A number of jurisdictions have asked if they can use SB 9 to help satisfy their RHNA. While theoretically possible, there are several challenges in doing so, including:

* There is no local (or regional) track record,
* There is limited HCD guidance,
* In some cases, there is no adopted ordinance to compare to,
* It is unclear if SB 9 units are net new units would have happened anyway under ADU laws, and
* There is little guidance on what affordability levels to assume.

The lack of an adopted ordinance is a problem, because it is not clear if the jurisdiction will ultimately adopt a policy that promotes duplexes and lot splits or merely does the minimum needed to comply with state law. Without this information, is hard to predict how much property owners will use SB 9.

A more promising path may be a well thought out Missing Middle strategy, and even this strategy will not be easy.

Generally, HCD has approved two types of methodology for the Sites inventory:

* **Recent trends** – For ADUs, HCD directs jurisdictions to multiply recent annual trends by eight (because there are eight years in the planning cycle). If there were a track record for SB 9, this would be the preferred method for the sites analysis. If a jurisdiction has a strong track record of approving building permits associated with SB 9 applications in the first half of 2022, there may be a solid argument for using this method.
* **Analysis of individual sites** – For most vacant and nonvacant sites, for example, a closed department store, HCD directs jurisdictions to conduct an analysis of the site and evaluate the potential for redevelopment. The analysis must take into account the existing uses, site characteristics, zoning, access to infrastructure, market conditions, etc. Applying this method to SB 9 would require listing each site where SB 9 is applicable and conducting an analysis. HCD mentioned the idea of conducting a survey to gauge homeowner interest in using SB 9 as a starting place for building this inventory.

HCD has provided comment letters to several Southern California jurisdictions that often resemble the following:

*Senate Bill 9 (Statutes of 2021) Projections: The element is projecting X units that will be developed based on the passage of SB 9 (Statutes of 2021) to accommodate a portion of its above moderate income RHNA. To utilize projections based on SB 9 legislation, the element must*

*1) include a site-specific inventory of sites where SB 9 projections are being applied to,*

*2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute as an impediment for additional residential use, and*

*3) 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.*

Short of a track record or conducting the type of analysis that HCD is requesting, it will be difficult to count SB 9 units in the sites inventory.

HCD has shown more interest in a broad-based Missing Middle Housing approach. This would likely start with a Council directive to study Missing Middle and a well-crafted package of incentives and policy changes to promote this type of development. Jurisdictions may want to hire an urban economist to predict likely uptake. Additionally, they can utilize the resources and development tool here:

<https://abag.ca.gov/our-work/housing/regional-housing-technical-assistance/peer-cohorts-work-groups>

Analysis/relevant data could include a proforma, summary of eligible lots, record of homeowner inquiries, survey of property owners, results from public meetings, etc. An accurate analysis should only summarize the net increase (e.g. deducting units demolished from the total) and also not count units that would have been produced under ADU rules.

Please note: If the missing middle zoning is not in place by January 31, 2023, jurisdictions would not be able to use Missing Middle for lower income housing. This is because programs to rezone for lower income housing cannot be on small sites.