

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

651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



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Greg Mirza-Avakyan, Senior Planner
Fatima Benitez, Associate Planner
City of Burbank
Planning Department
150 N. Third Street
Burbank, CA 91502
Via email: gmirzaavakyan@burbankca.gov, fbenitez@burbankca.gov

Dear Greg Mirza-Avakyan and Fatima Benitez:

RE: City of Burbank – SB 9 Implementation – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Burbank (City) regarding access requirements and fire hazard mitigation measures for housing development projects and urban lot splits under Senate Bill (SB) 9 (Chapter 162, Statutes of 2021).¹

Background

The California Department of Housing and Community Development (HCD) received a request for technical assistance from the City of Burbank regarding the interaction of SB 9 with easement and fire safety requirements. The specific property at issue is one parcel located within an existing four-lot subdivision. HCD understands that this parcel is accessed from the public right-of-way via a private easement that was established by the original subdivision. An owner of one of the four lots applied to perform an SB 9 urban lot split and develop a primary dwelling unit on the resultant parcel. Since the existing parcel does not adjoin the public right of way (ROW), an easement through neighboring properties in the original subdivision would be necessary to provide access to the public ROW. A Declaration, recorded with the original subdivision, permits the original four parcels in the subdivision to utilize the easements to access the public ROW.

Additionally, HCD understands that the subject property is located in a very high fire hazard severity zone (VHFHSZ). The City has advised that despite CalFire's recent remapping of VHFHSZ areas in Burbank, the subject property remains in a VHFHSZ. The City has also advised HCD that despite this remapping, the City's Hazard Mitigation Plan fire standards have not yet been updated to reflect it.

¹ Gov. Code, §§ 65852.21, 66411.7.

Analysis

The City submitted the following questions to HCD:

Can the existing offsite easements be used to comply with SB 9 access requirements if the urban lot split site does not adjoin the public ROW?

In general, an offsite easement can be a suitable means for providing access to the public ROW for SB 9 developments. SB 9 states that, when considering an application for a parcel map for an urban lot split, “a local agency may require ... that the parcels have access to, provide access to, or adjoin the public right-of-way.”² It is HCD's general understanding that if an easement served the original parcel, it should serve the resulting parcels created by an urban lot split. Pursuant to SB 9, in this situation, the City may choose to require that “the parcels have access to...the public right-of-way.”³ In addition, as noted below, the parcel's location in a VHFHSZ triggers certain ingress and egress requirements in the building code, which may implicate the adequacy of the proposed access roads.

Can the City apply existing fire hazard mitigation standards if the standards have not been updated to reflect CalFire's expanded fire hazard zones?

SB 9 ministerial approval does not apply to urban lot splits when the development is “(D) ... [w]ithin a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178....” However, this prohibition “does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development....”⁴

HCD understands the City has determined that the site is located in a VHFHSZ and that, pursuant to existing state building and fire codes, there are existing state fire mitigation measures applicable to this development. These include Chapter 7A of the California Building Code (CBC), Chapter 49 of the California Fire Code (CFC), and the Minimum Fire Safe Regulations in the Public Resources Code Section 4290 (14 CCR 1270 et seq.). These codes have all been updated since the passage of SB 35 in 2017 to establish and/or strengthen development standards that govern residential development within Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas. Both CBC Chapter 7A and CFC Chapter 49 require compliance with the requirements for defensible space and building in wildfire prone areas of Government Code Sections 51175 through 51189.

Given the foregoing, the site's location in a VHFHSZ does not preclude the site from eligibility for an SB 9 development. However, the City should ensure that the Project

² Gov. Code, § 66411.7, subd. (e)(2).

³ *Id.*

⁴ Gov. Code, §§ 65852.21, subd. (a)(2); 66411.7, subd. (a)(3)(C), incorporating the standard set forth in Gov. Code, § 65913.4, subd. (a)(6)(D).

meets all code requirements, including ingress and egress requirements contained in the CBC.

How does the city protect against fire when the offsite fire suppression infrastructure is insufficient to serve up to 16 units?

When processing an urban lot split application, the City may not require offsite improvements. As SB 9 states, "Notwithstanding Section 66411.7, 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."⁵

However, Government Code section 65852.21 does not contain a similar prohibition. Therefore, offsite improvements may be required at the time of SB 9 unit construction to the extent they do not conflict with section 65852.21, subdivision (b)(3), which states that "[a] local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone."

In short, additional offsite fire suppression infrastructure cannot be required as a condition of issuing a parcel map for an SB 9 urban lot split but can be required when permitting for construction of SB 9 residential units if such infrastructure is required by the underlying zoning.

Additionally, section 65852.21, subdivision (d) and section 66411.7, subdivision (d) permit a local agency to deny an application for an SB 9 urban lot split or construction of an SB 9 residential unit where the agency makes written findings, based on the preponderance of the evidence, that the project would have a specific, adverse impact on public health and safety that cannot be mitigated. The City may consider whether these provisions are applicable in this circumstance.

Conclusion

HCD understands the intricacies of implementing ever-changing state housing laws and is committed to supporting local agencies in the successful implementation of state housing laws, including SB 9. If you have any questions or need additional information, please contact Brandon Estes at Brandon.Estes@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁵ Gov. Code, § 66411.7, subd. (b)(3).