EXHIBIT F

The Planning Report
Insider's Guide to Planning & Infrastructure

August 25, 2021 - From the **August, 2021 (/issue/august-2021)** issue

What's "In & Not In" SB 9 & 10: California State Housing Bills Now Pending

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Cindy Montañez (/tags/cindy-monta-ez) SB 9 (/tags/sb-9) SB 10 (/tags/sb-10) Housing (/tags/housing) affordability (/tags/affordability) wildfire (/tags/wildfire)

With so little coverage of consequential housing legislation now pending in the California Legislature, TPR is pleased to present this timely analysis of SB 9 and SB 10 by ***Cindy Montañez,*** *current San Fernando City Councilmember, CEO of TreePeople, and former District 39 Assemblywoman. Digging deeper than tired NIMBY/YIMBY talking points, Montañez breaks down the bills' language to illustrate their planning and affordability implications. Montañez challenges the notion that these bills will be inconsequential and urges close reading and consideration of the impacts of overriding city planning decisions with top-down, one-size-fits-all provisions that ignore common-sense localized restrictions related to fire zone safety, open space, and affordability. TPR emphasizes these key findings below in* ***bold.***

Cindy Montañez

With the increasingly dire situation in newsrooms, it's understandable that California's major newspapers and news outlets do not know what is contained in the most controversial bill of the 2021 legislative session, Senate Bill 9 authored by Senate President Pro Tempore Toni Atkins.

SB 9 is a cousin of sorts to SB 10, authored by state Sen. Scott Wiener, which was approved by the Assembly this week and is all but certain to end up on the desk of Gov. Gavin Newsom - before the September 14th "Recall" election.

There's been some arguing among the many critics of SB 9 and SB 10 (latest polling has both bills polling poorly statewide), as to which bill is more ill-advised from a planning or affordability perspective.

Is it SB 10, which allows city councils to override voter initiatives that protect land, jeopardizing both the 110-year-old right to the initiative and dozens of voter ballot measures in California that guard urban growth boundaries, canyons, shorelines, trails, farmland and other land?

Or is the worst bill this year SB 9, which under the false flag of fighting sprawl is arguably the most pro-sprawl plan since California built its freeway system after legislative approval in 1947 of the Collier-Burns Act?

With SB 9 coming on the heels of SB 10 in Sacramento this month, facing a final hurdle on the Assembly floor, it's worth taking a closer look at the planning and affordability implications of the bill.

SB 9 upends residential planning in single-family zoned areas of towns and cities with more than 2,500 people, overriding local concerns — and local planning. It applies everywhere, including in severe burn zones such as Paradise. The bill curiously takes no interest in fire evacuation route capacity in fire zones, instead allowing developers to decide whether the density should go along narrow roads and at the end of cul de sacs.

> "Only after stepping back does it become clear that SB 9 is not primarily written for homeowners, as Atkins says. Large investors, yes. Blackrock-like entities, yes. Rental giants, yes. Pension funds, yes."— Cindy Montañez

Perhaps worse, **the too-clever and needlessly convoluted wording in SB 9 seems to say that the denser new housing will be held to new fire-hardening rules if built in the most severe fire hazard safety zones. Yet when the bill's wording is unwound**—not an easy thing, even for land use and planning experts **— the language says quite the opposite**: no new fire hardening is required of developers who choose to build SB 9 density in any of California's fire hazard zones.

You know a bill is relying on erroneous statements when a crucial issue — fire zone safety — is misunderstood even by the billionaire-backed Terner Center, a top advisor to California legislators. Terner, in its July analysis, fails to absorb the fine print in SB 9. To be clear: SB 9 does not restrict developers in the state's most dangerous fire zones unless the project fails to follow existing building codes.

The bill itself refers to a strict fire rule, then takes it away. But you have to dive deep into Government Code, Section 65913.4, to spot the wording (boldfaced) that negates SB 9's strict-sounding fire rule:

"This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development."

That is a get-out-of-jail-for-free card for developers, and it shouldn't be used to trick busy legislators. Many would vote No on SB 9 this month if they understood.

Terner Center further confused legislators by claiming that 1.4 million single-family homes are "removed ... from consideration" due to the fire hazard area exclusion and protection for non-urbanized areas. Both the exclusion of fire zones and the purported protection of our non-urban places are a mirage, and somebody in Sacramento should know this by now.

But legislators, hammered with more than 2,000 new bills each year, don't have four or five hours to tease out an analysis of troubling clauses whose meaning is hiding in plain sight.

Another word puzzle in SB 9 is embedded in the public promise by Senate President Pro Tem Atkins, just days ago, that the bill is aimed at helping homeowners provide housing, for the kids for example.

Maybe someday. But currently, in order to split your lot as envisioned in SB 9 — you can build four homes, and even add two ADUs, on land where one home now stands — a homeowner must first pay off the existing mortgage. Under law, you cannot owe the bank a mortgage, and then just split away half of the land that the bank still owns.

The average mortgage debt in California is about $371,000 — well out of the reach of the vast majority of California's 6.8 million homeowners, if paid off all at once. Few homeowners will be able to launch an SB 9 project in their yard. Even more problematic is the challenge of nailing down the construction loan to build several new homes, during a time of huge building costs. Let's estimate on a scratch pad that a loan to construct multiple full-sized houses could hit perhaps $1 million if you aren't careful.

And this week League of Cities Assistant Legislative Director Jason Rhine told a webinar crowd that a recent amendment to SB 9 by Atkins, which she claimed would prevent corporations from bidding for homes against families, "is unenforceable." Her plan to require buyers to state their "intent" to live in the home for three years, drew broad criticism for lacking teeth.

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The most interesting messaging around SB 9 is that this bill helps us avoid sprawl, by housing more people in already built-out neighborhoods served by roads, sewers, water and trees. (As an aside, SB 9 will likely destroy a significant number of urban trees and other greenhouse gas-absorbing greenery as yards are covered with foundations and a mere 4-foot setback from the neighbors is adopted by developers, as per the bill.)

What do dense bustling San Jose and charming little Borrego Springs have in common? Under SB 9's language, borrowed from an obscure definition that the U.S. Census devised years ago but rarely seems to cite, towns of 2,500 or 5,000 residents such as Mt. Shasta or Calistoga are considered urban, despite being a fraction of the size of San Diego or Los Angeles. SB 9 projects, then, are a form of infill in most of California localities.

The sprawl encouraged by SB 9 in the countryside and in distant suburbs, on land nowhere near a city bus route or decent broadband, is no longer classified as sprawl because the authors utilize a handy definition that no serious city planner would rely on. That explains how small towns in the Mojave Desert, under SB 9, end up in the same state planning category as San Francisco.

It should be noted that SB 9's cousin bill, SB 10, utilizes the same tortured definitions of urban areas to justify letting city councils in both big cities and small towns override the California Environmental Quality Act. This is to allow without public review 10-unit apartment buildings with 4 additional granny flats — known as ADUs and JADUs — in all residential areas and most commercial zones.

Neither SB 9 or SB 10 require any affordable units, despite potential windfalls for developers given free rein in some of California's most desirable and unsullied places. How long will it take for savvy developers (one might cynically imagine) to fund city council races in smaller cities and towns, to gain a dominant position on city councils allowed to ignore and override CEQA? The question is not answered or even floated in the formal legislative analysis of SB 10.

These unmet planning questions are crucial to understand before we find ourselves, under SB 9, at an eight-screen movie theater in what used to be East Quincy, Plumas County.

Perhaps the unspoken complexities are why SB 9's most worrisome issues have yet to be seriously explored in any media coverage of SB 9 — a bill so clearly at war with itself that it is difficult to imagine how it came to be.

Editor's note: The original publication of this piece cited the 4204 Public Resources Code, but the amendments in SB 9 that negate any special mitigation are found in the Government Code, Section 65913.4. The above reflects this correction.

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