Overview: Housing Elements + Regional Housing Needs Assessment

Key Changes to State Law
- Regional Housing Needs Assessment
- Housing Element Sites Inventory
- No Net Loss Zoning
- Housing Accountability Act
- SB 35 Streamlining
- Objective Standards
Overview

Regional Housing Needs Assessment + Housing Elements
Housing Element Overview

- Required element of the General Plan
- State-mandated update schedule
- Review and certified by State (HCD) for compliance with State law
- Plan for accommodating a jurisdiction’s “fair share” of the regional housing need
Housing Element Content

- Analysis of existing and projected housing needs
- Inventory of available land for housing
- Analysis of potential constraints on housing
- Goals, policies, and implementation programs:
  - Provide adequate land for housing
  - Assist in development of affordable housing
  - Remove governmental constraints
  - Preserve existing affordable housing
  - Promote equal housing opportunities (fair housing)
Regional Housing Needs Assessment (RHNA)

California (Housing and Community Development)

SACOG (Sacramento Area Council of Governments)

Regional Housing Needs Determination (RHND)

Local Jurisdictions

Every city and county must plan to accommodate its “fair share” of the regional housing need.

Regional Housing Needs Allocation (RHNA)
Regional Housing Needs Allocation (RHNA)

- RHNA is divided by income category, typically
  - 40% lower-income (very low and low)
  - 20% moderate-income
  - 40% above moderate-income

<table>
<thead>
<tr>
<th>Income Category</th>
<th>RHNA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Low Income ((&lt;50%) of Median Income)</td>
<td>200 units</td>
</tr>
<tr>
<td>Low Income (51-80% of Median Income)</td>
<td>200 units</td>
</tr>
<tr>
<td>Moderate Income (81-120% of Median Income)</td>
<td>200 units</td>
</tr>
<tr>
<td>Above Moderate Income (&gt;120% of Median Income)</td>
<td>400 units</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1,000 units</td>
</tr>
</tbody>
</table>
Accommodating the RHNA

- Cities and counties must show adequate land zoned for housing to accommodate the RHNA at each income level
- Default density standard for lower-income housing:
  - Metropolitan jurisdictions: 30 u/a
  - Suburban jurisdictions: 20 u/a
  - Nonmetropolitan w/ micropolitan area: 15 u/a
  - Nonmetropolitan jurisdictions: 10 u/a
Accommodating the RHNA

Rezone Requirements

• If jurisdiction does not have adequate capacity for lower-income housing
  • Must rezone within 3 years of adoption
  • Zoning much have 20 units/acre minimum density (16 units/acre in more rural areas)
  • Residential uses must be allowed by-right
    • No conditional use permit
    • No planned unit development permit
    • No discretionary review that would constitute a project under CEQA
    • Can conduct design review (but limited to the design and not the use itself)
Key Changes to State Housing Law

Just to name a few...
Expect Higher Housing Targets

- Overall RHND will likely be higher because HCD must consider:
  - Overcrowding of existing households
  - Cost burdens of existing households
  - No longer limited to projected future household growth

Expect about 18% higher RHNA in the 6th cycle
Changes to RHNA Methodology

- New Factors Added:
  - Greenhouse gas emissions reductions
  - Balance between low-wage jobs and affordable housing
  - “Affirmatively further fair housing” (AFFH)
- HCD Review of RHNA Methodology

State Law Changes to RHNA

AB 1771 + SB 828
Non-Vacant Sites

- It will be more difficult to count capacity on non-vacant sites
- Development potential for non-vacant sites must consider:
  - Extent to which existing uses are an impediment
  - Development trends
  - Regulatory incentives
  - Prior experience converting to higher density residential uses
  - Market demand
  - Leases and existing contracts for current uses
- If more than 50% of lower income sites are non-vacant sites, existing uses are presumed to impede development absent findings
Previously Identified Lower-Income Sites

- It will be difficult to continue to count sites that have been in previous housing element inventories
- Sites presumed inappropriate for lower-income housing:
  - Vacant sites counted in two or more previous housing elements
  - Non-vacant sites counted in one previous housing element
- Unless...housing element includes a program to rezone the sites within three years to allow development with at least 20% lower-income units by-right
Too big, too small, just right...

- Sites are presumed inappropriate for lower-income housing:
  - Less than ½ acre
  - Greater than 10 acres
- Unless...provide substantial evidence (e.g., affordable project approved on a site of this size)
No Net Loss Zoning
Govt. Code Sect. 65863
SB 166

**Maintain the sites inventory at all times**

- **“At all times”** the housing element land inventory and site identification program must accommodate the remaining unmet RHNA.

- **“At no time”** may a community allow development to cause the land inventory to become insufficient to meet the unmet RHNA for lower- and moderate-income households, unless alternative sites are made available in 180 days.

- Applies to all jurisdictions (general law and charter cities) (SB 1333)
Downzoning and Reduction in Density

- If a project is approved on a housing element site with either fewer units or a different income category, cities and counties must either:
  - Make written “no net loss” finding that other housing element sites are adequate to meet the RHNA for lower- or moderate-income housing; or
  - Identify and make available within 180 days other sites zoned at a density suitable for lower- or moderate-income housing

Major Change to “No Net Loss“: Maintaining Capacity by Income Category
Burden is on the Local Jurisdiction, not the Developer

- Developer has no responsibility for developing a site at the inventoried income level
- Jurisdiction may not deny a housing development because it would require identifying additional sites.
- It is the jurisdiction’s responsibility to identify and rezone a replacement site within 180 days (including any required CEQA)
Housing Accountability Act
Govt. Code Sec. 65589.5

Is the project a “housing development project”? 

Must receive consistency findings in either 30 or 60 days of completeness

Additional findings to deny or reduce density of affordable housing or emergency shelter

Specific findings require to deny or reduce density
Applicants must be informed of inconsistencies within 30 days (projects with 150 units or less) or 60 days (projects with more than 150 units).

If local agency does not identify an inconsistency within the required period, the project will be deemed consistent.
All Housing Development Projects

- Applies to all housing development projects (not just affordable) and emergency shelters:
  - Residential units only
  - Mixed-use projects with at least 2/3 sq. ft. for residential
  - Transitional and supportive housing

- If a housing project complies with all "objective" general plan, zoning, and subdivision standards, it may only be denied or have its density reduced if a city or county can find that the project would have a "specific adverse impact" on public health and safety
Additional Findings to Deny an Affordable Project

- Affordable projects defined as:
  - At least 20 percent low-income (up to 80% of median)
  - 100% middle income (150% of median)

- Must make one of these findings to deny or add condition making project infeasible (even if the project does not comply with all "objective" standards):
  - Have constructed RHNA at all income levels included in project; or
  - “Specific adverse impact”; or
  - Required to comply with state or federal law; or
  - Zoned for agriculture or open space; or
  - Inadequate water or sewer; or
  - Inconsistent with both general plan and zoning (can’t use this finding if housing element or sites inventory is inadequate)
Housing Accountability Act (HAA)

Govt. Code Sec. 65589.5

- "Specific adverse impact on the public health and safety" is the only permissible basis on which a local government can reject or reduce the size of a housing project that complies with objective standards.
- Legislature has declared: this will “arise infrequently”
- “Deemed consistent” if “substantial evidence that would allow a reasonable person to conclude” is consistent.
- Denial or reducing size of a housing development must meet the “preponderance of the evidence” standard (rather than the “substantial evidence” standard).
What is the Zoning and General Plan are Inconsistent?

- A housing project cannot be found inconsistent with zoning if it complies with objective standards in the general plan.
Penalties for Failure to Comply with HAA

- If there’s a lawsuit under HAA, prevailing party is entitled to attorneys' fees
- If local agency fails to comply with a court order to approve a project pursuant to the Housing Accountability Act within 60 days, it shall be fined a minimum of $10,000 per unit
- Penalties can increase to five times if the court finds bad faith when it denied the project
Streamlined Approval for Housing Projects

SB 35 Applies to Most Jurisdictions

- If number of building permits issued is less than the share of the RHNA by income category for the reporting period.
- Not met above moderate RHNA: projects with 10% low income eligible for streamlining.
- Not met low-income RHNA: projects with 50% low income eligible for streamlining.
Streamlined Approval for Housing Projects

Projects Eligible for SB 35 Streamlining (i.e., ministerial processing)

- Propose at least two residential units;
- Be located in an urban area, with 75% of the site's perimeter already developed;
- Have a general plan or zoning designation that allows residential or mixed-use development;
- Meet all "objective" zoning and design review standards;
- Dedicate a certain percentage of units as affordable; and
- Projects with more than 10 units must pay prevailing wages;
Locations excluded from SB 35 Streamlining

- Coastal zone
- Prime farmland or farmland of statewide importance
- Wetlands
- Specified hazardous areas (e.g., severe fire hazard areas, hazardous waste sites, fault zones, floodways)
- Sites subject to a conservation easement or designated for conservation in a habitat conservation plan;
- Sites subject to the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act;
- Sites that require the demolition of housing restricted to households with moderate income or lower or housing subject to rent control or an historic structure
- Sites that have contained housing occupied by tenants within last 10 years, even if such housing has subsequently been demolished.
By-right Housing + Objective Standards

- “Objective Standards” referenced in many different requirements:
  - Rezoned sites to meet unaccommodated need
  - Housing Accountability Act
  - SB 35 Streamlining
Definition of Objective Standards

- SB 35 defined “objective” standards as one that involves "no personal or subjective judgment by a public official and uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant... and the public official prior to submittal."
  - Examples: Height, setbacks, lot coverage, percentage open space, density, FAR, etc.
What is Not “Objective”?

- “Reflect the look and feel of the community”
- “Consistent with character of surrounding development”
- “Be of high quality, authentic design”
- “Special care shall be taken to avoid obstructing views to the surrounding hills”
- “The color palette for a building should be compatible with the colors of adjacent buildings, without being repetitious.”
- “Exterior lights shall be in harmony with surrounding buildings.”
Increased HCD Enforcement

AB 72

- HCD may **revoke housing element compliance** for failure to complete housing element rezone obligation (or any other act or failure to act that is inconsistent with the housing element)

- HCD may **report to the Attorney General** violations of:
  - No net loss statute
  - Housing accountability act
  - Density bonus law
  - Fair housing law
Lots of Other Housing Laws

- SB 11069/AB 2299/AB 2406/SB 229... - Accessory Dwelling Units
- AB 879 (2017) – Increased Annual Reporting Requirements
- AB 2162 (2018) – Supportive Housing Use "By Right"
- AB 2753/AB 2372/SB 1227 (2018) – State Density Bonus Reform
- AB 2913 (2018) – Extending Duration of Building Permits
- AB 686 (2018) – Affirmatively Further Fair Housing in Housing Elements
California Housing Legislation Highlights

as of April 4, 2019

**FASTER APPROVALS**

**AB 1484**
Development fees published and constant throughout project approval process.

**SB 330**
Faster approvals for housing & zoning changes; no parking requirements; statewide ban on downzoning.

**AB 1485 & AB 1706**
Incentives and faster approvals for moderate-income housing built with prevailing (union) wage labor.

**SB 50**
Upzoning near jobs, good schools, and mass transit.

**UPZONING**

**SB 48**
By-right approval for homeless shelters.

**SB 723**
Property tax exemption for housing leased for 35+ years to nonprofits in Alameda or Contra Costa County.

**SHELTERS**

**SCA 3**
Ends inheritance of Prop 13 tax break, unless heir lives in the house.

**TAX POLICY**

**AB 1673**
80% density bonus for affordable housing.

**SCA 1**
Eliminates requirement that public housing be approved by ballot measure.

**BALLETO MEASURES**

**ACA 1**
Allows bonds for housing & infrastructure to pass with a 55% majority.

**ACCESSORY DWELLING UNITS**

**SB 13, AB 68, & AB 69**
Simplifies process of approvals and allows more houses to add Accessory Dwelling Units.

**AB 1568**
Ties transport funding to housing production.

**TRANSPORT**

**AB 150**
Limits use of sprawl as way to meet housing planning goals.

**AB 1483**
Creates housing production database.

**FUNDING**

**AB 10**
Expands Low Income Housing Tax Credit funding program by $500 million per year.

**DATA**

**AB 11 & SB 5**
Creates new local funding agencies for affordable housing, infrastructure, and community investment.

**AB 724**
Creates rental housing database.

**FUNDING**

**AB 1407**
Creates Housing Alliance for the Bay Area, regional entity to raise $1.5 billion via ballot measure for affordable housing.

**AB 857**
Allows cities to create Public Banks.

**SB 18**
Funds for legal aid and rent assistance.

**LEGAL AID**

**SB 329**
Requires landlords to accept Section 8 vouchers.

**AB 437**
Move-In Loans for security deposit and first month’s rent.

**MOVE-IN ASSISTANCE**

**AB 1482**
Rent cap: Statewide limit to annual rent increases.

**AB 1481**
Statewide Just Cause limits to evictions.

**AB 53**
Move-In Loans for security deposit and first month’s rent.

**BB 531**
Ban the Box: no questions on criminal record on initial rental applications.

Contact your representatives @ findyourep.ca.gov

**More to Come!**

2019 Housing Legislation

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