



Department of Conservation and Development
County Planning Commission

Wednesday, February 23, 2022 – 6:30. P.M.
(continued from February 9, 2022)

STAFF REPORT

Agenda Item # _____

Project Title:	County-Initiated Zoning Text Amendment to Add Chapter 88-36 and Article 94-4.10 to the County Ordinance Code
County File:	Zoning Text CDZT21-00002
Applicant/Owner:	Contra Costa County
Zoning/General Plan:	Countywide
Site Address/Location:	Countywide
California Environmental Quality Act (CEQA) Status:	Not a Project, CEQA Guidelines Section 15060(c)(3), Government Code Section 65852.21(j), Government Code Section 66411.7(n)
Project Planner:	Stan Muraoka, Principal Planner (925) 655-2876
Staff Recommendation:	Recommend Board of Supervisors approval (See section II for full recommendation)

I. PROJECT SUMMARY

This is a County-initiated zoning text amendment to add Chapter 88-36 to the County Ordinance Code to authorize and regulate the development of up to two residential units on a parcel located in a single-family residential zone (urban housing development) in accordance with Government Code Sections 65852.21 and 66411.7; and, add Article 94-4.10 to the County Ordinance Code to authorize the ministerial approval of a parcel map for a subdivision of an existing lot in a single-family residential zone into no more than two new parcels (urban lot split) in accordance with Government Code Section 66411.7.

II. RECOMMENDATIONS

Department of Conservation and Development, Community Development Division (CDD) staff recommends that the County Planning Commission ADOPT a motion recommending that the Board of Supervisors:

- A. FIND for purposes of compliance with the California Environmental Quality Act (CEQA) that the proposed zoning text amendment is not a project pursuant to CEQA Guidelines Section 15060(c)(3), Government Code Section 65852.21(j), and Government Code Section 66411.7(n).
- B. FIND that the proposed zoning text amendment to add Chapter 88-36 and Article 94-4.10 to the County Ordinance Code is consistent with the County General Plan and Zoning Code.
- C. ADOPT the proposed zoning text amendment to add Chapter 88-36 that complies with the provisions of California Government Code Sections 65852.21 and 66411.7, and add Article 94-4.10 that complies with the provisions of California Government Code Section 66411.7.

III. BACKGROUND

Senate Bill 9 was approved by the Governor on September 16, 2021. This Bill became effective on January 1, 2022. As allowed by Senate Bill 9, staff has prepared an amendment to the County Ordinance Code to add Chapter 88-36 for urban housing developments of up to two residential units on a parcel and Article 94-4.10 for a parcel map for an urban lot split of up to two lots.

Staff has added documents and forms on the ePermit Center, the Department's permit application website, for applications for urban housing developments and urban lot splits. The Department is set up to process applications for urban housing developments applying State law in Government Code Sections 65852.21 and 66411.7 to existing procedures. Processing of an urban housing development application is similar to processing an application for an Accessory Dwelling Unit Permit. Processing an urban lot split parcel map is similar to processing a parcel map for a minor subdivision.

The proposed zoning text amendment details the County procedure for ministerial approval an urban housing development by the County Zoning Administrator, based

on objective standards in the County Code. The text amendment augments applicable objective standards in the County Code and adds criteria for lot coverage and for building height within established setbacks and yards of the land use districts. The proposed text amendment also details the County procedure for ministerial approval an urban lot split parcel map by the Board of Supervisors, based on standards for parcel maps in the County Code, and specific objective criteria that would be added by the text amendment to the County Code. Upon adoption of the proposed text amendment, staff would process an urban housing development permit application and an urban lot split parcel map using Chapter 88-36 and Article 94-4.10.

The County Planning Commission conducted a public hearing on the proposed zoning text amendment at its meeting on Wednesday, February 9, 2022. The Commission received oral testimony from three members of the Alamo Improvement Association along with a letter from the Alamo Improvement Association, closed the public hearing, and discussed the proposed text amendment. The Commission voted 4 – 3 to continue consideration of the text amendment to its meeting on Wednesday, February 23, 2022.

IV. PUBLIC COMMENTS

The Alamo Improvement Association submitted a letter on February 9, 2022, prior to the Planning Commission hearing. Three members of the Association presented oral testimony at the hearing. The Association's letter is included as Attachment 1. The Association had two main points related to the proposed zoning text amendment, including the inclusion of single-family residential areas of P-1 Planned Unit Districts as eligible locations for urban housing developments and urban lot splits, and requiring the owner occupancy of a resultant lot from an urban lot split.

A. Single-Family Residential P-1 Districts. The Alamo Improvement Association states that single-family residential areas in P-1 Districts should be included as potentially eligible for urban housing developments and urban lot splits. As discussed in Section V.D of the February 9, 2022 County Planning Commission staff report, Government Code Sections 65852.21(a) and 66411.7(a)(3)(A) limit the application of the State law for urban housing developments and urban lot splits to single-family residential zones. It was the decision of the State legislature to exclude non-single-family residential zones from Senate Bill 9.

B. Owner-Occupancy Requirement. The Alamo Improvement Association states that

the requirement for the owner to sign an affidavit stating an intent to occupy one of the residential units created on a lot resulting from an urban lot split will be difficult to enforce, and the requirement should be for the owner to occupy the residence. Government Code Section 66411.7(g)(1) states that the applicant for an urban lot split must sign an affidavit stating that the applicant intends to occupy one of the residential units for a minimum of three years. Proposed County Code Article 94-1.1004(b)(3)(D) is consistent with the State law requirement and requires the owner to sign an affidavit stating the intent to occupy one of the residential units.

V. INFORMATION REQUESTED BY THE COMMISSION

After closing the public hearing, the Planning Commission commented on the proposed zoning text amendment and requested additional information from staff, including clarification of the zoning of yellow areas shown on the Qualifying Parcels map attached to the February 9, 2022 staff report, and in particular, zoning of the Mt. View, Vine Hill, and Pacheco areas, potential conflict of Senate Bill 9 with the County General Plan, and the effect on CC&Rs (Conditions, Covenants, and Restrictions) of Senate Bill 9 and the proposed text amendment.

- A. Zoning of Yellow Parcels. The Commission asked staff what were the yellow parcels shown on the Qualifying Parcels Map, Attachment 1 of the February 9, 2022 staff report. The yellow parcels shown on this map are areas within urban area clusters in unincorporated County that are not in a single-family residential zone and that do not have a mapped environmental constraint; i.e., flood plain, earthquake fault hazard zone, and high and very high fire hazard severity zone.

The Qualifying Parcels Map includes overlays for mapped environmental constraints on top of the SB 9 likely parcels base map. For comparison, both maps are included as Attachment 2. On each map, the yellow areas shown are unincorporated areas inside U.S. Census-designated urban area clusters. The yellow areas shown on the Qualifying Parcels Map are reduced in size from the base map wherever there is a mapped environmental constraint. The green parcels shown on the maps are parcels that are in a R-6, R-7, R-10, R-12, R-15, R-20, R-40, R-65, or R-100 Single-Family Residential District.

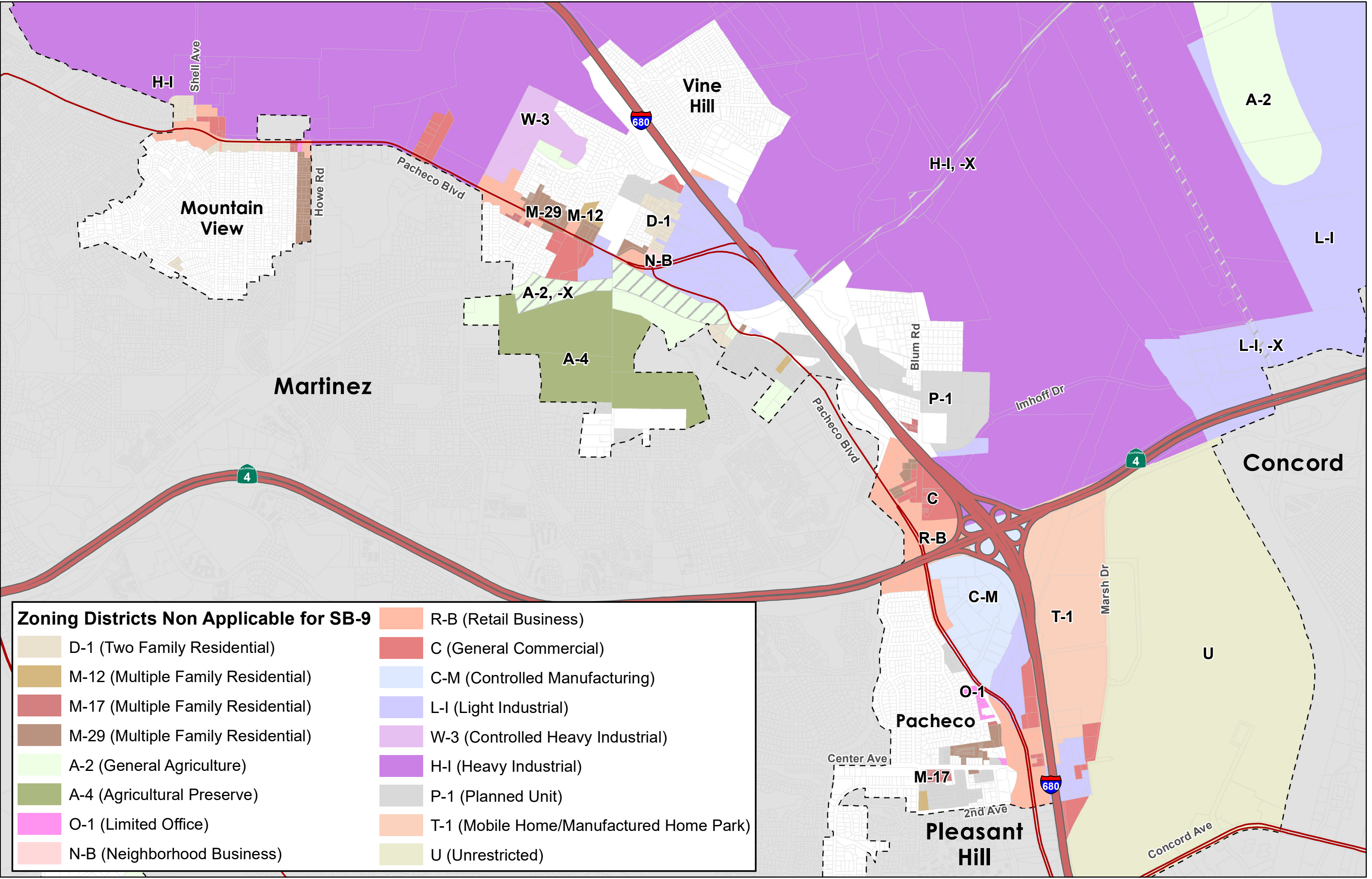
The Commission also asked staff what were the yellow parcels shown on the Qualifying Parcels Map specifically in the Mt. View, Vine Hill, and Pacheco areas. As shown on the map on page 6, the yellow parcels in these areas are in zoning

districts that are various non-single-family residential zones. Accordingly, these parcels do not qualify for urban housing developments and urban lot splits pursuant to Senate Bill 9.

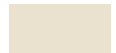







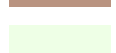






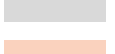
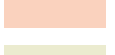
- B. Potential Conflict with General Plan. The Commission asked about the potential conflict of the proposed text amendment with the General Plan. As discussed in Section V.A of the February 9, 2022 staff report, the proposed text amendment would be consistent with the General Plan Housing Element. The staff report listed the housing goals that would be particularly relevant to the text amendment.

With respect to the General Plan Land Use Element, application of Senate Bill 9 within an area with a General Plan single-family residential land use designation could result in an exceedance of the maximum residential density for the designation, since Senate Bill 9 only limits the minimum size of a qualifying parcel to 1,200 square feet. A parcel in a single-family residential land use designation could be developed with up to two single-family residences through approval of an urban housing development and up to four single-family residences through approval of an urban lot split and subsequent approval of urban housing developments. However, General Plan single-family residential land use designations are mapped over very large areas of unincorporated County. Accordingly, a majority of the parcels within a single-family residential-designated area would have to be developed through urban lot splits followed by urban housing developments for the residential density of the designated area to significantly increase. As discussed in Sections IV.B.2 and IV.B.17 of the February 9 staff report, a subdivider cannot subdivide adjacent parcels through an urban lot split and further subdivision of a resultant lot of an urban lot split is not allowed. Thus, a significant increase in the density of an area within a single-family residential land use designation would not be expected. Development pursuant to Senate Bill 9 of scattered sites in a particular single-family residential land use designation would be expected to maintain the overall General Plan single-family residential density within the land use designation.

Further, an intent of Senate Bill 9 is to promote residential development in appropriate urbanized areas and sets forth criteria for qualifying parcels. Thus, the text amendment, as proposed, would remain consistent with General Plan land use goals such as Goal 3-E: *To recognize and support existing land use densities in most communities, while encouraging higher densities in appropriate areas, such as near major transportation hubs and job centers.*



Zoning Districts Non Applicable for SB-9

- | | |
|---|--|
|  D-1 (Two Family Residential) |  R-B (Retail Business) |
|  M-12 (Multiple Family Residential) |  C (General Commercial) |
|  M-17 (Multiple Family Residential) |  C-M (Controlled Manufacturing) |
|  M-29 (Multiple Family Residential) |  L-I (Light Industrial) |
|  A-2 (General Agriculture) |  W-3 (Controlled Heavy Industrial) |
|  A-4 (Agricultural Preserve) |  H-I (Heavy Industrial) |
|  O-1 (Limited Office) |  P-1 (Planned Unit) |
|  N-B (Neighborhood Business) |  T-1 (Mobile Home/Manufactured Home Park) |
| |  U (Unrestricted) |

Looking forward to the future, the Department is currently conducting a comprehensive update of the County General Plan through the *Envision Contra Costa 2040* process. As part of this process, the Department is reviewing existing land use designations and may propose new and revised land use designations that would be consistent with current and likely future State legislation.

- C. Effect on CC&Rs. The Commission asked about how Senate Bill 9 affects established CC&Rs. Senate Bill 9 and Government Code Sections 65852.21 and 66411.7 are silent on CC&Rs and do not address the rights of a homeowner or a common interest development as established in CC&Rs. Further, State Senator Atkins wrote a letter to the Secretary of the State Senate, dated August 30, 2021, stating that Senate Bill 9 does not supersede CC&Rs. Senator Atkins' letter is included as Attachment 3.

VI. CONCLUSION

The proposed zoning text amendment to add Chapter 88-36 to the County Ordinance Code and Article 94-4.10 to the County Ordinance Code is consistent with Government Code Sections 65852.21 and 66411.7, as well as the County General Plan and Zoning Code. Staff recommends that the County Planning Commission recommend approval of the zoning text amendment by the Board of Supervisors.

ATTACHMENTS

ATTACHMENT 1: ALAMO IMPROVEMENT ASSOCIATION LETTER

**ATTACHMENT 2: QUALIFYING PARCELS MAP AND SB 9 LIKELY
PARCELS BASE MAP**

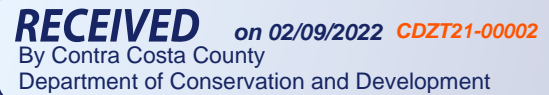
ATTACHMENT 3: STATE SENATOR ATKINS' LETTER

ATTACHMENT 1

ALAMO IMPROVEMENT ASSOCIATION LETTER

P.O. BOX 156 • ALAMO, CALIFORNIA 94507

February 9, 2022



By E-mail to “planninghearing@dcd.cccounty.us”

Contra Costa County Planning Commission
30 Muir Road
Martinez, CA 94553

Re: Comments on Proposed SB 9-Related Zoning Ordinance Revisions

Dear Commissioners:

The Alamo Improvement Association has reviewed the staff report for the proposed Zoning Ordinance revisions for SB-9 compliance, including the Staff report’s map of eligible parcels, the County’s zoning map, Cal Fire Hazard Rating maps and other pertinent information. While we continue to believe that SB-9 is not a wise policy choice for solving the problem of housing availability, given that the County must comply with it, we support most of the proposed ordinance provisions, especially such things as lot coverage limitations, reduced height limits within otherwise normally required side and rear yards, maintaining normal frontage setbacks, limits on ADUs when an Urban Lot Split is otherwise fully developed, etc. However, we do feel that certain provisions of the draft ordinance revision should be changed as follows:

1. **Single-family detached residential areas zoned P-1 should not be excluded from eligibility** - We believe that single family detached residential properties zoned P-1 should not be excluded from eligibility for urban housing development and urban lot splits under this proposed ordinance solely because of the P-1 designation. The exclusion of single-family homes and properties similar in other respects to traditionally zoned residential properties, merely because the P-1 zoning nomenclature is not listed in the text of SB9, is unfair and discriminatory. An R-20 parcel in central or west side Alamo improved with a single-family home is no different than a single-family home in Blackhawk, Bryan Ranch, Whitegate, Magee Ranch or Alamo Springs. Lot sizes may vary but all residentially used lots are physically capable of, and could theoretically support, a minimum square foot second home as the statute intends.

We understand that some areas may have been developed under P-1 zoning because they have significant topography. However, some conventionally zoned areas, some of which were developed prior to the existence of P-1 zoning, have significant topography as well. Most areas developed under P-1 zoning because of topography are already largely excluded from eligibility because of fire hazard ratings.

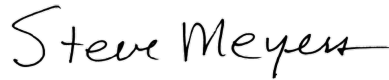
There is no logic which supports distinguishing single-family homes in a planned development from single family homes in a regular subdivision. There may be other

factors such as high fire danger, seismic hazard, historic district, and flood plain conditions that remove residentially zoned land from eligibility under SB 9 but differing local zoning nomenclature is not a factor contemplated by the law.

2. **The language requiring owner occupancy of one of the lots in an Urban Lot Split should be stronger** – We believe that an affidavit certifying under penalty of perjury the subdivider's intent to occupy for three years one of the lots created in an Urban Lot split would be difficult to enforce. The language should certify action (e.g., owner will occupy ...) rather than intent.

Thank you, commission members and staff, for the opportunity to comment on this important legislation.

Sincerely,



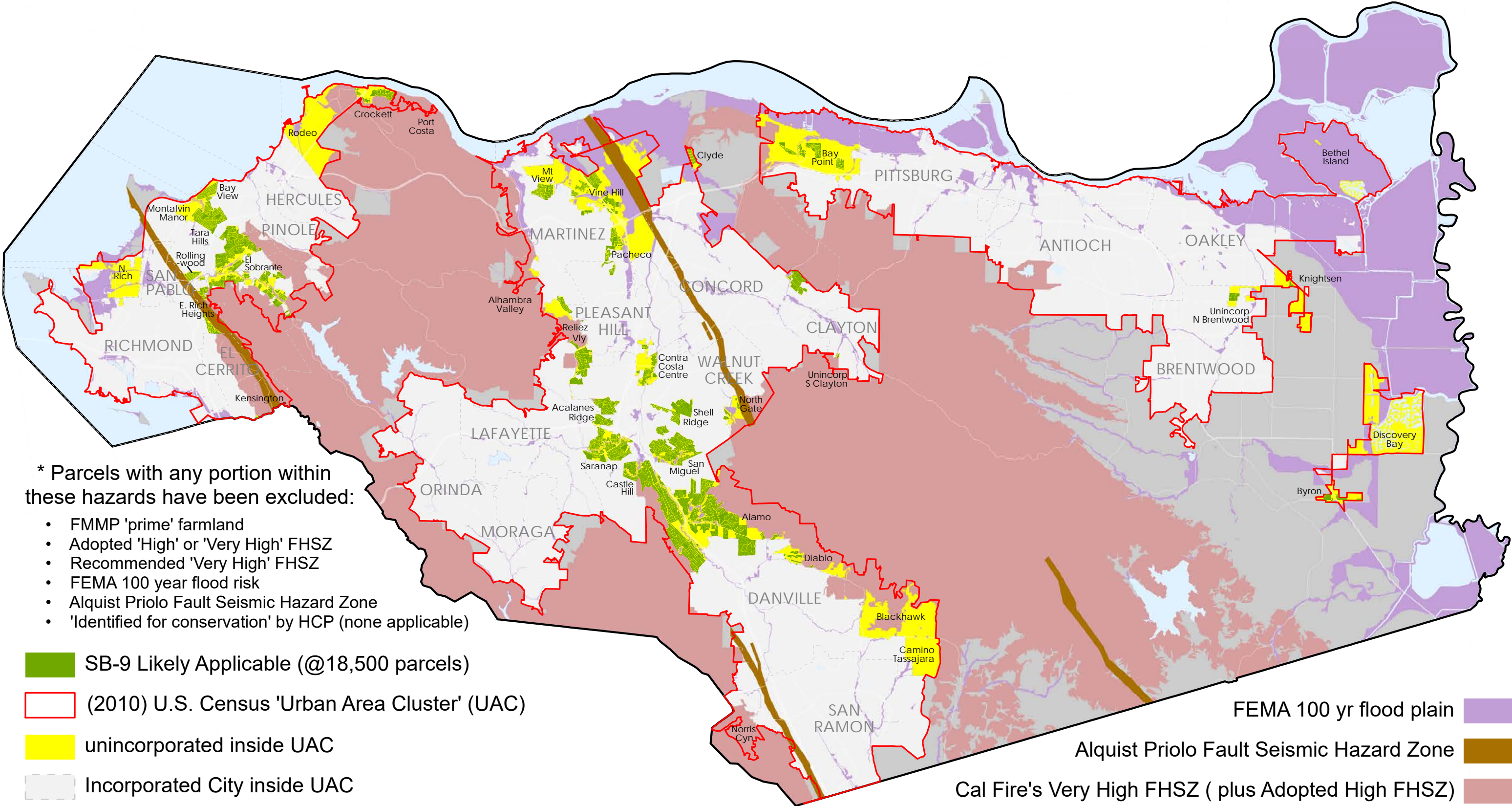
Steve Meyers
Chair,
Planning Committee

cc:	Supervisor Andersen	(by e-mail)
	Stan Muraoka	(")
	Alamo MAC	(")
	AIA Board & Planning Committee	(")
	AIA File	(")

ATTACHMENT 2

QUALIFYING PARCELS MAP AND SB 9 LIKELY PARCELS BASE MAP

SB-9 likely applicable 'Urban' parcels with Single Family Zoning outside designated Hazard Areas*



- * Parcels with any portion within these hazards have been excluded:
- FMMP 'prime' farmland
 - Adopted 'High' or 'Very High' FHSZ
 - Recommended 'Very High' FHSZ
 - FEMA 100 year flood risk
 - Alquist Priolo Fault Seismic Hazard Zone
 - 'Identified for conservation' by HCP (none applicable)

- SB-9 Likely Applicable (@18,500 parcels)
- (2010) U.S. Census 'Urban Area Cluster' (UAC)
- unincorporated inside UAC
- Incorporated City inside UAC
- outside UAC

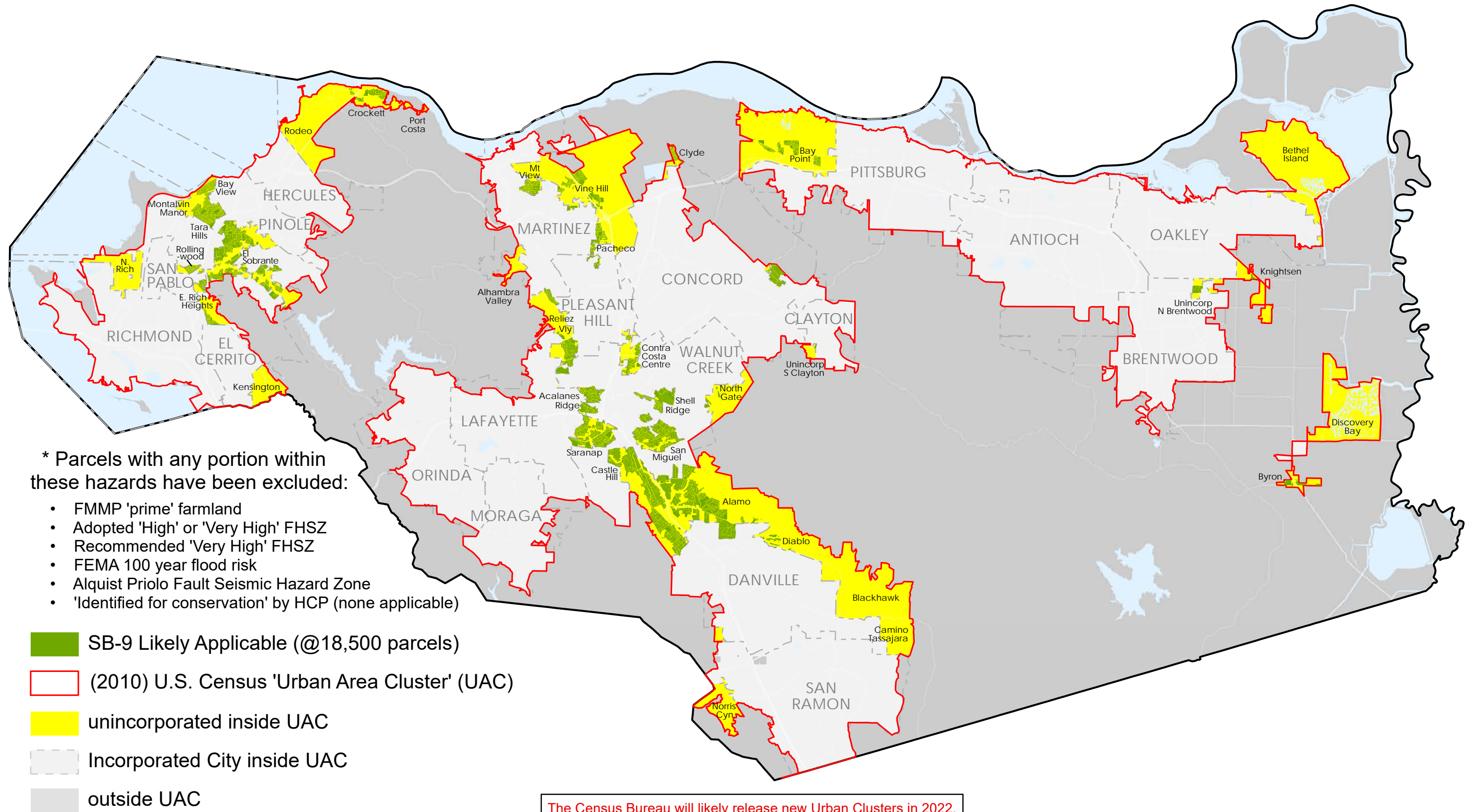
- FEMA 100 yr flood plain
- Alquist Priolo Fault Seismic Hazard Zone
- Cal Fire's Very High FHSZ (plus Adopted High FHSZ)

The Census Bureau will likely release new Urban Clusters in 2022.

Cal Fire will likely release new FHSZ in December 2021

CGS may revise AP Fault Zones as they complete full Seismic Hazard mapping for CCC over the next several years

SB-9 likely applicable 'Urban' parcels with Single Family Zoning outside designated Hazard Areas*



The Census Bureau will likely release new Urban Clusters in 2022.

Cal Fire will likely release new FHSZ in December 2021

CGS may revise AP Fault Zones as they complete full Seismic Hazard mapping for CCC over the next several years

Map created 11/08/2021
by Contra Costa County Department of
Conservation and Development, GIS Group
30 Muir Road, Martinez, CA 94553
37:59:41.791N 122:07:03.756W

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.

A number line is shown with tick marks at 0, 2.5, 5, and 10. A line segment is drawn from 2.5 to 5, and the word "Miles" is written above it.



ATTACHMENT 3

STATE SENATOR ATKINS' LETTER

STATE CAPITOL
ROOM 205
SACRAMENTO, CA 95814
TEL (916) 651-4039
FAX (916) 651-4939

DISTRICT OFFICE
1350 FRONT STREET, SUITE 4061
SAN DIEGO, CA 92101
TEL (619) 645-3133
FAX (619) 645-3144

SENATOR.ATKINS@SENATE.CA.GOV



STANDING COMMITTEE
SENATE RULES
CHAIR

SENATOR TONI G. ATKINS

PRESIDENT PRO TEMPORE

August 30, 2021

Ms. Erika Contreras
Secretary of the Senate
State Capitol, Room 3044
Sacramento, CA 95814

Dear Ms. Contreras:

I have authored SB 9, which seeks to address our housing crisis by allowing duplexes and ministerial lot splits in single-family zones. I submit this letter to the Senate Journal for the purposes of clarifying the applicability of SB 9's provisions.

First, on the issue of common interest developments (CID) and homeowners' associations (HOA). My office has consulted with Legislative Counsel, and SB 9 would not override CID or HOA restrictions. Specifically, SB 9 is silent on the issue, meaning the bill contains no provisions that supersede HOA or CID governing documents. As we have seen with other housing legislation, SB 9 would have to contain an explicit and proactive provision to override those rules. This bill does not.

Second, I would like to reiterate some of the bill's protections to ensure that community character is not unduly affected. Most importantly, SB 9 explicitly states that cities and counties may continue to impose objective zoning standards, objective subdivision standards, and objective design standards so long as they still allow two small, 800 square foot dwellings to be built on each lot. For example, objective requirements that lots include horse keeping areas of a specified size could still be imposed, and if a property owner applied for a permit that proposed larger dwellings that would conflict with such a requirement, a local official could deny the project.

Thank you for the opportunity to address these matters.

Warmly,

A handwritten signature in blue ink, reading "Toni G. Atkins".

TONI G. ATKINS
Senate President pro Tempore
39th Senate District

TGA:ml