoping consultation in good faith.

(iii) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements:

(i) Subdivision (r) of Section 6254.

(ii) Section 6254.10.

(iii) Subdivision (c) of Section 21082.3 of the Public Resources Code.

(iv) Subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

(v) Any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a scoping consultation conducted pursuant to this subdivision.

(2) (A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in subdivision (c). The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in subdivision (c).

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(i) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(ii) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(3) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent's notice of intent to submit an application pursuant to subclause (I) of clause (iii) of subparagraph (A) of paragraph (1) did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to subclause (II) of clause (iii) of subparagraph (A) of paragraph (1) but substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe.

(C) The parties to a scoping consultation pursuant to this subdivision find that no potential tribal cultural resource will be affected by the proposed development pursuant to subparagraph (A) of paragraph (2).

(D) A scoping consultation between a California Native American tribe and the local government has occurred in accordance with this subdivision and resulted in agreement pursuant to subparagraph (B) of paragraph (2).

(4) A project shall not be eligible for the streamlined, ministerial process described in subdivision (c) if any of the following apply:

(A) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(B) There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted pursuant to this subdivision do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2).

(C) The parties to a scoping consultation conducted pursuant to this subdivision do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(5) (A) If, after a scoping consultation conducted pursuant to this subdivision, a project is not eligible for the streamlined, ministerial process described in subdivision (c) for any or all of the following reasons, the local government shall provide written documentation of that fact, and an explanation of the reason for which the project is not eligible, to the development proponent and to any California Native American tribe that is a party to that scoping consultation:

(i) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project, as described in subparagraph (A) of paragraph (4).

(ii) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2) and subparagraph (B) of paragraph (4).

(iii) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development, as described in subparagraph (C) of paragraph (4).

(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(6) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(7) For purposes of this subdivision:

(A) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research.

(B) "Scoping" means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(8) This subdivision shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before the effective date of the act adding this subdivision.

(c) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(d) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards

published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(e) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(2) (A) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making at or below 80 percent of the area median income, that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval.

Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:

(i) The construction has begun and has not ceased for more than 180 days.

(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and processes set forth in this section.

(g) (1) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (c). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (c), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.

(h) (1) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5.

This paragraph does not constitute a change in, but is declaratory of, existing law.

(i) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(1) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(j) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(8) "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(9) "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

(10) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(11) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(12) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(k) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(*l*) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (c) is not a "project" as defined in Section 21065 of the Public Resources Code.

(m) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

(n) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 3.5. Section 65913.4 of the Government Code is amended to read:

65913.4. (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development and the site on which it is located satisfy all of the following:

(A) It is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) It is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, and at least two-thirds of the square footage of the development is designated for residential use. Additional

density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower or moderate income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower or moderate income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies subparagraphs (A) and (B) below:

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project does either of the following:

(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.

(II) (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply

with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.

(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.

(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).

(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. For purposes of this paragraph, "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 before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) It is the intent of the Legislature that the objective zoning standards, objective subdivision standards, and objective design review standards described in this paragraph be adopted or amended in compliance with the requirements of Chapter 905 of the Statutes of 2004.

(D) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish

and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

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

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or

because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months

of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) (A) (i) Before submitting an application for a development subject to the streamlined, ministerial approval process described in subdivision (c), the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of

the information described in Section 65941.1, as that section read on January 1, 2020.

(ii) Upon receipt of a notice of intent to submit an application described in clause (i), the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development. In order to expedite compliance with this subdivision, the local government shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development.

(iii) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

(I) The local government shall provide a formal notice of a development proponent's notice of intent to submit an application described in clause (i) to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

(ia) A description of the proposed development.

(ib) The location of the proposed development.

(ic) An invitation to engage in a scoping consultation in accordance with this subdivision.

(II) Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

(III) If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate in a scoping

consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(i) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(ii) The development proponent and its consultants engage in the scoping consultation in good faith.

(iii) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements:

(i) Subdivision (r) of Section 6254.

(ii) Section 6254.10.

(iii) Subdivision (c) of Section 21082.3 of the Public Resources Code.

(iv) Subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

(v) Any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a scoping consultation conducted pursuant to this subdivision.

(2) (A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in subdivision (c). The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in subdivision (c).

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(i) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(ii) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(3) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent's notice of intent to submit an application pursuant to subclause (I) of clause (iii) of subparagraph (A) of paragraph (1) did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to subclause (II) of clause (iii) of subparagraph (A) of paragraph (1) but substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe.

(C) The parties to a scoping consultation pursuant to this subdivision find that no potential tribal cultural resource will be affected by the proposed development pursuant to subparagraph (A) of paragraph (2).

(D) A scoping consultation between a California Native American tribe and the local government has occurred in accordance with this subdivision and resulted in agreement pursuant to subparagraph (B) of paragraph (2).

(4) A project shall not be eligible for the streamlined, ministerial process described in subdivision (c) if any of the following apply:

(A) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(B) There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted pursuant to this subdivision do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2).

(C) The parties to a scoping consultation conducted pursuant to this subdivision do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(5) (A) If, after a scoping consultation conducted pursuant to this subdivision, a project is not eligible for the streamlined, ministerial process described in subdivision (c) for any or all of the following reasons, the local government shall provide written documentation of that fact, and an

explanation of the reason for which the project is not eligible, to the development proponent and to any California Native American tribe that is a party to that scoping consultation:

(i) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project, as described in subparagraph (A) of paragraph (4).

(ii) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2) and subparagraph (B) of paragraph (4).

(iii) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development, as described in subparagraph (C) of paragraph (4).

(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(6) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(7) For purposes of this subdivision:

(A) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research.

(B) "Scoping" means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(8) This subdivision shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before the effective date of the act adding this subdivision.

(c) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(d) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(e) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(2) (A) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making at or below 80 percent of the area median income, that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:

(i) The construction has begun and has not ceased for more than 180 days.

(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year

extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and processes set forth in this section.

(g) (1) (A) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided in subdivision (b) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(B) Except as provided in paragraph (3), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.

(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (b).

(D) A guideline that was adopted or amended by the department pursuant to subdivision (j) after a development was approved through the streamlined ministerial approval process described in subdivision (b) shall not be used as a basis to deny proposed modifications.

(2) Upon receipt of the developmental proponent's application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification, or within 90 days if design review is required.

(3) Notwithstanding paragraph (1), the local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:

(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more.

(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, may be applied to all modifications.

(4) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the

modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

(h) (1) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (c). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (c), and includes, but is not limited to, demolition, grading, encroachment, and building permits and final maps, if necessary.

(3) (A) If a public improvement is necessary to implement a development that is subject to the streamlined, ministerial approval pursuant to this section, including, but not limited to, a bicycle lane, sidewalk or walkway, public transit stop, driveway, street paving or overlay, a curb or gutter, a modified intersection, a street sign or street light, landscape or hardscape, an above-ground or underground utility connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining wall, and any related work, and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development.

(B) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall do all of the following:

(i) Consider the application based upon any objective standards specified in any state or local laws that were in effect when the original development application was submitted.

(ii) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval pursuant to this section.

(C) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall not do either of the following:

(i) Adopt or impose any requirement that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(ii) Unreasonably delay in its consideration, review, or approval of the application.

(i) (1) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.

(j) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(1) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(k) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(8) "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(9) "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

(10) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(11) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(12) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(*l*) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(m) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (c) is not a "project" as defined in Section 21065 of the Public Resources Code.

(n) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

(o) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 4. Section 65941.1 of the Government Code is amended to read:

65941.1. (a) An applicant for a housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

(5) The proposed number of parking spaces.

(6) Any proposed point sources of air or water pollutants.

(7) Any species of special concern known to occur on the property.

(8) Whether a portion of the property is located within any of the following:

(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.

(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

(9) Any historic or cultural resources known to exist on the property.

(10) The number of proposed below market rate units and their affordability levels.

(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.

(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

(B) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

(C) A tsunami run-up zone.

(D) Use of the site for public access to or along the coast.

(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.

(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b) (1) Each local agency shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.

(2) The Department of Housing and Community Development shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form pursuant to paragraph (1). Adoption of the standardized form shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a).

(c) After submittal of all of the information required by subdivision (a), if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, the housing development project shall not be deemed to have submitted a preliminary application that satisfies this section until the development proponent resubmits the information required by subdivision (a) so that it reflects the revisions. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(d) (1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information

required to process the development application consistent with Sections 65940, 65941, and 65941.5.

(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

(3) This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.

(e) Notwithstanding any other law, submission of a preliminary application in accordance with this section shall not preclude the listing of a tribal cultural resource on a national, state, tribal, or local historic register list on or after the date that the preliminary application is submitted. For purposes of Section 65589.5 or any other law, the listing of a tribal cultural site on a national, state, tribal, or local historic register on or after the date the preliminary application was submitted shall not be deemed to be a change to the ordinances, policies, and standards adopted and in effect at the time that the preliminary application was submitted.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 5. (a) Section 2.3 of this bill incorporates amendments to Section 65400 of the Government Code proposed by both this bill and Assembly Bill 2345. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 65400 of the Government Code, (3) Senate Bill 1085 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2345, in which case Section 65400 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of Assembly Bill 2345, and Sections 2.5 and 2.7 of this bill shall not become operative.

(b) Section 2.5 of this bill incorporates amendments to Section 65400 of the Government Code proposed by both this bill and Senate Bill 1085. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 65400 of the Government Code, (3) Assembly Bill 2345 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1085, in which case Section 65400 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of Assembly Bill 2345, and Sections 2.3 and 2.7 of this bill shall not become operative.

(c) Section 2.7 of this bill incorporates amendments to Section 65400 of the Government Code proposed by this bill, Assembly Bill 2345, and Senate Bill 1085. That section of this bill shall only become operative if (1) all

three bills are enacted and become effective on or before January 1, 2021, (2) all three bills amend Section 65400 of the Government Code, and (3) this bill is enacted after Assembly Bill 2345 and Senate Bill 1085, in which case Section 65400 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of Assembly Bill 2345 and Senate Bill 1085, and Sections 2.3 and 2.5 of this bill shall not become operative.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 65913.4 of the Government Code proposed by this bill and Assembly Bill 831. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 65913.4 of the Government Code, and (3) this bill is enacted after Assembly Bill 831, in which case Section 65913.4 of the Government Code, as amended by Assembly Bill 831, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure adequate consultation with California Native American tribes and preservation of tribal cultural resources with respect to the streamlined, ministerial approval of housing development projects provided in Section 65913.4 of the Government Code, it is necessary that this act take effect immediately.

O

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of 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, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24

months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of 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, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) 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, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is

no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application 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.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) 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.

(2) 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. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) "Local agency" means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division

2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the

housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application 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.

(*l*) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "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. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be

considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars ($236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

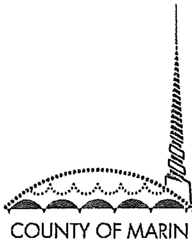
(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

MEMORANDUM

TO: PLANNING COMMISSION

FROM: JEREMY TEJIRIAN, PLANNING MANAGER

DATE: APRIL 7, 2022

RE: INTERIM ORDINANCES IMPLEMENTING SB 35 AND SB 9

Following the distribution of the staff report, the California Department of Housing and Development (HCD) issued a fact sheet related to implementing SB 9, which is attached for your review (attachment 1). While HCD's new fact sheet includes several points of clarification, it does not result in any changes to the staff recommendation or the proposed Resolutions.

However, upon further review of the proposed SB 9 Resolutions, staff recommends a minor change to the text.

After the first paragraph of number 4 of both the SB 9 lot split Ordinance and the SB 9 development Ordinance (pages 2), staff recommends adding the following sentence:

> "If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval."

Similar text is already contained in the SB 35 Ordinance, so no change needs to be made in that case.

Attachments:

1. HCD Fact Sheet on Implementing SB 9

3501 Civic Center Drive · Suite 308 · San Rafael, CA 94903-4157 · 415 473 6269 T · 415 473 7880 F · 415 473 2255 TTY · www.marincounty.org/plan

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** on HCD'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**.

From: Margot Biehle
To: Mosher, Ana Hilda
Cc:
Subject: Re: Staff supplemental memorandum
Date: Thursday, April 7, 2022 8:26:45 PM

Hello Ana Hilda and Commissioners -

As previously disclosed, I am unable to attend Monday's meeting. I do have the following comments/questions, however.

1. Ministerial review. I am very concerned that State Density Bonus law allows applicants for projects with more than four units to receive waivers of development standards if those standards make the development unfeasible - particularly in the SCA and WCA. A developer could propose a development in the WCA or SCA - which would already disprupt a fragile habitat, and further disrupt it by adding the density bonus and removing heritage trees, and we would have nothing to say about it. Is this a real possibility?

2. Review authority for SB 35 cases. Staff recommends that the PC be the review authority for SB 35 applications. But the report further states that "the Commission would only be able to apply objective standards to the project and would not be able to apply the discretion normally used in the review of planning applications." If this is really true, in absence of our discretion, the PC simply becomes the rubber stamp for the application. We would hold a hearing, allow the public to comment, express their views - ones we might share or not, and then, hands tied, approve the project assuming it objectively met criteria. If this is really the case I would rather have the Commission elect to modify the Resolution to indicate that decisions on SB 35 applications shall be issued on an administrative basis by staff. The Commission could hold workshops and that would be the accurate description of the hearing - members of the public wouldn't be under the mistaken assumption that the Commission could actually take any action on their comments.

3. SB9. Does staff have any idea how many potential lots there are that could be subject to SB9? Are there any examples that we could reference? I know I would benefit from listening to staff's report and the other Commissioners' comments on this matter. In the absence of that additional wisdom, I lean in the following direction:

a. 1800 square foot maximum floor area seems appropriate, I would not favor anything larger.

b. Do not eliminate the requirement for access to a public right of way. The fire danger in Marin is too great and we have enough egress and access issues in too many parts of the County to eliminate this requirement. This should also be part of the safety update to the CWP.

c. While there may be certain problems with not having an owner on site after an urban lot split, requiring such an on site requirement may provide a deterrent to taking advantage of SB9. I do think it would be wise to consider a ban on temporary rentals of such properties, or a requirement that the property cannot be rented for fewer than a certain number of days. Requiring that a certain percentage of the residents are low or moderate income would be another way to ensure that the intention of SB9 is met.

d. Finally, with regard to the proposal to allow ADUs on an urban lot split for a total of 6 units on the property - I defer to the Commission and wish I could be there to learn from everyone's opinion on this one.

Thanks.

Margot

Sent from my iPad

Mosher, Ana Hilda

From: Judy Schriebman <judy@leapfrogproductions.com>
Sent: Thursday, April 7, 2022 2:26 PM
To: PlanningCommission
Cc: BOS; <Susan@catalystsca.org>

Subject: Proposed SB-9 and SB-35 interim ordinances

Dear Planning Commission and Board of Supervisors:

The heavy hand of the state will ruin Marin's open spaces, rural character and diverse neighborhoods. These actions are not addressing the root cause of excessive housing prices which lie in a complex web of hedge fund and real estate speculation, foreign investments, short term rentals, stagnant wages for workers while CEO's reap enormous salaries, and an inherently non-sustainable economic system built on perpetual growth. None of the interim measures or state policies will address chronic homelessness, the housing insecure, or those in below the poverty level. In fact, these policies will only bring more expensive homes and over development to Marin at the cost of our health, safety, nature's biodiversity, schools, transportation and limited water supply.

You need to take serious, direct action to save Marin until these developer and financial interests backed state policies are overturned. The interim policies need to be pushed back on as staff have inappropriately disrespected Marin's legacy of protecting nature, backyards (that are increasingly desired by fleeing city dwellers!) and open spaces for public recreation (areas where everyone from the East Bay and SF are now coming to, given the overcrowding they have in their own cities).

Specifically:

1. DO NOT agree with staff's proposal to allow three additional ADUs in addition to the lot splits and duplexes that SB-9 mandates.This would increase potential buildout to 8 units on a single-family lot, instead of 4 units and instead of the one unit currently in place. Marin County Staff is completely out of touch with Marin's residents and others who seek a small piece of back yard, setbacks, trees. It also completely disregards the cumulative effects of creating more IMPERVIOUS SURFACE which leads to less water infiltration, starving our creeks, as well as increased stormwater flooding downstream. It is sad that there is NO understanding of these processes at the staff level.

2. **Counties are allowed to establish ministerial requirements** on design specifications for multifamily projects, considering standards for floor area ratios, maximum heights, minimum setbacks, and protections for streams and wetlands. Setbacks are important, as are reasonable FAR, maximum heights and protections for streams and wetlands. These should NOT be changed from the CWP. If anything, they should be strengthened. Encroachment into the SCA is leading to incision and erosion from constricted streams, as well as de-watering the landscape which means creeks going dry and baby fish are trapped. We are working hard with OneTam, the NPS and other state and federal and local groups and agencies to SAVE and enhance our remaining salmon and steelhead. This will be another nail in their coffin.

3. INSIST on the 3 year owner occupancy for one of the properties on the lot split. This will rule out corporate investors who are pooling investor funds to buy up properties, split them, build wall to wall plexes and then rent them out at high rates; again, not creating any new low income housing. It has been shown in other areas where this lot split occurs, it is only the investors who reap the benefits. The housing costs remain the same, denying staff's assertion that this would bring in diversity.

As Richard Halstead says in the first paragraph in the IJ, SB 9 and SB 35 "virtually eliminate local control over new residential development." **Loss of local control benefits developers and real estate investors. NOT the public; not the poor; not the homeless.** There is no requirement for SB 9 to provide affordable housing. Evidence shows that higher

density increases the cost of living, including housing, especially when housing stock changes from individual home ownership to rental units owned by Wall Street.

This moment is critical for you to take a firm stand against these aggressive, non-functional, monied interests backed rules. Climate change is sadly enhanced by removing trees, rain water infiltrating open spaces, drought and fire, and **buildings account for 40% of all GHG emissions,** according to Architecture 2030. Add in other infrastructure and activities, such as transportation, that are associated with buildings, and that number jumps.

These new housing mandates, in Marin, are bringing us ever closer to the precipice. We need to protect what we have, build what we need, not what the state says we need, and push back against the money and corrupt thinking on these complex issues.

Sincerely,
Judy Schriebman
San Rafael, CA 94903

215 Julia Ave
Mill Valley, CA 94941

April 7, 2022

Marin County Planning Commission
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
planningcommission@marincounty.org

Re: Interim Ordinances to implement Senate Bill 35 and Senate Bill 9

Dear Marin County Planning Commission,

We urge you to design the Interim Ordinances, which implement Senate Bill 35 and Senate Bill 9, in such a way that they restrict the bills and maintain the integrity of single-family neighborhoods to the greatest extent possible. By doing so, you will protect public health and safety, preserve the environment, and maintain quality of life.

I. About Senate Bill 35 and Senate Bill 9

Both SB-35 and SB-9 are atrocious, fundamentally flawed laws that take away local control of land use, streamline the review of housing projects, endanger public health and safety, harm the environment, and ruin residents' quality of life. In addition, Senate Bill 9 destroys single-family neighborhoods. These laws were written to line the pockets of Big Wall Investment Firms, Big Real Estate, and Big Tech and do little to promote affordable housing. Indeed, there is absolutely no requirement for any affordable housing to be built in SB-9.

To understand the potential profound adverse consequences of Senate Bill 9, please read Sharon Rushton's article entitled; "**Misguided Housing Bill Bans Single-Family Zoning Forever: Here are SB-9's nitty gritty details**". This analysis examines the fine print of the final version of Senate Bill 9 and sheds light on misinformation that mainstream media has propagated. Below are a link to and an important excerpt from the piece. We have also attached the article in **Addendum I** of this letter.

Link to article:

https://marinpost.org/blog/2021/10/16/misguided-housing-bill-bans-single-family-zoning-here-are-the-nitty-gritty-details-about-sb-9

Excerpt from Sharon Rushton's article entitled; ""Misguided Housing Bill Bans Single-Family Zoning Forever: Here are SB-9's nitty gritty details":

"SB-9 Significantly Increases The Risk Of Adverse Impacts

SB-9's vast up-zoning, without any environmental review of potential adverse impacts and cumulative effects, is reckless.

The 2007 Marin Countywide Plan's (CWP's) Environmental Impact Report (EIR) projected potential growth of 14,043 more housing units (more than the current number of homes in Sausalito and Mill Valley combined) and 29,759 more residents, if land vacant in 2006 were fully developed according to zoning designations of the cities in Marin County and the Countywide Plan. This didn't include density bonuses. Alarmingly, the EIR concluded that "land uses and development consistent with the CWP would result in 42 significant unavoidable adverse impacts", including worse traffic congestion and insufficient water supplies.

There are more than 61,200 single-family dwellings in Marin, according to a 2006 report by the County Assessor-Recorder. The County's average household size is 2.35 people (per the CWP's EIR). So, potential growth consistent with SB-9, in which single-family homes turn into duplexes or four homes, could be up to 183,600 more homes and 431,460 more residents, over and above the CWP EIR's forecast. Such expansion is unsustainable.

SB-9's subsequent housing density, population growth and changes to development standards would increase the risk of adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (water supply), public services (schools), views, sunlight, privacy, neighborhood character, and quality of life."

II. Sustainable TamAlmonte's Recommendations

Although some of Staff's recommendations are good, many more of Staff's recommendations embrace SB-9 and are completely out of touch with the vast majority Marin residents' viewpoints.

We urge you to do the following to restrict SB-35 and SB-9 to the greatest extent possible:

A. Prohibit SB-35 and SB-9 housing projects in Stream Conservation Areas (SCA) and Wetland Conservation Areas (WCA).

B. Prohibit SB-35 housing projects in all locations that are exempt, according to the law.

SB-35 states; "(6) The development is not located on a site that is any of the following..." and then lists many locations (E.g. Coastal Zone, wetlands, hazardous waste site, flood hazard area, etc.) where SB-35 projects are not allowed. Please disallow SB-35 housing projects in all of these specified locations.

C. Prohibit SB-9 housing projects in hazardous areas. To do so, complete a cumulative Environmental Impact Report for all potential SB-9 projects in all single-family zones throughout Unincorporated Marin in order to prove that the projects would have a specific, adverse impact upon public health and safety or the physical environment and for which there is no feasible method to mitigate the impact.

Marin County can deny SB-9 projects and protect hazardous properties from the increased risk of environmental impacts caused by the overly dense development of SB-9 by complying with the following section of the bill.

Excerpt from the text of SB-9 (in blue):
"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

For every single proposal to up-zone a single-family parcel to 4 units (via SB-9), Marin County would have to make a written finding, based upon a preponderance of evidence, that the proposed housing development project would have a specific, adverse impact 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. This could be very costly.

Moreover, the evaluation of just one single-family parcel (at which a single-family home would be converted into 4 units) at a time, won't show the true adverse impacts of housing development per SB-9. Cumulative impacts would most likely be necessary. So, the County would need to do some sort of environmental or safety assessment for all its single-family zones.

We strongly recommend that all potential SB-9 housing developments be evaluated by the Environmental Impact Report that will be completed for the Housing Element Update. This will give the County the means to deny SB-9 projects in hazardous areas in accordance with the law.

D. Prohibit lots and housing projects created under SB-9 in the Wildlands Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones, and Constrained Areas with unsafe access and evacuation routes.

SB-9 endangers communities in the Wildlands Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones, and Constrained Areas with unsafe access and evacuation routes. This is because the law dramatically increases potential housing density and population (potentially tripling the population) in these hazardous communities, while reducing or eliminating off-street parking requirements. This will lead to streets being overcrowded. **Dire consequences could result during an emergency when residents are unable to evacuate and fire trucks/paramedics are unable to reach their destinations.**

Therefore, SB-9 lot splits and housing projects should be prohibited in these dangerous communities. Please see **Section B** of this letter in order to know how SB-9 provides for the County to do this.

E. Require owner occupancy for three years after an urban lot split. If possible, require owner occupancy in perpetuity after an urban lot split.

Marin County should give priority to the wellbeing of Marin residents over the profits of corporate landlords. Marin residents cherish their single-family neighborhoods and do not want them destroyed by corporate greed.

Moreover, unaccountable corporate landlords are notorious for squeezing renters in every imaginable way, setting up byzantine ownership and management structures that harm tenants and neighborhoods.

Excerpt from NPR article entitled; "Amid a housing crisis, renters challenge firms they say are being exploitive":

"Ellen Davidson is a housing attorney with the Legal Aid Society in New York City. Davidson says corporate landlords often take the value out of a building. 'They raise rents, cut costs as severely as possible, which usually means deferred maintenance, neglect, failure to make repairs, making buildings more dangerous...' "

Please read the Atlantic article by Alexander Ferrer entitled; **"The Real Problem With Corporate Landlords"**; the NPR article by Marisa Penaloza entitled; **"Amid a housing crisis, renters challenge firms they say are being exploitive";** and the Hedgeclippers article entitled; **"Billionaire Corporate Landlords Are Exacerbating California's Housing Crisis"**

Links to articles:

- https://www.theatlantic.com/ideas/archive/2021/06/real-problem-corporate-landlords/619244/
- https://www.npr.org/2022/02/10/1078968784/amid-a-housing-crisis-renters-challenge-firms-they-say-are-being-exploitative
- https://hedgeclippers.org/hedge-papers-no-69-billionaire-corporate-landlords-are-exacerbating-californias-housing-crisis/

F. Prohibit the development of Accessory Dwelling Units (ADUs) after an SB-9 urban lot split or housing project.

State law allows the County to prohibit ADUs on properties that have undergone an urban lot split under SB-9 and therefore your Commission should include this requirement in the Ordinance. If the Ordinance is revised to prohibit ADUs after urban lot splits, then a lot could be divided into two and then two primary units would be allowed on each resulting lot for a maximum total of four units.

We strongly disagree with Staff's recommendation to allow ADUs. Allowing a further increase in density and population will only exacerbate environmental impacts. We also strongly disagree with Staff's assessment that units subject to size limits create more opportunities for developing housing that is affordable by design. A housing unit will only be affordable if the unit's rent or sale price is restricted or if the income of the tenant or owner is subsidized.

There is absolutely no requirement for SB-9 to provide affordable housing and no evidence that higher density lowers housing costs. In fact, housing costs increase when housing stock changes from individual home ownership to rental units owned by Wall Street. Forbes (12/2/21) describes California housing legislation as *California Scheming*.

G. Per Staff's recommendation, the Planning Commission should be the review authority for SB-35 applications and the Planning Commission's decisions should be appealable to the Board of Supervisors.

Sending SB-35 applications to the Planning Commission provides the public with an opportunity to voice their opinions about a project.

H. In order to maintain the traditional size of homes in single-family zones, do not limit the floor area of new residences allowed under the provisions of SB-9 to 1800 sq. ft. or 800 sq.

ft, per Staff's recommendations. However, we agree that the total Floor Area Ratio should be maintained at 30%.

III. Conclusion

We urge you to design the Interim Ordinances, which implement Senate Bill 35 and Senate Bill 9, in such a way that they restrict the bills and maintain the integrity of single-family neighborhoods to the greatest extent possible. By doing so, you will protect public health and safety, preserve the environment, and maintain quality of life.

Thank you in advance for your conscientious consideration.

Very truly yours,
/s/
Sharon Rushton, President
Sustainable TamAlmonte

Enclosure

ADDENDUM I

https://marinpost.org/blog/2021/10/16/misguided-housing-bill-bans-single-family-zoning-here-are-the-nitty-gritty-details-about-sb-9

Misguided Housing Bill Bans Single-Family Zoning Forever: Here are SB-9's nitty gritty details

By Sharon Rushton, The Marin Post, October 16, 2021

Senate Bill 9 (Atkins), a controversial and fundamentally flawed housing bill, was signed into law by Governor Newsom on September 16th. The bill is an unprecedented taking of local planning powers that hands county, city and community decision-making directly to housing developers. Overtime, the legislation will ruin treasured single-family neighborhoods.

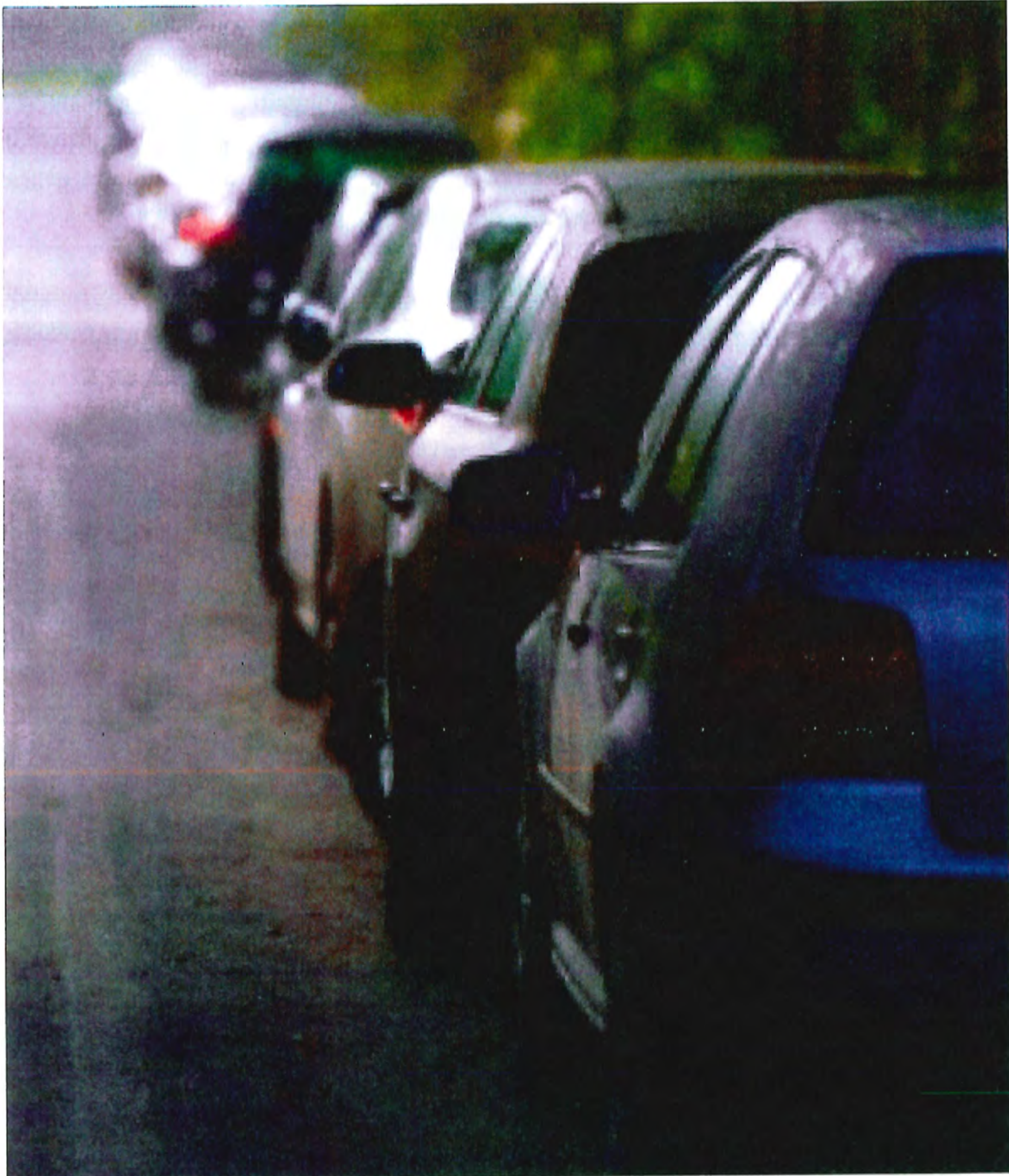
SB-9 ends single-family zoning and requires local governments to let property owners split single-family parcels (as small as 2400 sq. ft.) into two lots (each as small as 1200 sq. ft.) and then build duplexes on each lot. The result would be four homes, where there used to be only one. Side and rear setbacks are restricted to only four feet and off-street parking requirements are significantly reduced or eliminated.

"Ministerial" approval streamlines the permit process and eliminates discretionary review, environmental review in compliance with the California Environmental Quality Act (CEQA), and public hearings, thereby stifling public engagement, democracy, high-quality development, and environmental protections.

The Office of the Governor and the authors of the bill claim these provisions will expand housing options for people of all incomes. However, there is absolutely no requirement for any affordable housing to be built in the legislation.

This article examines the fine print of the final version of Senate Bill 9 and sheds light on misinformation that mainstream media has propagated.

SB-9 Severely Lowers Off-Street Parking Requirements



SB-9 lowers parking requirements to just one space per home and totally eliminates parking requirements on developments located within one-half mile walking distance of either a "high-quality transit corridor" or a "major transit stop" or if there is a car share vehicle located within one block of the parcel.

- A "high-quality transit corridor" means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.
- A "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

SB-9 Endangers Communities in the Wildland Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones, and Constrained Areas with inadequate access and evacuation routes

Burning Vehicle - Flickr

SB-9 endangers communities in the Wildland Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zone, and Constrained Areas with inadequate and unsafe access and evacuation routes in the event of a fire or other emergency. As housing density and population significantly increase, the access and evacuation routes of these hazardous neighborhoods will become even more congested. Dire consequences could result during

an emergency when residents are unable to evacuate and fire trucks/paramedics are unable to reach their destinations.

Moreover, the bill makes it very difficult for local jurisdictions to protect these hazardous areas.

Numerous articles incorrectly claim that SB-9 exempts High and Very High Fire Hazard Severity Zones. However, the fine print tells a different story.

SB-9 does **not** directly protect fire hazard severity zones with inadequate and unsafe access and evacuation routes in the event of a fire or other emergency due to the below clause (in blue & bold) from **Government Code Section 65913.4**, which SB-9 incorporates.

Excerpt from the text of SB-9 (in blue):

"Section 1 (a) (2)

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of **Section 65913.4."**

This references the below Section 65913.4 in the Government Code regarding the specific prohibited sites:

Excerpt from CHAPTER 4.2 Housing Development Approvals: Government Code Section 65913.4 (in blue):

"(a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(6) The development is not located on a site that is any of the following: ...

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. **This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard**

mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development."

Any new development would need to comply with fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures. Building standards don't mandate off-street parking or improve street conditions. So, this section of the bill, which incorporates Government Code Section 65913.4, does nothing to protect hazardous communities with inadequate and unsafe emergency access and evacuation routes.

The only way a jurisdiction can possibly protect hazardous properties with inadequate and unsafe emergency access and evacuation routes is to comply with the following new section that was recently added to the bill.

Excerpt from the text of SB-9 (in blue):

"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

So, for every single proposal to up-zone a single-family parcel to 4 units (via SB-9), a jurisdiction would have to make a written finding, based upon a preponderance of evidence, that the proposed housing development project would have a specific, adverse impact 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. This could be very costly.

Moreover, the evaluation of just one single-family parcel (at which a single-family home would be converted into 4 units) at a time, won't show the true adverse impacts of housing development per SB-9. Cumulative impacts would most likely be necessary. So, a jurisdiction would need to do some sort of environmental or safety assessment for all its single-family zones. Again, this type of broad assessment would be very time consuming and expensive.

Communities in the Wildland Urban Interface, High Fire Hazard Zones, Very High Fire Hazard Zones and Constrained Areas should be automatically exempt from SB-9 but they are not.

<u>SB-9 Endangers Communities In Earthquake Fault Zones</u>

San Andreas Fault - Wikipedia

Similar to the exclusion of fire risk areas, SB-9's exemption for earthquake fault zones is meaningless. The fault zone exemption doesn't apply if the duplexes (or fourplexes) comply with applicable seismic protection building code standards, which any new development would abide by.

Excerpt from the text of SB-9 (in blue):

"Section 1 (a) (2)

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of **Section 65913.4."**

This references the below Section 65913.4 in the Government Code regarding the specific prohibited sites:

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"(a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(6) The development is <u>not</u> located on a site that is any of the following: ...

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, **unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission** under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2."

Like fire risk areas, the only way a jurisdiction can protect hazardous properties in earthquake fault zones is to comply with the following new section that was recently added to the bill, which would be time consuming and costly for a jurisdiction.

Excerpt from the text of SB-9 (in blue):

"(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical

environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

SB-9 Limits Side & Rear Setbacks To Just 4 Feet

BEFORE NEW ADU LEGISLATION:
Lush Gardens

AFTER NEW ADU LEGISLATION:
Side & Rear Setbacks Are Limited To Just 4 Feet

On September 17th, a Bay Area News Group published an article by Maggie Angst entitled; "What California's new SB9 housing bill means for single-family zoning in your neighborhood". The article states: "Developments must still follow local zoning rules such as those governing height and yard size requirements." This is false.

Excerpt from the text of SB-9 regarding setbacks (in blue):

"(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section...

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines."

Per the above excerpt, a jurisdiction may require side and rear setbacks of up to 4 feet but no larger. This is the same as the setback requirements in the new Accessory Dwelling Unit (ADU) legislation.

Therefore, SB-9 eliminates the following aesthetic and functional benefits that proper setbacks provide:

- **Better protection of public safety:** Having space between houses and streets, etc., ensures that in the case of a fire or other emergencies, first responders can access the property and residents can evacuate rapidly and safely.
- **Better preservation of the environment:** For residential properties that are located adjacent to streams, wetland, forests, and other natural habit, proper setbacks are critical for the wellbeing of the habitat and wildlife, including endangered species, that live there.
- **Better services:** Proper setbacks ensure that maintenance personnel can safely and easily access the property for such services as sewer, utilities, and cable, etc.
- **Better ventilation and public health:** Not having a house squished up against another house or roadways gives residents cleaner air. This means residents won't be breathing in toxic exhaust or a neighbor's smoking habit.
- **Better lighting:** Property setbacks ensure that there is plenty of space around dwellings to bring in natural light and better visual access.
- **Better sound insolation:** Property setbacks help ensure better sound insulation by building away from busy intersections and other noisy environments.
- **Better landscape:** Landscaping makes a home more inviting and gives a sense of ease. Gardens provide residents with a place to enjoy the outdoors and commune with nature. They give children a place to play. Trees remove carbon from the air and help to cool our communities. Permeable ground cover helps to replenish groundwater resources, restore hydrologic balance and reduce runoff volume.
- **Additional benefits:** Property setbacks help ensure buildings don't fall over each other in the case of a natural disaster, like an earthquake or fire. They encourage outdoor activities in public areas, and help keep the sanity of society by giving people enough room to roam.

SB-9 Reduces The Ability To Achieve The American Dream – Owning A Single-Family Home In A Single-Family Neighborhood

Single Family Home - Flickr

A 2019 Redfin survey found that regardless of where people live within the US, more than 85% of home buyers and sellers (including millennials) prefer single-family homes with more space, privacy, and gardens over a unit in a triplex that has a shorter commute.

Moreover, realtors report a recent trend of city dwellers wanting to move to single-family neighborhoods in the suburbs to escape dense living conditions, which contribute to the spread of COVID-19.

Over time, the bill will cause the supply of single-family homes to diminish due to conversions to duplexes or "fourplexes" and the price for the remaining single-family dwellings will become even more expensive. This will make it more difficult for residents to attain their preferred lifestyle.

SB-9 Restricts Who Can Apply For A Lot Split And/Or Duplex

Wall Street - Wikipedia

SB-9 restricts who can apply for a lot split and/or duplex, in accordance with the bill.

Excerpt from the text of SB-9 (in blue):

"(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. (2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code."

So, either the applicant will reside on the property for 3 years or else the applicant is a "community land trust" or a "qualified nonprofit corporation".

What is a "Community Land Trust"? https://codes.findlaw.com/ca/revenue-and-taxation-code/rtc-sect-402-1.html

"(ii) **"Community land trust"** means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:
(I) Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.
(II) All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income.
(III) The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years."

What is a "Qualified Nonprofit Corporation"? https://codes.findlaw.com/ca/revenue-and-taxation-code/rtc-sect-214-15.html

Here's a description of a "**qualified nonprofit corporation**" as described in Section 214.15 of the Revenue and Taxation Code:

"(a) Property is within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution if that property is owned and operated by a nonprofit corporation, otherwise qualifying for exemption under Section 214 , that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low-income families, with financing in the form of a zero interest rate loan and without regard to religion, race, national origin, or the sex of the head of household."

Therefore, for the time being, the bill seems to hinder for-profit Big Wall Street Investment Firms or Big Real Estate Developers from buying up single-family residences and turning them into fourplexes for profit. However, it would be easy for the legislators to make a minor edit to the legislation next year and allow for this to happen in the near future.

SB-9 Significantly Increases The Risk Of Adverse Impacts

Sewage Spill - Wikipedia

SB-9's vast up-zoning, without any environmental review of potential adverse impacts and cumulative effects, is reckless.

The 2007 Marin Countywide Plan's (CWP's) Environmental Impact Report (EIR) projected potential growth of 14,043 more housing units (more than the current number of homes in Sausalito and Mill Valley combined) and 29,759 more residents, if land vacant in 2006 were fully developed according to zoning designations of the cities in Marin County and the Countywide Plan. This didn't include density bonuses. Alarmingly, the EIR concluded that "land uses and development consistent with the CWP would result in 42 significant unavoidable adverse impacts", including worse traffic congestion and insufficient water supplies.

There are more than 61,200 single-family dwellings in Marin, according to a 2006 report by the County Assessor-Recorder. The County's average household size is 2.35 people (per the CWP's EIR). So, potential growth consistent with SB-9, in which single-family

homes turn into duplexes or four homes, could be up to 183,600 more homes and 431,460 more residents, over and above the CWP EIR's forecast. Such expansion is unsustainable.

SB-9's subsequent housing density, population growth and changes to development standards would increase the risk of adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (water supply), public services (schools), views, sunlight, privacy, neighborhood character, and quality of life.

SB-9 Will Create Unfunded Mandates

Bankruptcy - Flickr

SB-9 will create unfunded mandates. There is no funding for dealing with the above listed impacts and the bill provides an official sidestep of addressing this issue, per the below excerpt. Local jurisdictions and taxpayers will be responsible for paying the costs.

Excerpt from the text of SB-9 (in blue):

"**SEC. 5.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act…"

National Law Review Article About Senate Bill 9

For more specifics about Senate Bill 9 and other recently enacted housing legislation, please click **HERE** to read the National Law Review article entitled; "**California Enacts New Legislation to Combat Growing Housing Crisis, But Not Without Controversy**".

TAKE ACTION!

Please support the **Californians for Community Planning Initiative**. This ballot measure will amend the State Constitution to ensure zoning, land-use and development decisions are made at the local level, and to stop the multitude of legislative bills like SB-9, emanating from Sacramento that seek to override municipal and county control over land-use and development. They hope to put this measure on the ballot for the General Election on November 8, 2022.

To learn more about the initiative and to donate your time or money to the cause, please click on the below links:

Link to More Information: www.communitiesforchoice.org

Link to the Video: https://youtu.be/rXyValtxDQ0

Link to the Initiative Text: https://www.communitiesforchoice.org/initiative-text/

Link to FAQs: https://www.communitiesforchoice.org/faq/

Link to Donate Money to the Cause: https://www.communitiesforchoice.org/support/

Link to Volunteer: https://www.communitiesforchoice.org/volunteer/

Mosher, Ana Hilda

From:	Susan Kirsch <susan@susankirsch.com>
Sent:	Friday, April 8, 2022 11:37 AM
To:	PlanningCommission
Cc:	BOS; Marin IJ - Richard Halstead
Subject:	Marin County Housing Element, Staff Recommendations
Attachments:	Marin PC, BOS.Housing.docx

I have attached and cut-and-pasted my comments urging you to oppose staff recommendations re: SB 9.

Catalysts for Local Control
PO BOx 1703, Mill Valley CA 94942
CatalystsCA.org 415-686-4375

April 8, 2022

Marin County Planning Commission: PlanningCommission@MarinCounty.org
Cc: Marin County Board of Supervisors: BOS@MarinCounty.org

RE: Staff Recommendations re: SB-9 - OPPOSE

Dear Marin Planning Commission:

You will be considering staff recommendations re: the Marin County Housing Element. I am submitting comments on two of the most egregious recommendations and urge you to vote against them.

What are the staff recommendations? The Planning Department staff recommends giving developers even more than the state requires. Rather than protecting residents, staff recommends siding with the extremes of the state.

1. Marin County could comply with state law and still control density by putting limits on ADU's after a lot split. That option would allow two units each on the lot split for a maximum of 4 housing units. Instead, staff recommends allowing four houses plus three ADUs on what is now a single-family home.
2. Marin County could require three-year owner occupancy for one of the properties on the lot split. That would rule out corporate investors for at least three years. It would mean outsider investors would have to live with the messes they make—parking, fire/flood hazards, congestion, loss of green space, and views. Instead, staff recommends waiving that option, claiming, without evidence, they'll get more diversity.

What is the impact? Marin IJ reporter Richard Halstead says in the first paragraph of his article (4/5/22) that SB 9 and SB 35 "virtually eliminate local control over new residential development." Loss of local control benefits developers and real estate investors without commensurate benefit to communities. There is no requirement for SB 9 to provide affordable housing and no evidence that higher density lowers housing costs. In fact, housing costs increase when housing stock changes from individual homeownership to rental units owned by Wall Street. Forbes (12/2/21) describes California housing legislation as *California Scheming*.

What are the problems with the staff recommendations? SB9 and SB35 miss the mark by assuming housing supply is the problem and housing production is the answer. However, housing ***affordability*** and **poverty** are the problems. SB 9 expedites the transfer of wealth from constituents and counties to outside, monied-interests in a

process called the globalization of housing. HCD's *2022 Statewide Housing Plan* is a simplistic analysis of the causes of the affordability crisis. The CA Audit Department reviewed HCD and the RHNA Methodology and found serious shortcomings. The Regional Housing Need Allocation (RHNA) numbers are unreliable, inflated, and unattainable. Four cities in Southern California have filed a lawsuit against SB9, an action the county should consider.

Boldly recommend in favor of your neighbors and constituents rather than complying with the extremes of the state. We urge you to oppose the staff recommendations.

Sincerely,
Susan Kirsch
Catalysts, Director
www.catalystsca.org
415-686-4375

POB 1703, Mill Valley, CA 94942
CatalystsCA.org 415-686-4375

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Sincerely,

Susan Kirsch

Mosher, Ana Hilda

From:	Jackson Stomberg <jcstromberg@comcast.net>
Sent:	Sunday, April 10, 2022 3:42 PM
To:	PlanningCommission; BOS
Cc:	'Susan Kirsch'
Subject:	Lackeys for the Absentee Developers

Dear Commissioners,

Please recognize that your staff are ideogues driven by a false view of the County's housing needs. I strongly recommend that you listen to your constituents and disregard your staff recommendatins.

What are the staff recommendations? The Planning Department staff recommends giving developers even more than the state requires. Rather than protecting residents, staff recommends siding with the extremes of the state.

1. Marin County could comply with state law and still control density by putting limits on ADU's after a lot split. That option would allow two units each on the lot split for a maximum of 4 housing units. Instead, staff recommends allowing four houses plus three ADUs on what is now a single-family home.

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Jackson C Stromberg
27 Throckmorton Lane,
Mill Valley Ca 94941

Mosher, Ana Hilda

From:	Lisa Barnes <lisa_barnes@yahoo.com>
Sent:	Sunday, April 10, 2022 9:01 PM
To:	PlanningCommission; Lai, Thomas; JTijirian@marincounty.org
Subject:	Interim Ordinances to implement Senate Bill 35 and Senate Bill 9
Attachments:	Sustainable TamAlmonte letter to Marin County PC re Interim Ordinances for SB-35 & SB-9 4-7-22.pdf

I am writing to endorse the Sustainable Tam Almonte letter (attached) regarding the above subject.

Thank you
Lisa Barnes
604 Eucalyptus Way
Mill Valley, CA 94941

Sent from my iPhone

Mosher, Ana Hilda

From:	Carolyn Lenert <CAROLYNREALESTATE@msn.com>
Sent:	Sunday, April 10, 2022 3:35 PM
To:	PlanningCommission; Tejirian, Jeremy; Lai, Thomas
Subject:	DEEPLY FLAWED: Interim Ordinances to implement Senate Bill 35 and Senate Bill 9
Attachments:	Sustainable TamAlmonte letter to Marin County PC re Interim Ordinances for SB-35 & SB-9 4-7-22.pdf

Commissioners, Ladies and Gentlemen:

I write to endorse the attached letter and attachment of Sustainable TamAlmonte to the Marin County Planning Commission regarding the Interim Ordinances to implement the fatally-flawed Senate Bills 35 and 9.

Thank you for your attention to this.

Very truly yours,
Carolyn Lenert

p.s. I am a 30-year resident of Marin, a retired community leader and an active Realtor with 21 years' of experience here.

Mosher, Ana Hilda

From:	Bill Fridl <bf@u-write.com>
Sent:	Sunday, April 10, 2022 6:07 PM
To:	PlanningCommission
Subject:	Please protect our neighborhoods from Texas-style zoning (Senate Bill 35 and Senate Bill 9)

Hi there,

My understanding is that Marin government should be representing the interests of Marin residents. So here's a fact: Marin neighborhoods will ***not*** become better once carpetbaggers squeeze in as many units as they can on residential lots.

Yes, we all want to save the world, but you have a job, and that is to represent the interest of <u>Marin</u> <u>residents</u>. Screwing-up our neighborhoods is not proper representation.

Thanks for listening,

Bill
Cleveland Ave (19 years!)
Mill Valley, CA

Mosher, Ana Hilda

From: Kim Burggraf <kkburggraf@gmail.com>
Sent: Sunday, April 10, 2022 3:51 PM
To: PlanningCommission; BOS
Subject: Oppose SB9

Marin County Planning Commission: PlanningCommission@MarinCounty.org
Cc: Marin County Board of Supervisors: BOS@MarinCounty.org

RE: Staff Recommendations re: SB-9 - OPPOSE

Dear Marin Planning Commission:

You will be considering staff recommendations re: the Marin County Housing Element. I am submitting comments on two of the most egregious recommendations and urge you to vote against them.

What are the staff recommendations? The Planning Department staff recommends giving developers even more than the state requires. Rather than protecting residents, staff recommend siding with the extremes of the state.
Marin County could comply with state law and still control density by putting limits on ADU's after a lot split. That option would allow two units each on the lot split for a maximum of 4 housing units. Instead, staff recommends allowing four houses plus three ADUs on what is now a single-family home.
Marin County could require three-year owner occupancy for one of the properties on the lot split. That would rule out corporate investors for at least three years. It would mean outsider investors would have to live with the messes they make—parking, fire/flood hazards, congestion, loss of green space and views. Instead, staff recommends waiving that option, claiming, without evidence, they'll get more diversity.

What is the impact? Marin IJ reporter Richard Halstead says in the first paragraph of his article (4/5/22) that SB 9 and SB 35 "virtually eliminate local control over new residential development." Loss of local control benefits developers and real estate investors without commensurate benefit to communities. There is no requirement for SB 9 to provide affordable housing and no evidence that higher density lowers housing costs. In fact, housing costs increase when housing stock changes from individual home ownership to rental units owned by Wall Street. Forbes (12/2/21) describes California housing legislation as *California Scheming*.

What are the problems with the staff recommendations? SB9 and SB35 miss the mark by assuming housing supply is the problem and housing production is the answer. However, housing ***affordability*** and **poverty** are the problems. SB 9 expedites the transfer of wealth from constituents and counties to outside, monied-interests in a process called the globalization of housing. HCD's *2022 Statewide Housing Plan* is a simplistic analysis of the causes of the affordability crisis. The CA Audit Department reviewed HCD and the RHNA Methodology and found serious shortcomings. The Regional Housing Need Allocation (RHNA) numbers are unreliable, inflated, and unattainable. Four cities in Southern California have filed a lawsuit against SB9, an action the county should consider.
Boldly recommend in favor of your neighbors and constituents rather than complying with the extremes of California schemes. We urge you to oppose the staff recommendations.

Sincerely,
Kim Burggraf
46 Canyon Road
Fairfax, CA 94930

Mosher, Ana Hilda

From:	Toni Shroyer <tonishroyer@hotmail.com>
Sent:	Sunday, April 10, 2022 12:50 PM
To:	PlanningCommission
Cc:	BOS; Susan@catalystsca.org
Subject:	OPPOSE Staff Recommendations re: SB-9

Dear Planning Commission,

I support the letter that Community Catalysts have written to you on April 8, 2022 opposing SB-9. Instead of helping the poor, these extreme densities add to corporate developers' coffers. When these corporations incorporate into non-profits, they don't pay real estate taxes, which is much needed for our infrastructure---- and bleeds our scant resources even further.

The Planning Department needs to work for the residents of Marin, instead of caving into wealthy high-density developers.

SB-9 helps developers get rich as the Regional Housing Need Allocation (RHNA) numbers are unsustainable and simply not reliable.

What about our lack of water? The county has not provided a viable solution with our consistant droughts and the building of thousands of more units.

Please work for the good people of Marin and oppose SB-9.

Respectfully,

Toni Shroyer

Toni Shroyer Realtor, SRES (Senior Real Estate Specialist)

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Mosher, Ana Hilda

From:	Susan hayes <suehayesmv@yahoo.com>
Sent:	Sunday, April 10, 2022 2:16 PM
To:	PlanningCommission
Subject:	Interim Ordinances

To Planning Commission,

We urge the Planning Commission to design the Interim Ordinances, which implement Senate Bill 35 and Senate Bill 9, in such a way that they restrict the bills and maintain the integrity of single-family neighborhoods to the greatest extent possible. By doing so, they will protect public health and safety, preserve the environment, and maintain quality of life.

Thank you,

Susan Hayes
Harry Humphrey
Mill Valley

Mosher, Ana Hilda

From: Dororthy McQuown <dr.dorothym@yahoo.com>
Sent: Sunday, April 10, 2022 2:32 PM
To: PlanningCommission; Tejirian, Jeremy; Lai, Thomas
Subject: SB 35 and SB9 Implementation

I am writing to endorse the letter from TamAlmonte to you regarding how these two bills will be implemented in our county. As a long-time resident of Marin I urge the Planning Commission to design the Interim Ordinances, which implement Senate Bill 35 and Senate Bill 9, in such a way that they restrict the bills and *maintain the integrity of single-family neighborhoods* to the greatest extent possible. By doing so, they will protect public health and safety, preserve the environment, and maintain quality of life for those of us here. Thank you. Dorothy McQuown, Ph.D., Mill Valley, CA

Mosher, Ana Hilda

From:	Jenny Kerr <jenniferher@gmail.com>
Sent:	Sunday, April 10, 2022 3:00 PM
To:	PlanningCommission
Subject:	Endorsement of Sustainable TamAltamonte's findings
Attachments:	Sustainable TamAlmonte letter to Marin County PC re Interim Ordinances for SB-35 & SB-9 4-7-22.pdf

Dear Planning Commission,

We are in agreement with sustainable TamAltamonte's recommendations for reining in SB9 and 35. Not only will these bills be beneficial only to real estate investors and speculators, they will prove utterly disastrous to the environment, especially since environmental review will be eviscerated. These bills ill make things worse, not better. Please do not allow greed be the undoing of our community.

Sincerely,

Jennifer Kerr

Mosher, Ana Hilda

From:	Helen Salem <helen.salem@comcast.net>
Sent:	Sunday, April 10, 2022 12:06 PM
To:	PlanningCommission
Cc:	BOS
Subject:	Oppose Staff Recommendations: SB 9

Marin Planning Commission:

As a Marin County resident, I am opposed to the elimination of local control over new residential development, a dire consequence of SB 9. With no requirement to provide affordable housing, how would SB 9 benefit our county? Developers and investors would benefit from it, but what about the rest of us? Where's the evidence that higher density lowers housing costs?

I urge you to prioritize the wellbeing of the county's residents over outside interests and oppose the staff recommendations.

Helen Salem

Mosher, Ana Hilda

From: Leyla Hill <leyla.hill@hos.com>
Sent: Sunday, April 10, 2022 3:18 PM
To: PlanningCommission; Tejirian, Jeremy; Lai, Thomas
Subject: Interim Ordinances implementing SB 35 and SB9
Attachments: Sustainable TamAlmonte letter to Marin County PC re Interim Ordinances for SB-35 & SB-9 4-7-22.pdf

The Los Ranchitos Improvement Association (LRIA) endorses Sustainable Tam Almonte's letter regarding the above-referenced subject. We will also submit comment on our own behalf.

Los Ranchitos Improvement Association (LRIA)
lriaboard@gmail.com
www.losranchitos.org
Leyla Hill, President
415-479-8737 landline/direct
415-302-3555 cell/text

Mosher, Ana Hilda

From: Judy Schriebman <judy@leapfrogproductions.com>
Sent: Monday, April 11, 2022 10:15 AM
To: PlanningCommission
Cc: Tejirian, Jeremy; Lai, Thomas

Subject: SB 9 and SB 35 interim ordinances comments

Dear Planning Commission:

In addition to my previous comments, I support the letter from TamAlmonte which lays out the most comprehensive case for how you should act today to protect Marin's value in its trees, open spaces and neighborhoods.

I want to draw your attention to one important note:

> Single Family Home - Flickr
> A 2019 Redfin survey found that regardless of where people live within the US, more than 85% of home buyers and sellers (including millennials) prefer single-family homes with more space, privacy, and gardens over a unit in a triplex that has a shorter commute.
> Moreover, realtors report a recent trend of **city dwellers wanting to move to single-family neighborhoods in the suburbs to escape dense living conditions,** which contribute to the spread of COVID-19.
> **Over time, the bill will cause the supply of single-family homes to diminis**h due to conversions to duplexes or "fourplexes" and the price for the remaining single-family dwellings will become even more expensive. This will make it more difficult for residents to attain their preferred lifestyle.

I believe this "conversion" of SRF to lot splits, etc, will actually create additional sprawl, as people who can will seek the outer edges or places where SFR still exist, further driving up prices. The "solution" that SB9 et al are attempting to sell us on is just smoke screen for big money interests and lobbyists who are gaming the system. This does not serve the residents of our state.

Thank you for your thoughtful consideration.

Judy Schriebman

Mosher, Ana Hilda

From:	John Bruce Corcoran <BruceCorcoran@msn.com>
Sent:	Monday, April 11, 2022 2:33 AM
To:	PlanningCommission; Tejirian, Jeremy; Lai, Thomas
Subject:	PC Hearing 4/11/22: Endorsement of Catalysts' 4/8/22 Letter

Dear Planning Commissioners,

My wife and I endorse Catalysts' 4/8/22 letter, signed by Susan Kirsch, and, in particular, we urge you to oppose the two "most egregious" Staff recommendations as articulated in that letter.

The Planning Commission must do more to push back against unpopular and destructive SB-9.

Sincerely,
Bruce Corcoran
Fran Corcoran
184 Great Circle Drive
Mill Valley, CA 94941

Mosher, Ana Hilda

From:	Amy Kalish <amylkalish@gmail.com>
Sent:	Monday, April 11, 2022 2:45 PM
To:	PlanningCommission
Cc:	BOS
Subject:	STAFF RECOMMENDATIONS re: SB 9

April 8, 2022

Marin County Planning Commission: PlanningCommission@MarinCounty.org
Cc: Marin County Board of Supervisors: BOS@MarinCounty.org

RE: Staff Recommendations re: SB-9 - OPPOSE

Dear Marin Planning Commission:

Regarding staff recommendations re: the Marin County Housing Element.
I find two of them quite objectionable. My comments are below. I urge you to vote against them.

The recommendations: The Recommendations are for the benefit of developers only. I suspect stricter rules will be forthcoming anyway. To go beyond what is required now is to disregard the wishes of neighborhoods and residents. You should be protecting your constituents as much as possible, whenever possible, as new laws are passed weekly that further erode our rights to local control. Please do not go any further than the law now requires.

1. Marin County could comply with state law and still have some control over density. A four unit maximum on split lots seems entirely reasonable, especially with 4' setbacks that may be entirely concrete, since fire regulations won't allow vegetation around structures. Staff recommends allowing four houses plus three ADUs on a lot that used to be a single family home. This density is unreasonable. Lot splits shouldn't mean that every bit of a lot can be covered.
2. Please create and enforce an owner occupancy requirement. If owners had to occupy one of the properties for at least three years, they could benefit from the diversity the mandates are encouraging. It will reduce speculation on the lot splits, and keep some semblance of neighborhood together. The property owners are more likely to make good decisions if they will be living with the results. If a neighborhood is heavily split, the occupants will have to deal with new parking issues, loss of views and vegetation and charm, plus the rest of what Marin residents already face: fire/flood hazards, and evacuation concerns. When staff recommends waiving that option, they are clearly only thinking of what's easiest for investors, not how neighborhoods will be best served under these changes.

What happens if the recommendations are followed? It means that Marin has rolled over and given up on any ability to guide local residential planning and development. We need planning. We need local control. Without it we are just a little satellite upon which the state may impose its singular, undemocratic vision, one which we may not share. I certainly do not share it. The state is quite eager to pave over California to benefit investment developers. What are they giving back? They only take from our community, stressing our resources. The stated goal of 39% or more low-cost housing is a farce, as private developers are not required under these laws to provide anything other than what works for them. It could be all market rate. The rental occupants will own nothing. They probably never will. Investors like to make money and the system is rigged for them to do just that, no matter how many units are built. Please refer to this phenomena here: rental units owned by Wall Street. Forbes (12/2/21) This well timed article clearly illustrates why our new legislation can be referred to as *California Scheming*.

The staff recommendations do nothing to fix real problems. Both SB 9 and SB35 continue with the misguided assumption that if we have more housing, it will be more affordable. Building *actual* affordable housing with partners like EAH does that. Unleashing developers, already unconstrained by so many new rules, let's them do as they please, without a thought to affordability. In fact, there is so much development coming across the state that materials scarcity will drive the price of building up, and those costs will be passed down to the renters.

What I hope to see Instead of going along with all of this, I hope you will consider why so many towns are considering or actively filing suit against the mandates. I sincerely hope Marin will decide to join them, rather than just go along with this destructive path.

Please think of Marin, and what makes it special. Planning for the housing element may have to go on, but the process is driven by fear of punishment. Plans do not have to exceed the minimum requirements. I strongly hope you oppose the staff recommendations.

Sincerely,

Amy Kalish
7 Walsh Drive, Mill Valley, CA 94941
415-383-9115

Mosher, Ana Hilda

From: Adrianna <adrianna18@comcast.net>
Sent: Monday, April 11, 2022 4:56 PM
To: BOS; PlanningCommission
Subject: SB 9 Staff recommendations

Dear Board of Supervisors and Marin County Planning Commissioners:

What are your staff doing? They recommend making the onerous SB9 even more onerous, even more the developer's dream? This terrible law was pushed by developers at the state level with no input from local government. From where do they think we'll get the extra water for the extra population caused by a potentially eight-fold increase of units on residential lots? How will the already terrible traffic fare? Parking? Sewer systems? School districts? The burden on every facet of infrastructure is mind-blowing. And this heavy development will do nothing to promote affordability...plus it severs any sort of local control.

And Marin staff is suggesting even harsher, more dense development! Please, please do not support this. Instead, you should support a requirement that forces the landowner to occupy the property for three years after developing it. Then the corporate investors and developers that will profit wildly from this scheme will have to reconsider before investing in the unending profits SB9 holds for them.

Loss of local control benefits developers and real estate investors without commensurate benefit to communities. There is no requirement for SB 9 to provide affordable housing and no evidence that higher density lowers housing costs. In fact, housing costs increase when housing stock changes from individual home ownership to rental units owned by Wall Street.

Four cities in Southern California have filed a lawsuit against SB9. We should do the same.

I urge you to oppose the staff recommendations.

Yours truly,

Adrianna Dinihanian
254 Woodward Avenue
Sausalito, CA

Mosher, Ana Hilda

From: Judy Schriebman <judy@leapfrogproductions.com>
Sent: Monday, April 11, 2022 5:05 PM
To: Leyla Hill
Cc: PlanningCommission; Tejirian, Jeremy; Lai, Thomas
Subject: Re: Implementing SB9

Really Well Done Leyla!!!

Judy

> On Apr 11, 2022, at 12:09 PM, Leyla Hill <leyla.hill@hos.com> wrote:
>
> We in Los Ranchitos believe that SB9 is bad legislation and we hope that it will be overturned or greatly amended in time. We have four (4) specific objections to staff recommendations for implementing SB9 in Marin County:
>
> **1. Loss of Local Control.** SB9 is bad legislation because directly effects a loss of local control over residential development. It potentially does away with single family residential neighborhoods, the backbone of American community, based in pride of ownership of home and neighborhood. It was advertised and "sold" as a boon to homeowners who wish to tap the equity built up in their properties. However, the way the county is being advised to apply it *increases* the loss of local control and shifts benefits to developers and investors, instead of homeowners. The county should do whatever it can to mitigate these potential negative effects.
>
> Specifically, if the State of California provides for a restriction, it should be retained, not overridden or excluded. Therefore, please retain the residency requirement, the requirement for direct access to safe ingress and egress for newly built residences, whether homes or ADUs; and limit the number of ADUs that can be built along with new residences.
>
> **2. Residency requirement:** SB9 is ostensibly to benefit homeowners who wish to split their lots or build additional units. Requiring that the owner maintain residence on the property for 3 years following a lot split would help mitigate corporate investment. Any homeowner or outside investor in the property would have to occupy one of the homes and live with the results of the lot split or increase in density, including lack of parking, compromises in safety, congestion, loss of green space, and loss of views. There is no proof that waiving the residency requirement will result in more diversity of residents as staff claims. It will just convert single family neighborhoods of homeowners into multi-family areas with potentially more renters and absentee landlords. Since the statute was advertised and sold as a benefit to homeowners wishing to leverage the equity in their properties, we should not allow said homeowners to create issues in their neighborhood and leave, or to sell out to absentee investors who will not have to live with the results. SB9 is enough of a change as it is — similar to short-term rentals — let's see what the intended and unintended consequences turn out to be before loosening the residency restriction.
>
> **3. Access to safe ingress and egress.** Staff recommends the elimination of the requirement for access to a public right of way for urban lot splits. Public right of way is defined as a "street that has been accepted or being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public." Please keep this requirement as doing otherwise virtually creates hazardous

ingress and egress during emergencies like fire or earthquake. Please also amend the definition of a public right of way as follows:

"...a street street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public."

4. Limitations on ADUs plus additional housing units. There is an option to restrict construction of ADUs after a lot split. That would help rule out corporate investors who would want to wring every last dime out of a re-developed property. Please do not accept staff's recommendation to waive this option. Again, please implement this radical change slowly: accept the State's allowance of restrictions, see how the process affects long-established neighborhoods, then if necessary or desirable, reconsider the restrictions later on.

Sincerely,

Los Ranchitos Improvement Association (LRIA)
lriaboard@gmail.com
www.losranchitos.org
Leyla Hill, President
415-479-8737 landline/direct
415-302-3555 cell/text

Mosher, Ana Hilda

From: Leyla Hill <leyla.hill@hos.com>
Sent: Monday, April 11, 2022 12:10 PM
To: PlanningCommission; Tejirian, Jeremy; Lai, Thomas
Subject: Implementing SB9

We in Los Ranchitos believe that SB9 is bad legislation and we hope that it will be overturned or greatly amended in time. We have four (4) specific objections to staff recommendations for implementing SB9 in Marin County:

1. Loss of Local Control. SB9 is bad legislation because directly effects a loss of local control over residential development. It potentially does away with single family residential neighborhoods, the backbone of American community, based in pride of ownership of home and neighborhood. It was advertised and "sold" as a boon to homeowners who wish to tap the equity built up in their properties. However, the way the county is being advised to apply it *increases* the loss of local control and shifts benefits to developers and investors, instead of homeowners. The county should do whatever it can to mitigate these potential negative effects.

Specifically, if the State of California provides for a restriction, it should be retained, not overridden or excluded. Therefore, please retain the residency requirement, the requirement for direct access to safe ingress and egress for newly built residences, whether homes or ADUs; and limit the number of ADUs that can be built along with new residences.

2. Residency requirement: SB9 is ostensibly to benefit homeowners who wish to split their lots or build additional units. Requiring that the owner maintain residence on the property for 3 years following a lot split would help mitigate corporate investment. Any homeowner or outside investor in the property would have to occupy one of the homes and live with the results of the lot split or increase in density, including lack of parking, compromises in safety, congestion, loss of green space, and loss of views. There is no proof that waiving the residency requirement will result in more diversity of residents as staff claims. It will just convert single family neighborhoods of homeowners into multi-family areas with potentially more renters and absentee landlords. Since the statute was advertised and sold as a benefit to homeowners wishing to leverage the equity in their properties, we should not allow said homeowners to create issues in their neighborhood and leave, or to sell out to absentee investors who will not have to live with the results. SB9 is enough of a change as it is — similar to short-term rentals — let's see what the intended and unintended consequences turn out to be before loosening the residency restriction.

3. Access to safe ingress and egress. Staff recommends the elimination of the requirement for access to a public right of way for urban lot splits. Public right of way is defined as a "street that has been accepted or being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public." Please keep this requirement as doing otherwise virtually creates hazardous ingress and egress during emergencies like fire or earthquake. Please also amend the definition of a public right of way as follows:

"...a street street that <u>has been accepted or</u> is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public."

4. Limitations on ADUs plus additional housing units. There is an option to restrict construction of ADUs after a lot split. That would help rule out corporate investors who would want to wring every last dime out of a re-developed property. Please do not accept staff's recommendation to waive this option. Again, please implement this radical change slowly: accept the State's allowance of restrictions, see how the process affects long-established neighborhoods, then if necessary or desirable, reconsider the restrictions later on.

Sincerely,

Los Ranchitos Improvement Association (LRIA)
lriaboard@gmail.com
www.losranchitos.org
Leyla Hill, President
415-479-8737 landline/direct
415-302-3555 cell/text

Mosher, Ana Hilda

From:	Leyla Hill <leyla.hill@hos.com>
Sent:	Monday, April 11, 2022 10:29 PM
To:	Tejirian, Jeremy
Cc:	PlanningCommission
Subject:	Eligibility of properties in A2 zoning district under SB9

I'm really puzzled by your answer to a query raised by "Jonathan" in the public comment period of the Planning Commission meeting today:

Is A2-B4 a single-family zoning district under SB9?

You said that [paraphrasing as best I can from my notes]:

Part of the structure of the ordinance [SB9] relies on the [local] development code. The [Marin County] Development Code defines single family residential zoning [as zones] RA, RR, RE, R1, RSP, etc. There is a list [of residential zoning districts] in our development code. That list defines what is single-family residential and what is not. A2 is on that list, so it does constitute a single family residential zone. RMP is not on the list [so it does not define a single family residential zone].

I'm looking at Marin County Development Code 22.06.020 - Zoning Districts Established (see .jpg included here).

Subparagraph A. lists Agricultural and Resource-Related Districts, specifying zoning districts, A, A2, and ARP.

Subparagraph B lists Residential Districts, all of which start with R. RA is listed as Residential Agricultural, but it is NOT the same as A2, which is NOT a "Residential District."

Are you perhaps confusing A2 with RA? If not, please tell me the portion of the Marin County Development Code that lists the A2 zoning district as "a single family residential district" or even a "residential zoning district." Of course, single family residences are permitted as a matter of right in the A2 zone per 22.08.30. But that is not the same as A2 being a single family residential district to which SB9 would apply.

If you have a different reading of the Marin County code, or are relying on different part(s) of it, please let me know what they may be, and why you believe A2 zoning district to be "on the list" of residential zoning districts.

Sincerely,

Leyla Hill, President
Los Ranchitos Improvement Association (LRIA)
lriaboard@gmail.com
www.losranchitos.org
415-479-8737 landline/direct
415-302-3555 cell/text

ARTICLE II - ZONING DISTRICTS AND ALLOWABLE LAND USES

Chapter 22.06 - Establishment of Zoning Districts

22.06.010 - Purpose of Chapter.

This Chapter establishes the zoning districts applied to property within the County, determines how the zoning dis maps, and provides general permit requirements for development and new land uses.

(Ord. No. 3577, 2012)

22.06.020 - Zoning Districts Established.

The unincorporated areas of Marin County shall be divided into zoning districts which consistently implement the community and specific plans. The following zoning districts are established, and shall be shown on the official Zoning with the term "Planned" in their title are Planned districts, which may be subject to Master Plan requirements, and all in their title are conventionally zoned districts. The designation of certain planned zoning districts includes a numeric the maximum residential density. Zoning districts within the Coastal Zone are established by the Local Coastal Progra

A. Agricultural and Resource-Related Districts	Map Symbol
Agriculture and Conservation	A
Agriculture, Limited	A2
Agricultural, Residential Planned	ARP

B. Residential Districts	
Residential, Agricultural	RA
Residential, Restricted	RR
Residential, Estate	RE
Residential, Single-Family	R1
Residential, Single-Family Planned	RSP
Residential, Two-Family	R2