

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

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September 29, 2025

Kelly Gleason
Planning Manager
City of Atascadero
6500 Palma Avenue
Atascadero, CA 93422

Dear Kelly Gleason:

RE: City of Atascadero – 8388 Santa Rosa Road – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the proposed project located at 8388 Santa Rosa Road in the City of Atascadero (City). The purpose of this letter is to provide technical assistance regarding the use of a covenant for owner occupancy requirements under Senate Bill (SB) 9 and the applicability of non-SB 9 standards on the resulting lots in an urban lot split (ULS).

Background

The project proposes a ULS on a 0.40-acre lot located in the Residential Single-Family zone. As HCD understands, the ULS application was approved in March 2024 and the tentative parcel map is ready to be recorded. As a part of the ULS application, the applicant submitted an affidavit stating their intent to occupy, as required by SB 9.¹ However, prior to recordation of the map, the City is requiring the property owner to sign a recorded covenant to document various SB 9 requirements. Some of the requirements contained in the covenant include provisions for short-term rental, owner occupancy, and prohibition on further subdivision. The covenant also specifies that future development of the lots is limited to development under the City's SB 9 standards as it states, "further development is limited to standards and requirements in effect governing Urban Lot Splits and Urban Dwelling Units in the City's municipal code consistent with California law at the time of permit application."² HCD understands the covenant is pending signature and recordation by the applicant.

The applicant reached out to HCD for technical assistance regarding the following questions:

¹ Gov. Code, § 66411.7, subd. (g)(1).

² Urban Lot Split Government Code § 66411.7 Covenant and Agreement, City of Atascadero.

Question 1: Can local agencies require a recorded covenant to satisfy the owner occupancy requirement under SB 9?

Answer: No. Requiring a covenant exceeds the owner occupancy affidavit requirement under the ULS portion of SB 9. The owner occupancy requirement of SB 9 states the following:

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.³ (Emphasis added.)

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....⁴ (Emphasis added.)

Government Code section 66411.7, subdivision (g)(1) specifically states that an affidavit agreement shall be signed by the applicant to satisfy the owner's intent to occupy one of the housing units as a requirement for the approval of a ULS. However, subdivision (g)(3) specifically prohibits local agencies from imposing any additional owner occupancy standards beyond this affidavit.

Thus, the City's requirement for a recorded covenant to memorialize this intent, which remains attached to and encumbers the property interest in perpetuity, clearly imposes additional restrictions and conditions that violate the prohibition in subdivision (g)(3). Instead, the City shall only require a signed affidavit to be maintained in City records, but may not require a recorded covenant, deed restriction, or other recorded document.

Question 2: Are parcels created from an urban lot split limited to SB 9 Urban Dwelling Unit (UDU) type of development?

Answer: No, the UDU and ULS sections of SB 9 are separate, and their provisions can be used independently of one another. This allows a project to utilize ULS and either use the UDU section of SB 9 or apply non-SB 9 standards and processes to develop dwelling units on the resulting parcels.

SB 9 specifically contemplates scenarios where the two sections are used independently, as illustrated by Government Code section 65852.21, subdivision (f), which states that a local agency shall not be required to permit an accessory dwelling unit (ADU) or a junior accessory dwelling unit (JADU) on a property that uses both the ULS and UDU provisions of SB 9. For example, on an ULS lot, an applicant may propose a unit utilizing the SB 9 ministerial process and associated standards (such as

³ Gov. Code, § 66411.7, subd. (g)(1).

⁴ Gov. Code, § 66411.7, subd. (g)(3).

setbacks and parking requirements). Alternatively, an applicant may choose to propose a unit pursuant to the zone's underlying standards and processes.

The City's Covenant and Agreement includes language stating that "further development and use of the Property is limited to those standards and requirements in effect governing Urban Lot Splits and Urban Dwelling Units...."⁵ To the extent this section purports to limit development on the resulting ULS lots to only SB 9 type units, such a requirement is inconsistent with SB 9 and must be removed.

Notably, SB 9 *does* limit the future development of a ULS created parcel to residential uses. For example, the statute specifies, "A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses."⁶ In addition, these units are still subject to all applicable requirements contained in the ULS portion of SB 9, such as the provision prohibiting short-term rentals.⁷

Conclusion

The City of Atascadero may not require a recorded covenant to satisfy the owner occupancy requirements for SB 9 projects. Additionally, the City must remove the language in the covenant that restricts the development and use of the property solely to SB 9 standards.

HCD looks forward to assisting the City with implementation of state housing laws and reminds the City that HCD has enforcement authority over SB 9 and various other state housing laws. Accordingly, HCD may review local government actions to determine consistency with these laws. If HCD finds that a jurisdiction is in violation of state law, HCD may notify the California Office of the Attorney General.⁸

HCD requests a written response from the City by October 31, 2025, indicating how the City plans to implement the guidance provided in this letter. If you have any questions about this letter or require additional technical assistance, please feel free to contact Troy Andres at troy.andres@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁵ Urban Lot Split Government Code § 66411.7 Deed Covenant and Agreement, City of Atascadero.

⁶ Gov. Code, § 66411.7, subd. (f).

⁷ Gov. Code, § 66411.7, subd. (h).

⁸ Gov. Code, § 65585, subd. (j).