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# 2023 New Housing Legislation Overview

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# Presentation Overview

- Project Processing
- Affordable Housing Entitlements
- CEQA
- Density Bonus and Inclusionary Zoning
- ADUs
- Parking
- Housing Development Financing

# Presentation Key

**ACTION ITEM**  
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**IMPACTS YOUR JOB**  
Yellow Background

**GOOD TO KNOW**  
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# Project Processing

# SB 35 Revamp - SB 423

- Expands jurisdictions subject to SB 35 to include localities where HCD has not approved housing element, at 10% affordability level
- Revises fire hazard area exclusions and specifies required mitigation measures
- Adds limitation on use of SB 35 for development on sites within equine/equestrian districts between 1/1/2024 and 7/1/2025

# SB 35 Revamp - SB 423

Now includes portions of coastal zone beginning 1/1/2025

## Must

- Subject to certified local coastal program or land use plan
- Zoned multifamily

## Must Not

- Between sea & 1st public road or within 300' of high tide line
- Within 300' of coastal bluffs
- Vulnerable to 5' of sea level rise
- Within 100' of wetlands, estuaries streams
- Prime agricultural land

# SB 35 Revamp - SB 423

- Rental projects required to
  - Provide at least 10 percent of units at 50% AMI
  - Comply with local inclusionary that requires greater than 10% at 50% AMI
- If local inclusionary ordinance requires units restricted at incomes higher than required by SB 35, units meeting SB 35 requirements satisfy local inclusionary requirement

Example: 50% AMI rental unit satisfies local low-income or moderate-income requirement

# SB 35 Revamp - SB 423

- Eliminates authority to conduct public oversight over project
- Requires local agency to hold public comment meeting before project application in moderate- or low-resource areas or areas of high segregation and poverty
  - Must issue notice within 45 days of notice of intent
  - Must be held by planning commission if population > 250,000
- Authorizes CA Department of General Services to determine SB 35 compliance and eligibility for developments on land owned by or leased to state

# SB 35 Revamp - SB 423

- For 100% lower-income housing projects, “affordable rent” may mean rent associated with financing program
- When conducting objective standards/zoning review for SB 35, cannot require information related to building/entitlements

# SB 35 Revamp - SB 423

- Agency with coastal development permitting authority must approve coastal development permit if development consistent with objective standards in a certified local coastal plan or certified land use plan
- Total units in development includes both
  - All projects developed on site regardless of when
  - All projects developed on adjacent sites if subdivided from development site after 1/1/2023

# SB 35 Revamp - SB 423 - Summary

## Action Item

- Coastal Zone jurisdictions need to be prepared for SB 35 applications
- Develop/ update SB 35 policies and procedures document

## Good to Know

- SB 35 sunset extended to 2036

# Replacement Housing Requirements - AB 1218

- Expands SB 330 replacement housing requirements to **ALL** development projects where protected units to be demolished or demolished in last 5 years
- Exempts industrial use where
  - Projects entirely within zone that does not allow residential
  - Protected units nonconforming
  - Zoning adopted before 1/1/2022
- Must develop replacement housing prior to or concurrent with development project and in same jurisdiction
- May contract with another entity to develop replacement housing

# General Plan Consistency - AB 821

- If General Plan and zoning not consistent, and there is a project application, jurisdiction must either
  - Amend zoning ordinance within 180 days
  - Apply objective general plan standards but not inconsistent zoning standards
- Cannot be deemed inconsistent if substantial evidence of general plan consistency
- Applies to housing development projects that do not fall within Housing Accountability Act

# Replacement Housing + General Plan Consistency - AB 1218 + AB 821 - Summary

## Action Item

- Ensure all application forms ask about rental housing existing now or in past 5 years

## Impacts Your Job

- Be prepared for demands that zoning be changed to be consistent with General Plan

# Subdivisions for Up to 10 Lots/Units - SB 684

- Maps: Ministerially consider, without discretion or review hearing, subdivision map that meets 12 criteria
- Key points
  - Results in  $\leq$  10 lots
  - Results in  $\leq$  10 housing units
  - Multifamily zone
  - Not larger than 5 acres
  - New lots not smaller than 600 sq ft, unless ordinance allows smaller

# Subdivisions for up to 10 Lots/Units - SB 684

Housing development projects may impose objective zoning, subdivision or design standards, unless project

- Physically precludes development at the following densities
  - Suburban jurisdiction 20 du/a
  - Jurisdiction in metropolitan county 30 du/a
- Requires a setback between units, except as required in building code
- Requires enclosed or covered parking or impose parking requirements inconsistent with SB 9
- Imposes side and rear setbacks inconsistent with SB 9
- Imposes a FAR standard of less than (a) 1.0 for projects with 3-7 units or (b) 1.25 for projects with 8-10 units

# Subdivisions for up to 10 Lots/Units - SB 684

## Building Permits

- Must issue building permit based on subdivision map without a final map
- May require recorded covenant and agreement stating the permit is issued on condition that certificate of occupancy will not be issued unless final map recorded

# Subdivisions for up to 10 Lots/Units - SB 684

- Must approve or deny an application within 60 days of complete application, no action = deemed approved
- To deny
  - Return in writing a full set of comments with list of deficient items and description of application remedies
  - Or make written findings, based on preponderance of evidence, showing specific, adverse impact on public health and safety and no feasible mitigation
- Operative on 7/1/2024

# Subdivisions for up to 10 Lots/Units - SB 684 - Summary

## Action Item

- Consider adopting an ordinance to implement bill provisions
- An implementing ordinance is not a “project” under CEQA

## Impacts Your Job

- Be prepared to review subdivision applications within 60 days
- Operative 7/1/2024

# Affordable Housing Entitlements

# Affordable Housing on Faith and Higher Education Land - SB 4

- Upon request of project applicant, a housing development project to be a “use by right” on land owned by
  - Independent institutions of higher education, or
  - Religious institutions
- Property must be owned on/before 1/1/2024
- Bill sunsets 1/1/2036

# Affordable Housing on Faith and Higher Education Land - SB 4

- Affordability Requirements - 100%
  - Up to 20% moderate income; rest is lower income
  - Manager(s)' unit allowed
  - 5% may be for staff of institution that owns the land
- Permitted ancillary uses on ground floor
  - Single Family Zone: childcare centers, facilities operated by community-based organizations
  - Other zones: commercial uses permitted without Conditional Use Permit

# Affordable Housing on Faith and Higher Education Land - SB 4

- Allowed Density
  - Suburban jurisdiction: 20 du/a
  - Jurisdiction in metropolitan county: 30 du/a
  - If non-residential zone: 40 du/a
- Height
  - One story above max height allowed on parcel
  - If adjacent parcel allows taller, the taller height

# Affordable Housing on Faith and Higher Education Land - SB 4

## Additional Requirements

- Housing Crisis Act replacement requirements apply if dwelling unit demolished
- Location restrictions if near industrial use
- Site must meet SB 35 location requirements
- Prevailing wages requirements
- Parking requirements

# Affordable Housing on Faith and Higher Education Land - SB 4

- Must provide determination of inconsistency with objective planning standards within
  - 60 days for projects with  $\leq$  150 units
  - 90 days for projects with  $>$  150 units
- Objective design review may occur at Planning Commission or equivalent within
  - 90 days for projects with  $\leq$  150 units
  - 180 days for projects with  $>$  150 units

# Affordable Housing on Faith and Higher Education Land - SB 4 - Summary

## Good to Know

Projects are exempt from CEQA

## Impacts Your Job

- New “use by right” type of project to process
- Applicant must request “use by right” and meet requirements in statute

# Extremely Affordable Adaptive Reuse Projects - AB 1490

- Allows conversion of motels, hotels, transient lodging, etc. to extremely low income housing
- Must meet following criteria
  - Restrict 100% of units to lower-income and at least 50% to very low-income (subject to recorded deed restriction)
  - Not on or adjoined to site with industrial use
  - If  $\geq 50$  units must provide onsite management services
  - Does not eliminate any existing open space on parcel

# Extremely Affordable Adaptive Reuse Projects - AB 1490

- Must provide disapproval determinations within
  - 60 days for projects  $\leq$  150 units
  - 90 days for projects  $>$  150 units
- May impose objective design standards except
  - Any maximum density or maximum floor area ratio requirements
  - Any requirement to add additional parking or open space
- May deny project on/adjoining industrial use if adverse health and safety finding made
- Local funding sources for affordable housing development must include adaptive reuse as eligible project type

# Extremely Affordable Adaptive Reuse Projects - AB 1490 - Summary

## Action Item

- Create new application checklists for extremely affordable adaptive reuse projects
- Comply with review deadlines for these types of projects

## Impacts Your Job

- Ensure all Notices of Funding Availability for local funding sources include adaptive reuse as a permitted use

# Q & A



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# CEQA

# Affordable Housing Exemption - AB 1449

- Exempts affordable housing projects from CEQA (financing, lease or sale of property, etc.) - even legislative actions
- Qualifying project must meet 10 criteria, including
  - 100% affordable to lower income households, except for managers' units
  - Meets AB 2011 prevailing wage requirements
  - 75% surrounded by urban uses
  - Will be subject to tax credit regulatory agreement
  - Adequately served by existing utilities
  - Meets environmental standards of SB 35; may be in coastal zone

# CEQA Violations as HAA Violations - AB 1633

- Disapproval of a project under HAA now includes failure to find project exempt and failing to approve a Neg. Dec., EIR, or addendum without substantial evidence for more study
- Qualifying project must
  - Meet environmental standards of SB 35; OK in coastal zone per SB 35
  - Cannot be in high or very high fire severity zone
  - Either within ½ mile of major transit stop, in very low VMT area, “proximal” to 6 amenities, or 75% of perimeter must be developed with urban uses
  - Be located in “urbanized area”: city + 2 contiguous cities = 100,000 population; some County islands or within urban growth area (PRC Section 21071)
  - Density at least 15 units du/a

# CEQA Violations as HAA Violations - AB 1633

- Applicant Notify Agency
  - Exemption
    - Applicant must notify within 35 days after told it is not exempt, or at least 60 days after project found complete
      - Notice must include excerpts from record supporting exemption
    - Agency must respond within 90 days or extend for 90 days; file notice with County Clerk
  - ND or EIR
    - Applicant must notify within 35 days after agency has failed to approve or, if no action, within time set out for document preparation
      - Must also include excerpts from the record
    - Agency must respond within 90 days
- Probably most likely to be used for exemptions

# CEQA Notices of Determination - SB 69

- Notices of determination and exemption must now also be filed with State Clearing House
- Office of Planning and Research must post notices within 24 hours of receipt on State Clearing House website

# CEQA - AB 1449 + AB 1633 + SB 69 - Summary

## Action Item

- Notices of Determination and Exemption need to be filed with the State Clearinghouse at OPR as well as with the County Clerk (SB 69)

## Impacts Your Job

- Some affordable housing developments may request an exemption under AB 1449
- Developers may assert they are entitled to an exemption or ND/EIR approval, with limited time for an agency response

# Q & A (1 of 2)



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# Density Bonus and Inclusionary Zoning



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# Density Bonus: Increase in Potential Density and Incentives - AB 1287

Developer can request additional density bonus if

- No more than 50% of the units will be restricted to moderate, lower or very low income households
- Project includes
  - 24% of the total units to lower income households
  - 15% of the units to very low income households
  - 44% of the units to moderate income households
- Project includes additional very low or moderate income units

# Density Bonus: Increase in Potential Density and Incentives - AB 1287

## Example

Project with 15% very low income units and 15% moderate income units can qualify for a 100% density bonus

## Explanation

- Project can qualify for a density bonus of 50% if 15% of the base project units will be affordable to very low income households
- Project can get an additional 50% bonus if 15% of the base project units will be affordable to moderate income households, which can be rentals

# Density Bonus: Increase in Potential Density and Incentives - AB 1287

- 100% affordable projects - increase from 4 to 5 incentives
- New category - 4 incentives for projects that include at least 16% of the units for very low-income households or at least 45% for moderate income persons and families in for sale development

# Revised Definitions of Maximum Density and Development Standard - AB 713

- “Maximum allowable residential density” or “base density” means the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan
- “Development standard” includes a development standard adopted by local initiative or by referendum

# Additional Restrictions when Selling Affordable Units - AB 323

- Requires developers to sell inclusionary or density bonus units to income-eligible purchasers
- Exception
  - Unit is not purchased by an income eligible household within 180 days from the Certificate of Occupancy issuance, developer may sell the unit to a “qualified nonprofit housing corporation” that will ensure owner occupancy by income eligible household
- Slightly different definition of “qualified nonprofit housing corporation” for density bonus and inclusionary units

# Density Bonus - AB 1287 + AB 713 + AB 323 - Summary

## Action Item

- Update the local jurisdiction's Density Bonus Ordinance if the ordinance does more than reference the Government Code

## Good to Know

- The density bonus law applies even if local agency does not adopt implementing ordinance

## Impacts Your Job

- Need to learn the updated benefits developers can request with these amendments
- Cannot require “reasonable documentation” for waivers

# ADUs

# Accessory Dwelling Units - AB 976 + AB 1033

- Owner occupancy prohibition no longer expires
- Separate sale - Local agencies can adopt an ordinance to permit the separate conveyance of an accessory dwelling unit from the primary dwelling unit. The ordinance must include 5 requirements defined in the statute.

# Accessory Dwelling Units - AB 1332

- Local agencies must adopt a preapproval program for accessory dwelling units by 1/1/2025
- Program must
  - Accept plan submissions for preapproval without restricting who may submit plans
  - Review based on the standards in Government Code Section 65852.2.
  - May charge applicant for the preapproval of plans same fees as an applicant seeking approval of an ADU
  - Must post the preapproved plans and applicant contact information on agency's website, plans must be removed from website within 30 days of receiving a request from applicant
- 30-day review period for detached accessory dwelling unit application using preapproved plans

# Accessory Dwelling Units - AB 979 + AB 1033 + AB 1332 - Summary

## Action Items

- Adopt a preapproval program for accessory dwelling units by 1/1/2025. Post approved plans on the local agency's website
- Remove owner occupancy requirements from local accessory dwelling unit ordinance
- Determine if separate conveyance of accessory dwelling units is appropriate for your community

## Impacts Your Job

- Local agencies only have 30 days to review detached ADU application that uses preapproved plans

## Good to Know

- The adoption of an ordinance to allow for separate conveyance of accessory dwelling units from the primary dwelling unit is optional

# Parking



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# Shared Parking - AB 894

- Generally, property owner can enter into shared parking agreements with others and shared parking counts towards development's required parking
- Requirements
  - At least 20% of a development's parking is not occupied
  - Contiguous, within 2,000 feet (walking route), or shuttle
- Noticing/ meeting requirements
  - Notice owners within 300 feet
  - Hold a meeting if request for a meeting is received within 14 days of notice
  - Jurisdictions can opt out of noticing requirements through an ordinance

# Shared Parking - AB 894

- Parking necessary to meet local parking requirements
  - Must accept shared parking agreement if agreement includes parking analysis using peer-reviewed methodologies developed by professional planning association and agreement either secures long-term parking provision or allows periodic review and approval
- Parking NOT necessary to meet local parking requirements, must accept shared parking agreement
- Can require shared parking agreements to be recorded

# Parking for Single Family Homes - AB 1308

If a single family home is being remodeled, renovated, or expanded, local agencies cannot impose higher parking minimums as a condition of approval UNLESS the maximum size requirements for the single family home are exceeded

# Unbundled Parking - AB 1317

- Residential developments with 16+ units must “unbundle” parking from the lease of a residential unit
- Applicable to residential developments issued a certificate of occupancy after 1/1/2025
- Applicable in several counties, but only in Alameda and Santa Clara Counties in ABAG/SANDAG areas

# Parking - AB 894 + AB 1308 + AB 1317 - Summary

## Action Item

- Can opt to adopt a “shared parking agreement” ordinance, which would allow the agency to avoid hearing requirements and require agreements be recorded against the parcel

## Impacts Your Job

- The impact of “unbundled parking” on the calculation of affordable rent depends on the affordable housing program being implemented

## Good to Know

- “Shared parking agreements” are allowed regardless of a local ordinance

# Q & A (2 of 2)



# Housing Development Financing



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# Article 34, CA Constitution - SB 469

Requires certain “low rent housing projects” “constructed, developed or acquired” by public bodies be approved by majority vote in jurisdiction where housing is proposed

# Article 34, CA Constitution - SB 469

## New Exemptions

- State or federal low-income tax credit
- Projects funded/assisted under Division 31 of Health & Safety Code and Division 44 of Public Resources Code, if received the following State funds
  - HCD programs
  - CalHFA programs
  - Affordable Housing and Sustainable Communities programs - HCD expected to provide guidance regarding exemptions

# Mitigation Fee Act - AB 516

- Expands information to be disclosed by local agency in annual report to include
  - Identification of each public improvement in previous report
  - Whether construction began on approximate date in previous report
  - Reason for delay and revised approximate date for commencement
- Must inform any person paying fee of right to request audit and notice of public meeting on annual report

# Mitigation Fee Act - AB 516 - Summary

## Action Item

- Expand list of information provided in annual report

## Good to Know

- Not required to conduct an audit requested by a person under Government Code § 66023 for a fee or charge levied by the local agency if an audit has been performed for the same fee or charge within the last 12 months

# Surplus Lands Act Updates - SB 747 + AB 480

- Exempt surplus land
  - Definition expanded
  - Can now identify certain exempt surplus land in a published notice, rather than at a public hearing
- Exclusive Negotiating Agreements to dispose of property
  - Previous deadline to dispose of property under previous SLA rules extended from 12/31/22 or 12/31/24 - now extended to 12/31/2027
  - Must revive the agreement before 1/1/2024

# Surplus Lands Act Updates - SB 747 + AB 480

- Definition of “disposed” added
  - Sale of land
  - Lease of land for a term longer than 15 years, entered into on or after 1/1/2024
- Leased property that is not “disposed”
  - Not surplus if term is 15 years or less
  - Not surplus if existing buildings are not being demolished or developed

# Surplus Lands Act Updates - SB 747 + AB 480

Penalty for violating SLA is a percentage of the “applicable disposition value” is the greater of (a) final price of land or (b) fair market value of the land at time of sale

# Surplus Land Act - SB 747 + AB 480 - Summary

## Action Item

- If jurisdiction had an exclusive negotiating agreement that terminated because it was unable to meet disposition deadlines under Surplus Land Act and they want to revive the agreement with the same party, must do so before 1/1/2024

## Impacts Your Job

- Identify exempt surplus property by notice rather than public hearing
- Definition of “exempt surplus land” has been revised and definition of “dispose” added

# Q & A



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# Thank You

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