ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION

Technical Assistance
for Local Planning
HOUSING

DISCLAIMER: This document is intended solely as a technical overview of new housing-related legislation. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel before taking any action to implement these changes.

2024 New Housing Legislation Summary

This document was prepared for the Association of Bay Area Governments (ABAG) Regional Housing Technical Assistance (RHTA) program, to be shared with local planning staff. Below is a summary of significant housing legislation that was passed in the 2024 legislative session and subsequently signed into law by Governor Newsom. All bills become effective on January 1, 2025, unless otherwise noted.

How to use this document:
Text in green denotes an "action item," yellow denotes something that "impacts your job," and blue denotes information that is "good to know." Wherever colors are used, the text is labeled for accessibility.

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HOUSING ACCOUNTABILITY ACT, THE BUILDER'S REMEDY, AND HOUSING LAW ENFORCEMENT

AB 1893: Housing Accountability Act and the Builder's Remedy

AB 1893 makes significant changes to the Housing Accountability Act (HAA) in three different areas: 1) it substantially increases liability under the Act for many local agency actions regarding review of project applications; 2) it adopts other changes applicable to all projects; and 3) it defines a "builder's remedy project" and adopts special protections for those projects.

Provisions Applicable to All Housing Development Projects:

Additional Violations of the Housing Accountability Act. AB 1893 includes a long list of additional public agency actions that are violations of the HAA, by defining all of the following agency actions as project "disapprovals" (§ 65589.5(h)(6))[1]:

- Holds more than 5 hearings on a housing development project in violation of Section 65905.5.
- Finds an application incomplete and includes in the incompleteness letter an item not on the application form.
- Requests information in a second incomplete letter that was not in the first incomplete letter and upholds this determination on appeal.
- Finds an application incomplete when a reasonable person would conclude that everything on the checklist has been submitted and upholds this determination on appeal.
- If the application is still incomplete after two resubmittals, the agency must establish that the incompleteness determination is not an effective disapproval of the application.
- Requires a builder's remedy project to apply for a legislative approval or for a permit not generally required of projects of the same type and density or treats the builder's remedy project as a nonconforming use.

[1] All references are to the Government Code unless otherwise stated. Code sections in this summary reference those **that will be in effect on January 1, 2025**, unless otherwise noted**.**

- Determines that a preliminary application has expired, or the vested rights have been lost for any reason other than expiration of the time limits under Section 65941.1(c) or changes in excess of those described in Section 65941.1(d).
- Fails to cease a course of conduct undertaken for an improper purpose, such as to cause unnecessary delay, that effectively disapproves the project, if the applicant provides written notice. The local agency must then post the notice, follow other procedures, and provide a written response between 60 and 90 days after receiving the notice. (See § 65589.5(h)(6)(D).)

AB 1893 also expands the definition of "bad faith" to include agency action or inaction that is "frivolous, pretextual, or intended to cause unnecessary delay." It also directs a court to multiply fines if the agency has violated the HAA multiple times within the planning period.

Action Items: Cities and counties should do a careful review of their application forms before January 1, 2025 to ensure that they include **all** of the information that they need to receive as part of a complete application.

Agencies also need to separate "consistency" items from "completeness" items in completeness letters. Many agencies have a practice of including in completeness letters issues of consistency with adopted standards. Completeness letters may **only** require items on the application form that were not provided. While consistency issues may be included, these should clearly be labeled as advisory only and not required for a complete application.

Finally, agencies should have provisions in their local codes allowing appeals of all staff incompleteness decisions so that any applicant must appeal before going to court.

Other Amendments Applicable to Housing Development Projects. Whether or not projects are "builder's remedy projects," the following changes apply:

1. AB 1893 expands the definition of a "housing development project" to include farmworker housing and projects where at least 50 percent of new or converted square footage is designated for residential use, the project includes at least 500 net new units, and no portion of the project is used for transient lodging. (§ 65589.5(h)(2).)
2. The Housing Accountability Act requires a separate set of findings to deny housing developments defined as "housing for very low, low- or moderate-income households." While current law requires that 20 percent of the **total** units be affordable to lower income households, or 100 percent to moderate-income households, AB 1893 lowers the affordability requirement to one of the following (§ 65589.5(h)(3)):
   - 13 percent affordable to lower income households; or
   - 10 percent affordable to very low income households; or
   - 7 percent affordable to extremely low income households; or
   - 100 percent affordable to moderate income households; or
   - 100 percent affordable to lower income households (excluding manager's units); or

- A project with 10 or fewer units base density (as defined in density bonus law), on a site smaller than one acre, with a minimum density of 10 units per acre.

These percentages apply only to a project's base density, rather than to the total units in the project, further reducing the required affordability.

Good to Know: AB 1893 creates a definition for "housing for mixed-income households" to refer to projects that meet the affordability requirement in (A), (B), (C) or (F) above.

All affordable units must have a deed restriction of at least 55 years for rentals and 45 years for ownership units. Rent and price limits are those established by the Health & Safety Code, except that 100 percent affordable projects may have rents set by the California Tax Credit Allocation Commission (CTCAC).

Impacts Your Job: To deny housing that meets the definition of "housing for very low, low-, or moderate income households," or to apply conditions that make these projects infeasible, cities and counties must make one of the findings contained in Section 65589.5(d) in addition to the findings contained in Section 65589.5(j)(1). This may expand the number of projects that must be approved because the findings contained in Section 65589.5(d) cannot be made.

3. Jurisdictions without a Housing Element in conformance with state law may now deny housing for very low, low- or moderate-income households if the project is not a builder's remedy project. (§ 65589.5(d)(6).) They still must make the findings required under Section 65589.5(j)(1) if the project conforms with all objective standards. (AB 1886, discussed below, requires that Housing Elements be approved by either HCD or a court to be considered in conformance with state law.)

4. New rules apply to a housing development that qualifies as "housing for very low, low-, or moderate income households," and is:

   - Proposed on a site designated for lower or moderate-income housing in the Housing Element, and consistent with the density in the Housing Element, and
   - Inconsistent with the general plan and zoning. A housing development may meet these qualifications if rezoning of the site has been promised in the Housing Element but has not yet been completed.

Housing developments meeting these requirements may only be required to comply with the objective standards that would have been applied on a site with zoning allowing the density, tenure (rental or ownership), and type of housing (single-family, multifamily, etc.) proposed by the applicant. If the city or county does not have any zoning or general plan classifications allowing the proposed housing, the applicant can identify objective standards within the jurisdiction that facilitate the project type and density, and those will apply. No combination of standards and conditions can be applied that make the project infeasible; or preclude the project, with density bonuses, waivers, and concessions allowed under density bonus law, from being constructed. (§ 65589.5(f)(8).)

Good to Know: This provision has been termed "builder's remedy lite." It allows development of sites designated for lower or moderate income housing in a Housing Element to be developed at that density before the site is rezoned, so long as the required amount of affordable housing is included.

Provisions Affecting Builder's Remedy Projects:

Definition of a Builder's Remedy Project. AB 1893 defines a "builder's remedy project" as a housing development project that complies with all of the following (§ 65589.5(h)(11)):

1. **The project qualifies as "housing for very low, low- or moderate-income households,"** as described above.
2. **The jurisdiction did not have a Housing Element in substantial compliance with state law on or after the date the project was "deemed complete."** This is either the date that a preliminary application containing all required information was submitted, or the date that the project application was determined to be complete, if no complete preliminary application was submitted.

   Good to Know: Under this provision, if a Housing Element was deemed out of compliance by HCD or a court after a project was deemed complete, an applicant could potentially modify the project to qualify it as a builder's remedy project. However, Section 65589.5(d)(5) allows local governments to disapprove projects that do not comply with local planning and zoning if the Housing Element was in compliance on the date that an application was "deemed complete." Local governments should consult with their counsel regarding these provisions.
3. **The density, before the addition of a density bonus, is not greater than one of the following:**
   a. 50 percent greater than the "default density" established in Section 65583.2(c)(3)(B). (In the Bay Area, communities have default densities of either 20 or 30 units per acre; this provision allows minimum densities of either 30 or 45 units per acre on all sites.); or
   b. Three times the maximum density allowed by the general plan, zoning, or state law, whichever is greater; or
   c. Density specified in the Housing Element.

   An additional 35 units per acre may be added to the above densities if any part of the site is located:

   a. Within one-half mile of a major transit stop; or
   b. In a very low vehicle travel area; or
   c. In a high or highest resource census tract, as shown on maps published by CTCAC and HCD.

   As an example, in a community with a default density of 30 units per acre, builder's remedy projects in high opportunity single-family areas are entitled to 80 units per acre base density (45 units per acre (50 percent more than the default density) plus 35 units per acre for a high resource census tract).

   Good to Know: Builder's remedy projects may utilize state density bonus law for density bonuses, incentives and concessions, and waivers and therefore may double the base densities provided by the statute. (See §§ 65589.5(f)(6)(C)(ii) and (iii).) Additional affordable housing may be required to obtain additional density if required by density bonus law.

4. **The density, on sites that have a minimum density requirement, is not less than one of the following:**

    a. If the project is located within one-half mile of a commuter rail station or heavy rail station, the project must meet the required minimum density. (Commuter rail and heavy rail are specifically defined in the statute.)

    b. On other sites with a minimum density, the project must meet at least the minimum density or half the default density, whichever is lower.

    Good to Know: If a builder's remedy project proposes fewer units than shown in the Housing Element, the city must make "no net loss" findings under state law (§ 65863) before approving the project.

5. **The project does not abut a site where more than one-third of the square footage on the site has been used, in the past three years, by a heavy or Title V industrial use, as defined in Section 65913.16.**

Protections for Builder's Remedy Projects. If a housing development project meets the new definition of a "builder's remedy project," then all of the following apply (§ 65589.5(f)(6)):

1. Only objective standards can be applied to the project. The objective standards that apply are those that would have been applied on a site with zoning allowing the density, tenure (rental or ownership), and type of housing (single-family, multifamily, etc.) proposed by the applicant. If the agency does not have any zoning or general plan classifications allowing the proposed housing, the applicant can identify objective standards within the jurisdiction that facilitate the project type and density, and those will apply.

2. No individual standard or condition or combination of standards and conditions can be applied that makes the project infeasible; or precludes the project, with waivers and concessions allowed under density bonus law, from being constructed.

3. If the project qualifies for a density bonus, the project is entitled to two additional concessions. Any extremely low income units are eligible for the same density bonus and concessions as a project with three more percentage points dedicated to very low income households. For instance, a project with 7 percent extremely low income units is entitled to the same density bonus and concessions as a project with 10 percent very low income units.

4. The project cannot be required to apply for a general or specific plan amendment, a rezoning, or any legislative approval and cannot be required to apply for any approval not generally required for a project of the same type and density. Projects complying with these provisions are deemed consistent with all standards and cannot be considered to be nonconforming uses. They are also deemed to be consistent with all standards for the purpose of SB 35 (§ 65913.4) and AB 2011 mixed-income housing projects (§ 65912.123).

5. No requirements can be applied to projects solely because they are builder's remedy projects.

6. Local affordable housing requirements cannot exceed 20 percent of the units and can only be applied if the agency can make written findings, supported by a preponderance of the evidence, that the local requirement would not make the project infeasible.

7. Affordable units must have a comparable bedroom and bathroom count as the market-rate units.

Builder's Remedy Projects Submitted Before January 1, 2025. Projects submitted before AB 1893 goes into effect, may either rely on the provisions of the HAA in effect before January 1, 2025, or, if they meet the new definition of a builder's remedy project, they may choose to be subject to "any or all" of the new provisions applicable to builder's remedy projects. (§ 65589.5(f)(7).) They may also revise their projects to meet the definition of a builder's remedy project even if the revision results in a change in the number of units or square footage of 20 percent or more. (§ 65589.5(f)(7).)

Impacts Your Job: Agencies with existing builder's remedy projects should expect at least some applicants to change their projects if allowed by state law. For instance, if a project otherwise meets the density requirements for a builder's remedy project, applicants may seek to reduce the percentage of lower income units from 20 to 13 percent or less.

AB 1413: Non-Substantive Changes to the Housing Accountability Act

AB 1413 recodifies certain provisions of the Housing Accountability Act (HAA) adopted in 2023 (as AB 1633) related to review of projects under the California Environmental Quality Act (CEQA) without making substantive changes in those provisions.

AB 1633 (2023) amended the HAA to expand the definition of disapproval of a housing development project to include certain circumstances when a public agency fails to approve a CEQA exemption or, without justification, requires additional analysis before approving environmental impact reports (EIRs) or mitigated negative declarations.

AB 1413 recodifies those provisions as Sections 65589.5.1 and 65589.5.2.

AB 1886: Housing Element Adequacy

AB 1886 states that a Housing Element is not consistent with state law until the Department of Housing and Community Development (HCD) or a court finds that it is consistent.

Significant Provisions

AB 1886 states that a Housing Element or amendment shall be considered to be in substantial compliance when the city or county adopts the element and either HCD or a court determines that the adopted Housing Element substantially complies with Housing Element Law, and the department's findings have not been superseded by contrary findings by HCD or a court or the court's decision has not been overturned by a subsequent court decision or by statute. (§ 65585.03.)

It also states that, for purposes of reviewing "housing for very low, low- or moderate-income households," a Housing Element shall be considered in compliance only if it was in compliance when the preliminary application was submitted, or when the project application was deemed complete, if no preliminary application was submitted. (§ 65589.55.) Even if a jurisdiction's Housing Element is in compliance with state law at the time a decision is made on a project, AB 1886 provides that it is not considered in compliance with state law if it was out of compliance when a preliminary application was filed.

The statute provides that it is "declaratory of existing law." Courts may or may not agree with such a legislative declaration. Agencies should consult with their local counsel regarding the applicability of the statute prior to January 1, 2025.

Good to Know: AB 1886 may expand local agency exposure to the builder's remedy by providing that Housing Elements cannot be considered in compliance with state law until HCD or a court finds an **adopted** element in compliance. It provides that local agencies do not have the authority to determine that their adopted Housing Elements are in substantial compliance with Housing Element Law.

AB 2023: Housing Element; Rebuttable Presumptions

AB 2023 amends the Government Code to add two rebuttable presumptions of *invalidity*. The first amendment is to Section 65585, which adds a rebuttable presumption of invalidity of a city or county's action or failure to act where HCD finds that act or failure to act does not substantially comply with the adopted Housing Element or obligations under Section 65583 (addressing contents of the Housing Element, rezoning, and enforcement). (§ 65585(i)(1)(B).)

Good to Know: Section 65585 already obligates HCD to review any action or failure to act by the local government that HCD determines is inconsistent with an adopted Housing Element or Section 65583. AB 2023 now adds a rebuttable presumption of invalidity to the action or failure to act where HCD finds a lack of substantial compliance. (§ 65585(i)(1)(A)-(B).)

Second, in an action to challenge the validity of a Housing Element, **AB 2023** amends Section 65589.3 to add a rebuttable presumption, of *invalidity* of that Housing Element if HCD has found that the element does *not* substantially comply with the Housing Element Law. (§ 65589.3(b).)

Good to Know: AB 2023 does not change the already existing rebuttable presumption of *validity* of an element or amendment if HCD has found that the element or amendment substantially complies with the Housing Element Law—this rebuttable presumption of validity may be found in the new subdivision (a) of Section 65589.3.

Impacts Your Job: Adopting a Housing Element despite HCD finding a lack of substantial compliance carries with it greater risk because AB 2023 has added a new rebuttable presumption of *invalidity* where HCD has found a lack of substantial compliance.

SB 1037: Housing Law Enforcement

SB 1037 creates new legal remedies for actions brought by the Attorney General (AG) or the Department of Housing and Community Development (HCD) to require adoption of Housing Element updates revisions or to enforce any state law that requires a local government to ministerially approve a planning application for a housing development project.

Significant Provisions

SB 1037 enacts Section 65009.1, which provides new penalties for actions brought by the AG or HCD to (1) enforce adoption of Housing Element updates under the schedule in Section 65588(e); or (2) enforce any state law requiring a city, county, or "local agencies" to ministerially approve any planning application for a housing development project. (§ 65009.1(a).) These remedies include: (1) a penalty for each violation of at least $10,000 but no more than $50,000 *per month* accrued from the violation date until the violation is cured; (2) all costs of investigating and prosecuting the action including expert fees, reasonable attorneys' fees, and costs whenever the AG or HCD prevails in a civil action to enforce state laws under this statute; and (3) other equitable or injunctive relief, including provisional or permanent injunctions. (§ 65009.1(a)(1)-(3).)

Good to Know: The monetary penalties in this statute only apply to a city or county's acts or omissions that are "arbitrary, capricious, entirely lacking in evidentiary support, contrary to established policy, unlawful, or procedurally unfair." (§ 65009.1(b).) Ensuring evidentiary and legal support, as well as procedural fairness, for a local agency's action may avoid these penalties, but it is not known how the courts will apply these terms in the housing context.

"Local agencies" are not defined in the statute, and it is unclear which agencies are covered in addition to cities and counties.

Any penalties imposed under this section may not be paid out of funds already dedicated to affordable housing. (§ 65009.1(c)(2).) Failure to pay penalties can result in the Controller intercepting available state and local funds. (§ 65009.1(c)(3).) Civil penalties are paid to the state's Building Homes and Jobs Trust Fund to support affordable housing in the community that paid the penalties. However, if not spent after five years, the funds may be used anywhere in the state. (§§ 65009.1(c)(1),(4)().) Additional penalties may be imposed to enforce timely adoption of Housing Element revisions if—despite a court order—cities or counties fail to meet the deadlines in Section 65754, which requires in part: (1) bringing the Housing Element into compliance within 120 days of the court's order; and (2) submitting to HCD for its review a draft of the revised Housing Element at least 45 days before adoption.

Good to Know: If subject to a court order to adopt a Housing Element, the Housing Element adoption is exempt from the California Environmental Quality Act, although an initial study must be prepared and possibly an "environmental assessment" in the form of a Draft Environmental Impact Report. (§ 65759.)

Failure to meet these deadlines requires the court to impose the following penalties and remedial provisions: (A) if not already imposed, the court must modify its prior order to impose the *maximum* penalty of $50,000 per month for each month until the "city, county, or local agency has substantially complied" with Section 65754; and (B) if not already imposed, the court must impose *all* of the remedial provisions in Section 65755(a) until substantial compliance, including:

1. Suspending authority to issue building permits and all other related permits with limited exceptions;
2. Suspending authority to grant zoning changes, variances;
3. Suspending the authority to grant subdivision map approvals;
4. Mandating approval of all applications for building permits and related construction permits for housing projects with an approved final subdivision map, parcel map, or plot plan, subject to some exceptions;
5. Mandating approval of final subdivision maps for housing projects that conform to an approved tentative map;
6. Mandating approval of any tentative subdivision map for a housing project that meets certain requirements.

(§§ 65009.1(d)(2)(B), 65755.)

However, certain housing projects must be exempted from the prohibition on further approvals. (§ 65009.1(d)(2)(C)(i)-(iv).) In other words, cities, counties, and local agencies are still required to issue certain approvals for housing development projects even if their land use approval authority has otherwise been suspended.

These new penalties and remedies apply *in addition* to any others already available. (§ 65009.1(d)(1).) These remedies apply to all cities, including charter cities, and do not limit or affect remedies available to any other party seeking to enforce dozens of other laws such as the Housing Accountability Act. (§§ 65009.1(e)(1), 65885(j)(1)-(26).) Attorneys' fees under Code of Civil Procedure section 1021.5, which a court may award to a successful party in any action resulting in enforcement of an important right affecting the public interest, remain available in addition to the remedies set forth in this new section. (§ 65009.1(e)(1).)

Impacts Your Job: The bills discussed in this section increase HCD's authority to find local actions out of compliance with many state laws and so increase the risks to cities and counties if HCD's direction is not followed, including exposure to the builder's remedy, hefty financial penalties, and the inability to approve non-residential developments.

HOUSING ELEMENTS

AB 2023, AB 2597, AB 2667, AB 3093, and SB 7: Housing Elements

These five bills collectively make significant changes to Housing Element law, primarily applicable in the **seventh** Housing Element cycle, but not applicable in the current sixth cycle.

Significant Provisions

Procedural Requirements for Adoption.

Assessment of Fair Housing. The assessment of fair housing (required by § 65583(c)(10)) must be completed before the first draft of the Housing Element is available to the public for the 30-day review period required by Section 65585(b).

HCD must develop a standardized reporting format for the programs and for reporting actions taken during the planning period to implement the jurisdiction's fair housing priorities and goals. (§ 65583(c)(10)(A).) The standardized reporting format must enable reporting of all the existing assessment components and, at a minimum, include:

- Timelines for implementation.
- Responsible party or parties.
- Resources committed from the local budget to affirmatively further fair housing.
- Action areas.
- Potential impacts of the program.

Cities and counties will be required to use the standardized report format that HCD creates for the seventh and subsequent revision of the Housing Element.

Impacts Your Job: The assessment of fair housing must be completed much earlier than was typical in the sixth cycle, but agencies will have a standardized format to use.

Housing Element Adoption and Revisions. A draft of the sites inventory must be available to HCD, posted on the agency's website, and emailed by link to anyone requesting notice at least 90 days before the initial adoption of the Housing Element and at least 7 days before any subsequent adoption if changes are made to the site inventory. (§ 65585(b).). All changes to draft elements must be posted at least 7 days before sending the revision to HCD. (§ 65585(f).).

If HCD finds a draft Housing Element does not comply with Housing Element law, the City Council or Board of Supervisors has the option of changing the element to comply with HCD's findings, or adopting the element without changes and adopting findings that explain why the city or county believes the Housing Element conforms with state law despite HCD's findings. (Section 65585(f).). If the city or county adopts these findings, it must submit the findings to HCD along with the adopted element, and HCD must review the local findings along with the adopted element. (§ 65585(g).).

Impacts Your Job: The net effect of these requirements is that Housing Elements will take longer to prepare. Cities and counties should begin the Housing Element process well in advance of the deadline.

Less Time to Complete Rezonings.

Section 65583(c)(1)(A) provides new statutory deadlines for rezonings required by Housing Element law. Beginning with the seventh cycle, where a jurisdiction's Housing Element fails to identify enough existing sites in the inventory to accommodate the housing need at all household income levels, cities and counties must commit to completing rezoning within either:

- One year of the statutory deadline for adopting the Housing Element; or
- Three years and 90 days after the statutory deadline if the local government satisfies all of the following requirements:
    - Submitting a draft element or amendment to HCD for review at least 90 days before the statutory deadline for adoption of the Housing Element;
    - Receiving from HCD findings that the draft substantially complies with the Housing Element Law on or before the deadline for adoption of the Housing Element; and
    - Adopting the draft element or amendment that HCD found to be substantially compliant no later than 120 days after the Section 65588 deadline.

"Rezoning," for the sixth cycle as well as the seventh cycle, now includes any necessary local coastal program amendments. (§ 65583(c)(10(A).) A one-year extension of the deadline may still be obtained under Section 65583(f).

Good to Know. The changes made by AB 1893 to the Housing Accountability Act allow sites designated for rezoning to be developed at the density shown in the Housing Element as soon as the Housing Element is adopted. In the seventh cycle, agencies may want to adopt the required zoning at the same time as they adopt their Housing Elements. This is particularly the case for localities within the coastal zone, where Coastal Commission review may be lengthy.

Addition of Extremely Low and Acutely Low-Income Categories and Other Changes.

Starting with the seventh cycle, regional housing needs allocations (RHNA) will include allocations for extremely low income (30 percent of median income and below) and acutely low income (15 percent of median income and below; definitions in Section 65582.). Numerous technical changes have been made in Section 65583 to require a specific analysis of the needs of households at those income levels and to develop programs to assist in providing adequate housing to meet the needs of acutely low income households.

By December 31, 2026, HCD must publish advisory guidance that includes sample analyses and programs pertaining to special housing needs for acutely low and extremely low income households. (§ 65583.05.)

The constraints analysis must include an assessment of how existing and proposed historic designations affect the community's ability to meet its RHNA. (§ 65583(a)(5).)

Amendments to Regional Housing Needs Allocation.

Limitations on Local Government Appeals. If HCD determines the RHNA (in regions without a council of governments), no objection to the RHNA may be filed by a city or county. (§ 65584.01(d).) Appeals of draft RHNA allocations must be filed within 30 days rather than 45 days (§ 65584.05(b)), and the appeal

period may be further reduced to as few as 10 days. The notice period for the hearings on any appeals is also reduced to 10 days. Other review periods – for comments on other cities' appeals, for instance – may also be reduced to 10 days to facilitate earlier adoption of the RHNA. (§ 65584.05(i).)

In general, other timelines are reduced so that the RHNA may be adopted earlier.

Changes to RHNA Determination. Data regarding the housing needs of homeless persons must be provided by the applicable council of governments – in the Bay Area, the Association of Bay Area Governments (ABAG) – to HCD when it determines the total housing needs of the region. (§ 65584.01((b)(1)(J).) A council of governments must make a diligent effort to achieve public participation of households with special housing needs. (§ 65584.04(d).)

For the seventh and subsequent cycles, the RHNA will include an allocation of units for acutely low and extremely low income households. (§ 65584.04(m)(2)(B).)

ANNUAL REPORTS

AB 2667: Reporting by Opportunity Area

AB 2667 amends Housing Element Law to require that local agencies report certain additional categories of information in their annual progress reports (APRs) related to "opportunity area."

Significant Provisions

For the 2025 APR, AB 2667 requires reporting by "opportunity area." Starting with the seventh Housing Element cycle, reporting will be required by income level within each opportunity area. (§ 65400(a)(2)(E).) The statute requires reporting of units approved and disapproved in the prior year by:

- The number of units located within each opportunity area.
- The number of units approved and disapproved within each opportunity area for each of the following income categories:
    - Very low-income households;
    - Lower-income households;
    - Moderate-income households; and
    - Above moderate-income households.

In the seventh cycle, this information will also need to be provided for acutely low-income and extremely low-income households.

Good To Know: "Opportunity area" is defined as the highest, high, moderate, or low resource area according to the most recent Opportunity Map published by the California Tax Credit Allocation Committee (CTCAC) and HCD. The 2024 opportunity maps can be viewed at: https://belonging.berkeley.edu/final-2024-ctcac-hcd-opportunity-map.

Action Item: Planning agencies will need to determine how to capture permit and project data by opportunity area to complete the APR due on April 1, 2025.

AB 2580: Reporting Historic Designations

AB 2580 requires that local agencies report new historic designations in their APRs and the status of any housing development projects proposed on those newly designated sites. (§ 65400(a)(2)(N).)

Significant Provisions

AB 2580 requires that the APR include a list of all sites or districts placed on the National Register of Historic Places, the California Register of Historic Resources, or a local register of historic places by the city or county within the past year and the status of any housing development projects proposed for the new historic designations, including:

- Whether the housing development project has been entitled.
- Whether a building permit has been issued for the project.
- The number of units in the project.

Action Item: Planning agencies will need to compile a list of historic designations created in the past year and any housing developments proposed for those sites to complete the APR due by April 1, 2025.

AB 3093: Reporting Housing Element Progress

AB 3093 requires that the APR include the city's or county's progress in meeting its RHNA for the sixth and previous versions of the Housing Element. (§ 65400(a)(2)(B)(i)(II).)

ZONING

AB 2904: Zoning Ordinance Notices

AB 2904 requires that public hearing notices be published 20 days before the hearing for a zoning ordinance amendment that affects permitted uses of real property.

Significant Provisions

Under existing law, planning commissions must hold a public hearing on a proposed zoning ordinance amendment and publish notice of this hearing 10 days before the hearing.

When a proposed zoning ordinance or amendment to a zoning ordinance "affects the permitted uses of real property," this bill requires a 20-day notice of the public hearing. Under AB 2904, notice of planning commission public hearings for zoning ordinances or amendments that affect the permitted uses of real property must be published and posted, as well as mailed, and delivered or advertised at least 20 days before the meeting. (§ 65854(b)(2).)

Ordinances or amendments that do not affect the permitted uses of real property require only 10-day notice under current law.

Good To Know: The statute does not require additional notice of City Council or Board of Supervisors hearings on zoning amendments.

Impacts Your Job: Planners will need to be mindful of the type of proposed zoning ordinance as required notice depends on whether the proposed zoning ordinance affects the permitted use of real property. A broad range of amendments may "affect the permitted uses of real property," so planners may wish to consult with legal counsel regarding the required planning commission notice.

STREAMLINED AND BY RIGHT APPROVALS

SB 450: Amendments to California HOME Act (SB 9)

SB 450 amends Senate Bill 9 (2021), which requires public agencies to ministerially approve urban lot splits and two-unit developments in single-family zones that meet certain criteria.

Significant Provisions

SB 450 makes the following changes in SB 9:

1. Agencies cannot impose objective zoning, subdivision, and design standards on two-unit developments that do not apply uniformly to development within the zone, unless the SB 9 standards are more permissive. (§ 65852.21(b)(3).)

2. As it relates to urban lot splits, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards, but only as they relate to the design or improvements of a parcel. (§ 66411.7(c)(1).)

3. An application under SB 9 must be approved or denied within 60 days after the agency receives a completed application, or it is "deemed approved." If the application is denied, the applicant must be provided a full list of deficiencies and told how the application can be remedied. (§§ 65852.21(h) and 66411.7(b)(1).)

4. Parcels must satisfy the requirements in Sections 65913.4(a)(6)(B) – (K), **as those sections existed on September 16, 2021.** (see Appendix A)

5. A two-unit development is permitted if it demolishes more than 25 percent of existing exterior structural walls. This means that a two-unit development that otherwise complies with the eligibility criteria in SB 9 may propose demolition of an entire existing structure and still qualify for ministerial review and approval. (Existing § 65852.21(a)(5) was deleted.)

6. A finding of a "specific adverse impact" justifying project denial may only be made for public health or safety reasons, not for the project's impact on the physical environment. (§§ 65852.21(d) and 66411.7(d).)

The Legislature also adopted an expanded list of reasons for the adoption of SB 9 in response to a trial court decision finding that SB 9 did not apply to charter cities. The court found that the Legislature's purpose for adopting SB 9 – to create more affordable housing – was not related to the actual provisions, which do not require any affordable housing. The revised statement indicates that the bill's purpose is to create more housing of all types.

Impacts Your Job: Agencies will need to establish procedures to ensure that SB 9 projects are approved or denied within 60 days after being found complete.

Action Items: Cities and counties that have imposed standards on SB 9 projects that are more restrictive than standards applied to single-family homes in the same zone should modify their SB 9 ordinances as soon as possible. Any provisions applying to urban lot splits that are unrelated to the design or improvements of the lot split must also be removed Agencies must review applications consistent with SB 450 even before revising their local ordinances.

Good To Know: The standards included in Sections 65913.4(a)(6)(B - K) existing on September 16, 2021 are attached as an appendix to this summary.

SB 1123: Amendments to Small Lot Subdivisions

SB 1123 (§§ 66499.41, 65852.28, and 65913.4.5) amends provisions enacted by SB 684, effective July 1, 2024, which specified processing procedures for subdivisions of 10 units or less.

Significant Provisions

The statute expands eligible sites to vacant lots zoned for single-family residences that are no larger than 1.5 acres. On a parcel zoned for single-family residences, newly created parcels must be at least 1,200 sq. ft. in size, and the city or county may impose a height limit at least as high as that allowed by the existing zoning.

SB 1123 also establishes a minimum density for these sites if the parcel is not included in the jurisdiction's site inventory in the Housing Element. The density of the development must be the greater of 66 percent of the allowable density or 66 percent of the default density (for example, approximately 20 units/acre if the default density is 30 units/acre). The proposed subdivision cannot allow an existing home to be sold separately from other existing homes.

Good To Know: SB 1123 will become effective on July 1, 2025.

Impacts Your Job: SB 684 established a ministerial process for approval of small subdivisions with short turnaround times and contains many detailed and complex provisions. Planners receiving applications under these provisions may want to create a checklist to determine the project's compliance.

AB 2243: Amendments to Middle Class Housing Act of 2022 (AB 2011) and Affordable Housing and High Road Jobs Act of 2022 (SB 6)

AB 2243 makes numerous amendments to both AB 2011 (2022) and SB 6 (2022), which allowed for residential development in zones where parking, retail, or commercial are a principally permitted use.

Significant Provisions Amending SB 6

SB 6 now provides that a site on which a housing development is proposed cannot be larger than 20 acres. AB 2243 amends this requirement, providing that the project site shall not exceed 20 acres unless the site is a regional mall (as defined in § 65912.101(r)), in which case the site may not exceed 100 acres. (§ 65912.121(d).)

Significant Provisions Amending AB 2011

Definitions. AB 2243 (§ 65912.101) adds several definitions to AB 2011 and amends several existing definitions in AB 2011, including the following:

- Changes the definition of “commercial corridor" to mean a street (rather than a highway) that is not a freeway.
- Adds definition of “freeway," providing that freeway shall have the same meaning as defined in Vehicle Code Section 332 except it shall not include the portion of a freeway that is an onramp or offramp.
- Removes definition of "side street" and replace it with a definition of "street," providing that “street” has the same meaning as defined in Vehicle Code Section 590 and includes sidewalks as defined in Vehicle Code Section 555.
- Changes definition of “industrial use” to add uses requiring certain air district permits. Also exempts from the definition of “industrial use” a “use where the only source permitted by a district is an emergency backup generator” and “self-storage for the residents of a building.”
- Adds a definition of “regional mall.”
- **Impacts Your Job:** Changes the definition of “principally permitted use” to provide that parking uses are a considered principally permitted whether or not they require conditional use permit.

Changes to Qualifying Criteria for All AB 2011 Projects (§§ 65912.111 and 65912.121).

AB 2011 prohibits development on a site or adjoined to any site where more than one-third of the square footage on the site is "dedicated to industrial use." AB 2243 alters the meaning of "dedicated to industrial use" to mean a site where the square footage is currently being used as an industrial use, the “most recently permitted use of the square footage is an industrial use*, and the site has been occupied within the past three years*”, or “site was designated for industrial use in latest version of local government’s general plan adopted before January 1, 2022, *and residential uses are not principally permitted on the site*.” [2]Under current law AB 2011 projects are allowed anywhere within the coastal zone. AB 2243 limits sites for AB 2011 projects within the coastal zone to sites eligible for SB 35 streamlined development review, except that they may be located on sites not zoned for multifamily housing. (Italics indicate changes to the law.)

AB 2243 additionally prohibits the development of affordable AB 2011 projects on a site that would require the demolition of a historic structure that is on the national, state, or local register; mixed-income projects were already prohibited on such sites.

AB 2243 provides that for a site within a neighborhood plan area, the neighborhood plan applicable to the site must permit multifamily housing development on the site. "Neighborhood plan" is redefined to mean a specific plan, an area plan, precise plan, community plan, urban village plan, or master plan adopted by the local government before January 1, 2024, and within 25 years of the date that a development proponent applies for an AB 2011 project. A "neighborhood plan" does not include community plan(s) where the cumulative area covered by the community plan(s) in the jurisdiction is more than one-half of the area of the jurisdiction.

[2] The italicized text indicates new language added by AB 2243.

Changes to Development Standards for All AB 2011 Projects. (§§ 65912.113 and 65912.123.)

As originally enacted, AB 2011 did not allow for the development of housing located within 500 feet of a freeway. AB 2243 eliminates this complete prohibition, providing that housing may be developed within 500 feet of a freeway so long as all the following requirements are met: (a) the building shall have a centralized heating, ventilation, and air-conditioning system; (b) outdoor air intakes for the heating, ventilation, and air-conditioning system shall face away from the freeway; (c) the building shall provide an air filtration media for outside and return air that provide a MERV of 16; (d) the air filtration media shall be replaced at the manufacturer's designated interval; and (e) the building shall not have any balconies facing the freeway. As defined by the statute, "minimum efficiency reporting value" or "MERV" refers to the measurement scale developed by the American Heating, Refrigerating, and Air-Conditioning Engineers used to report the effectiveness of air filters. (§ 659112.101(m).).

In addition, AB 2243 provides that for any project that is the conversion of the use of an existing nonresidential use building to residential use, the local government shall not require the provision of common open space beyond what is already existing on the project site.

The requirements for AB 2011 projects apply only to newly created housing units.

Changes to Approval Process for All AB 2011 Projects. (§§ 65912.114 and 65912.124.)

Impacts Your Job: AB 2243 makes important changes to the ministerial process for AB 2011 projects. First, a local government is required to determine, in writing, whether a development is consistent or inconsistent with objective planning standards within 60 days (for projects containing 150 units or fewer), or 90 days (for projects with more than 150 units) with the objective development standards specified in AB 2011.

If the local government determines that the development proposal conflicts with any of the applicable development standards, it must provide the applicant with a written, exhaustive list of the standard(s) with which the project conflicts and an explanation for the reason or reasons the development conflicts with such standard(s).

Within 30 days of resubmittal of any development proposal, the local government must determine, in writing, whether the development is consistent or still inconsistent with the applicable development standards. In such subsequent review of the application, the local government shall not request the development proponent provide any new information that was not stated in the initial list of items that were determined to be in conflict.

After the local government has determined that the development is consistent with the objective standards in AB 2011, the local government must approve the development within 60 days, or 90 days, as applicable, of the date that the development is determined to be consistent. Design review may be conducted in this period, but only by the board or commission responsible for design review (usually not the City Council or Board of Supervisors).

If the project is in the coastal zone, it must also receive a coastal development permit (CDP). (§ 65912.114(e).), The CDP must be approved if it is consistent with the objective standards of the local coastal program or certified land use plan.

AB 2443 clarifies that density bonuses, concessions, waivers, and reductions of parking standards under density bonus law do not require a discretionary review process and do not constitute a basis to find the

project inconsistent with the local coastal program. (§ 65912.114(f).). Moreover, the amount of any impact fee charged to an AB 2011 project must be proportional to the increased burden on public facilities and must be offset to account for demolition or change of an existing use. (§ 65912.114(g).).

Previously, applicants were required to submit a Phase I environmental assessment and, where needed, an endangerment assessment, with the project application. AB 2243 states that these items must be required as conditions of approval. (§ 65912.114(k).).

Impacts Your Job: AB 2243 expressly provides that the Housing Accountability Act (§ 65589.5) applies to AB 2011 projects. (§ 65912.114(r).). AB 2243 also allows an applicant who submitted an AB 2011 application before December 31, 2024, to be subject to any of the provisions of the statute as revised by AB 2243 or to be subject to the provisions existing on December 31, 2024. (§ 65912.106.).

Changes to Mixed-Income Housing Qualifying Criteria (Section 65912.121).

As originally enacted, AB 2011 provided that a site on which a mixed-income housing development was proposed could not exceed 20 acres in size. AB 2243 amends this requirement, providing that the project site shall not exceed 20 acres unless the site is a regional mall, in which case the site may not exceed 100 acres. (§ 65912.121(d).). "Regional mall" refers to a site that meets all the following criteria on the date that the development proponent submits an AB 2011 application:

- The permitted uses on the site include at least 250,000 square feet of retail use.
- At least two-thirds of the permitted uses on the site are retail uses.
- At least two of the permitted retail uses on the site are at least 10,000 square feet in size. (§ 65912.101(r).).

Changes to Mixed-Income Housing Development Standards (§§ 65912.122 and 65912.123).

AB 2011 mixed-income housing development projects must provide a certain percentage of affordable housing units. AB 2243 adds a definition of "base units", which has the same meaning as in state density bonus law. (Gov. Code § 65915(o)(8)(A).). Local agencies may require that AB 2011 projects meet local inclusionary standards if they provide for a deeper level of affordability.

AB 2011 established minimum residential densities for mixed-income housing development projects in both metropolitan and non-metropolitan jurisdictions. AB 2243 provides instead that the "allowable" residential density for an AB 2011 development (to be considered the "base density" for purposes of awarding a density bonus) shall the greater of:

- The maximum allowable residential density, as defined by Section 65915(o)(6), allowed on the parcel by the local government; or
- For sites in a metropolitan jurisdiction:
    - Of less than one acre in size in a metropolitan jurisdiction, 30 du/acre;
    - Of one acre or greater on commercial corridor of less than 100 ft, 40 du/acre;
    - Of one acre or greater on commercial corridor of 100 ft or more, 60 du/acre; or
    - In a *very low vehicle travel area* or within one-half mile of major transit stop, 80 du/acre.

- For sites in a non-metropolitan jurisdiction:
  - Of less than one acre in size, 20 du/acre;
  - Of one acre or greater on commercial corridor of less than 100 ft, 30 du/acre;
  - Of one acre or greater on commercial corridor of 100 ft or more, 50 du/acre; or
  - In a *very low vehicle travel area* or within one-half mile of major transit stop, 70 du/acre.

"Very low vehicle travel area" has the same meaning as defined in Section 65589.5(h).

AB 2243 also establishes requirements for the **minimum** density at which a housing development project must be developed. These requirements are as follows:

- For a housing development application that is determined to be consistent with AB 2011 objective planning standards before January 1, 2027, the project must be developed at 50 percent or greater of the allowable residential density specified by the statute (without consideration of the density permitted by local zoning), unless the site is within one-half mile of an existing passenger rail or bus rapid transit station, in which case the project must be developed at 75 percent or greater of the allowable residential density specified by the statute.

- For a housing development project application that is deemed complete on or after January 1, 2027, the development project shall be developed at a density that is 75 percent or greater of the allowable residential density specified by the statute.

Notwithstanding these requirements, a city or county cannot subject a development project to any density limitation if the project proposes to convert existing buildings to a residential use, unless the development project includes additional new square footage that is more than 20 percent of the overall square footage of the project.

In addition to the other development standards outlined in Section 65912.123, a development project at a regional mall must comply with the following requirements: § 65912.123, a development project at a regional mall must comply with the following requirements:

- The average size of a block shall not exceed three acres. A "block" means an area fully surrounded by streets, pedestrian paths, or a combination of streets and pedestrian paths that are each at least 40 feet in width.
- At least 5 percent of the site shall be dedicated to open space.
- For the portion of the property that fronts a street that is newly created by the project and is not a commercial corridor, a building shall abut within 10 feet of the street for at least 60 percent of the frontage.

Finally, AB 2243 provides that the objective standards that a jurisdiction applies to a housing development shall not preclude the development from being built at the residential density required by AB 2011 and shall not require the development to reduce unit size to meet the objective standards.

AB 3122: Amendments to SB 35

SB 3122 makes minor amendments to the streamlined, ministerial approval process generally known as the "SB 35" process. (§ 65913.4.).

Significant Provisions

AB 3122 requires local planning departments to provide a written notice of any consistencies with objective planning standards within **30 days** after an application is resubmitted in response to a letter finding inconsistencies.

When a modification of an approved application is submitted, objective planning standards that were put in place after the initial approval can only be imposed if the square footage of the project *increases* by 15 percent or the number of units *decreases by* 15 percent; this threshold is reduced from 15 percent to 5 percent if the standards address issues of health and safety. Previously the statute allowed new standards to be applied if the project "changed" by 15 percent.

An application for a subdivision for a project that satisfies the requirements of Section 65913.4 and all local objective subdivision standards is *only* exempt from CEQA if (i) it has or will receive low-income housing tax credit financing or (ii) if the development is within (A) an incorporated city that includes some portions of an urbanized area or (B) an urbanized area or urban cluster in a county with a population greater than 250,000 people.

Finally, SB 3122 reduces the required affordability of projects submitted prior to January 1, 2019

that include at least 500 units and desire to modify a prior approval. In that case, only 20 percent of the units must be affordable, with at least 9 percent of the units affordable to very low income households and at least 11 percent affordable to households making at or below 80 percent of the area median income.

Impacts Your Job: If an application is resubmitted to address previous comments, the planning department has only 30 days after the application is resubmitted to provide written notice of any remaining conflicts with objective standards.

ACCESSORY DWELLING UNITS

SB 1211: Additional ADUs for Multifamily Properties

SB 1211 (§§ 66313, 66314, and 66323) contains various provisions allowing additional ADUs in existing multifamily properties.

Significant Provisions

SB 2011 amends Section 66323(a)(4) to allow up to eight detached accessory dwelling units on a property with an existing multifamily dwelling. However, the number of detached accessory dwelling units cannot exceed the number of existing units on the lot. For a property with a proposed multifamily dwelling, only two detached accessory dwelling units may be permitted.

SB 2011 also adds a definition of "livable space" to include only spaces intended for human habitation, including living, sleeping, eating, cooking, or sanitation. Because multifamily buildings can convert non-livable space to ADUs, this will allow spaces such as laundry rooms and community rooms to be converted to ADUs.

SB 1211 expands the type of parking that a local jurisdiction cannot require be replaced as a condition of permitting an accessory dwelling unit to include "uncovered parking spaces."

Finally, the bill clarifies that development and design standards not included in Section 66323 cannot be required for an accessory dwelling unit that meets the requirements of Section 66323(a) (“exempt” ADUs, formerly listed in § 65852.2(e)).

Action Item: Agencies should update their ordinances to address the increase in the number of detached accessory dwelling units allowed on a property with an existing multifamily dwelling and other changes required by the statute.

AB 2533: Unpermitted ADUs and Junior Accessory Dwelling Units

AB 2533 (§ 66332) limits the ability of cities and counties to enforce their codes against certain ADUs and JADUs constructed without permits.

Significant Provisions

AB 2533 specifies the process that cities and counties must follow if requested to legalize ADUs and JADUs constructed before January 1, 2020. To deny a permit for the unpermitted unit, rather than making a finding that correcting a violation is necessary to "protect the health and safety of the public or occupants of the structure," the agency must make a finding that correcting the violation is necessary to comply with Health & Safety Code Section 17920.3. The local agency also cannot penalize the applicant for having the unpermitted unit, such as by doubling permit fees, and the agency must approve necessary permits to correct noncompliance with health and safety standards. Unpermitted units cannot be required to pay impact fees or connection or capacity charges unless the utilities are needed to comply with Health & Safety Code Section 17920.3.

AB 2533 also requires agencies to inform the public about the permitting process for unpermitted accessory dwelling units and junior accessory dwelling units. After receiving a request to legalize an unpermitted unit, a city or county inspector may inspect the unit and provide recommendations to

comply with health and safety standards. Information must be available to the public and posted on the agency's website, including:

- A checklist listing the conditions in Health & Safety Code Section 17920.3 that would deem a building substandard;
- Informing potential applicants that they may obtain a confidential third-party inspection before submitting the plans.

Action Item: Agencies need to post on their websites checklists listing conditions considered substandard under Health and Safety Code section 17920.3 and informing homeowners that they can obtain a confidential third-party inspection from a licensed contractor prior to submitting an application for a permit for a JADU or ADU constructed without permits before January 1, 2020.

SB 1211: ADUs in the Coastal Zone

SB 1077 (Public Resources Code Section 30500.5) requires the California Coastal Commission and the Department of Housing and Community Development to collaborate to develop and provide guidance to local agencies to simplify the permitting process for ADUs and JADUs in the coastal zone.

Good to Know: The Coastal Commission will convene at least one public workshop to receive comments on guidance before the document is finalized.

SB 477: Recodification of the ADU and JADU Statutes

SB 477 renumbered the Government Code sections for accessory dwelling units and junior accessory dwelling units.

Government Code Sections Prior to SB 477	Current Government Code Sections
65852.150	66310-66312
65852.2	66313-66332
65852.22	66333-66339
65852.26; 65852.2(a)(10)	66340-66341; 66342

Action Item: If the local ordinance references the old Government Code provisions, agencies should update those references.

DENSITY BONUS LAW

AB 2694 & AB 3116: Density Bonus – Residential Care Facilities for the Elderly and Student Housing Developments

AB 2694 and **AB 3116** (§ 65915) are companion bills that make amendments to density bonus law related to residential care facilities for the elderly and student housing developments.

Significant Provisions

AB 2694: Residential Care Facilities: AB 2694 adds to the definition of a "senior citizen housing development," a residential care facility for the elderly, as defined in Health & Safety Code Section 1569.2. This Health & Safety Code section defines a residential care facility for the elderly as housing for persons 60 years of age or over where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided.

It also defines a "shared housing unit" for purposes of a residential care facility for the elderly to include a unit without an individual kitchen that may be shared by unrelated persons, and a unit where a room that may be shared by unrelated persons meets the "minimum room area" requirements provided in density bonus definition of "shared housing unit".

Impacts Your Job: Planners now may receive requests for density bonuses for residential care facilities for the elderly (RCFEs). Note that senior housing developments are eligible for a density bonus even if no affordable housing is provided. State law provides that local agencies cannot limit rents in RCFEs.

AB 3116: Student housing developments: SB 3116 substantially modifies existing provisions applicable to student housing developments eligible for density bonuses. "Student housing developments" are defined as "a development that contains bedrooms containing two or more bedspaces that have a shared or private bathroom, access to a shared or private living room and laundry facilities, and access to a shared or private kitchen."

Additional requirements now apply to student housing. In particular:

- All units in the student housing development must be used exclusively for undergraduate, graduate, or professional students enrolled currently or in the past six months in at least six units at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges.
- As a condition of occupancy, the developer must provide evidence to the city or county that the developer has done one of the following: (i) entered into an operating agreement or master lease with one or more institutions of higher education; or (ii) established a system for confirming its renters' status as students to ensure that all units of the student housing development are occupied by students from an institution of higher education.
- The maximum density bonus is increased from 35 percent to 50 percent if more affordable housing is provided, but the student development cannot be located on a site that would require replacement housing if the project receives greater than a 35 percent density bonus.

- Any rental bed reserved for lower income students cannot be tied to a specific bedroom, and the affordability restriction provision cannot prevent a lower income student from sharing a room or unit with a student who is not lower income.
- The student housing project is now eligible for two concessions if the project includes at least 23percent of the total units for lower income students.
- No parking can be required for a bedspace in the housing development project.

Impacts Your Job: Planners need to be aware of these additional requirements if an application is made for a density bonus for a student housing development.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

SB 1395 and SB 1361: Expansion of CEQA Exemptions Relating to Shelters and Low Barrier Navigation Centers

SB 1395 expands certain exemptions from the requirements of the California Environmental Quality Act to additional public agency actions relating to homeless shelters and low barrier navigation centers.

Significant Provisions

SB 1395 and SB 1361 expand existing homeless shelter and low-barrier navigation CEQA exemptions to include:

- Actions taken to approve a contract with a homeless shelter to provide services such as case management, resource navigation, security services, residential services, and counseling services. (§ 8698.4(a)(4) and Public Resources Code § 21080.10.)
- Actions taken for a low barrier navigation center to: (1) lease land owned by the local agency for the center; (2) take other actions associated with the lease; (3) provide financial assistance; (4) construct or operate a low barrier navigation center; and (5) enter into a contract to provide services. (Public Resources Code § 21080.27.5.) “Low barrier navigation center” has the meaning provided in Section 65660.

Good to Know: The definition of “Low Barrier Navigation Center” now provides that a low barrier navigation center may be non-congregate and relocatable.

AB 2199: Extension of Infill Exemption in Unincorporated Areas

AB 2199 extends until January 1, 2032, the existing statutory CEQA exemption for multi-family residential and mixed-use housing projects on infill sites in unincorporated areas. In addition to extending the sunset date, AB 2199 provides that it cannot be used if the project may cause a substantial adverse impact to tribal cultural resources. (Public Resources Code § 21159.25.)

SB 768: HCD Study of Vehicle Miles Traveled (VMT)

SB 768 requires HCD, if it receives an appropriation for this purpose, to conduct and post on its website a study on how vehicles miles traveled (VMT) is used as a metric for measuring transportation impacts

of housing projects pursuant to CEQA. If the legislature appropriates the funds necessary for HCD's study, HCD would have until January 1, 2028 to post the completed study online. (Public Resources Code § 21099.5.)

The study must include an analysis of:

1. The Office of Planning and Research's guidelines for determining the significance of transportation impacts of project within transit priority areas;
2. How VMT impacts of various mitigation measures increase capacity and/or induce VMT;
3. The monetary and time costs of VMT mitigation measures to housing projects;
4. Exempt housing project types;
5. Differences in the availability and feasibility of mitigation measures for housing projects in rural, suburban, urban, and low VMT areas; and
6. The relationship between VMT reduction, greenhouse gas emissions, housing volume and affordability, transportation, economic development, public health, and equity.

Good to Know: SB 768 requires HCD to consult with local governments and interested parties in conducting its study.

FEES

AB 2430: Monitoring Fees for Affordable Units

AB 2430 limits the ability of cities to charge a monitoring fee to 100 percent affordable housing developments when the units are monitored by another agency. (§ 65915.3.)

Significant Provisions

AB 2430 prohibits a city or county from charging a monitoring fee to ensure continuing affordability of affordable units provided to obtain a density or required by a local inclusionary housing ordinance, if all of the following conditions are met:

1. The housing development is 100 percent affordable as defined in Section 65915(b)(1)(G).
2. The development received a density bonus under Section 65915.
3. The housing development is subject to a recorded regulatory agreement with the California Tax Credit Allocation Committee (CTCAC), the California Housing Finance Authority (FHA), or HCD that requires compliance with Section 65915.
4. Prior to receiving a building permit, the applicant provides a fully executed Tax Credit Reservation Letter indicating the applicant accepted the award.
5. The applicant provides the local government a copy of the recorded regulatory agreement with CTCAC, FHA, or HCD.

6. The applicant agreed to provide the local government the compliance monitoring document required by CTCAC, FHA, or HCD.

Starting January 1, 2025, an existing occupied housing development that is subject to a monitoring fee will no longer be subject to that fee if it meets all of the requirements listed above.

A city or county may still charge a monitoring fee on a housing development that meets the criteria of Section 65915(b)(1)(G) if any of the following conditions are met:

1. The applicant utilizes a local incentive program that results in development of units with deeper affordability or more affordable units than what is monitored by CTCAC, FHA, or HCD.
2. The applicant uses a local incentive program that results in the development of units that are affordable to moderate income households.
3. The applicant accepts a local funding source that results in development of units with different affordability than what is monitored for by CTAC, FHA, or HCD.
4. The applicant accepts funding from a regional, state, or federal agency other than CTCAC, FHA, HCD, or the California Debt Limit Allocation Committee that requires monitoring activities that would not otherwise be conducted by these entities or the public agency issuing the funding.

Lastly, a city or county that is not collecting a monitoring fee pursuant to this section has no obligation to monitor a housing development for compliance with state density bonus law.

Good to Know: A city or county may not be able to charge a monitoring fee to certain affordable projects.

Impacts Your Job: If a city or county routinely charges a monitoring fee on inclusionary or density bonus units, the city or county should revisit projects that are paying the fee to determine if they meet the above-described requirements that would prohibit charging a monitoring fee.

AB 2663: Inclusionary Housing In-Lieu Fees

Starting January 1, 2026, AB 2663 (§ 65906.6) requires agencies with an in-lieu fee alternative for inclusionary housing programs to track and annually publish on their website the amount of inclusionary in-lieu fees collected in the previous year and whether the fees are intended to be used for a project. Additionally, starting January 1, 2026 and every five years after that, the local agency must post the amount of inclusionary in-lieu fees collected in the past five years and the projects that the fees were spent on.

Action Item: The agency's first online publication of information for inclusionary in-lieu fees must satisfy both the annual and five-year reporting requirements. Cities and counties should commence to collect this information so that it can be posted as required.

AB 2553: Fees Near Major Transit Stops.

AB 2553 (§ 66005.1 and Public Resources § 21064.3) expands the definition of "major transit stop" and limits the ability of cities and counties to levy traffic impact fees for housing developments near major transit stops and in transit priority areas.

Significant Provisions

Previously a "major transit stop" included, among other locations, the intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods. This bill now revises the definition of "major transit stop" to increase the frequency of service interval to 20 minutes. (Public Resources Code § 21064.3.)

Section 66005.1 previously limited traffic impact fees that could be charged to housing developments located within one-half mile of a transit station. It now limits fees within any transit priority area, which includes any site within one-half mile of a "major transit stop," if the major transit stop is programmed to be completed within one year from the scheduled completion and occupancy of the housing development.

Impacts Your Job: Cities and counties may be required to set lower traffic impact mitigation fees for housing developments near major transit stops, instead of just at transit stations. The expanded definition of "major transit stop" will affect many projects' eligibility for other benefits, such as CEQA exemptions, parking reductions, and increased density under density bonus law and AB 2011.

SB 937: Impact Fees for Housing Developments Paid at Occupancy

SB 937 (§ 66007) requires that payment of impact fees for many housing development projects be delayed until issuance of a certificate of occupancy, temporary certificate of occupancy, or final inspection.

Significant Provisions

SB 937 restricts the ability of cities and counties to collect fees for the purpose of defraying the cost of public improvements until issuance of a certificate of occupancy, temporary certificate of occupancy, or final inspection. The restriction applies to "designated residential projects," which include:

- 100 percent affordable projects.
- Low barrier navigation centers.
- Projects approved under AB 2011.
- Projects meeting the requirements for approval under SB 35 (§ 65913.4(a)).
- Projects meeting the requirements for approval under SB 4 (§ 65913.16(c)).
- Projects eligible for a density bonus.
- Projects with 10 or fewer units.

The amount charged must be the same as would have been charged at building permit issuance, with no interest or other fees permitted. The agency may determine if the fees will be paid for each dwelling at occupancy, or when a certain percentage of units have been approved for occupancy, or when all the dwellings have been approved for occupancy.

However, fees may be collected earlier under the following conditions, except for projects where 49 percent of the units are reserved for lower income households:

1. Utility connection fees may be collected when the application for service is received, so long as those fees do not exceed the costs incurred. It is not clear if this provision applies to capacity fees.
2. The fees will reimburse the agency for expenditures previously made if those expenditures have not been paid by another party.
3. The agency determines that the fees will be used for water or sewer service; transportation; or public safety facilities for the residential development, and an account has been established and funds appropriated for those facilities.

For 49 percent affordable projects, the developer may either post a performance bond or letter of credit; if no letter of credit is posted, the unpaid fees may be imposed as a lien and collected with property taxes. This provision does not apply to 100 percent affordable projects.

Agencies may require applicants to execute a contract to pay the fees if they are not paid with the building permit. If required, the contract must be recorded against the property and constitutes a lien against the property and may require the property owner to notify the agency of each opening of escrow and authorize payment to the agency out of escrow. Agencies must post the model form of contract on their website. The City Council or Board of Supervisors may authorize an employee to sign the contract.

Good to Know: SB 937 provides no separate definition of "fees and charges." The definition of "fees" appears to be that in Section 66000(b), which defines "fees" as those imposed for the purpose of defraying all or a portion of the cost of public facilities related to the development project. However, park dedication fees paid under the Quimby Act (§ 66477), fees for processing applications, and fees collected under development agreements are excluded from the definition of "fees." Affordable housing fees appear to be exempt because they are not fees for "public facilities." However, agency staff should consult with their counsel regarding which fees are affected by this statute.

Action Items: Cities and counties should immediately review the fees paid at building permit issuance to determine which may be affected by this bill and to determine if the appropriate determinations can be made to continue collecting fees at building permit. If any fees cannot be collected until occupancy or final inspection and agencies desire to enter into and record contracts with developers, a model contract needs to be posted on the agency's website, and ideally a staff member should be authorized to sign the contract.

Impacts Your Job: Agencies will need to establish procedures to collect fees at occupancy or final inspection and to record releases if a contract was recorded. Because the fees must be the same as would have been charged at building permit issuance, agencies may wish to consider calculating the fees that will be due at occupancy at the time the building permit is issued.

AB 1820: Good Faith Fee Estimates

AB 1820 (§§ 65940.1, 65941.1, 65943.1) requires cities and counties to provide good faith fee estimates to developers after a project is approved and, if requested, after a preliminary application is filed.

Significant Provisions

AB 1820 requires a city, county, or city and county to provide, upon request, preliminary fee and exaction estimates within 30 business days of submission of a preliminary application. (§ 65941.1.). Within 30 business days of a housing development project receiving all necessary approvals to be eligible to apply for and obtain a building permit, cities and counties must provide the project proponent with an itemized list and good faith estimate of the fees and exactions. (§ 65943.1.). Cities and counties are only responsible to provide estimates of fees and exactions that they impose; the applicant must request fee schedules from other agencies, such as school districts, that may impose additional fees.

The statute defines "exactions" as defined in Section 65940.1 to include:

- A construction excise tax;
- A requirement to provide public art or an in-lieu payment;
- Parkland dedications or park in-lieu fees imposed under the Subdivision Map Act (Quimby Act fees);
- Special Mello-Roos tax.

It defines "fees" to include any fee or charge described in:

- The Mitigation Fee Act (primarily impact fees);
- Fees for development projects constructed after a natural disaster (§ 66010 *et seq.*);
- Fees adopted under Section 66016 *et seq.*; and
- Fees described in Section 66020 *et seq.*

However, "fees" do not include:

- Cost of providing electrical or gas service from a publicly owned utility;
- Fees to comply with CEQA.

Applicants may request fees schedules. For the fee estimate provided after project approval, if the agency calculates fees using a cost recovery method, the estimate must be based on the average fees imposed on a similar project.

These estimates are not binding.

Action Item: Cities and counties should determine which fees must be estimated and provided to developers and develop a method for estimating them. Project approvals will need to be accompanied by fee estimates. Cities may want to combine the required estimate with a notice of the right to protest the fees contained in Section 66020.

Good to Know: The fee and exaction estimates required by AB 1820 are not legally binding.

AB 3177: Restrictions on Required Dedications to Reduce Traffic Impacts.

AB 3177 (§ 66005.1(c)) limits the ability of cities and counties to require dedications of property to relieve traffic congestion.

Significant Provisions

This bill prohibits local agencies from imposing land dedication requirements on housing developments for purposes of mitigating vehicular traffic impacts, achieving an adopted level of service, or achieving a desired roadway width. A dedication requirement may be required if:

- The housing development is not in a transit priority area **and** has a street frontage of 500 feet or more; or
- The purpose is to construct public improvements, including, but not limited to, sewers and sidewalks; or
- The requirement is imposed as a condition of approval of a specific housing development for traffic safety features if the agency makes a finding supported by substantial evidence that the dedication is necessary to preserve the health, safety, or welfare of the public, including pedestrians, cyclists, and children.

For purposes of this bill, a "housing development" is a project where at least 50 percent of floorspace is for residential use.

Impacts Your Job: In most instances, cities and counties will not be able to require roadway dedications from housing developments to ease traffic congestion.

AFFORDABLE HOUSING BILLS

AB 846: Definition of Affordable Rent and Rent Caps on Tax Credit Projects (Health & Safety Code § 50053 & 50199.25)

AB 846 (Health & Safety Code §§ 50053 and 50199.25) changes the definition of "affordable rent" under the Health & Safety Code for housing developments where at least 80 percent of the units, exclusive of managers' units, are dedicated to lower income households so that it matches the affordable rent provisions of the tax-exempt bond program, the low income housing tax credit program, or other local, state, or federal program providing public financing or public financial assistance to the housing development. The legislation also requires the Tax Credit Allocation Committee ("TCAC") to adopt regulations to cap increases on annual rents for tax credit projects.

Significant Provisions

State law provides that the definitions of "affordable rent" found in Health and Safety Code Section 50053 apply in numerous circumstances. The following are some examples of the 58 provisions of state law that currently reference Health and Safety Code Section 50053:

- Density bonus law;
- Surplus land act;
- SB 35 streamlined ministerial approval for housing developments;
- Real property tax exemption laws;
- Certain exemptions from CEQA;
- Replacement housing laws; and
- Law governing the use of the low- and moderate-income housing asset funds administered by successors to the housing assets of a community's dissolved redevelopment agencies.

The definition of affordable rent under Health and Safety Code Section 50053 differs from other affordable housing programs such as the low-income housing tax program. Affordable housing operators and local agency staff charged with monitoring affordable housing development must calculate multiple "affordable rents" for a residential unit under the varying definitions that apply under each program. The lowest of all rents applies to the unit.

AB 846 will simplify the calculation of affordable rent for affordable housing developments that meet the following criteria:

- The affordable housing development is using a state program in which the law governing that program provides that the "affordable rent" definitions in Health and Safety Code Section 50053 apply.
- 80 percent of the residential units (excluding managers' units) in the development are dedicated to lower income households.
- The affordable housing development receives, on or after January 1, 2025, an award of one of the following:
    - Federal or state low-income housing tax credits;
    - Tax-exempt private activity bonds or general obligation bonds; or
    - Local, state, or federal loans or grants.

AB 846 provides that if the affordable housing developments meets these requirements, the definition of affordable rent under the other housing programs applies rather than the Health and Safety Code definition. For example, if a development is using HOME funds as well as Low and Moderate Income Housing Asset Funds, the HOME rents apply, not the Health and Safety Code Section 50053 definitions of affordable rent. Similarly, if a development is using low income housing tax credits and Low and Moderate Income Housing Asset Funds, the tax credit rents apply, not the Health and Safety Code Section 50053 definitions of affordable rent.

Good to Know: TCAC annually publishes maximum rents by income category on its website so the TCAC rents are easy to access. The TCAC rents are also based on the date the developments are placed in service, which is the date the certificate of occupancy is issued for the units, so it is helpful to have that information.

Impacts Your Job: This change should considerably ease the monitoring of eligible affordable housing developments by local jurisdictions as it will make the calculation of affordable rent consistent with other programs, thereby eliminating the need to calculate the affordable rent under varying definitions. However, staff monitoring local affordable housing developments should verify if other definitions of affordable rent may also apply given the funding sources for the housing development.

The legislation also requires TCAC to adopt regulations to cap increases on annual rents for tax credit projects by June 30, 2025, and thereafter to assess and possibly modify the rent caps annually.

AB 2926: Assisted Housing Developments; Expiration of Affordability Restrictions

AB 2926 (§§ 65863.10, 65863.11, and 65863.13) makes several changes to state law relating to the California Preservation Notice Law, which requires an owner to provide certain notices to tenants and potential buyers where the affordability restrictions applicable to an "assisted housing development" are set to expire.

Significant Provisions

Currently, state law requires an owner of an assisted housing development who is proposing termination of a subsidy contract or prepayment of governmental assistance or an owner of an assisted housing development which has expiring rental restrictions to provide a 12-month and 6-month notice of the proposed change(s) to each tenant household residing in the assisted housing development.

Good to Know: AB 2926 expands the definition "assisted housing development" to include a development that receives the following assistance from a city or county in exchange for affordability restrictions: SB 6 (2022); streamlining assistance pursuant to AB 2011 (2022); SB 35 (§ 65913.4); or the Affordable Housing on Faith and Higher Education Lands Act of 2023. However, affordable units provided only under local inclusionary programs are not considered to be "assisted housing developments," although affordable units provided in exchange for a density bonus or other provisions of density bonus law are considered to be "assisted housing developments."

AB 2926 makes several technical amendments to these noticing requirements. First, in the 12-month notice to tenants, the owner is required to state whether the owner might impose *any* rent increase during the 12 months following prepayment, termination, or the expiration of rental restrictions, as opposed to just rent increases in excess of the limits established by the Low-Income Housing Tax Credit program. Similarly, in the 6-month notice to tenants, the owner must now state that they will accept enhanced Section 8 housing choice vouchers if existing tenants receive them.

The Preservation Notice Act also requires an owner proposing prepayment or termination, or with expiring rental restrictions, to give notice of the opportunity to submit a purchase offer at full market value one year in advance to potential buyers (i.e., all "qualified entities" as certified by HCD) interested in preserving affordability.

Under the new provisions, an owner who receives a bona fide purchase offer- at a price determined by the parties or by a qualified appraiser - from a preservation buyer within 270 days (or 9 months) of the notice of the opportunity to purchase must inform HCD of all such offers within 90 days and either (1) accept the bona fide offer from a qualified entity to purchase and execute a purchase agreement or (2)

record a new regulatory agreement with a term of at least 30 years that minimally meets the criteria of Section 65863.13(a).

If the owner does not receive a bona fide offer from one or more qualified entities within 270 days of the notice of opportunity to purchase or if all bona fide offers are withdraw, the owner may either (1) sell the property to any buyer, (2) extend the affordability restrictions for any period of time, or (3) maintain ownership of the property and allow the expiration, termination or prepayment to occur at the end of applicable noticing period.

An owner seeking an exemption from the noticing and sale requirements of the Act may not terminate a tenancy due to planned renovation during escrow.

Finally, AB 2926 clarifies that all of the following may enforce both the noticing and sale provisions: an affected tenant (as defined in § 65863.10(a)(2)), a group of affected tenants that meets the requirements of a legitimate tenant organization, as defined in federal regulations, and a tenant association (as defined in § 54863.11(a)(4).).

OTHER BILLS

AB 2117: Extensions of Permit Approval for Litigation

AB 2117 (§ 65009(f)) delays the expiration of permit or project approval for the duration of an appeal period and any litigation over the project approval.

Significant Provisions

AB 2117 provides that the time before a permit or project approval issued by a city, county, or state agency expires does not include the period of time during which the approval of the permit or project is subject to a "pending" action or proceeding. "Pending" includes an appeal period and has the same meaning as in Code of Civil Procedure Section 1049. The period of delay extends from the litigation's commencement until final determination upon appeal or the time for appeal has passed.

Good to Know: AB 2117 defines "permit" as any development permit, but excludes the following types of permits: (1) building permits for the construction, demolition, or alteration of buildings, whether discretionary or ministerial; (2) minor or standard excavation and grading; (3) demolition; and (4) nondiscretionary permit or review required or issued by a local agency after the entitlement process has been completed.

Impacts Your Job: Permits do not expire while the permit or project is subject to litigation.

AB 2729: 18-Month Extension of Permit Approvals

AB 2729 (§ 65914.4) delays the expiration of certain permits issued for housing developments by 18 months.

Significant Provisions

AB 2729 extends by 18 months entitlements for housing development projects that were issued prior to, and in effect on, January 1, 2024 and will otherwise expire before December 31, 2025. The provision will not apply if the permit was previously extended for at least 18 months during 2024 under either state law or by a local agency. For purposes of this statute, a "housing development project" is a project where two-thirds of the square footage is dedicated for residential use (excluding underground space).

"Housing entitlements" include approvals and permits issued by state agencies, any permit subject to the Permit Streamlining Act, ministerial approvals such as those under SB 35 and AB 2011, tentative maps, and vested rights associated with permits. However, development agreements, preliminary applications, and tentative maps extended for 24 months under state law after January 1, 2024 are not considered to be "housing entitlements" for this purpose.

Action Item: Cities and counties will need to determine which project approvals have been extended by this legislation.

SB 1210: Electrical, Gas and Sewer Service Connections for New Housing Developments

SB 1210 (Public Utilities Code §§ 8400-8401) imposes new requirements on corporate utility providers, special districts, and municipal corporations operating public utilities to post certain information related to utility services for new housing construction.

Significant Provisions

SB 1210 requires electrical, gas, sewer, and water service utilities to post on their websites by January 1, 2026, the following information related to new housing construction: (1) the schedule of estimated fees for typical service connections for accessory dwelling units, mixed-use developments, multifamily structures, and single-family homes; and (2) estimated timeframes for completing typical connections for each housing type.

Good to Know: SB 1210 applies to municipal corporations operating a public utility but excludes agencies that are already required under § 65940.1 to post a schedule of fees and exactions online and continues to post this information.

The requirements imposed by SB 1210 do not apply to utilities with fewer than 4,000 service connections that do not maintain a website due to hardship. Such hardship must be evidenced by the utility annually adopting a resolution in a public meeting that is properly noticed and supported by detailed evidence. Examples of proper findings include, but are not limited to, inadequate access to broadband communications network facilities, significantly limited financial resources, or insufficient staff resources.

GENERAL PLANS – NON-HOUSING ELEMENTS

While the following two bills do not relate directly to housing, these general plan updates may be due along with the seventh cycle Housing Element revisions.

AB 1889: Conservation Element: Wildlife and Habitat Connectivity

AB 1889 amended Section 65302 to require that certain fish, wildlife, and habitat connectivity considerations be included in the conservation element.

Significant Provisions

The "Room to Roam" Act requires cities and counties to revise their conservation element to consider wildlife and habitat connectivity in both existing and planned land use projects upon the next update of one or more general plan elements on or after January 1, 2028. The bill's purpose is to supplement Executive Order No. N-82-20 (Public Resources Code Section 71450) in assisting with the state's efforts to conserve at least 30 percent of California's land and coastal waters by 2030 and to contribute to the preservation and restoration of biodiversity through wildlife connectivity. The conservation element must identify and analyze connectivity areas, permeability, natural landscape areas, and planned or existing wildlife passage features; must consider the impacts of development and barriers caused by it to wildlife and habitat connectivity; and must analyze and consider opportunities to remediate existing connectivity barriers and restore degraded habitat and open space.

Good to Know: "Room to Roam" Act does not require updates to the conservation element until on or after January 1, 2028, but will require an update along with the seventh cycle Housing Element in 2031 if no general plan update was completed before that date. If the jurisdiction already has policies in place that meet the requirements of the Act, it can incorporate those policies in the general plan by reference.

AB 2684: Safety Element: Extreme Heat

AB 2684 added Section 65302.011 to require an analysis of extreme heat in the safety element.

Significant Provisions

AB 2684 requires a city or county to update the safety element of its general plan to address the hazards caused by extreme heat upon the next revision of one or more elements of the general plan on or after January 1, 2028.

The definition of "Extreme Heat" has the same meaning as in Public Resources Code Section 71410, which defines it as increasing temperatures or other meteorological conditions that could result in any of the following:

> (A) Extreme heat wave.
>
> (B) Heat health event.
>
> (C) Heat watch, warning, or advisory from the National Weather Service, the Office of Emergency Services, or a county health officer.

(D) A proclamation of a state of emergency by the Governor pursuant to Section 8625 of the Government Code.

If the jurisdiction has adopted an extreme heat action plan or document that fulfills the goals of AB 2684, the jurisdiction can summarize and incorporate that plan or document in the safety element. The jurisdiction may also use or reference information in the Extreme Heat Action Plan described in Public Resources Code Section 71361 and the State Hazard Mitigation Plan required by the Federal Disaster Mitigation Act of 2000 (Public Law 106-390).

Good to Know: The safety element does not need to be updated to incorporate the requirements of AB 2684 until after January 1, 2028, but will require an update along with the seventh cycle Housing Element in 2031 if no general plan update was completed before that date.

Impacts Your Job: After the first revision to incorporate the analysis of extreme heat, the safety element shall be reviewed and, if necessary, revised upon each revision of the Housing Element or local hazard mitigation plan, but at least every eight years, to identify new information relating to extreme heat hazards that was not available during the previous revision of the safety element.

APPENDIX A - SECTION 65913.4(A)(6)(B), 9/16/2021

Related to SB 9, SB 450 adds language that the project must comply with 65913.4(A)(6)(B)-(K) as it existed on Sept 16, 2021. This language is included in the summary for easier access to this text, since this statute has and is likely to change in the future.

(6) The development is not located on a site that is any of the following:

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. 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.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
(K) Lands under conservation easement.