City of Capitola

Planning Commission Special Meeting Agenda

Thursday, April 21, 2022 – 5:00 PM

City Council Chambers

420 Capitola Avenue, Capitola, CA 95010

Chairperson: Peter Wilk

Commissioners: Courtney Christiansen, Ed Newman, Mick Routh, Susan Westman

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Please review the Notice of Remote Access for instructions on participating in the meeting remotely. The Notice of Remote Access is at the end of the agenda.

All correspondences received prior to 5:00 p.m. on the Wednesday preceding a Planning Commission Meeting will be distributed to Commissioners to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Commissioners, nor be read by them prior to consideration of an item.

All matters listed on the Regular Meeting of the Capitola Planning Commission Agenda shall be considered as Public Hearings.

1. **Roll Call**
2. **Oral Communications**

   A. Additions and Deletions to the Agenda

   B. Public Comments

   Please review the Notice of Remote Access for instructions. Short communications from the public concerning matters not on the Agenda. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the Minutes. Members of the public may speak for up to three minutes, unless otherwise specified by the Chair. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue.

   C. Commission Comments

   D. Staff Comments

3. **Public Hearings**

   Public Hearings are intended to provide an opportunity for public discussion of each item listed as a Public Hearing. The following procedure is as follows: 1) Staff Presentation; 2) Planning Commission Questions; 3) Public Comment; 4) Planning Commission Deliberation; and 5) Decision.

A. Ordinance Adding Chapter 17.82 to establish Objective Standards for Multifamily and Mixed-use Residential Developments
Permit Number: 22-0126
Location: All zones with multifamily and mixed-use residential, excluding the mixed use village
Draft ordinance to establish for new objective standards for multifamily and mixed-use residential development
Environmental Determination: Categorically Exempt under Section 15061(b)(3)
Property Owner: Citywide
Representative: Ben Noble, Ben Noble Planning

B. SB9 Ordinance

Ordinance #: 1049

APN: Applicable to all parcels in Single-Family Zone

Project description: Amendments to the Capitola Municipal Code, Adding Section 17.75 SB9 Residential Developments to Title 17, Part 3 (Zoning, Citywide Standards), Adding Section 16.78 Urban Lot Splits to Title 16 (Subdivisions), Amending Section 17.74 Accessory Dwelling Units, and Amending Section 16.08 Definitions for the implementation of Government Code Sections 66411.7 and 65852.21 Related to Urban Lot Splits and SB9 Residential Developments.

Environmental Determination: Implement of Government Code sections 65852.21 and 66411.7, are not considered a project under CEQA.

Property Owner: Ordinance applies to all properties in the R-1 Zoning District

Representative: Katie Herlihy, Community Development Director

4. **Director's Report**
5. **Commission Communications**
6. **Adjournment**

Notice of Remote Access

In accordance with California Senate Bill 361, the Planning Commission meeting is not physically open to the public and in person attendance cannot be accommodated.

Watch:

- Online: https://www.cityofcapitola.org/meetings or https://www.youtube.com/channel/UCJgSsB5qgoS7CcD8Ig9Yw1g/videos
- Spectrum Cable Television channel 8

Join Zoom by Computer or by Phone:

Click this Meeting link: https://us02web.zoom.us/j/87436920377?pwd=aUFRWU10RVFJdTRPcmQ3WU85S1Z2UT09

Or Call one of the following Phone Numbers: - **1 (669) 900 6833 OR 1 (408) 638 0968 OR- 1 (346) 248 7799**

Meeting ID: **874 3692 0377**

Meeting Passcode: **320189**

To participate remotely and make public comment:

- Send email:

- As always, send additional materials to the Planning Commission via planningcommission@ci.capitola.ca.us by 5 p.m. the Wednesday before the meeting and they will be distributed to agenda recipients.

- During the meeting, send comments via email to publiccomment@ci.capitola.ca.us

- Identify the item you wish to comment on in your email's subject line.

- Emailed comments will be accepted during the Public Comments meeting item and for General Government / Public Hearing items.

- Emailed comments on each General Government/ Public Hearing item will be accepted after the start of the meeting until the Chairman announces that public comment for that item is closed.

- Emailed comments should be a maximum of 450 words, which corresponds to approximately 3 minutes of speaking time.

- Each emailed comment will be read aloud for up to three minutes and/or displayed on a screen.

- Emails received by publiccomment@ci.capitola.ca.us outside of the comment period outlined above will not be included in the record.

- Zoom Meeting (Via Computer or Phone):

If using computer: Use participant option to "raise hand" during the public comment period for the item you wish to speak on. Once unmuted, you will have up to 3 minutes to speak

If called in over the phone: Press ***6** on your phone to "raise your hand" when the Chairman calls for public comment. It will be your turn to speak when the Chairman unmutes you. You will hear an announcement that you have been unmuted. The timer will then be set to 3 minutes.

Appeals: The following decisions of the Planning Commission can be appealed to the City Council within the (10) calendar days following the date of the Commission action: Conditional Use Permit, Variance, and Coastal Permit. The decision of the Planning Commission pertaining to an Architectural and Site Review Design Permit can be appealed to the City Council within the (10) calendar days following the date of the Commission action. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

All appeals must be in writing, setting forth the nature of the action and the basis upon which the action is considered to be in error, and addressed to the City Council in care of the City Clerk. An appeal must be accompanied by a filing fee, unless the item involves a Coastal Permit that is appealable to the Coastal Commission, in which case there is no fee. If you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this agenda, or in written correspondence delivered to the City at, or prior to, the public hearing.

Notice regarding Planning Commission meetings: The Planning Commission meets regularly on the 1st Thursday of each month at 7 p.m. in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The Planning Commission Agenda and complete Agenda Packet are available on the Internet at the City's website: www.cityofcapitola.org/meetings. Need more information? Contact the Community Development Department at (831) 475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Materials that are a public record under Government Code § 54957.5(A) and that relate to an agenda item of a regular meeting of the Planning Commission that are distributed to a majority of all the members of the Planning Commission more than 72 hours prior to that meeting shall be available for public inspection at City Hall located at 420 Capitola Avenue, Capitola, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the Community Development Department at least 24 hours in advance of the meeting at (831) 475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: Planning Commission meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be replayed on the following Monday and Friday at 1:00 p.m. on Charter Channel 71 and Comcast Channel 25. Meetings can also be viewed from the City's website: www.cityofcapitola.org.

Capitola Planning Commission

Agenda Report

Meeting: April 21, 2022

From: Community Development Department

Subject: **Ordinance Adding Chapter 17.82 to establish Objective Standards for Multifamily and Mixed-use Residential Developments**

Permit Number: 22-0126
Location: All zones with multifamily and mixed-use residential, excluding the mixed use village
Draft ordinance to establish for new objective standards for multifamily and mixed-use residential development

Environmental Determination: Categorically Exempt under Section 15061(b)(3)

Property Owner: Citywide

Representative: Ben Noble, Ben Noble Planning

Background: In 2021, the city began an effort to prepare objective standards for multifamily dwellings and mixed-use residential development. These standards are needed to protect the city and ensure quality development in light of new state housing laws. The City is using part of its SB2 grant funds for this project and is working with consultants Ben Noble and Bottomley Design and Planning on the project.

The city has held the following prior meetings for the Objective Standards project:

- Planning Commission Study Session (February 3, 2021) to present project goals and approach
- City Council Study Session (April 8, 2021) to present project goals and approach
- Stakeholder Meeting #1 (July 21, 2021) to receive preliminary input from developers, architects, and residents on potential draft standards
- Stakeholder Meeting #2 (February 16, 2021) to receive feedback on draft standards

On March 31, 2022, the Planning Commission reviewed the draft objective standards for multifamily and mixed-use residential development. The Commission provided feedback on the standards, specifically:

1. New purpose, applicability, deviations sections up front.
2. New intent statement for circulation and streetscape standards (17.82.040.A.5)
3. New landscaping standards if parking is adjacent to the street (17.82.050.b.1.b)
4. New options for entries not required to face street (17.82.060.B.3.c)

Discussion: The new objective standards would apply to all new multifamily and mixed-use residential development in the RM, MU-N, C-C, and C-R districts. The standards would not apply in the MU-V district as sufficient standards are already in place for this district. The standards

would apply to projects that require Design Review, as well as projects requesting ministerial approval under SB 35.

Standards Categories

The standards are divided into six categories:

- Circulation and Streetscape
- Parking and Vehicle Access
- Building Placement, Orientation, and Entries
- Building Massing
- Facade and Roof Design
- Other Site Features

Each category includes an intent statement to explain the purpose of the standards.

A proposed project would be permitted to request deviation from one or more standard. The Planning Commission could approve deviation upon finding that the project successfully incorporates an alternative method achieve the intent of the standard. A project requesting a deviation would not be eligible for streamlined review under SB 35.

A public review draft of the document was published on April 14, 2022. The public review draft includes revisions suggested by the Planning Commission at the March 31 meeting.

During the April 21 meeting, Ben Noble will present an overview of the updates and be available for any questions. Ultimately, if the Planning Commission does not have extensive modifications to the ordinance, the Commission may forward a positive recommendation to City Council for adoption. If the Commission has extensive changes, the Planning Commission may continue the item to the May 5, 2022, Planning Commission meeting.

CEQA: The adoption of Objective Standards for multifamily and mixed-use developments is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), the common sense exception that CEQA applies only to projects which have the potential for causing a significant effect on the environment and 15183, projects consistent with a community plan, general plan or zoning.

Recommendation: Accept presentation on the objective standards and consider forwarding a positive recommendation on the ordinance to the City Council.

Attachments:

1. Draft Ordinance
2. Objective Design Standards Memo

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF CAPITOLA ADDING MUNICIPAL CODE CHAPTERS 17.82 TO ESTABLISH OBJECTIVE STANDARDS FOR MULTIFAMILY DWELLINGS AND MIXED-USE RESIDENTIAL DEVELOPMENT

WHEREAS, SB-35 (Chapter 366, Statutes of 2017) enacted section 65913.4 to the Government Code, effective January 1, 2018; and

WHEREAS, Government Code section 65913.4 requires cities and counties to approve qualifying multifamily projects through a streamlined ministerial process if a project conforms to applicable objective standards and meets other requirements;

WHEREAS, The Housing Accountability Act (HAA), Government Code section 65589.5, limits the ability of cities and counties to deny or reduce the density of housing development projects that are consistent with objective standards;

WHEREAS, SB-330 (Chapter 654, Statutes of 2019) enacted Government Code section 66300 which prohibits cities and counties from establishing design standards that are not objective;

WHEREAS, the HAA and SB-330 apply within the coastal zone, but do not alter or lessen the effect or application of Coastal Act resource protection policies;

WHEREAS, Capitola's Zoning Code currently contains limited objective design standards for multifamily residential development;

WHEREAS, Capitola currently relies on subjective design review criteria in Zoning Code Section 17.120.070 to ensure that multifamily residential development exhibits high-quality design that enhances Capitola's unique identity and sense of place;

WHEREAS, for a project requesting streamlined review under SB-35, the City cannot enforce these requirements;

WHEREAS, under the Housing Accountability Act and SB-330, the City cannot require compliance with these standards for any multifamily or mixed-use residential project in a manner that disallows or reduces the density of the proposed project;

WHEREAS, in 2021 Capitola was awarded an SB-2 grant from the State of California established to fund city planning efforts to streamline housing approvals and accelerate housing production;

WHEREAS, Capitola elected to use part of this SB-2 grant to prepare new objective standards for multifamily and mixed-use residential development;

WHEREAS, the Planning Commission held a study session on February 3, 2021 and the City Council held a study session on April 8, 2021 to provide feedback on the project goals and approach;

WHEREAS, a stakeholder group including architects, developers, and residents provided input on new objective standards at meetings on July 21, 2021 and February 16, 2022;

WHEREAS, on March 31, 2022, the Planning Commission provided feedback on draft objective standards.

WHEREAS, on April 11, 2022, the Planning Commission recommended to the City Council adoption of the the objective standards.

BE IT ORDAINED by the City of Capitola as follows:

Section 1. The above findings are adopted and incorporated herein.

Section 2. Section 17.82 (Objective Standards for Multifamily and Mixed-Use Residential Development) is added to the Municipal Code to read as shown in Attachment 1.

Section 3:

Paragraph 4 is added to Municipal Code Section 17.16.030.C as follows:

4. Objective Standards for Multifamily Dwellings. New multifamily dwellings in the RM zoning district must comply with Chapter 17.82 (Objective Standards for Multifamily and Mixed-use Residential Development).

Subsection I is added to Municipal Code Section 17.20.040 as follows:

I. Objective Standards for Multifamily Dwellings and Mixed-use Residential Development. New multifamily dwellings and mixed-use residential development in the MU-N zoning district must comply with Chapter 17.82 (Objective Standards for Multifamily and Mixed-use Residential Development).

Subsection H is added to Municipal Code Section 17.24.030 as follows:

H. Objective Standards for Multifamily Dwellings and Mixed-use Residential Development. New multifamily dwellings and mixed-use residential development in the C-c and C-R zoning districts must comply with Chapter 17.82 (Objective Standards for Multifamily and Mixed-use Residential Development).

Section 4: Environmental Review.

The City Council finds and determines that enactment of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Government Code sections 15061(b)(3).

Section 5: Effective Date.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption except that it will not take effect within the coastal zone until certified by the California Coastal Commission. This Ordinance shall be transmitted to the California Coastal Commission and shall take effect in the coastal zone immediately upon certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the Ordinance adopted by the City is legally adequate.

Section 6: Severability.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 7: Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the ___ day of _____ 2022, and was adopted at a regular meeting of the City Council on the ___ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:

_____
Sam Story, Mayor

Attest: _____

Chloe Woodmansee, City Clerk

Approved as to form:

_____
Samantha Zutler, City Attorney

Chapter 17.82 – Objective Standards for Multifamily and Mixed-Use Residential Development

Sections:

17.82.010 Purpose

This chapter contains objective standards for multifamily and mixed-use residential development. These standards are intended to help ensure that proposed development exhibits high-quality design that enhances Capitola's unique identity and sense of place.

17.82.020 Applicability

A. Land Use.

1. The standards in this chapter apply to new multifamily dwellings, attached single-family homes (townhomes), and mixed-use development that contain both a residential and non-residential use.
2. This chapter does not apply to detached-single-family dwellings, including subdivisions of multiple subdivisions of multiple single-family homes.

B. Zoning Districts. The standards in this chapter apply in all zoning districts except for the Single-Family (R-1), Mobile Home (MH), Mixed Use Village ((MU-V), and Industrial (I) districts.

17.82.030 Deviations

An applicant may request deviation from one or more standard through the design permit process. The Planning Commission may approve a deviation upon finding that the project incorporates an alternative method to achieve the intent statement the proceeds the standard. A project requesting a deviation is not eligible for streamlined ministerial approval under Government Code Section 65913.4.

17.82.040 Circulation and Streetscape

A. Intent. The intent of the circulation and streetscape standards is to:

1. Enhance the visual character and aesthetic qualities of the city.
2. Encourage pedestrian mobility with safe, functional, and attractive sidewalks.
3. Provide for sufficient sidewalk widths to accommodate street trees and an ADA-compliant pedestrian clear path.
4. Provide for appropriate and attractive transitions from the public to private realm.
5. Promote social engagement along property frontages.

B. Standards.

1. **Sidewalks**. Outside of designated sidewalk exempt areas, public sidewalks abutting a development parcel shall have a minimum sidewalk width (back of curb to back of walk) as follows:
    a. RM and MU-N zones: 6 feet. If the sidewalk ties into an existing 4-foot sidewalk, the minimum sidewalk width is 4 feet.
    b. C-C and C-R zones: 10 ft.
2. **Street Trees**.
    a. At least one street tree for every 30 feet of linear feet of sidewalk length shall be provided within the sidewalk.
    b. A minimum 48-inch pedestrian clear path shall be maintained adjacent to street trees.
    c. Sidewalk tree wells shall be minimum 36 inches in width by minimum 36 inches in length. Tree grates are required for sidewalks less than 7 feet in width.
    d. Street trees shall be located a minimum 15 feet from power and/or other utility poles and "small" per PG&E's "Trees and shrubs for power line-friendly landscaping" to reduce potential utility line conflicts.
    e. Street trees shall not be planted over buried utilities, public or private,
    f. Street trees shall be planted with approved root guard to encourage downward root growth
    g. The variety of street tree to be planted must be approved the City as part of a landscape plan.
3. **Public Access Easement.** If the existing public right-of-way area between the curb and the property line is insufficient to meet the minimum standards above, extension of the sidewalk onto the property, with corresponding public access easement or dedication, shall be provided.

17.82.050 Parking and Vehicle Access

A. Intent. The intent of the parking and vehicle access standards is to:

1. Support a pedestrian-friendly streetscape, walkable neighborhoods, and active and inviting mixed-use districts.
2. Minimize the visual dominance of parking facilities visible from the street frontage.
3. Encourage residents to walk, bike, and/or take transit to destinations, rather than drive.

B. Standards

1. **Parking Placement.**

   a. As shown in Figure 17.82-1, surface parking spaces may not be located:

      (1) In a required front or street side setback area; or

      (2) Between a primary structure and a front or street side property line.

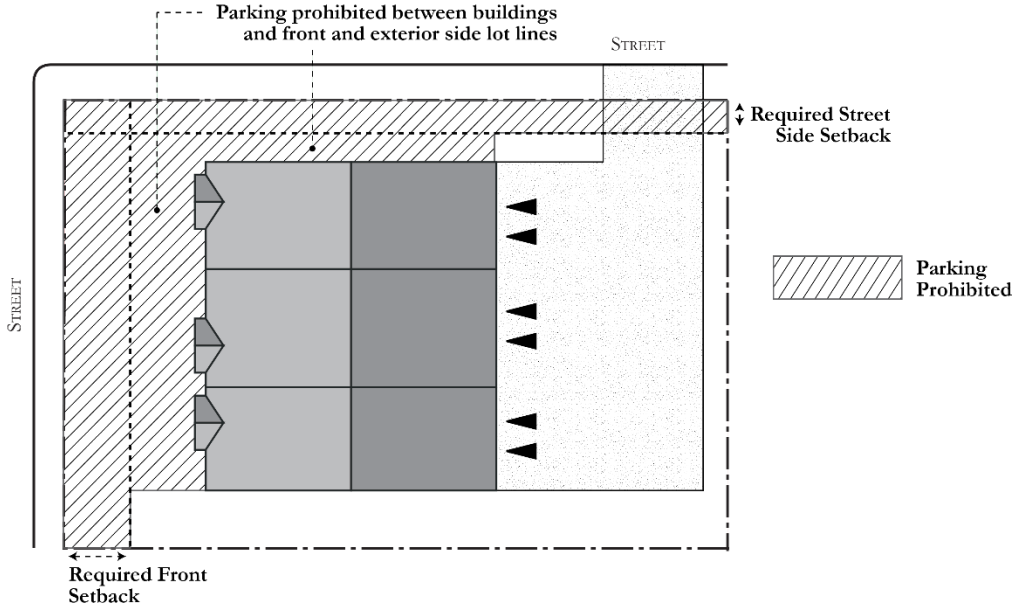
   b. The Director may administratively approve an exception to this requirement for age-restricted senior housing developments or when necessary to provide ADA-compliant parking. For such exceptions, the following standards apply:

      (1) Parking areas adjacent to a street must include a landscaped planting strip between the street and parking area at least four feet wide with a minimum planting height of 36 inches.

      (2) Plantings and screening materials may include a combination of plant materials, earth berms, solid decorative masonry walls, raised planters, or other screening devices that are determined by the Director to meet the intent of this requirement.

      (3) Trees must be provided within the planting strip at a rate of at least one tree for each 30 feet of street frontage with a minimum distance of not more than 60 feet between each tree. Tree species must reach a mature height of at least 20 feet.

Figure 17.82-1: Parking Placement



2. **Driveway Width.** The maximum width of a new driveway crossing a public sidewalk is 12 feet for a one-car driveway and 20 feet for a two-car driveway. Greater driveway width is allowed if required by the Fire District.

3. **Number of Driveways.** A maximum of two curb cuts for one-way traffic and one curb cut for two-way traffic are permitted per street frontage per 150 feet of lineal street frontage. Deviation from this standard is allowed if required by the Fire District.

4. **Garage Width and Design.**

    a. Garage doors may occupy no more than 40 percent of a building's street frontage and shall be recessed a minimum of 18 inches from a street-facing wall plane.

    b. Street-facing garage doors serving individual units that are attached to the structure must incorporate one or more of the following so that the garage doors are visually subservient and complementary to other building elements:

        (1) Garage door windows or architectural detailing consistent with the main dwelling.

        (2) Arbor or other similar projecting feature above the garage doors.

        (3) Landscaping occupying 50 percent or more of driveway area serving the garage (e.g, "ribbon" driveway with landscaping between two parallel strips of pavement for vehicle tires)

5. **Podium Parking.**

a. **Landscaping Strip**. Partially submerged podiums adjacent to a street must include a landscaped planter between the street and podium at least 4 feet wide with a planting height and vegetative cover sufficient in height to fully screen the podium edge and ventilation openings from view. At maturity, plantings must comprise a minimum of 75 percent of the total landscape planter area.

b. Residential-only Projects.

(1) The maximum height of lower-level parking podium adjacent to the street is 5 feet above finished sidewalk grade.

(2) First-floor units above a street-facing podium must feature entries with stoops and stairs providing direct access to the adjacent sidewalk.

c. Mixed-Use Projects.

(1) The podium parking entry shall be recessed a minimum of 4 feet from the front street-facing building facade.

6. **Loading.**

a. Loading docks and service areas on a corner lot must be accessed from the side street.

b. Loading docks and service areas are prohibited on the primary street building frontage.

17.82.060 Building Placement, Orientation, and Entries

A. Intent. The intent of the building placement, orientation, and entries standards is to:

1. Support cohesive neighborhoods and social interaction with outward facing buildings.
2. Support a pedestrian-oriented public realm with an attractive and welcoming streetscape character.
3. Provide for sensitive transition from the public realm (sidewalk) to the private realm (residences).
4. Provide adequate area behind buildings for parking.

B. Standards

1. **Maximum Front Setback**.

a. RM Zone: 25 ft. or front setback of adjacent building, whatever is greater.

b. MU-N Zone: 25 ft.

c. C-C and C-R Zones: 25 ft. from edge of curb.

2. **Front Setback Area**.

a. All areas between a building and adjoining sidewalk shall be landscaped with live plant materials, except for:

(1) Areas required for vehicular or pedestrian access to the property; and

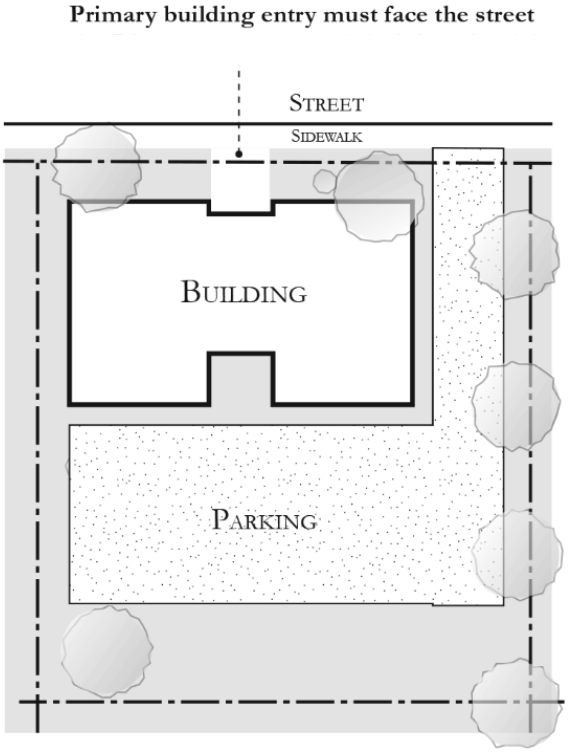
(2) Courtyards, outdoor seating areas, and other similar outdoor spaces for residents, customers and/or the general public.

b. Landscaping shall consist of any combination of trees and shrubs, and may include grass or related natural features, such as rock, stone, or mulch. At maturity, plantings must comprise a minimum of 75 percent of the total landscape area.

3. **Building Entrances**.

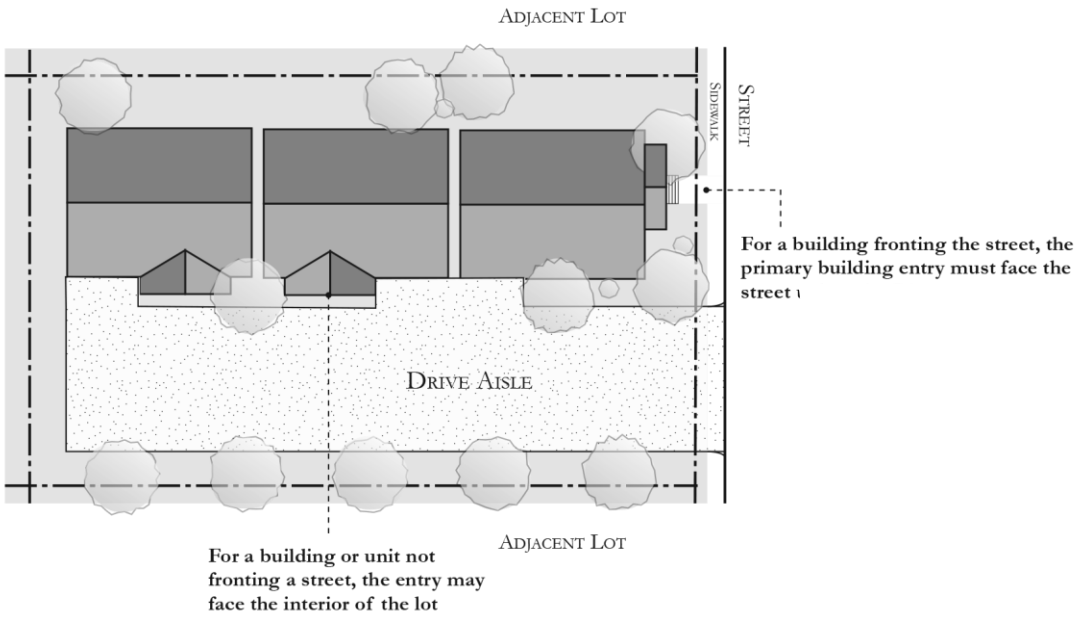
a. For buildings with one primary entrance that provides interior access to multiple individual dwelling units, the primary building entrance must face the street. A primary building entrance facing the interior of the interior of a lot is not allowed. See Figure 17.82-2.

Figure 17.82-2: Building Entry Orientation – Single Primary Entry



b. On lots where units have individual exterior entrances, all ground floor units with street frontage must have an entrance that faces the street. If any wall of a ground floor unit faces the street, the unit must comply with this requirement. For units that do not front the street, entrances may face the interior of the lot. See Figure 17.82-3.

Figure 17.82-3: Building Entry Orientation – Multiple Primary Entries



Option 1:

c. The entry-orientation standards in this section do not apply to residential-only projects in the C-C zone that front Bay Avenue, Capitola Road, and 41st Avenue north of Jade Street.

Option 2:

c. The Director may administratively approve an exception to the entry-orientation standards in this section for residential-only projects on Bay Avenue, Capitola Road, and 41st Avenue north of Jade Street that comply with all of the following standards:

(1) At least one pedestrian walkway per 50 feet of property street frontage must connect the adjacent sidewalk to the interior of the lot.

(2) The area between a building and the street must be landscaped, except for private open space for units (patios) and pedestrian pathways.

(3) Continuous solid fences between buildings and the street are prohibited. Private outdoor space, if provided, may be defined by a low fence at least 50 percent transparent.

(4) Street-facing buildings may not exceed a width of 100 feet.

4. **Pedestrian Walkway**. A pedestrian walkway, minimum 6-foot width, shall provide a connection between the public street and all building entrances (i.e., residents shall not be required to walk in a driveway to reach their unit.

C. Entry Design.

1. **Residential Projects.**

   a. A street-facing primary entrance must feature a porch, covered entry, or recessed entry clearly visible from the street that gives the entrance visual prominence. Entrances must be connected to the adjacent sidewalk with a pedestrian walkway.

   b. Front porches must comply with the following:

      (1) The front porch must be part of the primary entrance, connected to the front yard and in full view of the street-way.

      (2) Minimum dimensions: 6 feet by 5 feet.

      (3) The porch or covered entry must have open-rung railings or landscaping defining the space.

   c. Recessed entries must feature design elements that call attention to the entrance such as ridged canopies, contrasting materials, crown molding, decorative trim, or a 45-degree cut away entry. This standard does not apply to secondary or service entrances.

2. **Mixed-Use Projects.** Entrances to mixed-use buildings with ground floor commercial must be emphasized and clearly recognizable from the street. One or more of the following methods shall be used to achieve this result:

   a. Projecting non-fabric awnings or canopies above an entry (covered entry);

   b. Varied building mass above an entry, such as a tower that protrudes from the rest of the building surface;

   c. Special corner building entrance treatments, such as a rounded or angled facets on the corner, or an embedded corner tower, above the entry;

   d. Special architectural elements, such as columns, porticos, overhanging roofs, and ornamental light fixtures;

   e. Projecting or recessed entries or bays in the facade;

   f. Recessed entries must feature design elements that call attention to the entrance such as ridged canopies, contrasting materials, crown molding, decorative trim, or a 45-degree cut away entry; and

   g. Changes in roofline or articulation in the surface of the subject wall.

3. **Street-facing Entries to Upper Floors.** Street-facing entries to upper floors in a mixed-use building shall be equal in quality and detail to storefronts. This standard may be satisfied through one or more of the following:

   a. Dedicated non-fabric awning, canopy, or other projecting element

   b. Dedicated light fixture(s)

   c. Decorative street address numbers or tiles

d. Plaque signs for upper-floor residences.

17.82.070 Building Massing

A. Intent. The intent of the building massing and open space standards is to:

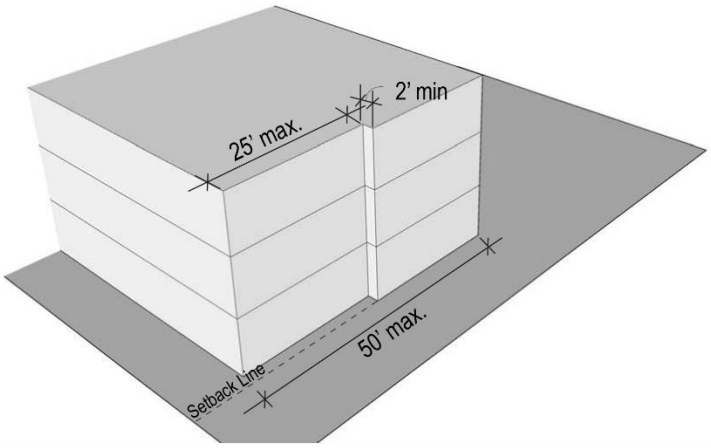
1. Provide for human-scale and pedestrian-friendly building massing where large buildings are broken into smaller volumes that fit into the surrounding neighborhood.
2. Provide for sensitive transitions to adjacent lower-density residential uses.
3. Minimize visual and privacy impacts to neighboring properties.

B. Standards.

1. **Building Width.** The width of a building measured parallel to the primary street frontage shall not exceed 50 feet.
2. **Massing Breaks**.

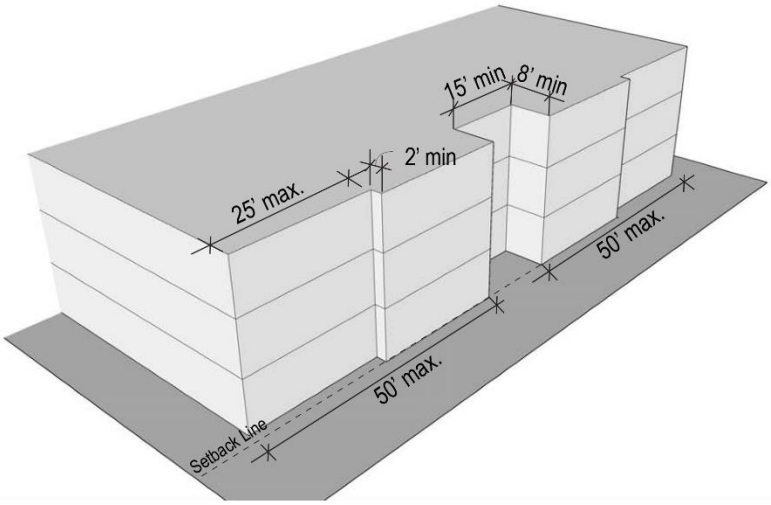
   a. All street-facing building facades 25 feet or more in length shall incorporate a building projection or recess (e.g., wall, balcony, or window) at least 2 feet in depth. See Figure 17.82-4.

Figure 17.82-4: Massing Breaks – 25 ft. Module



   b. Buildings that exceed 50 feet in length along a street facade shall provide a prominent recess at intervals of 50 feet or less. The recess shall have a minimum of depth of 8 feet and minimum width of 15 feet. See Figure 17.82-5.

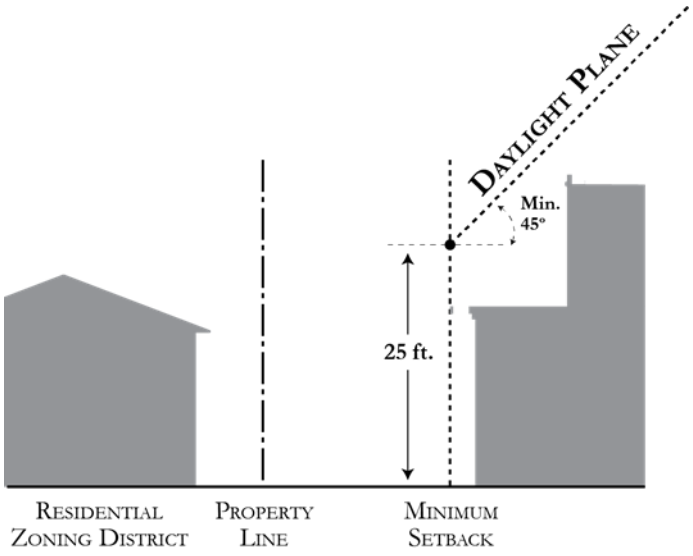
Figure 17.82-5: Massing Breaks – 50 ft. Module



3. **Residential Transitions.** Development sharing a side or rear lot line with the R-1 district shall comply with the following:

    a. No structure shall extend above or beyond a daylight plane having a height of 25 feet at the setback from the residential property line and extending into the parcel at an angle of 45 degrees. See Figure 17.82-6.

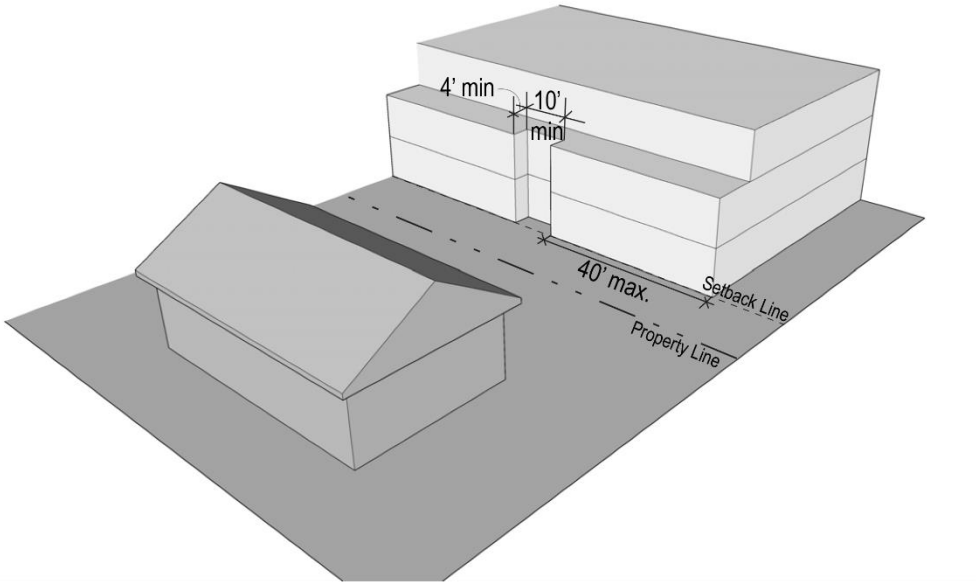
Figure 17.82-6: Daylight Plane



C.

a. A side building wall adjacent to a single-family dwelling may not extend in an unbroken plane for more than 40 feet along a side lot line. To break the plane, a perpendicular wall articulation of at least 10 feet width and 4 feet depth is required. See Figure 17.82-7.

Figure 17.82-7: Break in Side Building Wall



17.82.080 Facade and Roof Design

A. Intent. The intent of the facade and roof design standards is to:

1. Create street-facing building facades that are varied and interesting with human-scale design details;
2. Incorporate architectural elements that reduce the perceived mass and box-like appearance of buildings;
3. Provide for buildings designed as a unified whole with architectural integrity on all sides of the structure;
4. Promote design details and materials compatible with the existing neighborhood character; and
5. Minimize privacy impacts to neighboring properties

B. Standards.

1. **Blank Wall Areas.**
   a. The area of a blank building wall fronting a public street may not exceed a square area where the height and width are both 10 feet. See Figure 17.82-8.
   b. A break in a blank building wall may be provided by any of the following:
      (1) Doors, windows, or other building openings.
      (2) Building projections or recesses, decorative trim, trellises, or other details that provide architectural articulation and design interest.

(3) Varying wall planes where the wall plane projects or is recessed at least six inches.

(4) Awnings, canopies or arcades.

(5) Murals or other similar public art.

Figure 17.82-8: Blank Walls

2. **Windows and Doors.** Street-facing windows and doors shall comply with one of the following:

   a. All street-facing windows and doors must feature built up profile trim/framing. Windows must include sills and lintels. Trim/framing must project at least two inches from the building wall with material that visually contrasts from the building wall.

   b. For all street-facing windows, glass shall be inset a minimum of 3 inches from the exterior wall or frame surface to add relief to the wall surface.

3. **Facade Design.** Each side of a building facing a street shall include a minimum of two of the following façade design strategies to create visual interest:

   a. **Projecting Windows.** At least 25 percent of the total window area on the street-facing building wall consists of projecting windows. The furthest extent of each projecting window must project at least one foot from the building wall. This requirement may be satisfied with bay windows, oriel windows, bow windows, canted windows, and other similar designs.

   b. **Window Boxes.** A minimum of 50 percent of street-facing windows feature window boxes projecting at least one-half foot from the building wall.

   c. **Shutters.** A minimum of 50 percent of street-facing windows feature exterior decorative shutters constructed of material that visually contrasts from the building wall

d. **Prominent Front Porch.** A front porch with a minimum depth of 6 feet and width of 12 feet providing access to the unit's primary entrance.

e. **Balconies.** Balconies, habitable projections, or Juliet balconies, with at least 20 percent of the linear frontage of the street-facing building wall containing one or more above-ground balcony.

f. **Shade/Screening Devices.** Screening devices such as lattices, louvers, shading devices, awnings, non-fabric canopies, perforated metal screens, with such a device occupying at least 20 percent of the linear frontage of the street-facing building wall.

g. **Datum Lines.** Datum lines that continue the length of the building, such as cornices, with a minimum four inches in depth, or a minimum two inches in depth and include a change in material.

h. **Varied Exterior Color.** The street-facing building walls feature two or more visibly contrasting primary colors, with each color occupying at least 20 percent of the street-facing building wall area.

i. **Varied Building Wall Material.** The street-facing building walls feature two or more visibly contrasting primary materials (e.g., wood shingles and stucco), with each material occupying at least 20 percent of the street-facing building wall area.

4. **Roof Design.** Each side of a building facing a street shall include a minimum of one of the following roof design strategies to create visual interest:

   a. **Roof Eaves.** A roof eave projecting at least two feet from the street-facing building wall with ornamental brackets or decorative fascia and eave returns.

   b. **Roof Form Variation.** At least 25 percent of the linear frontage of the building's street-facing building roof line incorporates at least one element of variable roof form that is different from the remainder of the street-facing roof form. This requirement may be satisfied with recessed or projecting gabled roof elements, roof dormers, changes in roof heights, changes in direction or pitch of roof slopes, and other similar methods.

   c. **Roof Detail and Ornamentation.** At least 80 percent of the linear frontage of the building's street-facing roof line incorporates roof detail and/or ornamentation. This requirement may be satisfied with Parapet wall that is an average of at least one-foot tall and has a cornice, periodic and articulated corbelling or dentils, an ornamental soffit, an offset gable clearstory, and other similar methods.

5. **Neighbor Privacy.**

   a. Balconies, roof decks and other usable outdoor building space is not allowed on upper-story facades abutting R-1 zoning district.

b. Sliding glass doors, French doors, and floor-to-ceiling windows are not allowed on upper-story facades abutting R-1 zoning district.

c. Windows facing adjacent dwellings must be staggered to limit visibility into neighboring units. The vertical centerline of a window may not intersect the window of an adjacent dwelling.

6. **360-degree Design.** Buildings shall have consistent architectural quality on all sides, with all exterior surfaces featuring consistent facade articulation, window and door material and styles, and building wall materials and colors.

17.82.090 Other Site Features

A. Intent. The intent of the other site feature standards is to:

1. Minimize visual clutter on a development site.
2. Enhance the design character of the public realm.
3. Support an active and welcoming pedestrian environment.
4. Minimize noise, odor, and visual impacts on neighboring residential properties.

B. Standards.

1. **Refuse Storage Areas**.

a. Refuse collection and storage areas may not be located:

(1) In a required front or street side setback area;

(2) Between a primary structure and a front or street side property line;

(3) Within a required landscape area; or

(4) Within a required side setback area adjacent to an R-1 district.

b. Refuse containers shall be located in a building or screened by a solid enclosure with a minimum height of five feet for carts/cans, and seven feet for dumpsters.

2. **Mechanical Equipment Screening**.

a. Rooftop mechanical equipment, including vents and stacks, shall be fully screened from view by an architectural feature, such as a parapet wall.

b. Ground-mounted mechanical equipment may not be located

(1) In a required front setback area; or

(2) Between a primary structure and a front property line.

3. Backflow prevention devices shall not be placed directly in front of the building but may be located in a side location of the front yard. Backflow prevention devices may be located within the front half of the lot, when located between the side building

plane extending to the front property line and the side yard property line. The equipment shall be either:

a. Screened to its full height by a combination of fencing and perennial landscaping to 70 percent opacity; or

b. Contained within a protective enclosure (metal grate) within a planter or landscape bed.

BN CONSULTING

memorandum

To: City of Capitola
From: Ben Noble
Subject: Objective Standards for Multifamily and Mixed-Use Development

This memorandum describes the approach to prepare new objective standards for multifamily and mixed-use residential development in Capitola (the "Objective Standards project"). In addition to this project approach, this memorandum also provides background information about the Objective Standards project and describes recently adopted state housing law relevant to the project.

PROJECT BACKGROUND

In 2017 the State of California established the SB2 grant program to fund city planning efforts to streamline housing approvals and accelerate housing production. Capitola is using part of its SB2 grant for the Objective Standards project. As described further below, new objective standards for multifamily and mixed-use development will help to protect the City and ensure quality development in light of new state housing laws. The City hired consultants Ben Noble and Bottomley Design and Planning to assist with this project.

Process and Schedule

The Objective Standards project includes the following three main tasks:

- **Task 1: Existing Regulation Review & Recommended Approach.** Summarize existing regulations and recommend approach to new objective standards.
- **Task 2: Objective Standards Drafting.** Prepare new objective standards for multifamily and mixed-use residential development.
- **Task 3: Public Review and Adoption.** Hold public hearings and adopt new objective standards.

Public Engagement

Information about the Objective Standards project will be posted online at www.cityofcapitola.org.communitydevelopment. The public will be able to participate in the project in the following ways:

- Planning Commission and City Council study sessions (2)
- Stakeholder meetings (2)
- Planning Commission and City Council public hearings

For the stakeholder meetings, the City will invite interested architects, builders, property owners, and residents to review and comment on project materials. At the first meeting planned for April 2021,

stakeholders will review a draft outline of new objective standards. Stakeholders will meet a second time in May 2021 to review the draft standards prior to public hearings.

STATE LAW

Recent changes to state housing law aim to facilitate housing production by streamlining the approval of housing projects that comply with established local standards. These laws include Senate Bill (SB) 35, the Housing Accountability Act, and SB 330. The Regional Housing Needs Allocation (RHNA) requirement in state housing element law is also relevant to the Objective Standards project.

SB 35

In 2017 the California legislature adopted SB 35, which was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. SB 35 requires local governments that have not met their RHNA to approve by right without a discretionary process qualifying multifamily and mixed-use residential projects. A qualifying project in Capitola must be consistent with all objective standards, contain at least 50 percent affordable units, agree to pay prevailing wages for construction work, and meet other requirements. Projects in the coastal zone are not eligible for streamlined approval under SB 35.

If an applicant requests streamlined approval for a qualifying project under SB 35, the City must approve the project if it is consistent with objective standards in effect at the time the application was submitted. The City must review and act on the application through a ministerial process without a use permit, design review, or public hearings. SB 35 defines objective standards as "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."

Housing Accountability Act and SB 330

The Housing Accountability Act (HAA), Government Code Section 65589.5, limits a local government's ability to deny or reduce the density of housing development projects that are consistent with objective standards. The HAA was originally enacted in 1982 and amended in 2017, 2018, and 2019 to expand and strengthen its provisions.

The HAA applies to any development project with two or more units, including multifamily housing, mixed-use residential development and projects with two or more detached single-family homes. Under the HAA, a local government may deny or reduce the proposed density of a project only if it finds that 1) the project "would have a specific, adverse impact upon the public health or safety" and 2) "there is no feasible method to satisfactorily mitigate or avoid the adverse impact."

SB 330, adopted in 2019, amended the HAA to establish vesting rights for projects that use a new pre-application process. SB 330 also added a new chapter to the Government Code, the "Housing Crisis Act of 2019," which prohibits local governments from:

- Reducing the allowed intensity on a property below what was allowed under the general plan or zoning in effect on January 1, 2018;
- Imposing a moratorium or similar restriction or limitation on housing development;

- Establishing or imposing growth control measures that meter the pace of housing construction or limit the jurisdiction's population; and
- Establishing new design standards that are not "objective." The definition of an objective standard in SB 330 is the same as in SB 35.

The HAA and SB 330 apply within the coastal zone, but do not alter or lessen the effect or application of Coastal Act resource protection policies. Government Code Section 65589.5(e) states "Nothing in this section shall be construed to relieve the local agency from complying with...the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code)"

Regional Housing Needs Allocation (RHNA)

State housing element law requires Capitola to accommodate its fair share of new housing units during a specified planning period. This fair share requirement is determined by the Association of Monterey Bay Area Governments (AMBAG) and known as the Regional Housing Needs Allocation (RHNA). Table 1 shows Capitola's RHNA for the 2015-2023 planning period, including units affordable at different income levels. Since January 1, 2015, Capitola has not approved any very low or low-income units. One moderate income unit, a town house in Tera Court located behind OSH, was approved.

Table 1: RHNA and Permits Issued for 2015-2023 Planning Period

Income Group	RHNA
Very Low-Income (<50% of Median Family Income)	34
Low-Income (50-80% of Median Family Income)	23
Moderate-Income (80-120% of Median Family Income)	26
Above Moderate-Income (>120% of Median Family Income	60
Total	**143**

In 2022, Capitola will be assigned a new RHNA for the 2024-2032 planning period and will update its Housing Element and Zoning Code (if needed) to provide adequate sites for these units. Based on preliminary information from AMBAG, Capitola's new RHNA will likely be two to three times greater than the RHNA for the prior planning period. AMBAG will release its draft RHNA in January 2022 and approve the final RHNA in June 2022.

To accommodate the new RHNA, Capitola may need to identify new housing sites, increase the allowed density of existing sites, or both. Recently approved state law also may limit Capitola's ability to carry forward previously identified sites where housing was not approved during prior planning periods. If Capitola adds new sites for multifamily housing, it becomes increasingly important for the City to have quality standards in place.

EXISTING REGULATIONS

Objective Standards

Table 2 on the following page shows Capitola's existing Zoning Code requirements for multifamily and mixed-use residential development that meets the state definition of an objective standard. Table 2 shows objective standards in all zoning districts where multifamily and mixed-use residential development is allowed. A gray cell in Table 2 means that there is no objective standard in the zoning district.

Objective standards may also be found in the in the General Plan, Subdivision Ordinance, and other similar regulatory documents. The General Plan contains few objective standards as it was written to provide a policy foundation for land use and development in Capitola. Objective standards in the General Plan are limited to allowed land uses and density in RM designation, allowed land use and FAR in mixed-use and commercial designations, and noise standards in Policy SN-7.4.

Subdivision Ordinance Chapter 16.24 contains design standards that apply to proposed subdivisions. Standards in Chapter 16.24 that qualify as objective standards include new street standards (street alignment, intersection angles, intersection cure radius, street grade) and lot configuration standards (property line angles, minimum frontage width).

If a qualifying project requests streamlined review under SB 35, the City must approve the project ministerially if it conforms with these standards. The City may not require project changes to comply with subjective requirements, such as the City's design review criteria in Zoning Code Section 17.120.070. The Housing Accountability Act and SB 330 may also limit the City's ability to require changes to a proposed project if the project complies with all objective standards

.

Table 2: Existing Zoning Code Objective Standards

Standard	Zoning District			
	MF	**MU-V**	**MU-N**	**C-C & C-R**
Allowed Land Uses	17.16.020	17.20.020	17.20.020	17.24.020
Development Standards				
Parcel Size and Dimensions			17.20.040	17.24.030
Floor Area Ratio		17.20.030	17.20.040	17.24.030
Building Coverage	17.16.030			
Open Space	17.16.030			17.24.030
Density	17.16.030			17.24.030
Setbacks	17.16.030	17.20.030	17.20.040	17.24.030
Build-to Line		17.20.030.D	17.20.040	
Height	17.16.030	17.20.030	17.20.040	17.24.030
Design Standards				
Building Orientation		17.20.030.E	17.20.040.B	17.24.040.B.3
Blank Walls		17.20.030.E		17.24.040.B.4
Storefront Width	N/A	17.20.030.E		17.24.040.B.5
Ground Floor Transparency		17.20.030.E		17.24.040.B.6
Retail Depth	N/A			17.24.040.B.7
Ground Floor Height				17.24.040.B.8
Parking Placement and Screening		17.20.030.E	17.20.040.E	17.24.040.B.9
Driveway Width		17.20.030.E	17.20.040.F	
Garbage and Recycling Screening		17.20.030.E		
Residential Transitions			17.20.040.D	17.24.030.E
Landscaping				
Required landscape areas	17.72.050.A	17.72.050.B	17.72.050.B	17.72.050.B
General standards [1]	17.72.060.A	17.72.060.A	17.72.060.A	17.72.060.A
Irrigation and Water Efficiency	17.72.060.B	17.72.060.B	17.72.060.B	17.72.060.B
Maintenance	17.72.070	17.72.070	17.72.070	17.72.070
Parking				
Required Spaces	17.76.030	17.76.030	17.76.030	17.76.030
Parking in Setbacks	17.76.040.B	17.76.040.B	17.76.040.B	17.76.040.B
Parking Design Standards [2]	17.76.060	17.76.060	17.76.060	17.76.060
Landscaping [3]	17.76.070	17.76.070	17.76.070	17.76.070
Bicycle Parking	17.76.080	17.76.080	17.76.080	17.76.080
Outdoor Lighting [4]	17.967.110	17.967.110	17.967.110	17.967.110

Notes:

[1] Includes plant selection, turf limitations, maximum slope, plant groupings, water features, watering times

[2] Includes parking space dimensions, parking lot dimensions, surfacing, pedestrian access, screening

[3] Includes minimum amount of required landscaping, shade trees

[4] Includes maximum height, prohibited lighting types, fixture types, light trespass

Subjective Requirements

Proposed multifamily and mixed-use residential development requires a Design Review Permit and, in certain zoning districts, a Conditional Use Permit. To approve these permits, the Planning Commission must make findings in Section 17.120.080 for Design Permits and Section 17.124.070 for Conditional Use Permits. These findings are provided in Attachment A.

Design Permit Finding E requires compliance with all applicable design review criteria in Zoning Code Section 17.120.070. These design review criteria, also provided in Attachment A, address a broad range of building and site design issues and were recently developed as part of the Zoning Code Update. These criteria reflect public desires for new development and are based on design-related policies in the General Plan such as community character, neighborhood compatibility, mass and scale, articulation, and visual interest.

In addition to permit findings, the Zoning Code contains a number of requirements for multifamily and mixed-use residential development that do not meet the state definition of an objective standard. These subjective requirements are identified in Attachment B. Some requirements apply in all zoning districts (e.g., fence color and material) while others apply only in certain zoning districts or locations (e.g., 3-story building requirements on Capitola Road).

For projects requiring a Design Review Permit or Conditional Use Permit, the City can require compliance with subjective requirements through the discretionary process. For a project requesting streamlined review under SB 35, the City cannot enforce these requirements. Under the Housing Accountability Act and SB 330, the City also cannot require compliance with these standards for any multifamily or mixed-use residential project in a manner that disallows or reduces the density of the proposed project.

PROJECT APPROACH

Given the project goals and relevant state law, this section describes the City's approach to prepare new objective standards for multifamily and mixed-use residential development.

1. Translate Design Review Criteria to New Standards

As described above, a qualifying project requesting streamlined approval under SB 35 must be approved ministerially without Design Review or a public hearing. Instead, the City may only require compliance with objective standards in effect at the time the application was submitted. The City would not be able to require changes to the project to address Design Review criteria in Section 17.120.070.

For this reason, we will translate Design Review criteria into objective standards as needed to ensure quality design for all multi-family and mixed-use residential projects, including projects qualifying for streamlined approval under SB 35. Table 3 below lists Design Review criteria appropriate for translation into objective standards. Translating Design Review criteria into objective standards will also benefits applicants, decision-makers, and the public by providing greater certainty on City requirements and expectations for all proposed projects.

Table 3: Design Review Criteria to Translate into New Objective Standards

B. Neighborhood Compatibility. The project is designed to respect and complement adjacent properties. The project height, massing, and intensity is compatible with the scale of nearby buildings. The project design incorporates measures to minimize traffic, parking, noise, and odor impacts on nearby residential properties.
C. Historic Character. Renovations and additions respect and preserve existing historic structure. New structures and additions to non-historic structures reflect and complement the historic character of nearby properties and the community at large.
E. Pedestrian Environment. The primary entrances are oriented towards and visible from the street to support an active public realm and an inviting pedestrian environment.
F. Privacy. The orientation and location of buildings, entrances, windows, doors, decks, and other building features minimizes privacy impacts on adjacent properties and provides adequate privacy for project occupants.
H. Massing and Scale. The massing and scale of buildings complement and respect neighboring structures and correspond to the scale of the human form. Large volumes are divided into small components through varying wall planes, heights, and setbacks. Building placement and massing avoids impacts to public views and solar access.
J. Articulation and Visual Interest. Building facades are well articulated to add visual interest, distinctiveness, and human scale. Building elements such as roofs, doors, windows, and porches are part of an integrated design and relate to the human scale. Architectural details such as trim, eaves, window boxes, and brackets contribute to the visual interest of the building.
L. Parking and Access. Parking areas are located and designed to minimize visual impacts and maintain Capitola's distinctive neighborhoods and pedestrian-friendly environment. Safe and convenient connections are provided for pedestrians and bicyclists.
S. Mechanical Equipment, Trash Receptacles, and Utilities. Mechanical equipment, trash receptacles, and utilities are contained within architectural enclosures or fencing, sited in unobtrusive locations, and/or screened by landscaping.

Design Review criteria excluded from Table 3 will not be translated into new objective standards. New standards to translate Design Review Criteria M (Landscaping), N (Drainage), O (Open Space and Public Places), P (Signs), Q (Lighting), and R (Accessory Structures) are not needed because existing standards are sufficient to address these issues. We will not translate Design Criteria I (Architectural Style) and K (Materials) to avoid establishing overly prescribe building design standards. We also will not translate G (Safety) as this criterion does not easily lend itself to objective standards.

Many of the Design Review criteria in Table 3 are already addressed in existing objective standards for some zoning districts. For example, Mixed-Use Village design standards in Section 17.20.030.E contain building orientation, blank walls, storefront width, ground floor transparency, and parking location and buffer standards that address aspects of Design Review Criteria E (Pedestrian Environment), H (Massing and Scale), J (Articulation and Visual Interest, L (Parking and Access). and J (Articulation and Visual Interest). As we prepare the new standards, we will consider if any existing standards should be applied in other zoning districts. We will also consider if existing standards should be augmented or modified to more fully implement the Design Review criteria.

2. Consider New Standards for Other Subjective Requirements

As described above, the City may not require compliance with subjective requirements in Attachment B for projects requesting streamlined approval under SB 35. For this reason, we will review the requirements in Attachment B to determine which, if any, should be translated into an objective standard. Some of these existing requirements are relatively minor and may not need an objective standard (e.g., MU-V pavement material in 17.20.030.E.7). Other requirements may be important to the community and warrant a new objective standard (e.g., 3-story buildings on Capitola Road).

3. Provide Options to Achieve Objectives

Design standards can establish a single method by which all proposed projects must achieve a design objective. For example, to provide variation in facade articulation, the design standards could require all building walls to feature a wall modulation or increase setback every 30 feet. Alternatively, design standards could allow projects to choose from different options to achieve the objective. With this approach, a project could achieve the facade articulation objective by selecting from options such as changes in material and color, vertical accent lines, wall modulation, balconies, bay windows, and changes in building height.

New objective standards will include options to achieve design objectives where appropriate. The facade articulation standard above is an example of where providing options is appropriate. For other standards, options may not be needed or desirable. As we prepare the standards, we will look for opportunities to incorporate options into standards so that individual projects can determine the best design solutions to achieve the City's objectives. In unique circumstances, applicants will also be able to requests a deviation from a standard, as described below.

4. Allow Deviations with Design Review

The design standards need to specify if a proposed project may deviate from the standards through a discretionary process. If deviation is allowed, the standards need to identify who approves the deviation, the criteria to allow the deviation, and if deviation is allowed from all standards, or just certain ones.

We will allow deviation from all standards with Planning Commission approval of a Design Permit. This approach matches allowed deviations for accessory dwelling units in Zoning Code Section 17.74.100. However, the default assumption should be that projects will comply with all standards, with deviations allowed only due to unique circumstances.

Findings required to approve the deviation will allow for flexibility when needed but ensure that all projects achieve quality design. We will clearly identify the intent of the standards, and allow for deviation only if the Planning Commission finds that 1) the project, with the deviation, achieves the intent of the standard to the extent possible; and 2) unique circumstances on the property require the deviation.

For example, the new design standards may include a requirement for buildings to be oriented towards a public street with the primary entrance to the building directly accessible from an adjacent sidewalk. The new standards will identify the intent of the standard, which is to provide for an active public realm and an inviting pedestrian environment. On certain sites, complying with this standard may not be feasible or desirable due to unique circumstance such as the location of existing buildings or an unusual

parcel configuration. In such a case, the Planning Commission could allow for an alternative entrance orientation upon finding that the project incorporates alternative design features to support a pedestrian-friendly environment and active/inviting public realm.

5. Locate Standards in Zoning Code

New standards may be located in the Zoning Code or adopted separately by resolution. We plan to locate new standards in the Zoning Code so that all similar development and design standards are found together in one place. With this approach, users will not need to consult a separate document to find the standards, and the standards are less likely to be overlooked by City staff and applicants.

Within the Zoning Code, the new standards may be added to individual zoning district chapters (e.g., Chapter 17.16: Residential Zoning Districts) or placed in a new separate chapter in the Zoning Code. The best location will depend on the details of the standards once they are drafted. If the standards vary considerably across zoning districts, the best location for the standards will likely be individual zoning district chapters. If the standards are more generally applicable to all zoning districts, a separate new chapter may be preferable.

Because new standards will be tailored to different areas of the city and types of development, we expect that we will add the standards to individual zoning district chapters. As we proceed with drafting the standards, we will confirm that this approach works best. The goal should be to locate standards where readers expect to find them while minimizing unnecessary repetition where possible.

Attachments:

A. Design Permit Findings, Conditional Use Permit Findings, and Design Review Criteria
B. Additional Subjective Zoning Code Requirements

Capitola Planning Commission

Agenda Report

Meeting: April 21, 2022

From: Community Development Department

Subject: **SB9 Ordinance**

Project #: 22-0079

APN: Applicable to all parcels in Single-Family Zone

Project description: Amendments to the Capitola Municipal Code, Adding Section 17.75 SB9 Residential Developments to Title 17, Part 3 (Zoning, Citywide Standards), Adding Section 16.78 Urban Lot Splits to Title 16 (Subdivisions), Amending Section 17.74 Accessory Dwelling Units, and Amending Section 16.08 Definitions for the implementation of Government Code Sections 66411.7 and 65852.21 Related to Urban Lot Splits and SB9 Residential Developments.
Environmental Determination: Implement of Government Code sections 65852.21 and 66411.7, are not considered a project under CEQA.

Property Owner: Ordinance applies to all properties in the R-1 Zoning District

Representative: Katie Herlihy, Community Development Director

Background: Senate Bill 9 (SB 9) was passed in September 2021, and went into effect on January 1, 2022. SB 9 enacted Government Code Sections 66411.7 and 65852.21 which allows ministerial review of two-lot subdivisions with up to two residential units on each new lot. SB9 applies solely to properties within a single-family zone. The ministerial review is limited to the review of the objective standards established within the municipal code.

On February 3, 2022, the Planning Commission reviewed the first public draft of the ordinance and provided the following feedback on the draft ordinance:

1. Add requirement for deed restriction that development be limited to the standards within Chapter 17.75: Two-Unit Development in Chapter 17.75 and Chapter 17.74 Accessory Dwelling Units and prohibit Vacation Rental.
2. Increase maximum unit size to 1,200 square feet.
3. Keep guaranteed allowance for unit size at 800 square feet.
4. Allow two stories but limit the height of the second story to 22 feet, consistent with ADU standards.
5. Do not require separation between residential units
6. Allow up to 150 square feet for a porch but do not allow the front porch to project/encroach into the front yard.
7. Remove requirement that color and materials shall match other structures on the same parcel.
8. Include stormwater and onsite infiltration/pervious surface requirements.
9. Specify if accessory uses such as home occupancy or childcare are allowed.
10. For guaranteed allowance, prioritize front yard setbacks as the last option to encroach into for site design.
11. Consider decreased side and rear setbacks for smaller lots.

12. For lots created through an Urban Lot Split, allow zero setbacks from the new central lot line.
13. Minimize curb cuts for driveways. Consider requiring shared driveways through one curb cut.
14. Create maximum driveway widths rather than minimum driveway widths.
15. Consider more design standards to preserve front yard in single-family neighborhoods.
16. Do not require covered parking.
17. Guide parking to the side and rear of homes, not in the front yard

On March 31, 2022, the Planning Commission provided feedback on policy questions related to the SB9 ordinance. Specifically, further study of the proposed SB9 development standards applied to Capitola's typical lot sizes revealed that lots under 5,500 square feet in size cannot accommodate four units which comply with the draft setbacks, height, and parking. For instance, on a 4,000 square foot lot, if the 15-foot front yard setback is maintained and parking is required on the side or to the rear of the structures, a third story must be allowed to fit four 800 square foot units within the two lots. During the meeting, the Planning Commission directed staff to allow addition height up to three stories to prioritize front yards and require parking through shared access toward the back to the property.

The draft ordinance was also sent to Coastal Commission staff for comments. In general, Coastal staff comments suggested putting in protections for areas prone to flooding, sea level rise, environmentally sensitive habitat areas (ESHA), and geologic hazards. Another suggestion of Coastal staff was to require onsite parking or limit development in areas with limited street parking availability to ensure coastal access. Lastly, they requested additional notes to ensure the requirement of a Coastal Development Permit and necessary CDP findings are required for all SB9 development projects within the coastal zone. In response to Coastal Staff's suggestions, staff updated the ordinance to prohibited SB9 Residential Developments and Urban Lot Splits within the 100-year flood area, the Geological Hazards (GH) overlay, and within the Environmentally Sensitive Habitat Areas (ESHA) overlay. The ordinance was also updated to not allow any parking exceptions to the onsite parking requirement for properties located on streets with extremely limited street parking in close proximity to the coast to ensure coastal access is not impacted. A map of impacted streets is included in the updated ordinance.

Discussion: The draft ordinance will establish two new chapters of the Capitola Municipal Code, including Chapter 16.68 for Urban Lots Splits and Chapter 17.75 for Two Unit Developments. The ordinance establishes review procedures and objective standards for review of SB-9 applications. Pursuant to state law, the code must allow the following:

Eligibility:

- All properties located in the single family (R-1) zoning district

Subdivision:

- Up to two new parcels of at least 1,200 square feet in area.
- Created lots at least 40 percent of the lot area of the original parcel
- Lots have access to the public right-of-way.

Allowed Development:

- Up to two units allowed on each lot. Maximum of 4 units total

- Guaranteed allowance of up to 800 square feet per unit, regardless of setbacks, parking, and height
- 4 feet maximum size and rear yard setback

SB9 development applications must be reviewed administratively by staff and are not subject to discretionary review by the Planning Commission. Staff is limited to applying objective development standards in the review of the project and cannot apply subjective standards, such as compatibility within the neighborhood. The ordinance can guide the design of the urban lot splits and two-unit developments through the application of objectives standards for siting and design.

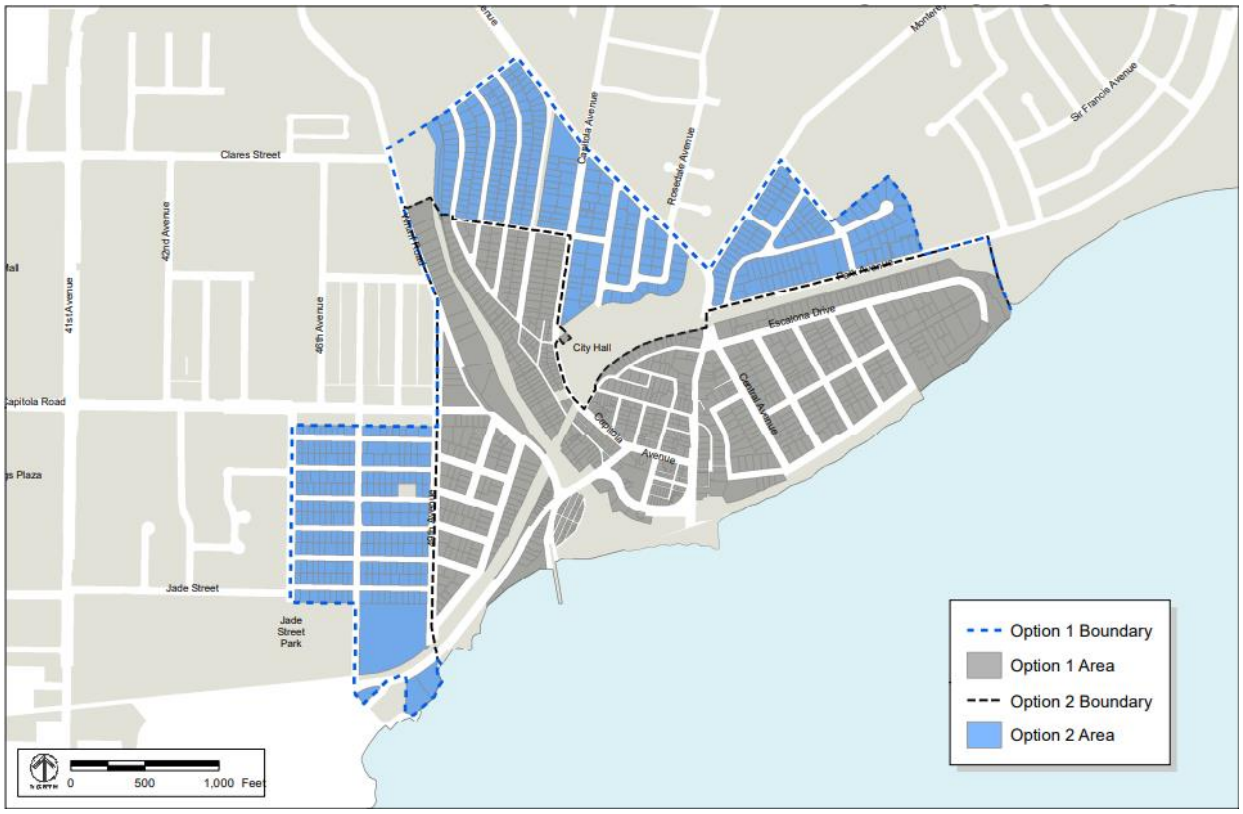
The draft ordinance has been updated to include Planning Commission and Coastal Commission staff direction. In addition to the changes listed in the background section of the report, the ordinance has also been updated to include the following:

1. Modified Title from Two Unit Developments to SB9 Residential Development
2. Within the guaranteed allowance 17.75.050.G.3, the Community Development Director shall determine which standards must be adjusted (height, setbacks, open space) to comply with the section.
3. Prohibited the use of the SB9 parking exception in areas close to the coast which have high demand for on street parking.

During the April meeting, an overview of the updated draft ordinance and major changes will be presented. There are two remaining items staff is seeking direction on.

17.75.040.D Separate Utility Connections. The draft code requires separate utility connection for each dwelling unit on a lot. This is not required by state law. Would the Planning Commission like to keep or remove this requirement?

17.75.050.D.7. Parking Exception. Under SB9, onsite parking is exempt if the parcel is 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. Staff added a map to show areas where the parking exception will not be applicable due to conflicts with coastal access. The areas shown on the map are in close proximity to the beach and heavily impacted by street parking. Staff is requesting direction on the map in Figure 1. Should the map include the boundary of option 1, or option 1 and 2?



Next Steps: If the Planning Commission has minor revisions to the ordinance, the Commission could make a positive recommendation to the City Council to adopt the ordinance with specific revisions. If the Planning Commission has major revisions to the ordinance, the ordinance should be continued to the May 5, 2022, Planning Commission meeting.

CEQA: Implement of Government Code sections 65852.21 and 66411.7, are not considered a project under CEQA.

Recommendation: Review the draft ordinance and consider forwarding a positive recommendation to the City Council to adopt the ordinance.

Attachments:

Attachment 1. Draft Ordinance

Attachment 2. SB9 Buildout Models

Attachment 3. SB9 Map

Attachment 4. Environmentally Sensitive Habitat Area Map

Attachment 5. Geologic Hazards Map

Attachment 6. Flood Map

Attachment 7. Zoning Map

Attachment 8. HCD SB9 Guidance

Attachment 9. Coastal Commission SB9 Guidance

ORDINANCE NO. 1049

AN ORDINANCE OF THE CITY OF CAPITOLA ADDING MUNICIPAL CODE CHAPTERS 16.78 AND 17.75, ADDING MUNICIPAL CODE SECTION 16.08.020, AND AMENDING SECTION 17.74.040 FOR THE IMPLEMENTATION OF GOVERNMENT CODE SECTIONS 66411.7 AND 65852.21 RELATED TO URBAN LOT SPLITS AND SB9 RESIDENTIAL DEVELOPMENTS

WHEREAS, SB-9 (Chapter 162, Statutes of 2021) enacted sections 66411.7 and 65852.21 to the Government Code, effective January 1, 2022; and

WHEREAS, these provisions require the City to provide ministerial approval of urban lot splits, ("Urban Lot Splits") and the construction of up to two residential dwelling units ("SB9 Residential Developments") on each single-family residential zoned lot within the City, subject to certain limitations; and

WHEREAS, Government Code section 66411.7(a) limits eligibility of Urban Lot Splits by size and proportionality; and

WHEREAS, Government Code sections 66411.7(a)(3)(C) and 65852.21(a)(2) limit Urban Lot Splits and SB9 Residential Developments, respectively, to sites that are not located on or within certain farmland, wetlands, very high fire hazard severity zones, hazardous waste sites, earthquake fault zones, special flood hazard areas, regulatory floodways, lands identified for conservation, habitats for protected species, and historic properties, unless projects on such sites meet specified conditions; and

WHEREAS, Government Code sections 66411.7(a)(3)(D) and 65852.21(a)(3) through (a)(5) limit eligibility of an Urban Lot Split and a SB9 Residential Development, respectfully, that proposes to demolish or alter housing subject to affordability restrictions, housing subject to rent or price controls, housing that has been occupied by a tenant in the last three years, housing that has been withdrawn from rent or lease within the past 15 years, and housing that requires demolition of existing structural walls unless authorized by local ordinance or has not been tenant-occupied within the past 3 years; and

WHEREAS, Government Code sections 65852.21(a)(6) and 66411.7(a)(3)(E) allow a city to deny an Urban Lot Split for properties within an historic district or listed on the State's Historic Resource Inventory 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; and

WHEREAS, Government Code sections 66411.7(c) and 65852.21(b) allow a city to establish objective zoning standards, objective subdivision standards, and objective

design review standards for Urban Lot Splits and SB9 Residential Developments, respectively, subject to limits within state law; and

WHEREAS, such objective zoning standards, objective subdivision standards, and objective design review standards may not have the effect of "precluding the construction of two units on either of the resulting parcels from an Urban Lot Split or that would result in a unit size of less than 800 square feet" for a SB9 Residential Development; and

WHEREAS, Government Code sections 66411.7 and 65852.21 allow a city to deny a proposed SB9 Residential Development or Urban Lot Split, respectively, if the 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; and

WHEREAS, pursuant to Government Code sections 65852.21(j) and 66411.7(n), the City may adopt an ordinance to implement the provisions of Government Code sections 65852.21 and 66411.7, and such an ordinance shall not be considered a project under the California Environmental Quality Act ("CEQA"); and

WHEREAS, in recognition of the City of Capitola's unique geography and proximity to the Pacific Ocean, the City Council desires to implement objective standards and an application process for projects undertaken pursuant to Government Code Sections 65852.21 and 66411.7 by the adoption of such an ordinance;

BE IT ORDAINED by the City of Capitola as follows:

Section 1. The above findings are adopted and incorporated herein.

Section 2. Section 16.08.120 (Urban Lot Split) is added to Chapter 16.08 (Definitions) to read as follows:

16.08.020 Urban Lot Split.

The subdivision of a parcel within a residential single-family (R-1) zone into two parcels pursuant to Section 66411.7 of the Government Code and Chapter 16.78 of the Capitola Municipal Code.

Section 3. Chapter 16.78 (Urban Lot Splits) is added to Title 16 (Subdivisions) of the Capitola Municipal Code as set forth in Attachment 1, attached hereto and incorporated herein by this reference.

Section 4. The following subsection M is added to Section 17.74.040 (General Requirements) of Chapter 17.74 (Accessory Dwelling Units) of the Capitola Municipal Code to read as follows:

M. Pursuant to the authority provided by section 65852.21(f) of the Government Code, no accessory dwelling unit or junior accessory dwelling unit shall be permitted on any lot in a single-family zoning district if: 1) an Urban Lot Split has been approved pursuant to Chapter 16.78 herein; and 2) a SB9 Residential Development with two units has been approved for construction pursuant to Chapter 17.75 herein.

Section 5. Chapter 17.75 (SB9 Residential Developments) is added to Title 17, Part 3 (Zoning, Citywide Standards) of the Capitola Municipal Code as set forth in Attachment 2, attached hereto and incorporated herein by this reference.

Section 6: Environmental Review.

The City Council finds and determines that enactment of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Government Code sections 65852.21(j) and 66411.7(n), as this action is to adopt an ordinance to implement the requirements of sections 65852.21 and 66411.7 of the Government Code.

Section 7: Effective Date.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption except that it will not take effect within the coastal zone until certified by the California Coastal Commission. This Ordinance shall be transmitted to the California Coastal Commission and shall take effect in the coastal zone immediately upon certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the Ordinance adopted by the City is legally adequate.

Section 8: Severability.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 9: Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the ___ day of _____ 2022, and was adopted at a regular meeting of the City Council on the ___ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:

_____
Sam Story, Mayor

Attest: _____
Chloe Woodmansee, City Clerk

Approved as to form:

_____
Samantha Zutler, City Attorney

CHAPTER 16.78 – URBAN LOT SPLITS

Sections:

16.78.010 Purpose and Intent

This chapter contains requirements for urban lot splits to implement Government Code Section 66411.7. These requirements are necessary to preserve of the public health, safety, and general welfare, and to promote orderly growth and development. In cases where a requirement in the chapter directly conflicts with Government Code Section 66411.7, the Government Code governs.

16.78.020 Eligibility

A. Parcel Map Required. A parcel map is required for all urban lot splits pursuant to Government Code Section 66411.7.

B. Requirements to Accept Application. The City shall accept a parcel map application for an urban lot split only if the application complies with all of the following requirements:

1. **Existing Parcel Size**. The area of the existing parcel is 2,400 square feet or more.
2. **Number of New Parcels.** The urban lot split creates no more than two new parcels.
3. **New Parcel Size.** The area of each newly created parcel is:
    a. At least 1,200 square feet; and
    b. No smaller than 40 percent of the parcel area of the original parcel.
4. **Zoning District**. The parcel is located within the Residential Single-Family (R-1) zoning district.
5. **Environmental Resources and Hazards**.
    a. The parcel satisfies the requirements of Government Code subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4, which prohibits development on sites subject to specified environmental resources and hazards.
    b. The parcel is not located in any of the following areas as identified in the City's certified Local Coastal Program:
        (1) Geological hazard areas.

(2) 100-year and/or 500-year flood hazard areas.

(3) Environmentally Sensitive Hazard Habitat Areas (ESHA).

6. **Affordable and Rental Housing**. 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 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 of the Government Code (the Ellis Act) to evict tenants due to the property owner's decision to no longer use the property for rental housing 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 based on the date of the application for an urban lot split.

7. **Historic Resources.**

   a. 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.

   b. The parcel is not located on a site which includes a structure that is a Designated Historic Resource or that meets the criteria provided in Municipal Code Section 17.84.020.B. to qualify as a Designated Historic Resource.

8. **No Prior Urban Lot Split.**

   a. The parcel has not been established through prior exercise of an urban lot split provided for in Government Code Section 66411.7 of this chapter.

   b. 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 chapter.

16.78.030 Objective Standards

All urban lot splits shall comply with the following standards, unless the applicant can demonstrate that a standard would have the effect of physically precluding the construction of two units on either of the resulting parcels or would preclude a unit size of 800 square feet for either unit.

A. Parcel Line Angles. New parcel lines that abut a street shall maintain right angles to streets or radial to the centerline of curved streets, or be parallel to existing parcel lines.

B. Street Frontage/Flag Lots. Parcels without 20 feet or more of frontage on a street are not permitted, except that flag lots are permitted if:

1. The front corridor portion of the flag lot is at least 5 feet in width; and

2. The lot shares with the other newly created lot a driveway or private road at least 10 feet in width and no more than 40 percent of the parcel width or 20 feet, whichever is less.

C. Parking.

1. **Number of Spaces.** A minimum of one off-street parking space shall be provided for each dwelling unit except that no parking is required where the parcel satisfies one or more of the following circumstances:

   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.

   c. This section does not apply to areas identified in Figure 1.

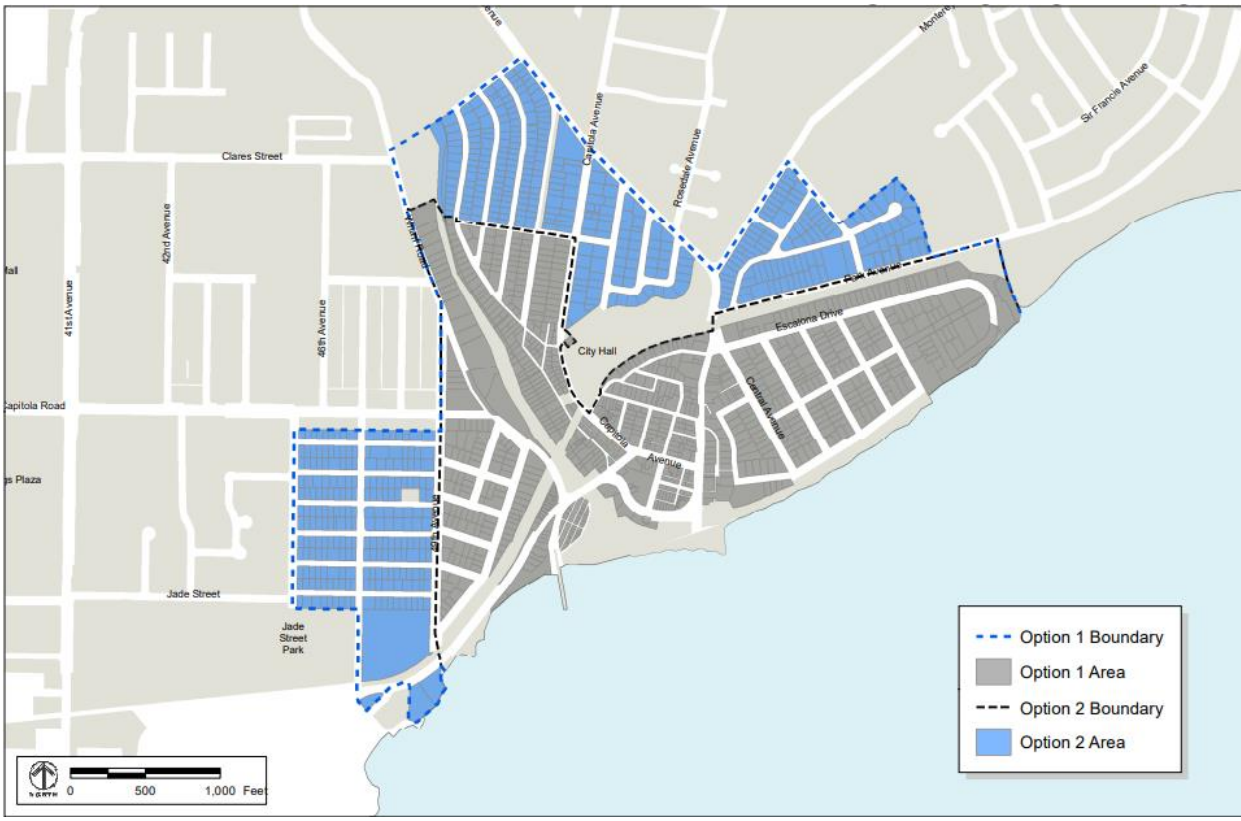


Figure 1.

2. **Shared Driveways.**

   a. Both newly created parcels shall share one driveway providing vehicle access to the parcels. A maximum of one curb cut is permitted to serve both newly created parcels.

   b. The maximum width of the new driveway crossing a public sidewalk is 12 feet.

D. Access to Public Right-of-way. The newly created parcels shall provide access to or adjoin the public right-of-way, sufficient to allow development on the parcel to comply with all applicable property access requirements under the California Fire Code section 503 (Fire Apparatus Access Roads) and California Code Regulations Title 14, section 1273.00 et seq. (Intent).

E. Setbacks.

1. No setback is required for an existing structure or a structure reconstructed in the same location and to the same dimensions as an existing structure. In all other circumstances minimum setbacks consistent with Zoning Code Section 17.75.050 (Objective Development Standards) are required.
2. Within the coastal zone, structures must comply with minimum setbacks from environmentally sensitive habitat areas and geologic hazards as specified in Zoning Code Chapter 17.64 (Environmentally Sensitive Habitat Areas) and Chapter 17.68 (GH Geologic Hazards District).
3. Verification of size and location of the existing and proposed structure requires pre- and post-construction surveys by a California licensed land surveyor.

F. Existing Structure on One Parcel. The proposed lot split shall not result in the splitting of any structure between the two parcels and shall not create a new encroachment of an existing structure over a property line.

G. Residential Land Use. The proposed new parcels must be intended for residential use.

H. Compliance with Subdivision Requirements. The parcel map shall satisfy the objective requirements of the Subdivision Map Act and this title regarding parcel maps, including Chapter 16.24 (Design Standards) except as provided in this chapter.

16.78.040 Parcel Map Application Review and Action

A. Application Contents. A parcel map application for an urban lot split must be filed with the Community Development Department on an official City application form. Applications shall be filed with all required fees, information, and materials as specified by the Community Development Department. At a minimum, an application package shall include the following:

1. Title report less than 30 days old.
2. Copies of deeds for all properties included in the request.
3. A plat map drawn to scale by a licensed land surveyor or registered civil engineer depicting all of the following:
    a. Existing and proposed parcel lines.

b. Location of easements required for the provision of public services and facilities to each of the proposed parcels.

c. Location of any easements necessary for each parcel to have access to the public right-of-way.

d. Survey of existing conditions signed and stamped by licensed land surveyor.

e. Site plan with existing conditions, proposed parcel lines, driveways, and location of utility easements.

4. An affidavit, signed by the property owner under penalty of perjury, declaring all of the following to be true:

a. Any housing units proposed to be demolished or altered have not been occupied by a tenant at any time within three years of the date of the application for an urban lot split.

b. The owner of the parcel 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. Owner-occupancy is not required if the owner is a community land trust or qualified nonprofit corporation under Sections 214.15 or 402.1 of the Revenue and Taxation Code.

c. The owner has not previously subdivided an adjacent parcel using an urban lot split.

d. The owner has not previously acted in concert with any person to subdivide an adjacent parcel using an urban lot split. "Acted in concert" means that the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

B. Ministerial Approval. The Community Development Director shall ministerially approve a parcel map for an urban lot split if the application complies with all requirements of this chapter. No public hearing or discretionary review is required.

C. Basis for Denial.

1. The Community Development Director shall deny the urban lot split if either of the following is found:

a. The urban lot split fails to meet or perform one of more objective requirements imposed by the Subdivision Map Act or by this chapter. Any such requirement or condition that is the basis for denial shall be specified by the Community Development Director in writing.

b. The building official makes a written finding, based upon a preponderance of the evidence, that the proposed subdivision would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, 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.

2. For an urban lot split in the coastal zone, the Community Development Director shall deny the application upon finding that the development is inconsistent with policies of the Local Coastal Plan and/or will have an adverse impact on coastal resources.

3. The Community Development Director shall not deny an urban lot split solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

D. Conditions of Approval.

1. **Easements**. The Community Development Director shall condition parcel map approval on the dedication of any easements deemed necessary for the provision of public services to the proposed parcels and any easements deemed necessary for access to the public right-of-way.

2. **Nonconforming Zoning Conditions**. The Community Development Director may not require the correction of nonconforming zoning conditions on the parcel a condition of parcel map approval.

E. Within Coastal Zone.

1. A proposed urban lot split that is located in the coastal zone may require a Coastal Development Permit (CDP) as specified by Chapter 17.44 (Coastal Overlay Zone) and the findings for approval of a CDP as specified in 17.44.130 (Findings for Approval).

2. A public hearing for a CDP application for an urban lot split is not required.

3. Nothing in this chapter shall be construed to supersede or in any way alter or lessen the effect of application of the California Coastal Act of 1976 (Division 20, commencing with Section 30000, of the Public Resources Code).

16.78.050 Use and Development Requirements

A. Short-term Rentals Prohibited. It is unlawful to use a dwelling unit constructed on a parcel created under this chapter for vacation rentals as defined in Chapter 17.160 (Glossary).

B. Residential Use. The primary use of a dwelling unit constructed on a parcel created under this chapter must be residential.

C. Maximum Unit Size. New dwelling units constructed on a parcel created under this chapter shall be no more than 800 square feet in floor area, or 1,200 square feet if each newly created parcels contain only one dwelling unit.

D. Compliance with Zoning Requirements

1. New dwelling units constructed on a parcel created under this chapter are subject to the requirements of Zoning Code Chapter 17.75 (Two-Unit Developments) and shall also comply with all applicable objective zoning requirements set forth in Zoning Code.

2. The standards described in this paragraph (1) of this subsection apply to all urban lot splits except where a standard directly conflicts with a provision of this chapter, or where the applicant demonstrates that a standard would:

   a. Have the effect of physically precluding the construction of two units on either of the newly created parcels; or

   b. Necessarily result in a unit size of less than 800 square feet.

E. Maximum Number of Dwelling Units. Notwithstanding any other provision of the Municipal Code, no more than two dwelling units, including any accessory dwelling units or junior accessory dwelling units, are permitted on a parcel created under this chapter.

16.78.060 Deed Restrictions

A. Before obtaining a building permit for a dwelling unit constructed on a parcel created under this chapter, the property owner shall file with the County Recorder a declaration of restrictions containing a reference to the deed under with the property was acquired by the current owner. The deed restriction shall state that:

1. The maximum size of the dwelling unit is limited to 1,200 square feet for two-unit projects and 800 square feet for three and four-unit projects;
2. The primary use of the unit must be residential;
3. Use of shared driveway must be permanently provided and maintained for both newly created parcels through a reciprocal access easement or other comparable mechanism; and
4. The unit may not be used for vacation rentals as defined in Zoning Code Chapter 17.160 (Glossary).

B. The above declarations are binding upon any successor in ownership of the property. Lack of compliance shall be cause for code enforcement.

C. The deed restriction shall lapse upon removal of all dwelling units established on a parcel created under this chapter.

CHAPTER 17.75 – SB 9 RESIDENTIAL DEVELOPMENTS

Sections:

17.75.010 Purpose and Intent

This chapter contains requirements for SB 9 residential developments pursuant to Government Code Section 65852.21. These requirements are necessary to preserve the public health, safety and general welfare, and to promote orderly growth and development. In cases where a requirement in the chapter directly conflicts with Government Code Section 65852.21, the Government Code governs.

17.75.020 Definitions

A. SB 9 Residential Development. An SB 9 residential development is a proposed residential project pursuant to Government Code Section 65852.21.

B. Urban Lot Split. The subdivision of a parcel within the Residential Single-family (R-1) zoning district into two parcels pursuant to Government Code Section 66411.7 and Municipal Code Chapter 16.78 (Urban Lot Splits).

17.75.030 Permitting Process

A. Administrative Permit. The Community Development Director shall ministerially approve an Administrative Permit for an SB 9 residential development if the application complies with all requirements of this chapter and Municipal Code Chapter 16.78 (Urban Lot Split), when applicable. No discretionary review or public hearing is required.

B. Basis for Denial.

1. The Community Development Director shall deny an application for an SB 9 residential development if either of the following is found:

    a. The two-unit development fails to comply with any objective requirement imposed by this chapter. Any such requirement or condition that is the basis for denial shall be specified by the Community Development Director in writing; or

b. The building official makes a written finding, based upon a preponderance of the evidence, that the proposed development 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.

2. For an SB 9 residential development in the coastal zone, the Community Development Director shall deny the application upon finding that the development is inconsistent with policies of the Local Coastal Plan and/or will have an adverse impact on coastal resources.

3. The Community Development Director shall not deny an SB 9 residential development solely because it conflicts with the City's density limitations for the R-1 zoning district.

C. Within Coastal Zone. A proposed Two-Unit Development that is located in the coastal zone may require a coastal development permit (CDP) as specified by Chapter 17.44 (Coastal Overlay Zone) and the findings for approval of a CDP as specified in Section 17.44.130 (Findings for approval).

1. A public hearing for a CDP application for an SB 9 residential development is not required.

2. Nothing in this chapter shall be construed to supersede or in any other way alter or lessen the effect of application of the California Coastal Act of 1976 (Division 20, commencing with Section 30000, of the Public Resources Code).

D. Building Permit. A building permit for an SB 9 residential development may be submitted only after:

1. The City approves the Administrative Permit for the two-unit development; and

2. A parcel map for the urban lot split parcel map is recorded by the Santa Cruz County Recorder if a dwelling unit will be constructed on a lot created by an urban lot split.

17.75.040 General Requirements

A. Eligibility Requirements. The City shall accept an application for an SB 9 residential development only if the project complies with the following requirements:

1. **Zoning District.** The two-unit development is located in the Residential Single-Family (R-1) zoning district**.**

2. **Compliance with Chapter.** The two-unit development complies with all applicable requirements of this chapter.

3. **Environmental Resources and Hazards**.

a. The two-unit development satisfies the requirements of Government Code subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4, which prohibits development on sites subject to specified environmental resources and hazards.

b. The parcel is not located in any of the following areas as identified in the City's certified Local Coastal Program:

(1) Geological hazard areas.

(2) 100-year and/or 500-year flood hazard areas.

(3) Environmentally Sensitive Hazard Habitat Areas (ESHA).

4. **Affordable and Rental Housing**.

a. The two-unit development will not 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.

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

b. The parcel subject to the proposed Two-Unit Development is not a parcel on which an owner of residential real property has exercised the owner's rights under Government Code Section 7060 et seq. (the Ellis Act) to evict tenants due to the property owner's decision to no longer use the property for rental housing within 15 years before the date that the Two-Unit Development proponent submits an application.

5. **Historic Resources**.

a. The two-unit development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1.

b. The two-unit development is not located on a site which includes a structure that is a Designated Historic Resource or that meets the criteria provided in Capitola Municipal Code Section 17.84.020.B. to qualify as a Designated Historic Resource.

B. Number of Primary Dwelling Units.

1. A maximum of two primary dwelling units are allowed on a parcel.

2. If a parcel is subdivided pursuant to Municipal Code Chapter 17.78 (Urban Lot Splits), a maximum of two primary dwelling units are allowed on each newly created parcel. Up to four units are allowed on the two parcels combined.

C. Accessory Dwelling Units.

1. **Projects with Urban Lot Split**. The following accessory dwelling unit (ADU) rules apply to a parcel created through an urban lot split as provided in Chapter 16.78 (Urban Lot Split.)

a. If the parcel contains one primary dwelling unit, one ADU or Junior ADU is also allowed on the parcel.

b. If the parcel contains two primary dwelling units, an ADU or Junior ADU is not allowed on the parcel.

2. **Projects Without Urban Lot Split**. Where a parcel has not been subdivided as provided in Chapter 16.78 (Urban Lot Split), one ADU and/or JADU is allowed on the parcel in addition to the two primary dwelling units.

D. Utility Connections.

1. Each dwelling unit shall be served by a separate utility connection for water, sewer, and electrical services.

2. The Community Development Director shall condition approval of a dwelling unit on the dedication of any easements deemed necessary to provide public services to the unit and access to the public right-of-way.

E. Residential Uses Only.

1. The primary use of a dwelling unit must be residential. A dwelling unit may not be utilized for a non-residential primary use otherwise permitted in the R-1 zoning district as identified in Table 17.16-1.

2. Home occupations and other accessory uses are permitted in a dwelling unit consistent with Section 17.96.040 (Home Occupations) and Section 17.52 (Accessory Uses).

F. Vacation Rentals. A dwelling unit may not be used for vacation rentals as defined in Chapter 17.160 (Glossary).

G. Guaranteed Allowance.

1. The standards in 17.75050 (Objective Development Standards) and 17.75.060 (Objective Design Standards) shall not prohibit up to two dwelling units each with up to 800 square feet of floor area, provided the dwelling units comply with all other applicable standards.

2. The guaranteed allowance of 800 square feet of floor area is in addition to the maximum floor area of a property in the R-1 zoning district as allowed by the Zoning Ordinance.

3. The Community Development Director shall determine which standards must be adjusted, if any, to comply with this section.

H. Existing Nonconformities. Establishing a dwelling unit shall not require the correction of an existing legal nonconforming zoning condition on the property.

17.75.050 Objective Development Standards.

A. General. Table 17.75-1 shows development standards for two-unit development on parcels with an area of 5,500 square feet or more. Table 17.75-2 shows development standards on parcels with an area of less than 5,500. Parcel sizes are based on the area of a parcel prior to an urban lot split.

Table 17.75-1: Development Standards for Parcels 5,500 Sq. Ft. or More

Maximum Unit Size	
Projects with Two Units	1,200 sq. ft. per unit
Projects with Three and Four Units [1]	800 sq. ft. for each unit within the project
Minimum Setbacks	
Front	
Ground floor	15 ft.
Second story	15 ft.
Garage	20 ft.
New Interior Property Line [2]	0 ft.
Rear	4 ft.
Interior Side	4 ft.
Street Side	4 ft.
Maximum Height	
One-story Building	16 ft.
Two-story Building	
Plate height [3]	20 ft.
Roof peak	3 ft. above plate height
Three-story Building	Not allowed
Minimum Private Open Space [4]	48 sq. ft.

Notes:
[1] For projects with a dwelling unit on a parcel created through an urban lot split pursuant to Chapter 16.78 (Urban Lot Split).
[2] "New interior property line" means a property line created pursuant to 16.78 (Urban Lot Split) that does not abut an existing parcel outside of the property subject to the urban lot split.
[3] "Plate height" means the vertical distance from the assumed ground surface of the building to the point that exterior wall meets the roof eave.
[4] Private open space may include screened terraces, decks, balconies, and other similar areas.

Table 17.75-2: Development Standards for Parcels Less than 5,500 Sq. Ft.

	Number of Units [1]		
	Up to Two	**Three**	**Four**
Maximum Unit Size	1,200 sq. ft.	800 sq. ft.	800 sq. ft.
Minimum Setbacks			
Front			
Ground floor	15 ft. [2]	10 ft.	0 ft.
Second story	15 ft. [2]	10 ft.	0 ft.
Garage	20 ft. [2]	10 ft.	0 ft.
New Interior Property Line [3]	0 ft.	0 ft.	0 ft.
Rear	4 ft. [4]	4 ft. [4]	4 ft. [5]
Interior Side	4 ft. [4]	4 ft. [4]	4 ft. [6]
Street Side	4 ft. [4]	4 ft. [4]	4 ft. [6]
Maximum Height			
One-story Building	16 ft.	16 ft.	16 ft.
Two-story Building			

	Number of Units [1]		
	Up to Two	**Three**	**Four**
Plate height [7]	20 ft.	20 ft.	20 ft.
Roof peak	3 ft. above plate height	3 ft. above plate height	3 ft. above plate height
Three-story Building	Not allowed	Allowed [8]	Allowed
Plate height [7]	-	20 ft.	28 ft.
Roof peak	-	33 ft.	3 ft. above plate height
Minimum Private Open Space [9]	48 sq. ft.	48 sq. ft.	48 sq. ft.

Notes:
[1] Standards for three and four-unit projects apply to projects with a dwelling unit on a parcel created through an urban lot split pursuant to Chapter 16.78 (Urban Lot Split). Standards apply to all units established as part of the project.
[2] For parcels less than 3,200 sq. ft., minimum front setback is 10 feet for ground floor and second story and 15 feet for garage.
[3] "New interior property line" means a property line created pursuant to 16.78 (Urban Lot Split) that does not abut an existing parcel outside of the property subject to the urban lot split.
[4] For parcels less than 3,200 sq. ft., the minimum rear, interior side, and street side setback is 3 feet.
[5] On parcels less than 3,200 sq. ft., 0 ft. rear setback allowed where a side driveway provides vehicle access to parking located behind the front building. A 3-foot rear setback is allowed for all other 4-unit configurations on parcels less than 3,200 sq. ft.
[6] 0 ft. side setback allowed where a side driveway provides vehicle access to parking located behind the front building. A 3-foot side setback is allowed for all other 4-unit configurations on parcels less than 3,200 sq. ft.
[7] "Plate height" means the vertical distance from the assumed ground surface of the building to the point that exterior wall meets the roof eave.
[8] Third story must be built into roof element (2 ½ stories)
[9] Private open space may include screened terraces, decks, balconies, and other similar areas.

B. Additional Setback Standards.

1. **Converting and Replacing Existing Structures.** No setback is required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
2. **Within Coastal Zone**. Within the coastal zone, structures must comply with minimum setbacks from environmentally sensitive habitat areas and geologic hazards as specified in Zoning Code Chapter 17.64 (Environmentally Sensitive Habitat Areas) and Chapter 17.68 (GH Geologic Hazards District).

C. Separation Between Dwelling Units.

1. No minimum separation is required between dwelling units on a parcel.
2. Dwelling units may be connected if the structures meet building code safety standards and are sufficient to allow a separate conveyance.

D. Parking.

1. **Required Parking**. A minimum of one off-street parking space is required per dwelling unit except as provided in subsection (D)(7) of this section.
2. **Tandem Spaces**. Required off-street parking for two separate dwelling units shall not be provided as tandem parking.
3. **Parking Placement**. Required off-street parking may not be located within minimum required front setback area.

4. **Number of Driveways**.
   a. A maximum of one curb cut is allowed to provide vehicle access to the parking.
   b. Shared driveways are required to serve parking on separate parcels created through an urban lot split.
5. **Driveway Width**. The maximum width of a new driveway crossing a public sidewalk is 12 feet.
6. **Alley Access**. Parking accessed from an alley shall maintain a 24-foot back-out area, which may include the alley.
7. **Exceptions to Required Parking**. No off-street parking is required in the following cases:
   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.
   c. This section does not apply to areas identified in Figure 1.

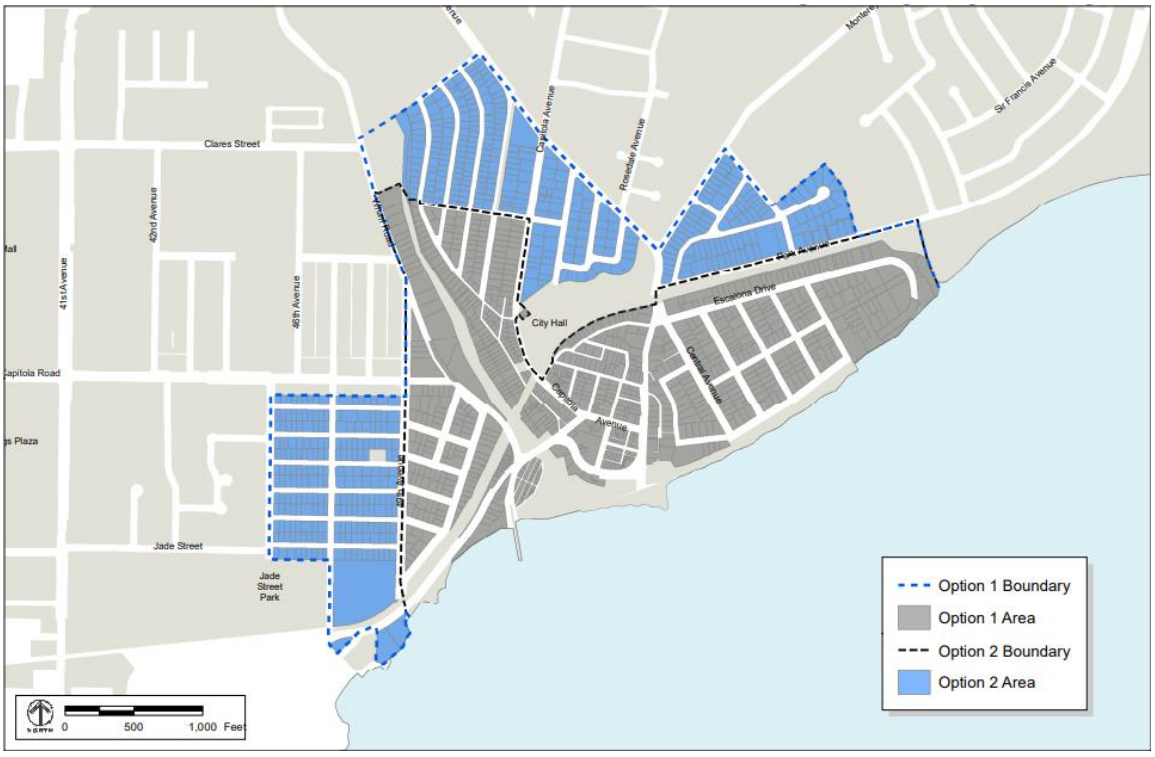


Figure 1.

17.75.060 Objective Design Standards

A. Entrance Orientation. The primary entrance to each new dwelling unit shall face the front or interior of the parcel unless the dwelling unit is directly accessible from an alley.

B. Neighbor Privacy. To minimize privacy impacts on adjacent properties, the following requirements apply to walls with windows within eight feet of an interior side or rear property line abutting a residential use:

1. For a single-story wall or the first story of a two or three-story wall, privacy impacts shall be minimized by either:
    a. A 6-foot solid fence on the property line; or
    b. Clerestory or opaque windows for all windows facing the adjacent property.
2. For a second or third-story wall, all windows facing an adjacent property shall be clerestory or opaque.

C. Upper Story Decks and Balconies. Second and third-story exterior decks and balconies and rooftop decks are prohibited.

D. Front Porches, Patios and Entry Features.

1. If a dwelling unit is set back 15 feet or more from a front property line, a front porch or covered patio may project up to 5 feet into the front setback area.
2. A front porch or covered patio less than 15 feet from a front property line may not exceed a width greater than 10 feet.
3. For a dwelling unit setback less than 15 feet from a front property line, the primary entrance may be covered by a roof element, or other similar overhanging feature provided that:
    a. The covering is attached to the building wall and is not supported by columns, walls, or other vertical structural elements that extend to the ground; and
    b. The covering dimensions do not exceed five feet width and three feet depth.

E. Pervious Surface Area. Pervious materials shall be used for all on-site paved areas including driveways, walkways, and patios.

F. Stormwater. SB 9 residential developments shall comply with Municipal Code Chapter 13.16 (Stormwater Pollution Prevention and Protection).

17.75.070 Deed Restrictions

A. Before obtaining a building permit for an SB 9 residential development, the property owner shall file with the County Recorder a declaration of restrictions containing a reference to the deed under with the property was acquired by the current owner. The deed restriction shall state that:

1. The maximum size of the dwelling unit is limited to 1,200 square feet for two-unit projects and 800 square feet for three and four-unit projects;
2. The primary use of the dwelling unit must be residential;

3. For SB 9 residential developments involving an urban lot split, use of shared driveway must be permanently provided and maintained for both newly created parcels through a reciprocal access easement or other comparable mechanism; and
4. The dwelling unit may not be used for vacation rentals as defined in 17.160 (Glossary).

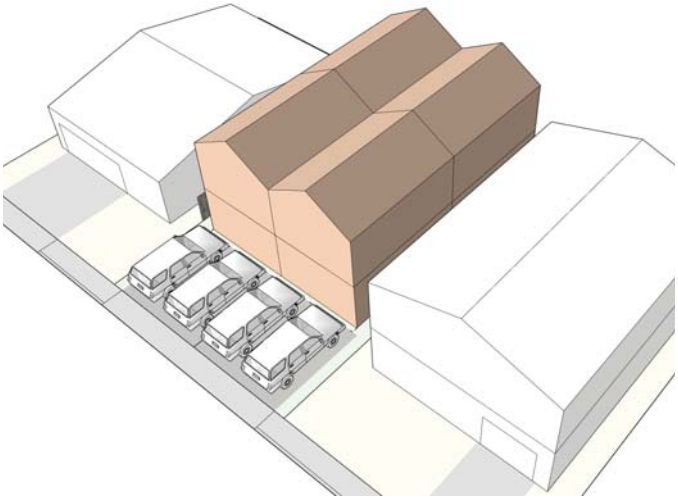
B. The above declarations are binding upon any successor in ownership of the property. Lack of compliance shall be cause for code enforcement.

C. The deed restriction shall lapse upon removal of all dwelling units established under this chapter.

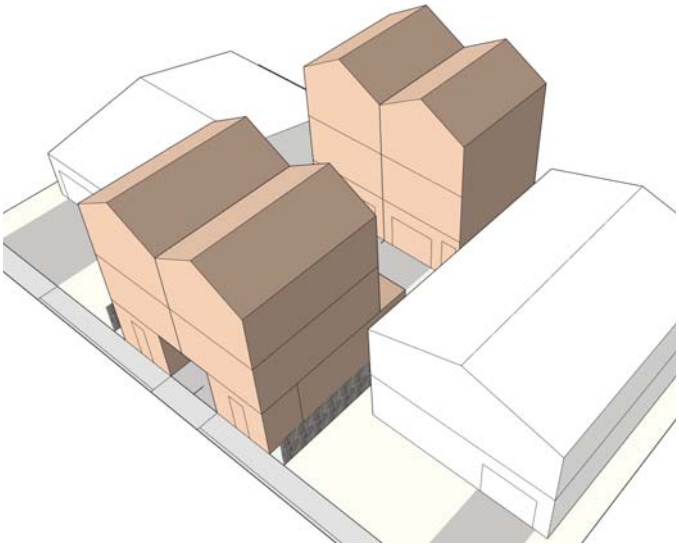
1. 40’x70’ lot (4 units with parking)

	A.	B.	C.
Front setback	18’	0’	0’
Side setbacks	3’	3’	0’
Rear setback	3’	3’	0’
Height (stories)	2	3	3

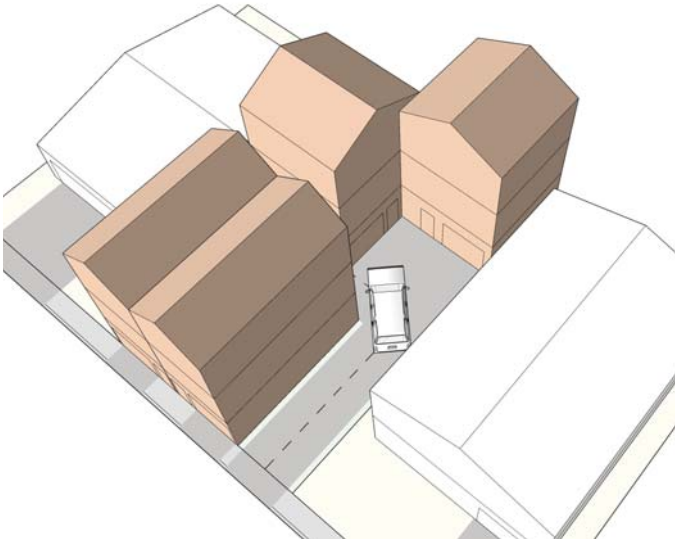
All layouts	
Units	4
Parking (per unit)	1



A. 2 stories, surface parking in front setback



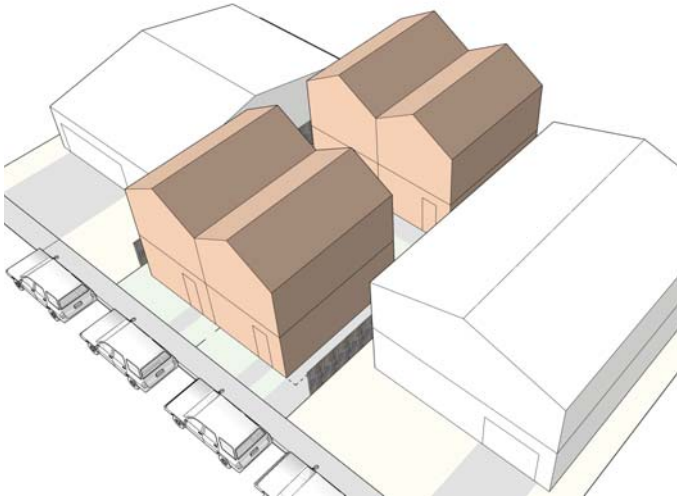
B. 3 stories, garage parking w/one driveway



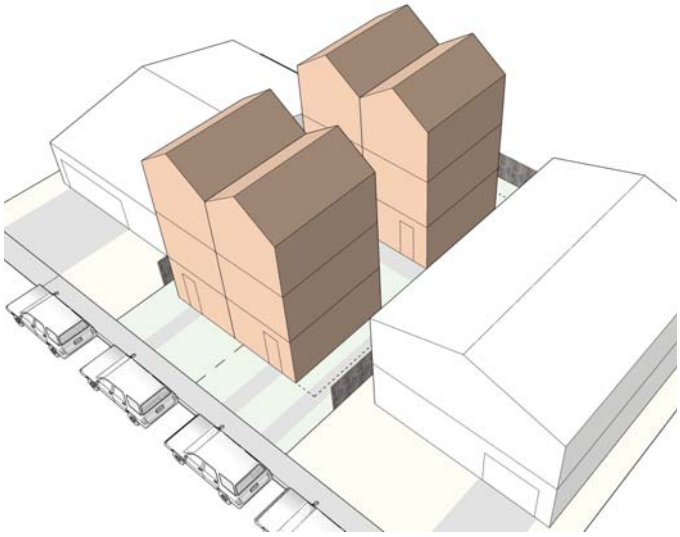
C. 3 stories, garage parking w/three driveways

2. 40’x70’ lot (4 units with no parking)

	D.	E.
Front setback	5’	10’
Height (stories)	2	3
	All layouts	
Units	4	
Side setbacks	4’	
Rear setback	4’	
Parking (per unit)	0	



D. 2 stories, no onsite parking

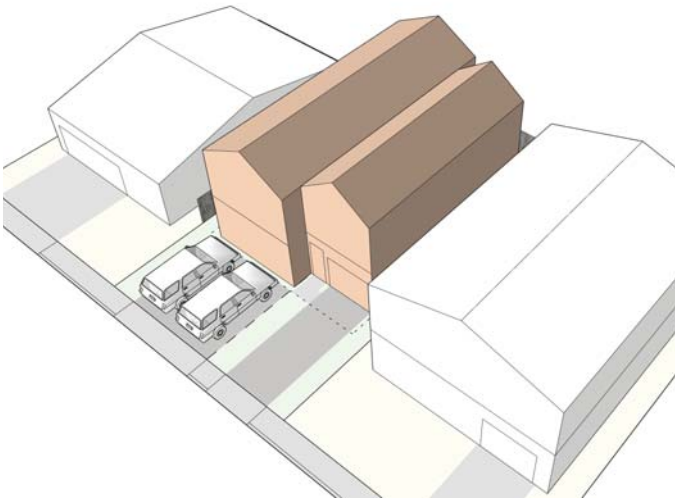


E. 3 stories, no onsite parking

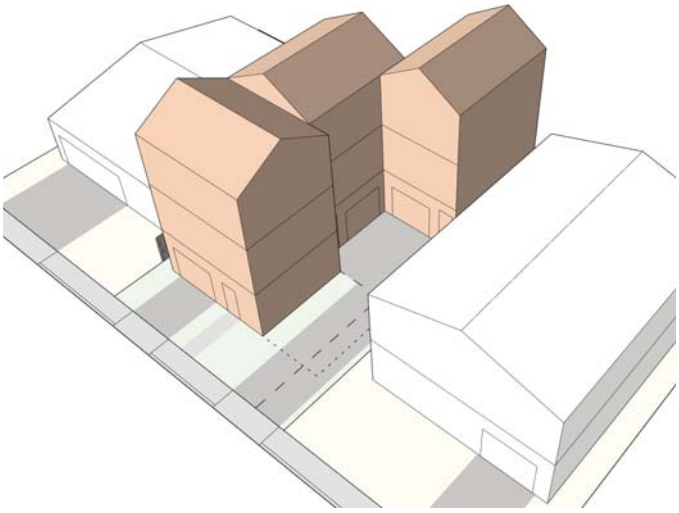
3. 40’x70’ lot (2 and 3 units)

	F.	G.	H.
Units	3	3	2
Front setback	18’	10’	10’
Height (stories)	2	3	2

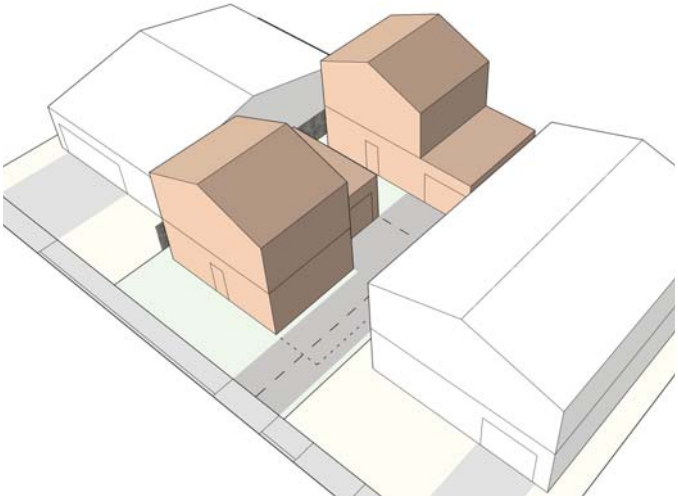
All layouts	
Side setbacks	3’
Rear setback	3’
Parking (per unit)	1



F. 3 units, 2 stories, surface parking in front setback/garage parking in front



G. 3 units, 3 stories garage parking in front and rear

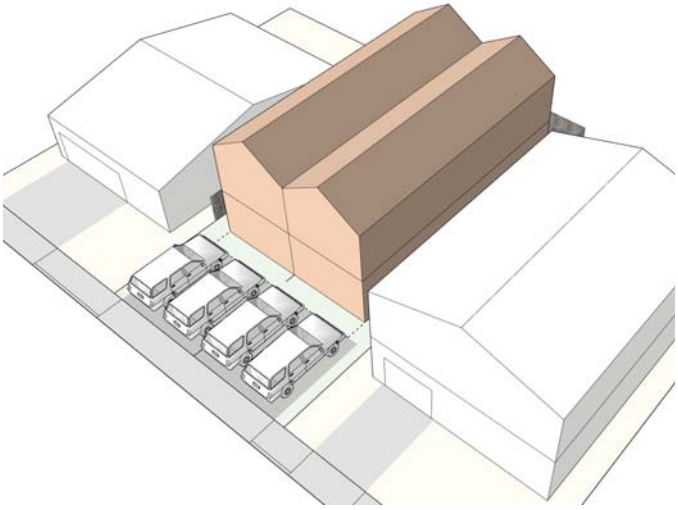


H. 2 units, 2 stories, parking in rear

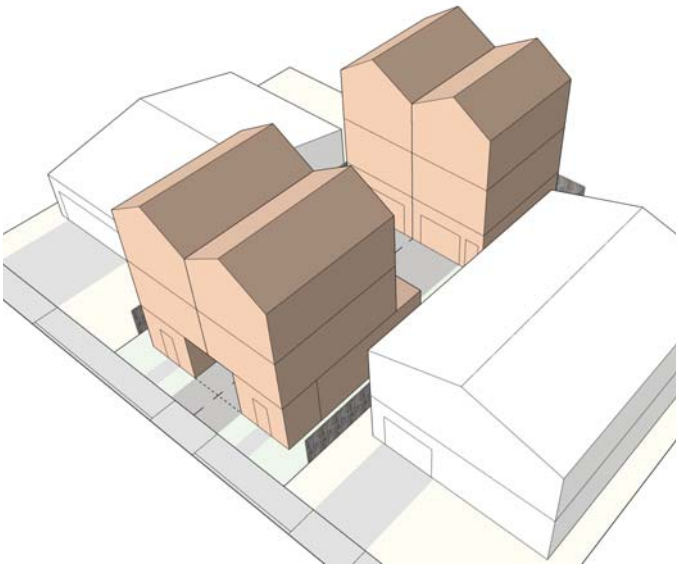
4. 40’x80’ lot (4 units with parking)

	A.	B.	C.
Front setback	18’	5’	0’
Side setbacks	4’	4’	0’
Height (stories)	2	3	3

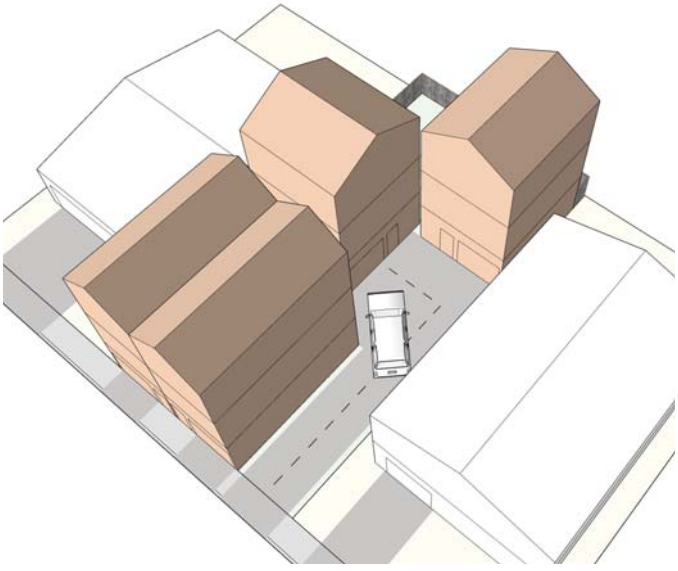
All layouts	
Units	4
Rear setback	4’
Parking (per unit)	1



A. 2 stories, surface parking in front setback



B. 3 stories, garage parking w/one driveway

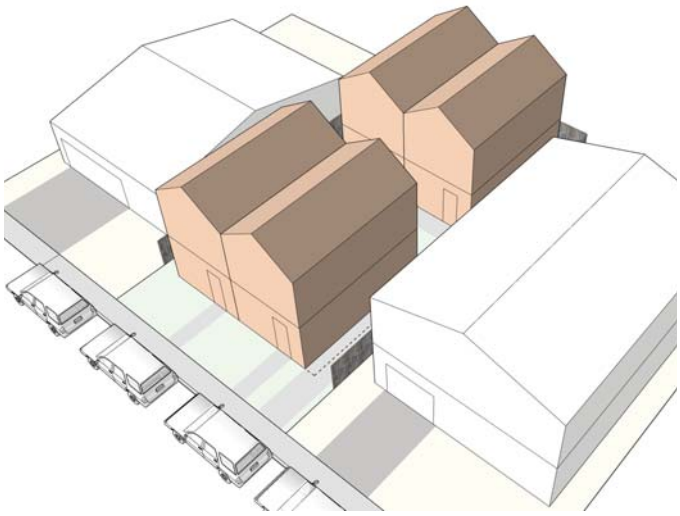


C. 3 stories, garage parking w/three driveways

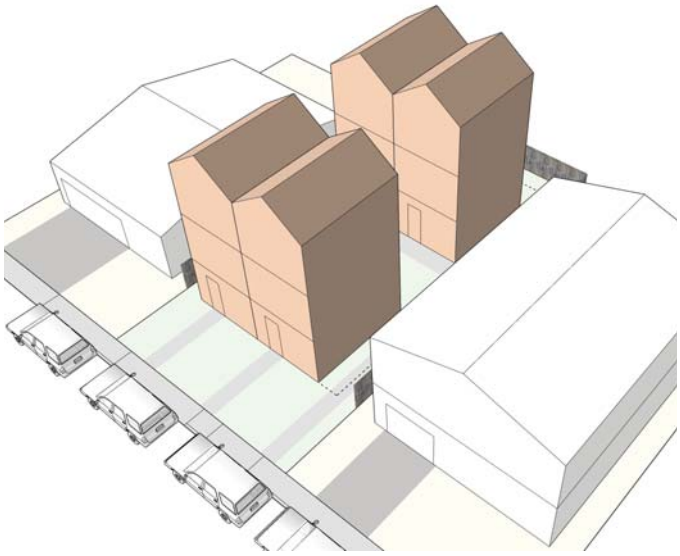
5. 40’x80’ lot (4 units with no parking)

	D.	E.
Front setback	10’	15’
Height (stories)	2	3

All layouts	
Units	4
Side setbacks	4’
Rear setback	4’
Parking (per unit)	0



D. 2 stories, no onsite parking

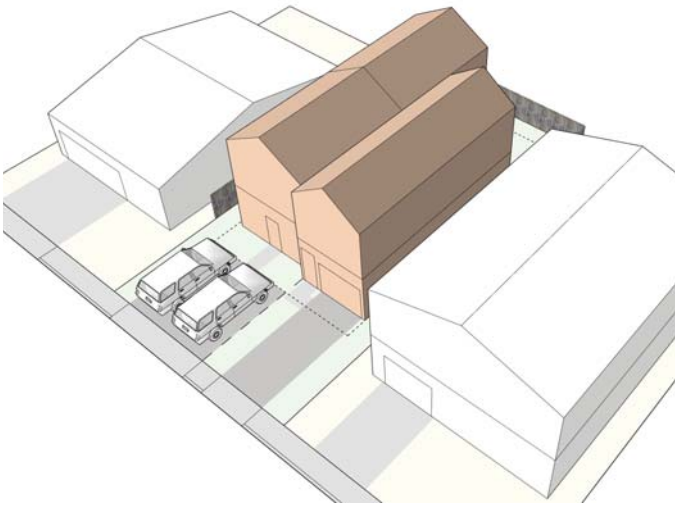


E. 3 stories, no onsite parking

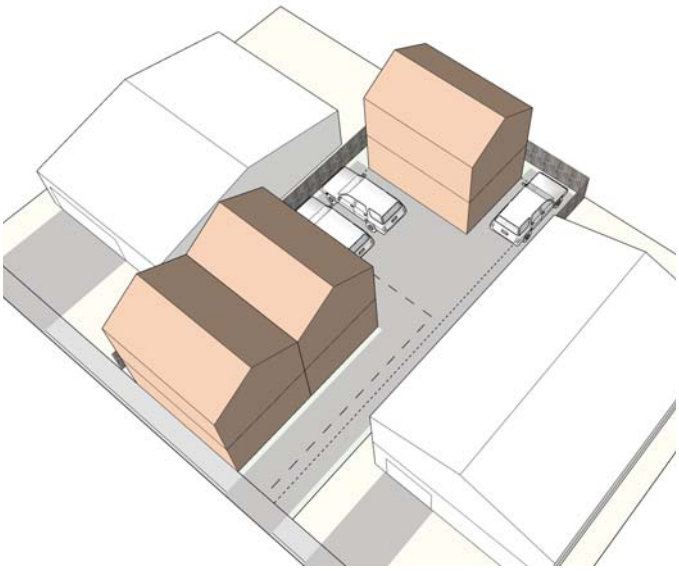
6. 40’x80’ lot (3 units)

	F.	G.	H.	I.
Front setback	18’	0’	0’	10’
Side setbacks	4’	4’	3’	4’
Height (stories)	2	2	2	3

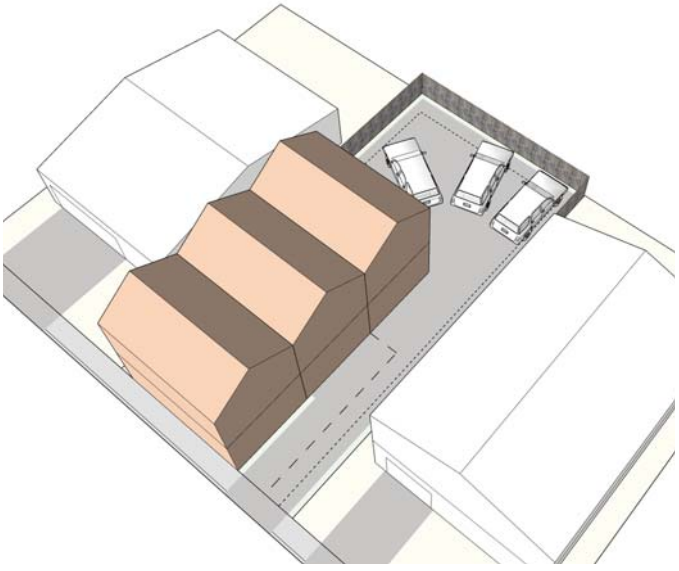
All layouts	
Units	3
Rear setback	4’
Parking (per unit)	1



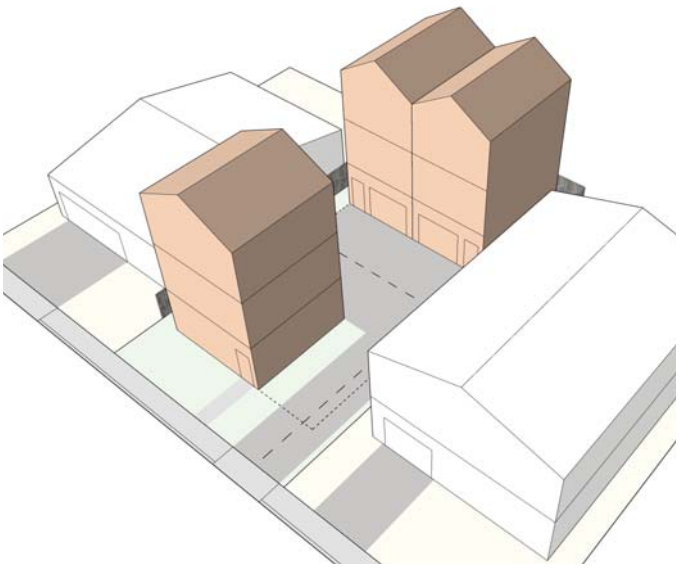
F. 2 stories, surface parking in front setback/garage parking in front



G. 2 stories, parking in side/rear



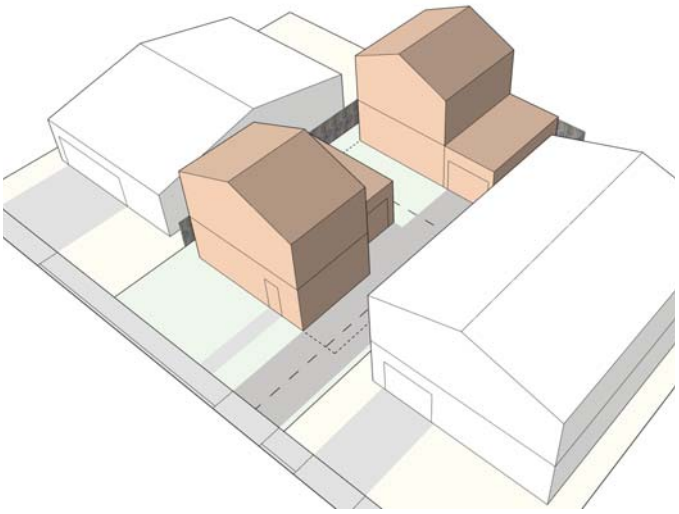
H. 2 stories, parking in rear



I. 3 stories, parking in rear

7. 40’x80’ lot (2 units)

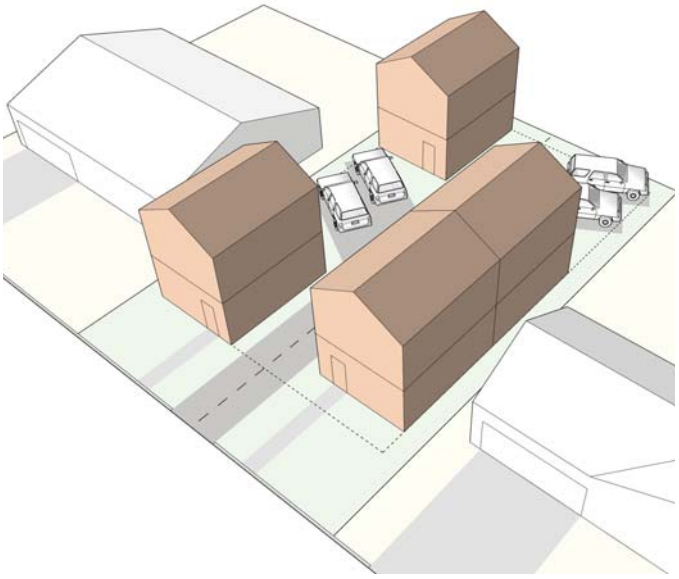
	J.
Units	2
Front setback	15’
Side setbacks	4’
Rear setback	4’
Height (stories)	2
Parking (per unit)	1



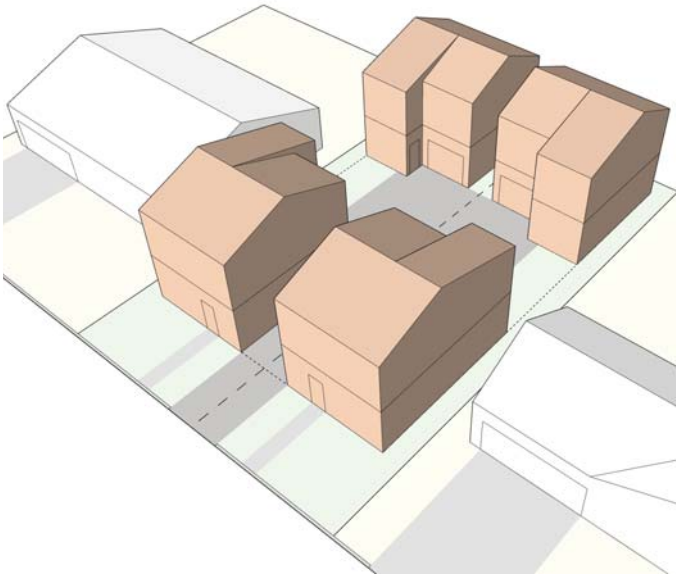
J. 2 stories, 2 units

8. 60’x100’ lot (4 units)

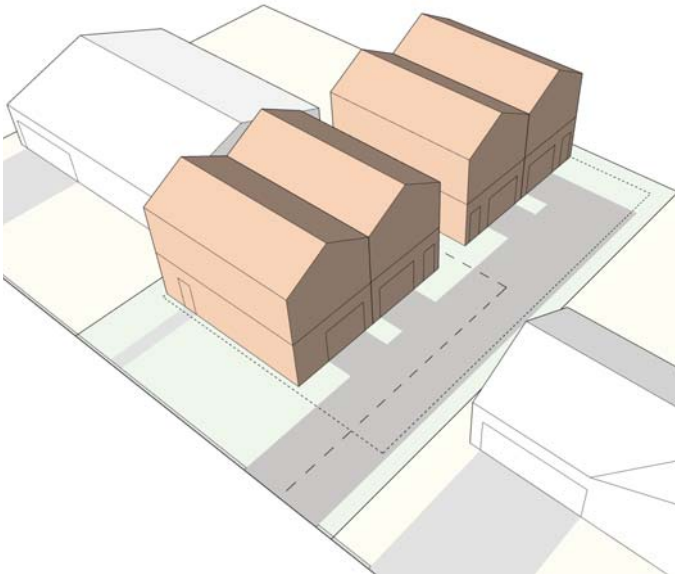
	All layouts
Units	4
Front setback	15’
Side setbacks	4’
Rear setback	4’
Height (stories)	2
Parking (per unit)	1



A. Surface parking in rear



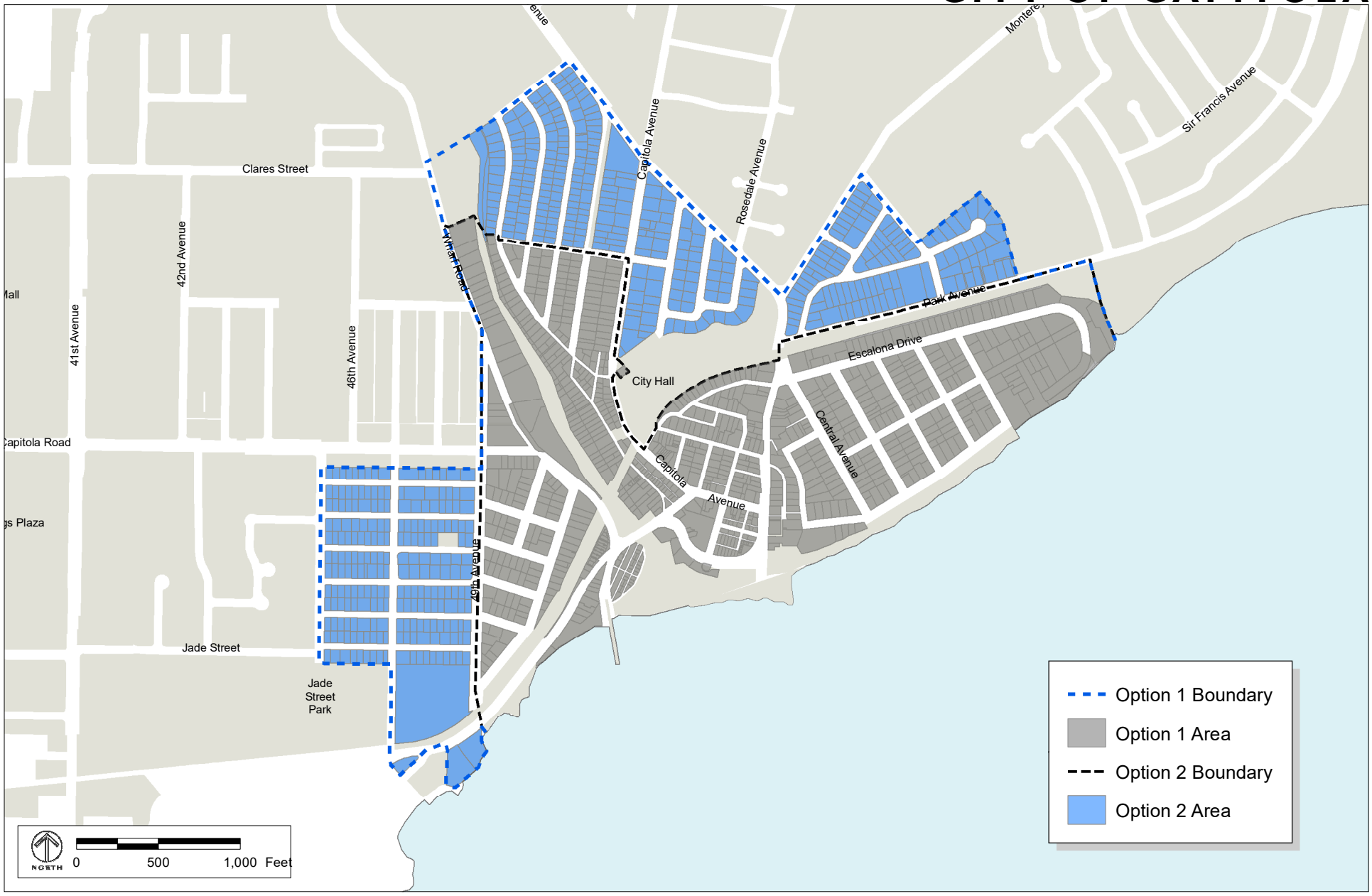
B. Garage parking, detached units



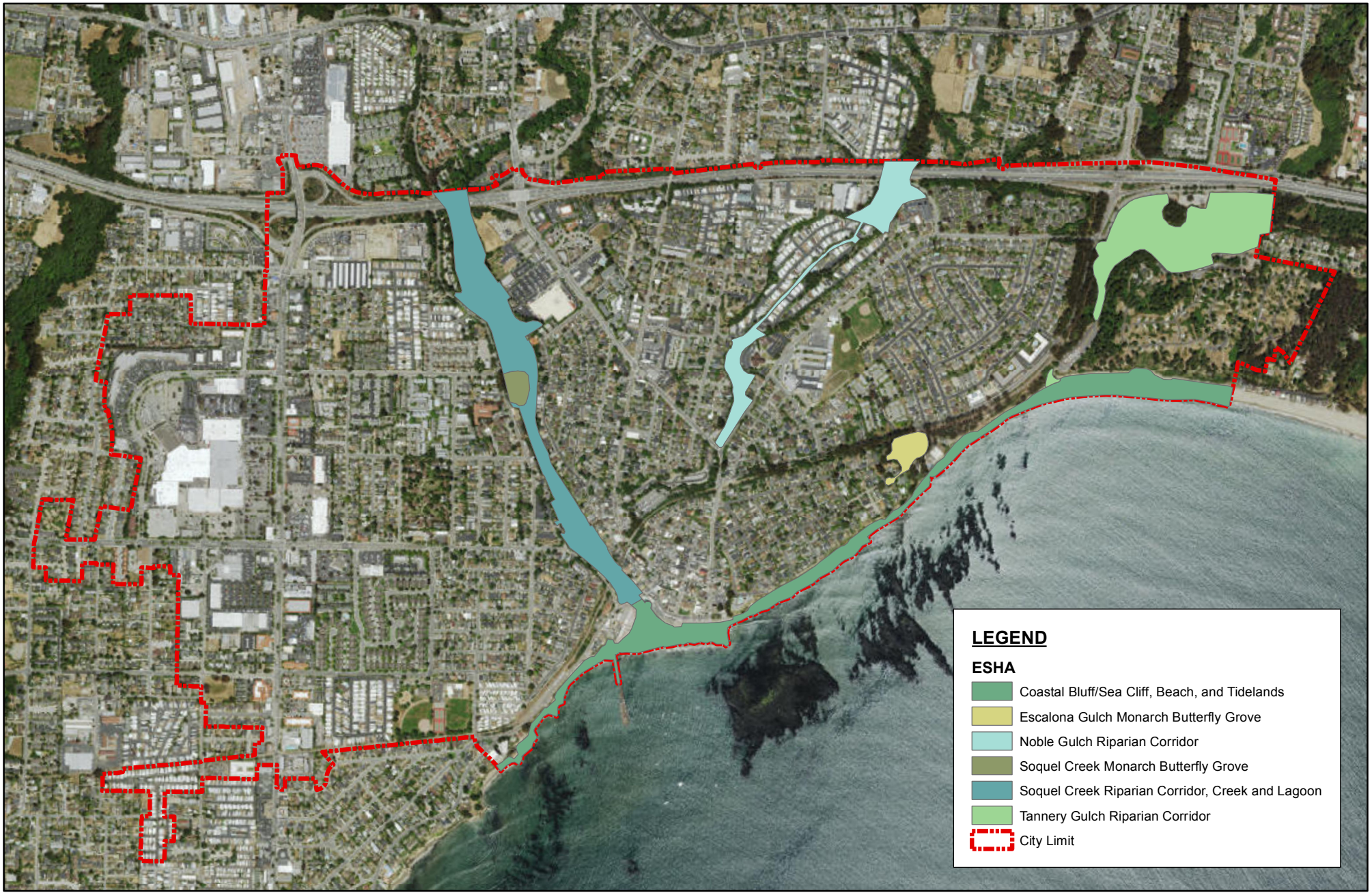
C. Garage parking, attached units

Note: Consider requiring shared driveway access for 60x100 lots

CITY OF CAPITOLA



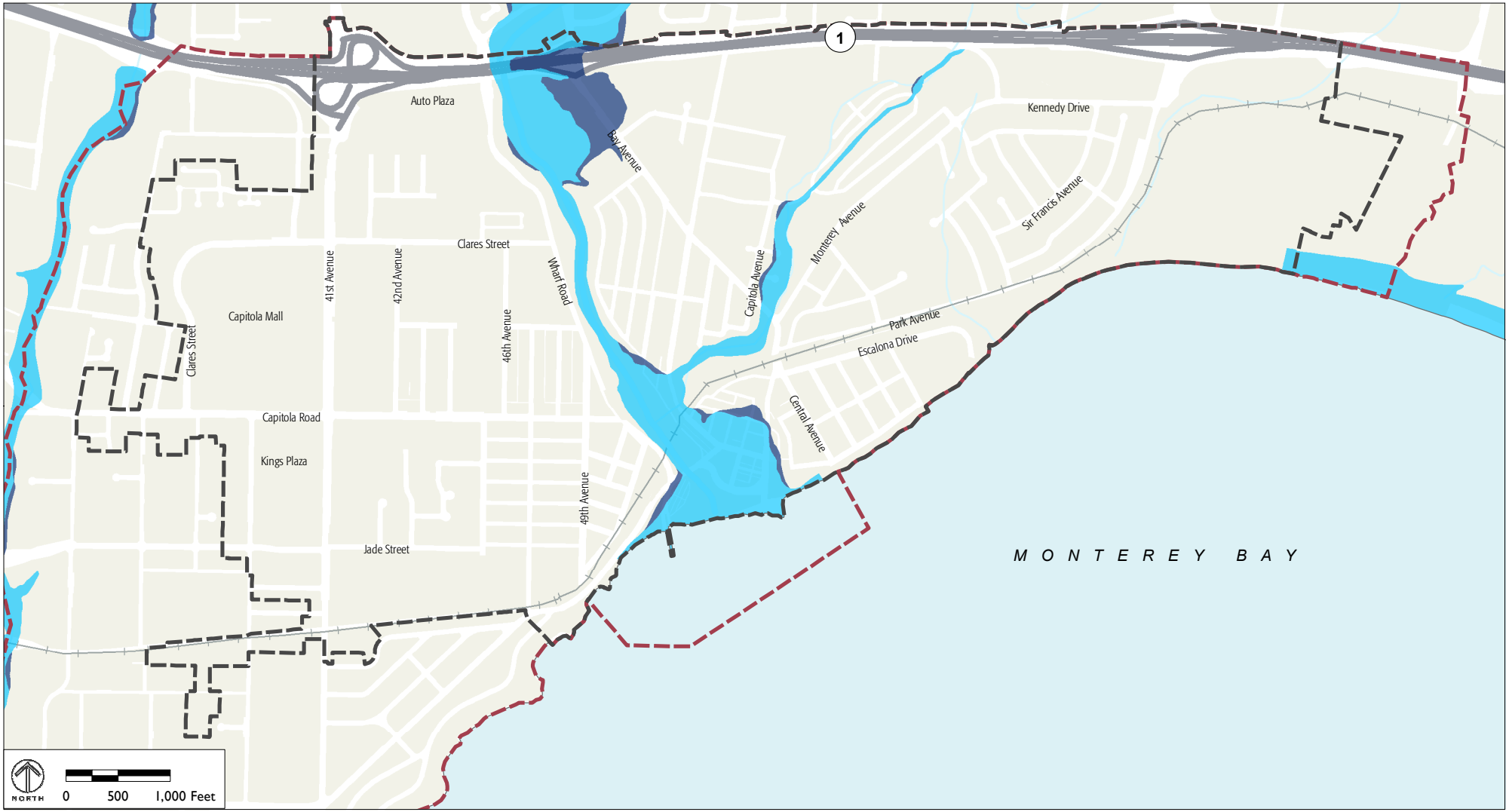
Source: City of Capitola, 2022.



Source: ESRI, 2017; Kimley-Horn, 2017.

Geological Hazard
City Limits
Land Parcels

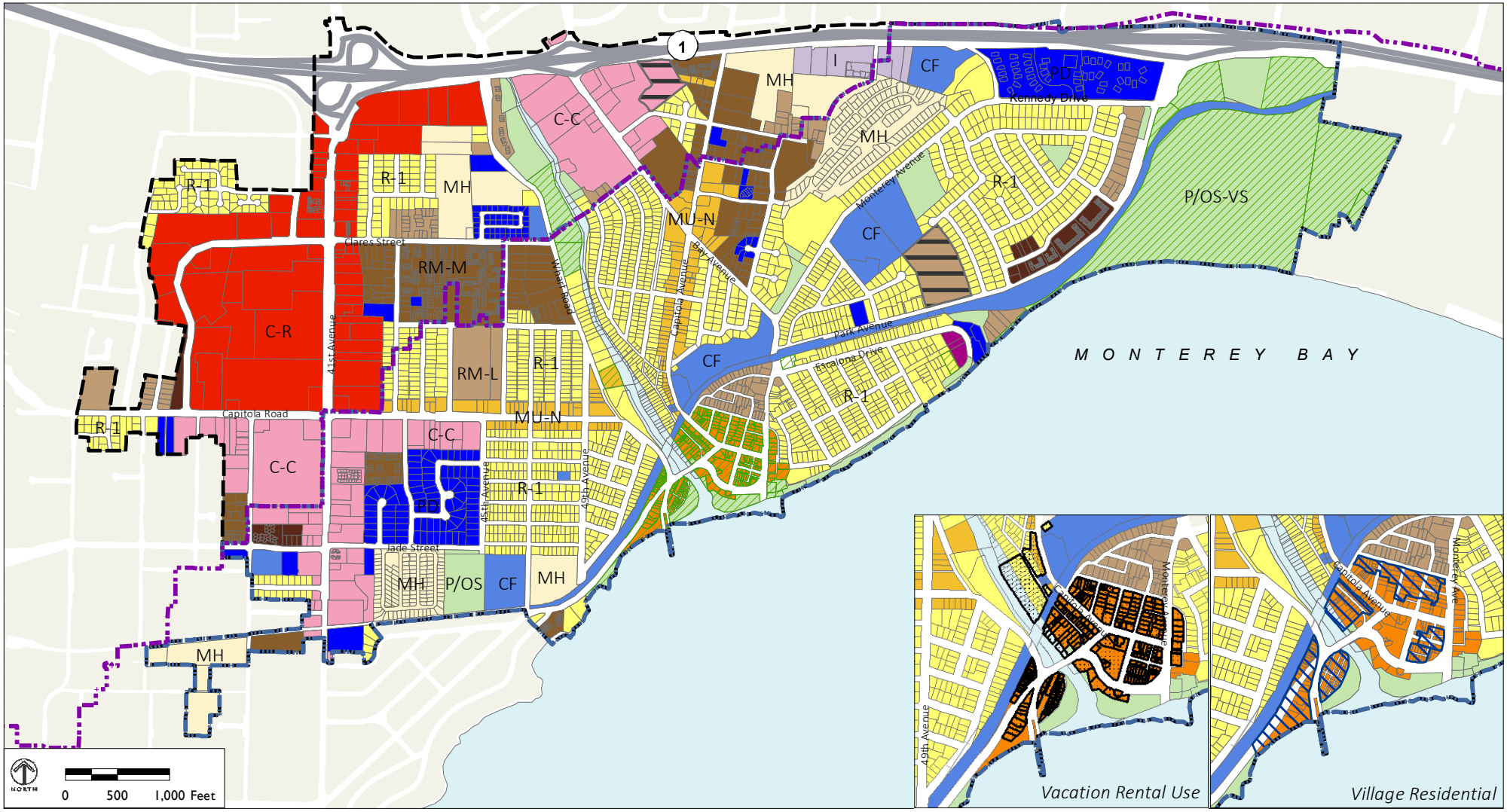
Source: ESRI 2017; PlaceWorks, 2017.



100-year flood
500-year flood
City Limit
Sphere of Influence

Source: ESRI, 2017; PlaceWorks, 2017.

CITY OF CAPITOLA
ZONING MAP



Source: ESRI, 2017; PlaceWorks, 2017.

Residential Zoning Districts
- R-1 - Single-Family Residential
- RM-L - Multi-Family Residential, Low Density
- RM-M - Multi-Family Residential, Medium Density
- RM-H - Multi-Family Residential, High Density
- MH - Mobile Home Park

Mixed-Use Zoning Districts
- MU-V - Mixed Use Village
- MU-N - Mixed Use Neighborhood

Commercial and Industrial Zoning Districts
- C-R - Regional Commercial
- C-C - Community Commercial
- I - Industrial

Other Zoning Districts
- P/OS - Parks and Open Space
- CF - Community Facility
- PD - Planned Development
- VS - Visitor Serving

Overlay Zones*
- -AHO - Affordable Housing Overlay
- -CZ - Coastal Zone
- -VRU - Vacation Rental Use
- -VR - Village Residential
- -VS - Visitor Serving

City Limit

Santa Cruz Coastal Zone Boundary

Zoning Map Certified
June 9, 2021
by CA Coastal Commission

*See Local Coastal Program Habitats Map for boundaries of Environmentally Sensitive Habitats Area Overlay Zone.

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.
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> *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**.

STATE OF CALIFORNIA—THE RESOURCES AGENCY GAVIN NEWSOM, *GOVERNOR*

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To: Planning Directors of Coastal Cities and Counties
From: John Ainsworth, Executive Director, California Coastal Commission
Date: January 21, 2022

Re: Implementation of New SB 9 Housing Laws in Sea Level Rise Vulnerable Areas

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As of January 1, 2022, SB 9 (Atkins) changed the way that local governments can regulate new residential development and lot splits in single-family residential zones within designated urban areas, with the goal of increasing housing density in those areas. The new housing laws added by SB 9, Government Code Sections 65852.21 and 66411.7, contain Coastal Act savings clauses. This means that, except for public hearing requirements, the Coastal Act continues to apply in full force in the coastal zone. Accordingly, certified Local Coastal Program (LCP) provisions continue to apply but, in most places, will need to be updated to conform with SB 9 to the greatest extent possible while still complying with the Coastal Act. This memorandum focuses on how to harmonize the new SB 9 requirements with LCP and Coastal Act policies in areas that are vulnerable to sea level rise because increasing residential density in these areas presents unique challenges and risks. When updating LCPs, local governments should keep in mind that LCP provisions must continue to be consistent with all applicable Coastal Act policies in all areas.

I. Housing in the Coastal Zone

The State of California is experiencing a critical shortage of affordable housing. In recognition of this critical shortage, the state Legislature passed numerous laws in recent years aimed at increasing construction of additional housing units, and preferably affordable units. Many of these measures, including SB 9, state that they do not supersede or lessen the application of the Coastal Act. The Coastal Commission (Commission) recognizes the particularly critical shortage of affordable housing in the coastal zone and has strongly supported strategies to increase access to affordable housing near the coast. To address housing shortages in the coastal zone over the long-term, new residential development must be built in locations and with designs that ensure it will be safe from hazards, have access to adequate public services, and will minimize coastal resource impacts.

Importantly, siting new housing in areas projected to be impacted by sea level rise, without planning for adaptation, will not address the housing crisis over the long-term and will instead put more residences and lives at risk and exacerbate housing shortages. The hazards and other impacts associated with sea level rise require local governments to plan carefully to ensure that new housing is safe both now and for future generations. Likewise, effective January 1, 2022, a

new section was added to the Coastal Act that explicitly requires the Commission to "take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise." (Pub. Res. Code § 30270.) While the Commission has considered sea level rise in its planning, policies, and activities for many decades, the new section of the Coastal Act further emphasizes the importance of accounting for sea level rise.

New residential development in the coastal zone must be consistent with Coastal Act and LCP policies, including requirements relating to protection of coastal resources and hazards, such as Coastal Act Sections 30250, 30253, 30235 and 30240, as discussed further below. In addition to these requirements, a variety of other provisions in the Coastal Act relate to housing in the coastal zone. As relevant here, the Coastal Act does not exempt local governments from complying with state and federal law "with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted." (Pub. Res. Code § 30007.) The Coastal Act also requires the Commission to encourage housing opportunities for low- and moderate-income households (Pub. Res. Code § 30604(f)), but states that "[n]o local coastal program shall be required to include housing policies and programs." (Pub. Res. Code § 30500.1.) Lastly, the Coastal Act regulates where new development can be sited. New residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects, either individually or cumulatively, on coastal resources. (Pub. Res. Code § 30250(a).) Land divisions, other than leases for agricultural uses, are permitted outside existing developed areas "only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels." (Pub. Res. Code § 30250(a).)

II. Overview of New Legislation

As of January 1, 2022, SB 9 adds Government Code Sections 65852.21 and 66411.7, and amends Government Code Section 66452.6. The new laws apply only to parcels located in: (a) a city that includes some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, within the city's boundaries; or (b) an unincorporated area, *and* the parcel is located entirely within either an urbanized area or urban cluster, as designated by the United States Census Bureau. (Gov. Code §§ 65852.21(a)(1), 66411.7(a)(3)(B).) Currently certified LCPs are not superseded by the new laws and continue to apply until an LCP amendment is adopted.

The new legislation makes two primary changes to existing law:

a. Ministerial consideration of proposals to develop two or fewer residential units in urban areas

For projects outside the coastal zone, local governments must now ministerially consider, without discretionary review, proposals to develop two or fewer residential units in a single-family residential zone in designated urban areas when certain criteria are met. (Gov. Code § 65852.21.) Proposals to construct two new residential units and proposals to add one new unit to a parcel with an existing unit are both covered by this section. (Gov. Code § 65852.21(i)(1).) For ministerial consideration of proposed residential development to be required, proposals must meet the many criteria set forth in the statute, including that rental of any new unit created is for a term longer than 30 days. (*See* Gov. Code § 65852.21(a), (d)-(g).) Local governments are free to adopt objective zoning, subdivision, and design review standards for development of residential units in any residential zone that do not conflict with Government Code Section 65852.21. (Gov. Code § 65852.21(b)-(c).) This new section of the Government Code does not supersede or in any way alter application of the Coastal Act, except that local governments are not required to hold public hearings for coastal development permit (CDP) applications. (Gov. Code § 65852.21(k).) This means that, aside from CDP public hearing requirements, Government Code Section 65852.21 does not override the Coastal Act or LCP policies implementing the Coastal Act, which may involve the application of discretion. Therefore, local governments should adopt LCP amendments with standards that harmonize with SB 9 requirements as much as is feasible and that also ensure such new development is consistent with the Coastal Act and any applicable LCP policies, including requirements relating to notice of local decisions to the public and the Commission.

b. Ministerial approval of urban lot splits

For projects outside the coastal zone, local governments must now ministerially approve lot splits that create no more than two new lots in single-family residential zones in designated urban areas when certain criteria are met, (Gov. Code § 66411.7). However, as with the new requirements regarding residential development, this section of the Government Code does not supersede or in any way alter application of the Coastal Act, except that local governments are not required to hold public hearings for coastal development permit (CDP) applications. (Gov. Code § 66411.7(o).) Accordingly, for projects in the coastal zone, review for consistency with Coastal Act and applicable LCP policies is still required, and that may involve the application of discretion. For ministerial approval to be required outside the coastal zone, proposals must meet the many criteria set forth in the statute, including that no more than two new lots are created, and that rental of any new unit created is for a term longer than 30 days. (*See* Gov. Code § 66411.7.) Although discretionary review is prohibited in these circumstances in non-coastal zone areas, local governments are free to adopt objective zoning standards, objective subdivision standards, and objective design review standards applicable to urban lot splits that do not conflict with Government Code § 66411.7. (Gov. Code § 66411.7(c), (e).)

Although the new laws do not supersede the Coastal Act, and the requirement for ministerial approval does not automatically apply in the coastal zone, the laws should be harmonized with the Coastal Act as much as feasible. This could be accomplished, for example, by updating LCPs to create a checklist of objective standards for qualifying projects so that little or no discretion is involved when considering them. Overall, local governments should adopt LCP amendments with standards to ensure that such new development is consistent with the Coastal Act and any applicable LCP policies, including requirements relating to notice of local decisions to the public and the Commission.[1]

III. SB 9 Application to Coastal Act Policies Generally

Local governments should consider how to amend their LCPs to comply with SB 9 to the greatest extent possible, while continuing to be consistent with the Coastal Act. Approval of the types of lot split and residential development projects contemplated by SB 9 is likely to increase residential density in urban areas, both in terms of the overall number of residential units and in terms of the nature of the built environment itself. In some areas, this increase in density may be able to be accommodated with limited coastal resource impacts. However, in other areas, there may be cases where such projects cause significant adverse impacts to coastal resources such as public access, sensitive habitats, and recreation areas. (*See* Pub. Res. Code § 30250.) For example, approval of new residential development projects and lot splits pursuant to SB 9 would not be consistent with the Coastal Act if the projects are adjacent to environmentally sensitive areas (ESHA) and are not sited and designed to prevent impacts which would significantly degrade those areas, or are incompatible with the continuance of those habitat and recreation areas. (Pub. Res. Code § 30240.) Residential areas in the coastal zone are often intertwined with significant coastal resource areas, such as along the immediate shoreline, between the first public road and the sea, near LCP-designated scenic areas, and near sensitive habitat areas. LCPs generally include a myriad of provisions protecting these coastal resources; LCP provisions designed to implement SB 9 should not conflict with or inappropriately diminish any such LCP protections that already apply. At the same time, SB 9's focus on ensuring that applicable standards are objective and processed ministerially means that local governments should consider ways to evaluate the potential for coastal resource impacts at the LCP planning stage, such as by using checklists or other such ministerial tools that can be employed at the CDP application stage as much as possible. Local governments are encouraged to coordinate with Commission staff as they develop LCP provisions to implement SB 9.

[1] SB 9 also amends Government Code § 66452.6 to allow local governments to provide by ordinance an additional 24-month time period before an approved or conditionally approved tentative subdivision map expires.

IV. SB 9 Application in Sea Level Rise Vulnerable Areas

As described in Chapter 3 of the Coastal Commission's 2018 Update to the Sea Level Rise Policy Guidance (SLR Guidance), as sea levels rise, tidal and groundwater inundation, flooding, wave impacts, bluff and beach erosion, saltwater intrusion, and other impacts are projected to worsen and further threaten residential development and coastal resources in the coastal zone. The applicability of SB 9 in areas vulnerable to the impacts associated with sea level rise is thus a critical concern.

a. Development of two or fewer residential units in sea level rise vulnerable areas

In many cases, increasing density in areas subject to sea level rise impacts without including appropriate siting, design, and mitigation features will not be consistent with Coastal Act policies. Proposals to develop two or fewer residential units pursuant to Government Code Section 65852.21 may be permitted in sea level rise-vulnerable areas if they can be developed in such a way as to be found consistent with the Coastal Act and LCP provisions, and can be designed and sited to be safe from hazards for the expected life of the structures. Proposed projects to construct two or fewer residential units pursuant to Government Code Section 65852.21 typically qualify as "development" under the Coastal Act because such projects usually involve "the placement or erection of any solid material or structure," and/or a "change in the density or intensity of use of land. . . ." (Pub. Res. Code § 30106.)[2] As new development, the new units must minimize risks to life and property in areas of geologic and flood hazard; assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area; and not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Pub. Res. Code §§ 30253, 30270; *see also* corresponding LCP provisions.) New residential development must be consistent with the Chapter 3 policies of the Coastal Act and any relevant LCP policies, including that they must be sited and designed to prevent significant degradation of adjacent sensitive habitats and recreation areas and to allow the continuance of those areas into the future (Pub. Res. Code § 30240(b)).

In some areas vulnerable to sea level rise, the risk of hazards during the anticipated life of the structure may be too great to permit development of two residential units on one lot if the new unit(s) cannot be sited and designed safely and consistent with relevant Coastal Act and LCP provisions. In other vulnerable areas, development may be permitted where adaptation strategies and special conditions can minimize hazard risks and avoid impacts on coastal

[2] As discussed in the Updates Regarding the Implementation of New ADU Laws Memorandum (Jan. 2022), conversion of existing habitable space within a single-family residence into another residential unit may not qualify as development if there are no major structural changes (e.g., changes to roofs, exterior walls, foundations, etc.) and no change to the size or intensity of use of the existing structure. (*See* Pub. Res. Code § 30106.)

resources. Local governments and applicants should refer to the Commission's SLR Guidance when determining whether construction of residential units pursuant to Government Code Section 65852.21 in vulnerable areas is consistent with the Coastal Act and LCP policies. Chapter 7 of the SLR Guidance describes some of the adaptation strategies to consider when planning for development in sea level rise vulnerable areas. Some adaptation strategies may require land use plans or proposed projects to anticipate long-term impacts now. Other strategies may build adaptive capacity into the plan or project itself, such as special conditions that require elevation or removal of structures when certain triggers are met, so that future changes in hazard risks can be effectively addressed while ensuring long-term resource protection.

b. Lot splits in sea level rise vulnerable areas

As discussed above, Government Code Section 66411.7 requires ministerial consideration of urban lot splits in single-family residential zones in designated areas outside the coastal zone when certain criteria are met. "[S]ubdivision . . . and any other division of land, including lot splits," qualify as "development" under the Coastal Act, thereby triggering the need for a CDP or other appropriate authorization. (Pub. Res. Code § 30106.) Lot splits also qualify as development because they constitute a "change in the density or intensity of use of land." (*Id*.) As new development, proposals to subdivide land must:

> (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
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> (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(Pub. Res. Code § 30253.) New development must also be sited and designed to prevent significant degradation of adjacent sensitive habitats and recreation areas and to allow the continuance of those areas in the future. (Pub. Res. Code § 30240(b).) In addition, new development must be consistent with all Chapter 3 policies of the Coastal Act, including Sections 30210 through 30224 protecting public access and recreational opportunities; Sections 30230 and 30231 protecting marine habitats and water quality; Section 30250 requiring development to have adequate public services; and Section 30251 protecting visual resources. Subdivisions in areas with certified LCPs must also be consistent with corresponding, relevant LCP provisions. The Commission must also consider the effects of sea level rise in its coastal resources planning and management policies and activities, including those relating to new residential development. (Pub. Res. Code § 30270.)

The Commission's SLR Guidance states that to comply with Section 30253 of the Coastal Act or the equivalent LCP section, projects will need to be planned, located, designed, and engineered

for the changing water levels and associated impacts that might occur over the life of the development. In addition, Chapter 7 of the SLR Guidance recommends concentrating development away from hazardous areas and limiting subdivisions in areas vulnerable to sea level rise. To be consistent with the Coastal Act, including how it is interpreted through the SLR Guidance, proposals to subdivide land in areas vulnerable to sea level rise should be considered very carefully for several reasons.

First, subdividing land projected to be negatively impacted by sea level rise in the foreseeable future is not a sound way to minimize risks to life and property in areas with high flood and geologic hazards. (*See* Pub. Res. Code § 30253.) Instead, subdivision in these areas is likely to increase risks to life and property by allowing for increased density and intensity of use of sites that are projected to be exposed to hazards such as tidal and groundwater inundation, flooding, wave impacts, bluff and beach erosion, and saltwater intrusion. Under SB 9, a lot currently zoned for a single-family residence could support many additional residential units. For example, a lot could be subdivided pursuant to Government Code Section 66411.7, and then two residential structures could be built on each of the newly divided lots pursuant to Government Code Section 65852.21. This scenario would result in four residences on a lot that, prior to SB 9, could only support one residence. When considering the circumstances in which residentially zoned lot splits (pursuant to SB 9 or otherwise) should be allowed in the coastal zone, local governments should consider whether each of the new lots would have a buildable area that is safe from coastal hazards for the foreseeable future without relying on shoreline armoring and could be developed in conformance with relevant coastal resource protection policies of the LCP and Coastal Act.

Second, it is important to analyze the safety of proposed lot splits over the longest feasible timeframe. Hazard analyses typically evaluate potential hazards for the expected life of the development. Unlike the development of residential structures that may only need to be safe for approximately 75-100 years, land divisions tend to be permanent and have little to no adaptive capacity. Although the SLR Guidance does not suggest a specific timeframe for the hazard analysis of proposed lot splits, it does note that projects that are expected to last indefinitely should consider time frames of 100 years or more, and this is also consistent with past Commission action. For example, Commission staff recently recommended denial of a proposal to subdivide property in Orange County that was particularly vulnerable to sea level rise because, among other reasons, the project did not minimize risks to life and property and could not assure stability and structural integrity of the project, as Section 30253 of the Coastal Act requires. (Staff Report, Application Nos. 5-18-0907 & 5-18-0908, August 29, 2019.) The staff report found that the proposed subdivision could last in perpetuity, potentially long beyond the anticipated life of the proposed residential structure, and that both new lots would likely be subject to sea level rise impacts after the anticipated life of the residential structure. (*Id.*) After some deliberation with the Commission at the public hearing, the applicant withdrew its application and submitted a new proposal to build two single-family residences on the lot

without subdivision. The Commission approved the new application with the condition that the property cannot be subdivided now or in the future, among other conditions addressing the property's sea level rise vulnerabilities. (Staff Report, Application No. 5-20-0646, May 21, 2021.) In the zoning context, the Commission denied a request by the County of Santa Barbara to amend its Land Use Plan (LUP) to rezone a single oceanfront property from recreation/open space to single-family residential because the property was projected to be impacted by hazards in the foreseeable future, among other reasons. The Commission found that the hazards analysis for a proposed land use designation change should consider hazards for the foreseeable future because "[u]nlike residential structural development, where the Commission generally analyzes whether the structure will be stable and safe for its expected life of 75 to 100 years, the land use designation change of a parcel would be more or less permanent." (Staff Report, Application No. LCP-4-STB-18-0039-1- Part D, July 10, 2019, p. 16.) Land divisions, like land use designation changes, may last in perpetuity. Thus, the Commission's past guidance and actions demonstrate that, in most circumstances, a hazard analysis for a lot split proposal should consider the longest time frame feasible.

Third, subdivision may limit the adaptation strategies available to individuals and communities as sea levels rise. Unlike structural development, which can be designed to incorporate adaptive elements like waterproofing, elevation, or relocation, subdivisions have little to no adaptive capacity; thus, it is not always feasible to mitigate the impacts created by subdivisions. Subdividing a parcel can also limit the opportunities to adapt to sea level rise on that land by decreasing the land available on a lot for existing development to be moved landward, or for new development to be sited in a more landward or higher elevation location. Land divisions also increase the number of property interests in a site. This can add cost and logistical complexity to community-scale adaptation strategies, making it harder to form and manage geological hazard abatement districts, negotiate buyouts, and implement conservation easements, and making it more difficult to minimize hazards and protect coastal resources in the future.

Lastly, allowing subdivisions in vulnerable areas may negatively impact coastal resources and public access. Coastal resources such as beaches and wetlands will migrate and naturally adapt due to future coastal erosion and sea level rise conditions. Increased residential density and intensity of use along the shoreline and in vulnerable areas may impact coastal resources through, for example, "coastal squeeze" where shoreline development prevents beaches and bluffs from migrating inland, which causes the narrowing and eventual loss of beaches, dunes, and other shoreline habitats as well as the loss of offshore recreational areas. Having fewer structures on relatively larger lots may allow more opportunities for those structures to adapt—for example, by being moved to other parts of the lot that are safer. Depending on the geography and other site-specific conditions, creating additional, smaller lots with more structures may reduce this adaptive capacity.

In light of the potential hazards and coastal resource impacts associated with subdivision in areas vulnerable to sea level rise, many local governments have avoided such land divisions. For example, Policy 7-2 of the City of Half Moon Bay's Local Coastal LUP limits "subdivisions in areas vulnerable to environmental hazards, including as may be exacerbated by climate change, by prohibiting any new land divisions, including subdivisions, lot splits, and lot line adjustments that create new building sites unless specific criteria [are] met that ensure that when the subject lots are developed, the development will not be exposed to hazards, pose any risks to protection of coastal resources, or create or contribute to geologic instability." Likewise, San Mateo County's LCP Implementation Plan (IP) requires applications for proposed subdivisions to include a development footprint analysis that comprehensively evaluates site development constraints and potential impacts, including sea level rise impacts, prior to approval of subdivision parcel maps. These LCP policies allow lot splits, such as those authorized by Government Code § 66411.7, but only when consistent with the Coastal Act.

c. Identifying areas vulnerable to sea level rise

The best available, up-to-date scientific information about coastal hazards and sea level rise should be used to determine whether proposals for lot splits and new residential units in areas vulnerable to sea level rise are consistent with the Coastal Act and LCP provisions. Local governments and applicants should refer to the SLR Guidance when conducting this analysis.

Step 1: Identify sea level rise projections. First, identify the best available, locally-relevant sea level rise projections. In line with statewide guidance, the Commission currently recognizes the Ocean Protection Council's 2018 State Sea-Level Rise Guidance as the best available science on sea level rise projections for California.

- *Tide gauges.* Appendix G of the SLR Guidance includes sea level rise projections for every 10 years from 2030 to 2150 for 12 tide gauges along the California coast; the projections from the closest tide gauge to the project site should be used.
- *Planning horizon.* Hazard analyses typically evaluate potential hazards for the expected life of the development. Some LCPs include a specified design life for new types of development. If no specified time frame is provided, a time frame may be chosen based on the type of development. For proposed development of new residential units, it is generally appropriate to analyze sea level rise impacts for at least the expected life of the proposed structure(s), often 75-100 years for residential structures, as described in Chapter 6 of the SLR Guidance. Although situations may vary, local governments and applicants should typically use a longer planning horizon of at least 100 years for lot splits because, as described in subsection (b), land divisions are expected to be permanent, unlike many other kinds of development, and have a limited ability to adapt.
- *Risk aversion scenario.* Evaluate impacts from the "medium-high risk aversion" scenario, as described in Chapters 5 and 6 of the SLR Guidance. The SLR Guidance recommends

that all communities evaluate the impacts from the "medium-high risk aversion" scenario (p. 76), and that residential structures and projects with greater consequences and/or a lower ability to adapt use this projection scenario (p. 102). In addition, impacts under other risk aversion scenarios may be helpful to analyze.

Step 2: Analyze the physical effects of sea level rise. Analyze the following hazards under the medium-high risk aversion scenario: erosion of beaches, bluffs, cliffs, and other landforms; tidal inundation of shoreline areas; flooding (wave run-up and storm impacts); and saltwater intrusion and groundwater impacts, consistent with the SLR Guidance and Coastal Act and LCP requirements.

Step 3: Assess impacts to future development and coastal resources. Determine whether the proposed residential units and/or potential building sites on new parcels are vulnerable to sea level rise impacts.

Step 4: Determine whether proposed development is appropriate. Lastly, determine whether the proposed development is consistent with the LCP and Coastal Act as proposed, or can be made consistent with design modifications, adaptive strategies, or other conditions. Development of new residential units in areas projected to be impacted by sea level rise may be inconsistent with the Coastal Act or LCPs if adaptive strategies cannot minimize the risk of hazards and protect coastal resources, as discussed in subsection (a). Lot splits may be inconsistent with the Coastal Act or LCP policies if they occur in areas projected to be impacted by the hazards associated with sea level rise over the next 100+ years under the medium-high risk aversion scenario, as discussed in subsection (b). As described in the SLR Guidance, local governments should consider whether to "[p]rohibit any new land divisions, including subdivisions [and] lot splits . . . that create new beachfront or blufftop lots unless the lots can meet specific criteria that ensure that when the lots are developed, the development will not be exposed to hazards or pose any risks to protection of coastal resources." (SLR Guidance, p. 130.) A lot split may be appropriate if the project site is not projected to be impacted by sea level rise hazards for the longest time frame feasible, typically at least 100 years, and is otherwise consistent with the LCP and Coastal Act.

V. Local Government Application of SB 9 in the Coastal Zone

a. Update applicable LCP provisions

Local governments in the coastal zone are required to comply with both the Coastal Act and, to the extent they do not conflict with Coastal Act requirements, the new SB 9 requirements. Currently certified provisions of LCPs are not superseded by Government Code Sections 65852.21 and 66411.7 and continue to apply to CDP applications until an LCP amendment is adopted. Where LCP provisions directly conflict with the new Government Code provisions or require refinement to be consistent with the new laws, those LCP provisions should be updated to be consistent with SB 9 to the greatest extent feasible while still complying with Coastal Act

requirements. As discussed above, when updating LCP policies to account for SB 9, local governments should also consider how proposed lot splits and residential development might impact public access, sensitive habitats, recreation areas, and other coastal resources. Local governments should also consider new LCP provisions that limit or prohibit subdivisions in areas vulnerable to sea level rise, and that appropriately account for coastal hazards and coastal resource impacts, including as exacerbated or associated with sea level rise, for new residential development.

Although a public hearing is not required under SB 9, public notice requirements still apply. LCP amendment applications should specify how local and Coastal Act public notice requirements will be fulfilled, including the notice requirements for: (a) pending action to interested parties prior to a local decision, and (b) notice of final action to the Commission and those who have requested such notice after a local decision. LCP amendment applications should specify the procedures for issuing a Final Local Action Notice (FLAN) for local decisions on applications for development that are appealable to the Commission. Some LCP amendments may qualify for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); Cal. Code Regs., tit. 14, § 13554.)

b. Review SB 9 applications consistent with the Coastal Act/LCP and SB 9

Local governments should generally follow the below process when considering proposed SB 9 projects outside of areas that are potentially vulnerable to sea level rise.

Review Prior CDP History. First, determine whether a CDP or other form of Coastal Act authorization was previously issued for development of the site and whether that CDP and/or authorization limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Commission district office if a Commission-issued CDP and/or authorization limits the applicant's ability to apply to construct two or fewer residential units or split the lot.

Consider Possible Expedited Permitting Processes. Second, and only if an application proposes to undertake development in an area where it will be consistent with LCP and Coastal Act hazard and coastal resource protection policies, consider whether any expedited permitting processes, such as waivers or administrative permits, are available. If a local government's LCP includes a waiver provision, and the proposed lot split and/or residential unit development proposal meets the criteria for a CDP waiver, the local government may issue a CDP waiver in place of a CDP. The Commission has generally allowed a CDP waiver only when the Executive Director determines that the proposed development is de minimis (i.e., it is development that has no potential for any individual or cumulative adverse effect on coastal resources and is consistent with all Chapter 3 policies of the Coastal Act). Such a finding can typically be made when the proposed project has been sited, designed, and limited in such a way as to ensure any potential impacts to coastal resources are avoided (such as through habitat and/or hazards setbacks, provision of adequate off-street parking to ensure that public access to the coast is

not impacted, etc.). (*See* Pub. Res. Code § 30624.7.) Projects that qualify for a CDP waiver typically allow for a substantially reduced evaluation process and streamlined approval. It may be appropriate for local governments to use waivers to approve applications in both appealable and non-appealable areas to streamline permitting.[3] Local governments interested in exploring this option should consult with Commission staff. LCP amendment applications that propose to allow waivers in appealable areas should ensure that there are proper procedures for notifying the public and the Commission of approvals for individual, appealable waivers (such as Final Local Action Notices) so that the proper appeal period can be set, and any appeals received are properly considered.[4]

Require and Review a CDP Application. Lastly, if a proposal is not eligible for a waiver or similar expedited process authorized by the Coastal Act and the certified LCP, including because it is located in an area potentially subject to coastal hazards and/or future sea level rise hazards, it requires a CDP. (Pub. Res. Code § 30600.) The CDP must be consistent with the requirements of the certified LCP and any relevant policies of the Coastal Act. Local governments must provide all required public notice for any CDP applications for development covered by SB 9 and process the application pursuant to LCP requirements, but local governments are not required to hold public hearings. (Gov. Code §§ 65852.21(k); 66411.7(o).) Once the local government has made a CDP decision, it must send the required final local action notice of that decision to the appropriate Commission district office. If the CDP decision on the proposed project is appealable, a local government action to approve a CDP for the proposed project may be appealed to the Commission. (Pub. Res. Code § 30603.)

[3] Most, if not all, LCPs with CDP waiver provisions do not allow for waivers in areas where local CDP decisions are appealable to the Coastal Commission. There have been a variety of reasons for this in the past, including that the Commission's regulations require that local governments hold a public hearing for all applications for appealable development (14 Cal. Code Regs § 13566), and also that development in such areas tends to raise more coastal resource concerns and that waivers may therefore not be appropriate. However, under SB 9 provisions, public hearings are not required for qualifying development. Because of this, the above-described public hearing issue would not be a concern, so it could be appropriate for LCPs to allow CDP waivers in both appealable and non-appealable areas at least related to this criterion. Local governments should consult with Commission staff should they consider proposing CDP waiver provisions in their LCP.

[4] The development authorized by SB 9—specifically, residential lot splits and development of new residential units that change the intensity of use—are not types of development that the Commission has typically found to be exempt from CDP requirements as improvements to single-family residences. (*See* Pub. Res. Code § 30610; Cal. Code Regs., tit. 14, § 13250(a).) In addition, any development that is not designated as the principal permitted use under the approved zoning ordinance or zoning district map—such as lot splits—is appealable to the Commission. (Pub. Res. Code § 30603(a)(4).)

VI. Conclusion

The Commission strongly supports increased access to affordable housing and increased residential density in the coastal zone. For new housing to be a long-term solution to the housing shortage, it must be sited and designed to be safe from hazards, such as sea level rise, and to not have significant adverse effects on coastal resources. Local governments should review their LCPs to determine what changes are necessary to implement SB 9 in a manner that is consistent with the Coastal Act and appropriate for local geography, and prepare and submit LCP amendments to the Commission as soon as is feasible.

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