CITY OF CUPERTINO

AGENDA

CITY COUNCIL

10350 Torre Avenue, Council Chamber and via Teleconference
Tuesday, July 25, 2023
5:00 PM

Televised Special Meeting

IN-PERSON AND TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION

Members of the public wishing to observe the meeting may do so in one of the following ways:
1) Attend in person at Cupertino Community Hall, 10350 Torre Avenue.
2) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.
3) The meeting will also be streamed live on and online at www.Cupertino.org/youtube and www.Cupertino.org/webcast

Members of the public wishing to comment on an item on the agenda may do so in the following ways:

1) Appear in person at Cupertino Community Hall.

2) E-mail comments by 4:00 p.m. on Tuesday, July 25 to the Council at citycouncil@cupertino.org. These e-mail comments will also be forwarded to Councilmembers by the City Clerk's office before the meeting and posted to the City's website after the meeting.

Members of the public may provide oral public comments during the Special Meeting as follows:

Oral public comments may be made during the public comment period for each agenda item.

Members of the audience who address the City Council must come to the lectern/microphone, and are requested to complete a Speaker Card and identify themselves. Completion of Speaker Cards and identifying yourself is voluntary and not required to attend the meeting or provide comments.

3) Teleconferencing Instructions

To address the City Council, click on the link below to register in advance and access the meeting:

Online
Register in advance for this webinar:
https://cityofcupertino.zoom.us/webinar/register/WN_PFadKKNmRe6JdQDG-81C3w

Phone
Dial: 669-900-6833 and enter Webinar ID: 924 1500 2859 (Type *9 to raise hand to speak, *6 to unmute yourself). Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
Meeting ID: 924 1500 2859
SIP: 92415002859@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.

2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter "Cupertino Resident" or similar designation.

3. When the Mayor calls for the item on which you wish to speak, click on "raise hand," or, if you are calling in, press *9. Speakers will be notified shortly before they are called to speak.

4. When called, please limit your remarks to the time allotted and the specific agenda topic.

5. Members of the public that wish to share a document must email cityclerk@cupertino.org prior to speaking. These documents will posted to the City's website after the meeting.

NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino City Council is hereby called for Tuesday, July 25, 2023, commencing at 5:00 p.m. in Community Hall Council Chamber, 10350 Torre Avenue, Cupertino, California 95014 and via teleconference. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting."

SPECIAL MEETING

ROLL CALL

STUDY SESSION

1. Subject: Study Session and staff presentation on the 6th Cycle Housing Element Update
Recommended Action: Receive the staff presentation on the 6th Cycle Housing Element Update and confirm sites selection strategy and provide policy direction.
A - Presentation

ACTION CALENDAR

2. Subject: Consider taking a position in support of, in opposition to, or otherwise regarding Senate Bill ("SB") 423: Streamlined Housing Approvals: Multifamily Housing Developments
Recommended Action: Consider taking a position in support of, in opposition to, or otherwise regarding SB 423
Staff Report
A - SB 423 (redline)
B - SB 423 Assembly Natural Resources Summary

ADJOURNMENT

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence legislative or administrative action may be required by the City of Cupertino's lobbying ordinance (Cupertino Municipal Code Chapter 2.100) to register and report lobbying activity. Persons whose communications regarding any legislative or administrative are solely limited to appearing at or submitting testimony for any public meeting held by the City are not required to register as lobbyists. For more information about the lobbying ordinance, please contact the City Clerk's Office at 10300

Torre Avenue, Cupertino, CA 94107; telephone (408) 777-3223; email cityclerk@cupertino.org; and website: www.cupertino.org/lobbyist.

The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to http://www.cupertino.org/cityclerk for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

Any writings or documents provided to a majority of the Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, Cupertino, California 95014, during normal business hours; and in Council packet archives linked from the agenda/minutes page on the Cupertino web site.

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code section 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agendized item. These written communications are accessible to the public through the City's website and kept in packet archives. Do not include any personal or private information in written communications to the City that you do not wish to make public, as written communications are considered public records and will be made publicly available on the City website.

CITY OF CUPERTINO

Agenda Item

23-12338

Agenda Date: 7/25/2023
Agenda #: 1.

Subject: Study Session and staff presentation on the 6th Cycle Housing Element Update

Receive the staff presentation on the 6th Cycle Housing Element Update and confirm sites selection strategy and provide policy direction.

6th Cycle Housing Element Update

City Council

July 25, 2023

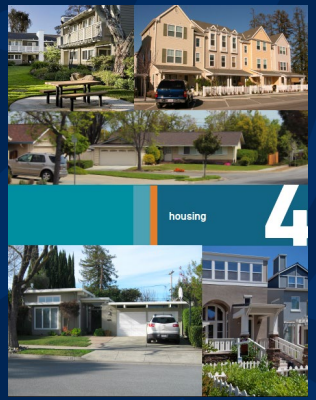
CUPERTINO

Agenda

- Background
- What we know now
- Updated sites strategy
- Policies
- Timeline and next steps

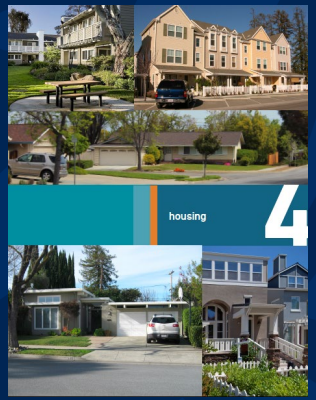
Background

- What is a Housing Element?
  - State-mandated Element of City's General Plan
- Why update it now?
  - Unlike other General Plan Elements required by State law to be updated every 8 years
- Purpose of the Update:
  - Study and plan for housing needs in the community, across all income levels



Background

- What does State law require?
  - Public Participation
  - Needs Analysis
  - Review of prior Housing Element policies/programs
  - Develop goals/policies/programs to address current needs
  - Housing Sites Inventory
- Who reviews and certifies compliance with State law?
  - CA Department of Housing and Community Development (HCD)

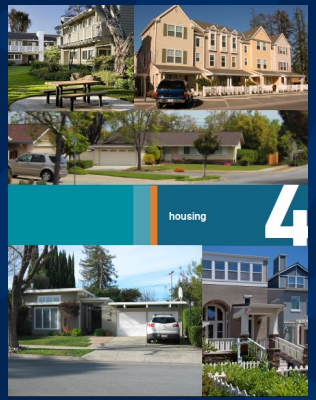


Related Updates

- Conforming changes:
  - Other General Plan Elements – Land Use, Transportation, Specific Plans
  - Rezoning
- State law requirements:
  - Health and Safety Element
  - Zoning amendments (emergency shelters etc.)
- Other – necessary to implement HE programs (e.g. Objective standards for housing developments)

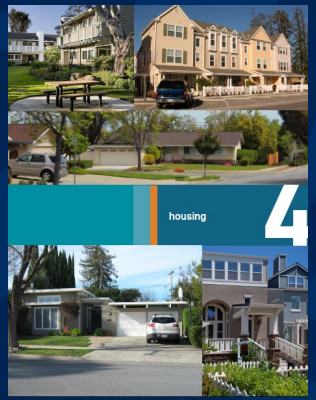
Background

- 6th Cycle Housing Element update covers 2023 – 2031 Planning Period.
- Certification deadline: January 31, 2023 (passed)
  - Rezoning must be completed by Jan 31, 2024
- 11 jurisdictions in Santa Clara County (15 cities/1 county) do not have compliant Housing Elements
  - ~56% of 109 ABAG jurisdictions not in compliance
  - ~1/3rd of SCAG jurisdictions still out of compliance



Background

- State-wide Housing Needs Determination made by HCD for each region within State
  - Cupertino in 9 County ABAG region



ABAG Regional Housing Needs Determination from HCD

Income Category	Percent	Housing Unit Need
Very Low	25.9%	114,442
Low	14.9%	65,892
Moderate	16.5%	72,712
Above Moderate	42.6%	188,130
Total	100%	441,176

Santa Clara County 6th RHNA Cycle

Jurisdiction	VERY LOW INCOME (<50% of Area Median Income)	LOW INCOME (50-80% of Area Median Income)	MODERATE INCOME (80-120% of Area Median Income)	ABOVE MODERATE INCOME (>120% of Area Median Income)	TOTAL
SANTA CLARA COUNTY					
Campbell	752	434	499	1,292	2,977
Cupertino	1,193	687	755	1,953	4,588
Gilroy	669	385	200	519	1,773
Los Altos	501	288	326	843	1,958
Los Altos Hills	125	72	82	210	489
Los Gatos	537	310	320	826	1,993
Milpitas	1,685	970	1,131	2,927	6,713
Monte Sereno	53	30	31	79	193
Morgan Hill	262	151	174	450	1,037
Mountain View	2,773	1,597	1,885	4,880	11,135
Palo Alto	1,556	896	1,013	2,621	6,086
San Jose	15,088	8,687	10,711	27,714	62,200
Santa Clara	2,872	1,653	1,981	5,126	11,632
Saratoga	454	261	278	719	1,712
Sunnyvale	2,968	1,709	2,032	5,257	11,966
Unincorporated Santa Clara	828	477	508	1,312	3,125

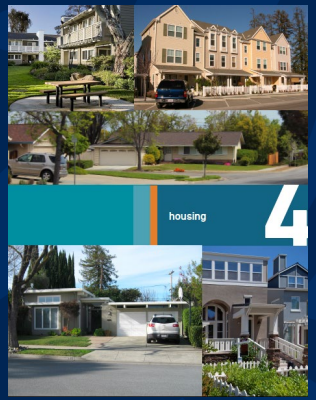
Cupertino's 6th Cycle RHNA

Income Group	Units	% of total
Very Low Income (<50% of AMI)	1,193	26.0
Low Income (50%-80% of AMI)	687	15.0
Moderate Income (80%-120% of AMI)	755	16.5
Above Moderate Income (>120% of AMI)	1,953	42.5
Total	**4,588**	**100**

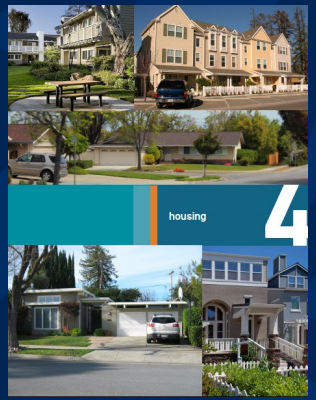
Affordable Units = 2,635

Background: 5th Cycle Performance

- City's 5th Cycle RHNA: 1,064 units
- Housing Element sites: 5 total, capacity ~1,400 units
- Approved projects on all 5 Housing Element sites
  - Total approved units: **3,370 units**
  - VLI units: 362; LI units: 847; Mod units: 75
- Building Permits issued: **546 units**
  - VLI units: 48; LI units: 19; Mod units: 158
- 4 out of 5 projects utilized State Density Bonus law
  - Density Bonus requested: 3 projects
  - Incentives: 2 projects
  - Waivers: 3 projects
  - Reduced parking standards: 3 projects



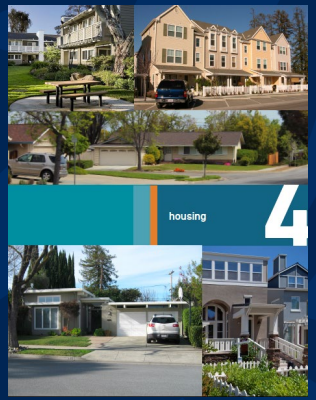
Background: 6th Cycle vs. 5th Cycle



- RHNA ~3x higher in Bay Area
- Fewer undeveloped sites, more reliance on redevelopment to meet RHNA
- New legislation adds requirements in:
  - Developing policy/programs
  - Greater accountability to produce housing
  - Site selection
  - Less discretion in housing development
  - More reporting
  - Affirmatively Furthering Fair Housing (AFFH)
  - More outreach and inclusion
- HE more like contract than standalone document.

Background

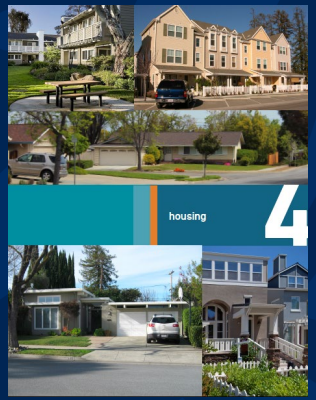
- What can happen if city does not have a certified Housing Element?
  - Loss of local land use control – Builder's Remedy projects
  - Court receivership appointing an agent to bring City's Housing Element compliance
  - Lawsuits and attorney fees
  - Ineligibility for grant funding
  - Financial penalties, court issued fines
  - Streamlined ministerial approval of projects



What is Affirmatively Furthering Fair Housing (AFFH)?

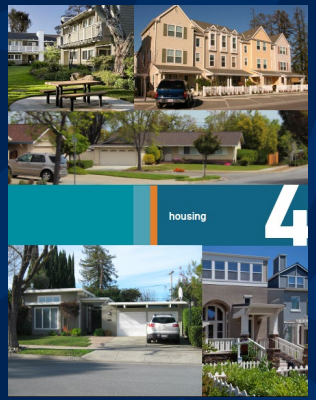
- AB 686 (2018) defines AFFH as: "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."

- Three community meetings focused on AFFH held May-September 2022.



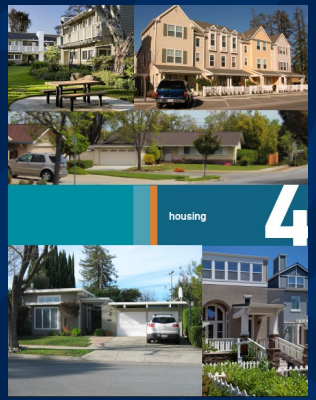
Affirmatively Furthering Fair Housing (AFFH) - Goals

- Address disparities in housing needs and access to opportunities.
- Replace segregated living patterns with integrated and balanced living patterns.
- Transform racially and ethnically concentrated areas of poverty into areas of opportunity.
- Foster and maintain compliance with civil rights and fair housing laws.



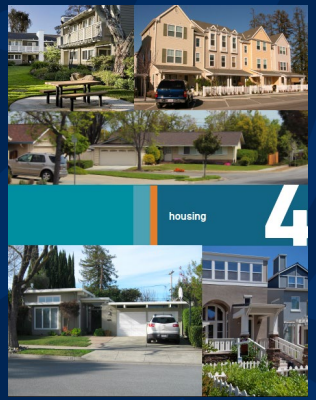
Affirmatively Furthering Fair Housing (AFFH) - Cupertino

- Most of City is Highest Resource with Access to Opportunities
- Housing anywhere in City would regionally Affirmatively Further Fair Housing
- City has higher RHNA and must look to accommodate persons who currently do not reside here



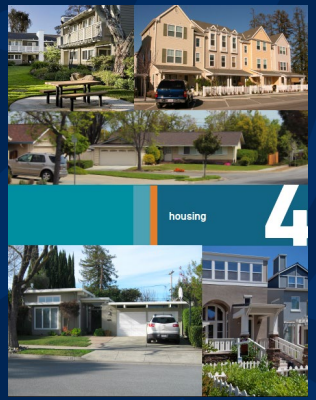
What's happened so far?

- **Community meetings** – Aug & Dec 2021
- **AFFH focused** meetings:
  - May 2022 – Unhoused, Veterans & individuals with disabilities
  - Jul 2022 – Students and Seniors
  - Sept 2022 – Cash-poor/House rich and workers
- **Consultant released –** Oct 2022
- Council directs staff to submit Draft HE to HCD – Nov 2022
- Draft HE submitted to HCD – Feb 4, 2023
- New Consultant approved – Mar 2023
- NOP for EIR sent to OPR's clearinghouse – Apr 2023
- EIR scoping meeting – April 18, 2023
- Comments received from HCD – May 4, 2023



What's happened so far?

- **Joint Study Sessions** with HC/PC/CC - April/May 2021 (2 meetings)
- **Consultant selected:** September 2021, following multiple RFPs
- **City Council:** Sept 2021 – Aug 2022 (8 meetings)
- **Housing Commission** – Dec 2021, Jun/Jul 2022 (3 meetings)
- **Planning Commission** – Jan 2022 – Jul 2022 (6 meetings)
- **Community Engagement Plan – Strategic Advisory Committee*** – Mar 2022 – Oct 2022 (8 meetings)



* Two councilmembers, HC Chair and PC Chair

Cupertino's 6th Cycle RHNA

Income Group	Units	% of total
Very Low Income (<50% of AMI)	1,193	26.0
Low Income (50%-80% of AMI)	687	15.0
Moderate Income (80%-120% of AMI)	755	16.5
Above Moderate Income (>120% of AMI)	1,953	42.5
Total	**4,588**	**100**

Affordable Units = 2,635

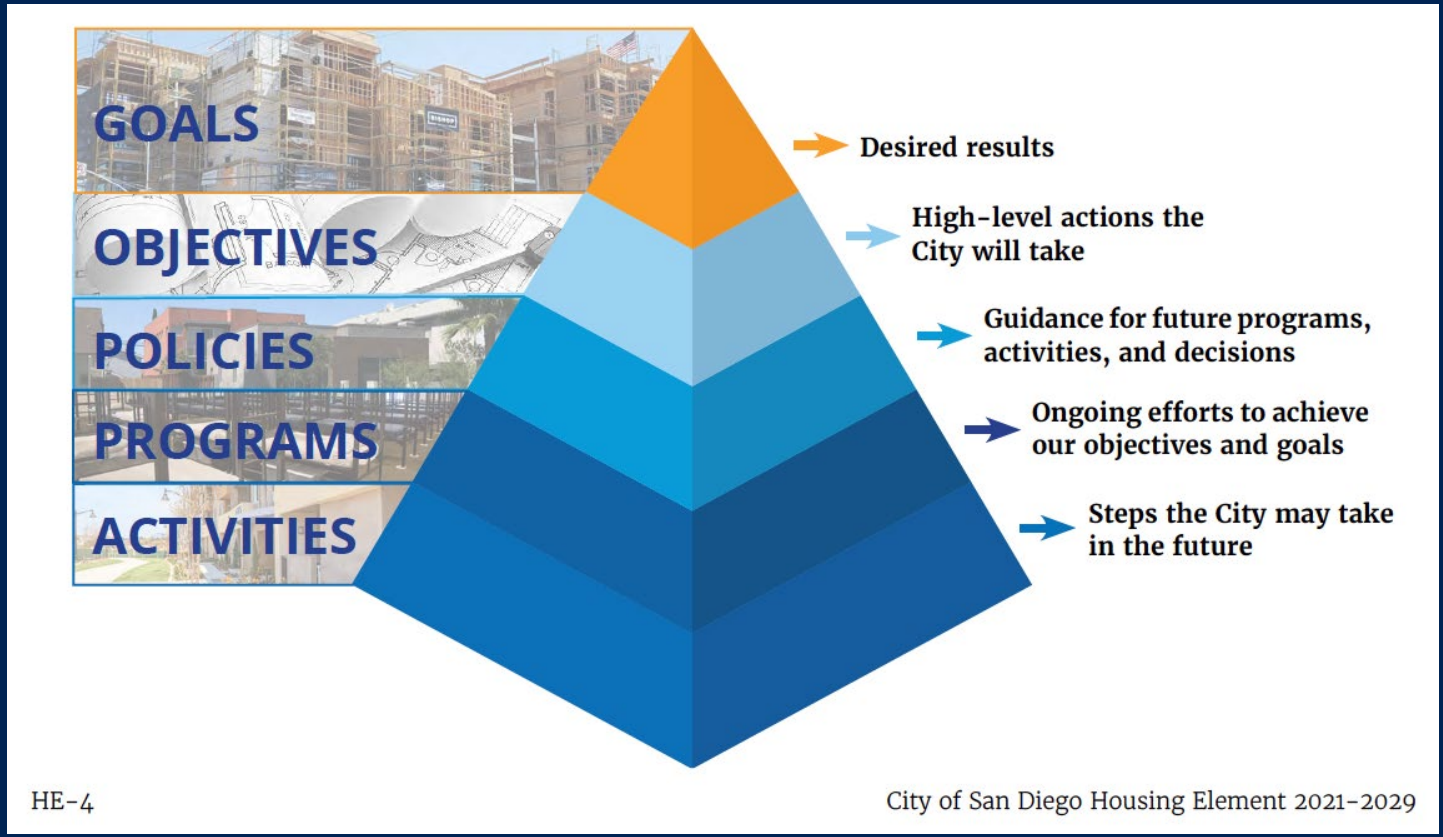
RHNA Buffer

- Why do you need a RHNA Buffer?
  - SB166 (2017): No net loss law
  - Mandates that jurisdictions must maintain adequate site inventory to accommodate remaining unmet RHNA ***by each income category*** at all times
- How much is recommended?
  - ~ 25 - 30% particularly for lower income levels to ensure city does not have to update sites inventory before next HE update

Goals / Policies / Programs

CUPERTINO

Goals, Policies and Programs



Required Programs and Policies

- Programs to provide **Adequate Housing Sites**
- Programs to **Assist Lower-Income Housing Development**
- Programs to Address Housing **Constraints**
- Programs to **Conserve and Improve the Housing Stock**
- Programs to **Affirmatively Further Fair Housing**
- Programs to **Preserve "at risk" Units**
- Programs for **ADUs/Second Units**

Sites Inventory

- Robust discussion in 2022 at Housing and Planning Commissions and City Council
- Started with all potential sites throughout the City which:
  - Met HCD size criteria – b/w 0.5 – 10 ac.
  - Indicated owner interest
  - Outside of fire hazard and geologic and other hazard zones – *more environmental impacts*

Sites Inventory

- More Interest in accommodating more development in western and southern parts of city
- Less interest in accommodating housing east of De Anza Blvd
- Locate housing sites to counteract declining school enrollment

Site selection strategy

- Comments from HCD: reliance on pipeline units
- New State law realities (AB 2011)
- Proximity to transportation – AB32/SB375
- Consultant experience based on likelihood of site acceptance by HCD
- Development potential of site
- Size of sites (0.5 acres (min.) to 10 acres (max.)

Pipeline Projects

- Over 3,500 units in first Draft HE
- Likely 1,500–1,600 units will be allowed at Vallco (west side only)
- Likely elimination of Hamptons (600 units) from pipeline
- If developed by 2031, City still gets credit for these units

Land use and Transportation

- State laws focus on linking land use and transportation to align with AB32 (2006) and SB375 (2008) – Climate Change and GHG reduction

- Regional plans (Plan Bay Area 2050 and Regional Transportation Plan) align with state law:
  - Identifies Heart of the City as Priority Development Area
  - Identifies transportation investment to support growth to reduce GHG

- City's policies align

POLICY LU-1.1: LAND USE AND TRANSPORTATION

Focus higher land use intensities and densities within a half-mile of public transit service, and along major corridors. Figure LU-2 indicates the maximum residential densities for sites that allow residential land uses.

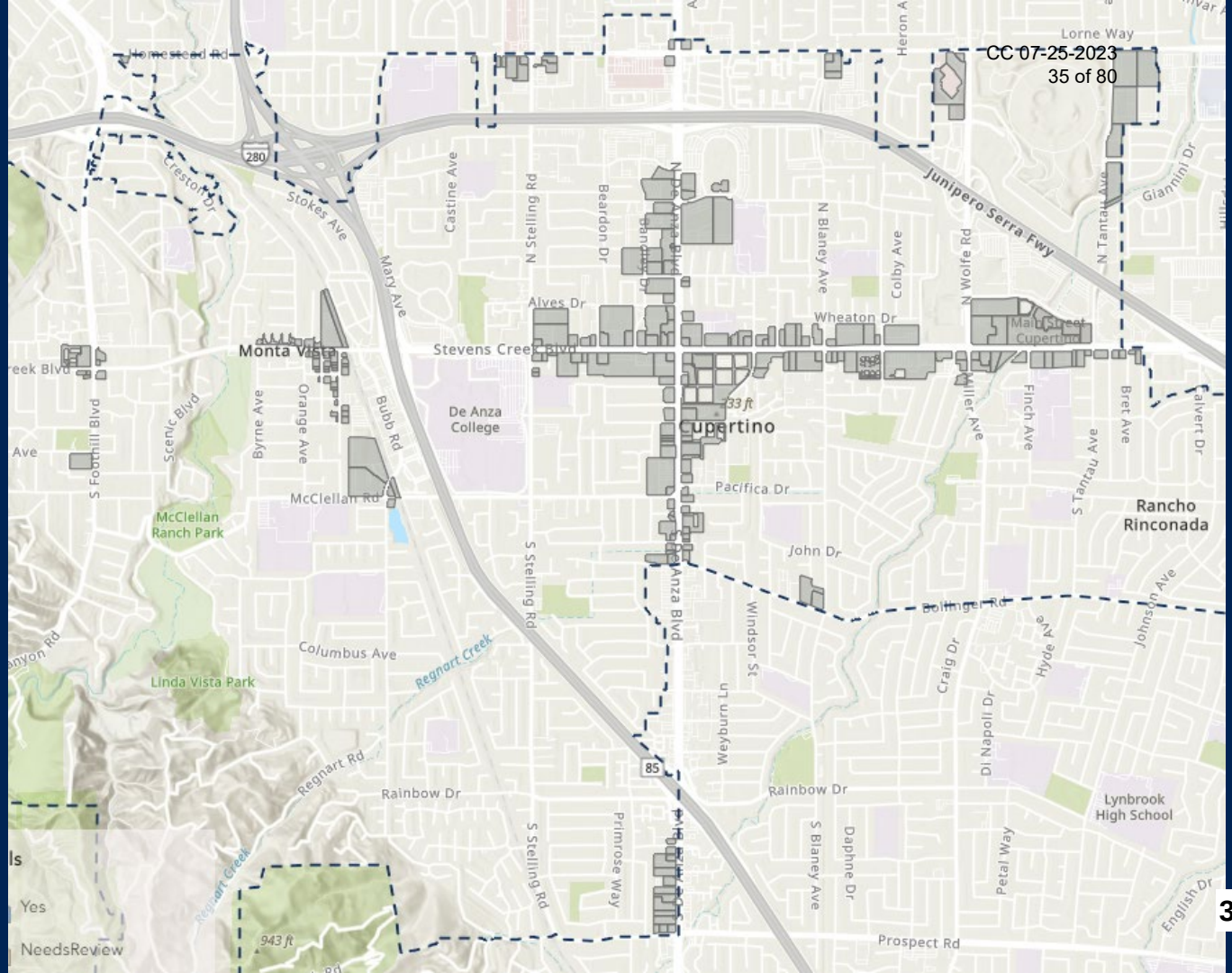
AB 2011/SB 6

- Effective July 1, 2023
- Allows Residential development on Commercial-Office Corridors regardless of Zoning
- Density and building height varies depending on lot size and width of corridor
- 45-foot minimum building height
- Zero-foot front setback

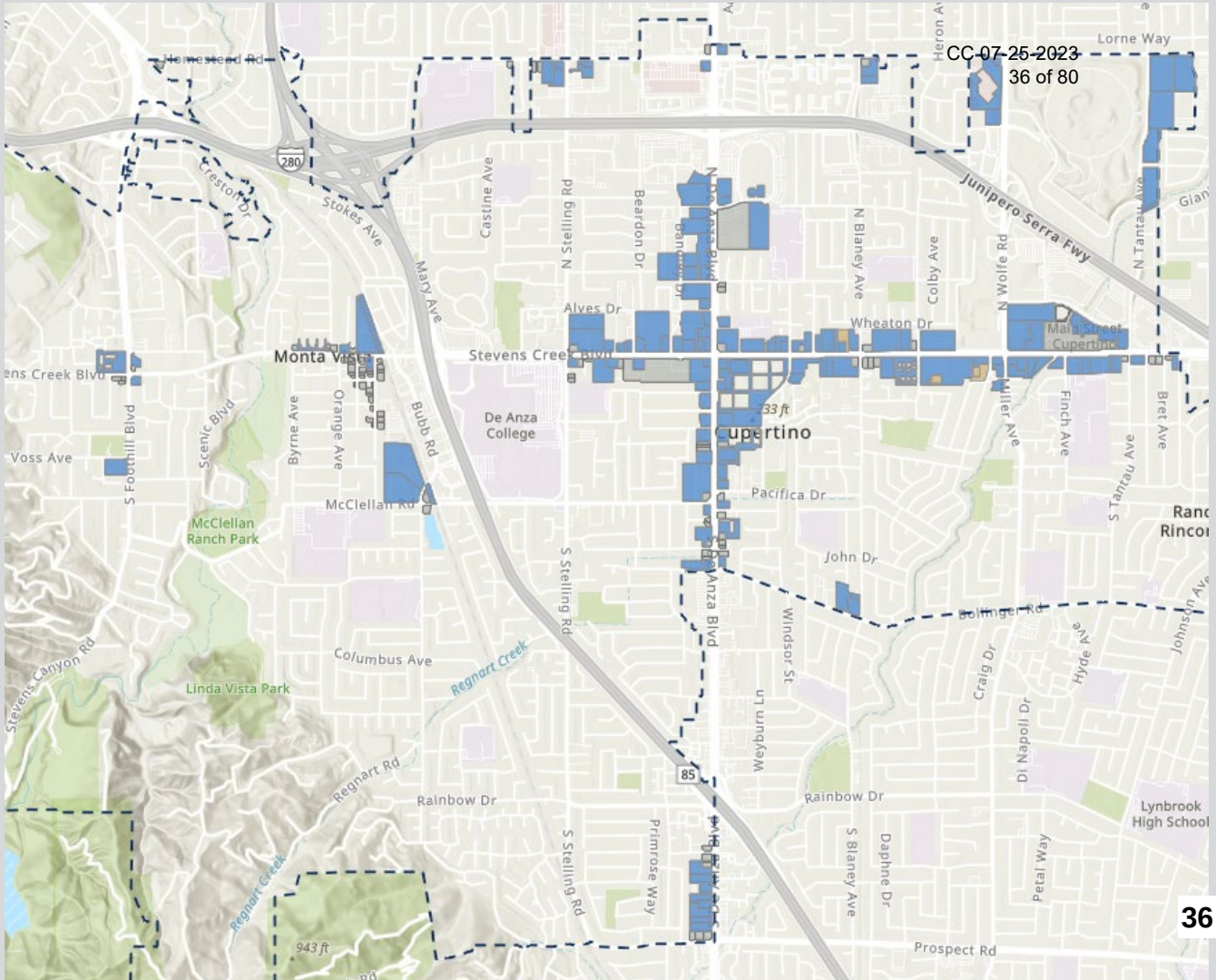
AB 2011/ SB 6?

SITE	DENSITY
Site < one (1) acre	30 du/acre
Site > one (1) acre and Commercial Corridor right-of-way < 100 feet	40 du/acre
Site > one (1) acre and Commercial Corridor right-of-way > 100 feet	60 du/acre
Site within one half-mile of Major Transit Stop (*N/A in Cupertino*)	80 du/acre

AB 2011 Sites



AB2011 with HCD size criteria



Updated Site Selection strategy

- Staff recommends using updated site selection strategy based on:
  - Consultant's feedback based on extensive HE update experience
  - Input from HCD on pipeline projects
  - HCD size and other criteria
  - State law (AB2011/SB6) framework to align transportation with land use

Housing Policy Areas

- Programs to **Assist Lower-Income Housing Development –**
  - Examples: Support Grant applications; Provide technical support; Issue NOFA for BMR Affordable Housing Funds
- Programs to Address Housing **Constraints –**
  - Examples: Adopt Objective standards, Continue fee waivers for affordable units and/or 100% affordable projects; evaluate Parking standards

Housing Policy Areas (cont.)

- Programs to **Conserve, Improve and Expand City Housing Stock –**
  - Examples: Requiring replacement of at least as many units as exist on a site; Disallow conversion of multi-family units to Single Family; CDBG funds for conservation/ improvements

Housing Policy Areas (cont.)

- Programs to **Affirmatively Further Fair Housing –**
  - Examples: Upzone sites adequately to allow accommodation of RHNA; Support teacher housing and ELI projects; Continue to support the development of ADUs, which offer opportunities with modest increases in density; Enhance "missing middle" housing policies

Housing Policy Areas (cont.)

- Programs to **Preserve "at risk" Units –**
  - Examples: programs to meet with affordable housing operators annually.
- Programs for **ADUs/Second Units –**
  - Examples: Continue to offer streamlined pre-approved plans; Evaluate and participate in local and regional efforts on ADU programs.

HCD comments

- Received May 4, 2023
- General in nature but comprehensive
- Asks for more analysis in several areas
- Some comments do not apply to City (e.g. manufactured homes/ADUs)
- No specific feedback on Sites Inventory, except pipeline (*discussed earlier*)

Council consensus on:

- Updated sites strategy
- Identifying priority housing policy areas among the following:
  - Assist lower income households
  - Address constraints
  - Conserve and Improve Housing Stock
  - Affirmatively Further Fair Housing
  - Preserve “at risk” units
  - ADUs/Second Units

Timeline and Next Steps

Aug/ Early Sept 2023

- Publish Revised Draft HE
- Public Outreach re: zoning

Sept 2023

- Submit revised draft to HCD

Oct/Nov 2023

- EIR preparation continued
- Comments from HCD

Dec 2023

- Publish Draft EIR
- Prepare 2nd Revised Draft HE

Jan 2024

- Revised Draft to HCD
- Review/Comment on Draft EIR

Mar/Apr 2024

- Comments from HCD
- Final EIR
- Adoption Hearings

CITY OF CUPERTINO

Agenda Item

23-12186

Agenda Date: 7/25/2023
Agenda #: 2.

Subject: Consider taking a position in support of, in opposition to, or otherwise regarding Senate Bill ("SB") 423: Streamlined Housing Approvals: Multifamily Housing Developments

Consider taking a position in support of, in opposition to, or otherwise regarding SB 423

CITY ATTORNEY'S OFFICE

CITY HALL
10300 TORRE AVENUE• CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3195 • FAX: (408) 777- 3366
EMAIL: CITYATTORNEY@CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: July 25, 2023

Subject

Consider taking a position in support of, in opposition to, or otherwise regarding Senate Bill ("SB") 423: Streamlined Housing Approvals: Multifamily Housing Developments

Recommended Action

Consider taking a position in support of, in opposition to, or otherwise regarding SB 423

Reasons for Recommendation

In 2017, the Legislature passed, and the Governor signed, SB 35 (codified as amended at Government Code section 65913.4). SB 35 requires local government agencies that do not satisfy their share of their regional housing needs assessment for specified income categories to approve applications for certain housing development projects ministerially if a project satisfies specified objective planning standards and the applicant includes a specified share of affordable housing units in the project. As a result, the statute preempts local discretionary land use authority and eliminates California Environmental Quality Act ("CEQA") review of qualifying housing development projects.

Currently SB 35 is scheduled to sunset in 2026. SB 423 (Attachment A) extends the sunset date of SB 35 from January 1, 2026 to January 1, 2036. In addition, SB 423 makes substantive amendments to SB 35. These amendments include:

- Requiring a local government planning director or other equivalent position to make determinations about compliance with the objective planning standards.

- Applying SB 35 provisions to cities that have not been found in substantial compliance with housing element law by the Department of Housing and Community Development.

- Prohibiting a local government from requiring "[s]tudies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development."

- Providing that if a local government requires units restricted to higher incomes than those required for SB 35 streamlining, then those units meet the affordable housing requirements for purposes of SB 35.

- Modifying specified construction labor requirements.

- Applying SB 35 provisions to developments in the Coastal Zone.

The California League of Cities has requested that member cities oppose SB 423 because it is "top-down, one-size-fits-all legislation" that overrides local control and allows the approval of housing development projects "without regard to the needs of the community, opportunities for environmental review, or public input." In addition to the League of Cities, at least 27 California cities, including the City of Palo Alto, have taken positions opposing the bill in the Legislature. The City and County of San Francisco, the City of Bakersfield, and various local elected officials have taken positions in support of SB 423. A complete list of organizations supporting and opposing the bill is provided in the attached Bill Summary (Attachment B).

By majority vote, Council may support or oppose SB 423. Staff would then prepare a letter for the Mayor's signature to be distributed to legislators conveying the City's official position. No action is required if Council does not wish to take a position on the bill.

Sustainability Impact
Sending a letter supporting or opposing SB 423 would have no sustainability impact. However, because the adoption of SB 423 would extend streamlining provisions for infill housing development, Council should consider whether opposition to the bill is consistent with City sustainability goals and the City's Climate Action Plan. (*E.g.*, Climate Action Plan 2.0, p. 55 [climate goals supported by "creating a clear pathway for new development so it can align with Cupertino's greenhouse gas reduction plan"].)

Fiscal Impact
No fiscal impact.

California Environmental Quality Act
Not applicable.

Prepared by: Christopher D. Jensen, City Attorney
Approved for Submission by: Pamela Wu, City Manager
Attachments:
A – Senate Bill 423
B – Assembly Committee on Natural Resources Bill Summary

SB-423 Land use: streamlined housing approvals: multifamily housing developments. (2023-2024)

As Amends the Law Today

SECTION 1. *The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:*

(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code).

(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009 of the Government Code).

(c) Restrictions on disapproval of housing developments (Section 65589.5 of the Government Code).

(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7 of the Government Code).

(e) Least cost zoning law (Section 65913.1 of the Government Code).

(f) Density Bonus Law (Section 65915 of the Government Code).

(g) Accessory dwelling units (Sections 65852.150 and 65852.2 of the Government Code).

(h) By-right housing, in which certain multifamily housing is designated a permitted use (Section 65589.4 of the Government Code).

(i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863 of the Government Code).

(j) Requiring persons who sue to halt affordable housing to pay attorney's fees (Section 65914 of the Government Code) or post a bond (Section 529.2 of the Code of Civil Procedure).

(k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code).

(l) Limiting moratoriums on multifamily housing (Section 65858 of the Government Code).

(m) Prohibiting discrimination against affordable housing (Section 65008 of the Government Code).

(n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code).

(o) Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413 of the Health and Safety Code).

(p) Streamlining housing approvals during a housing shortage (Section 65913.4 of the Government Code).

(q) Housing sustainability districts (Chapter 11 (commencing with Section 66200) of Division 1 of Title 7 of the Government Code).

(r) Streamlining agricultural employee housing development approvals (Section 17021.8 of the Health and Safety Code).

(s) The Housing Crisis Act of 2019 (Senate Bill 330 (Chapter 654 of the Statutes of 2019)).

(t) Allowing four units to be built on single-family parcels statewide (Senate Bill 9 (Chapter 162 of the Statutes of 2021)).

(u) The Middle Class Housing Act of 2022 (Section 65852.24 of the Government Code).

(v) Affordable Housing and High Road Jobs Act of 2022 (Chapter 4.1 (commencing with Section 65912.100) of Division 1 of Title 7 of the Government Code).

SEC. 2. Section 65913.4 of the Government Code is amended to read:

65913.4. (a) ~~A~~ *Except as provided in subdivision (r), a* development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit or any other nonlegislative discretionary approval if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development and the site on which it is located satisfy all of the following:

(A) It is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) (i) A site that meets the requirements of clause (ii) and satisfies any of the following:

(I) The site is zoned for residential use or residential mixed-use development.

(II) The site has a general plan designation that allows residential use or a mix of residential and nonresidential uses.

(III) The site ~~is zoned for office or retail commercial use and~~ meets the requirements of Section 65852.24.

(ii) At least two-thirds of the square footage of the development is designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower or moderate income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower or ~~moderate income~~ *moderate-income* for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies ~~subparagraphs (A) and~~ *clause (i) or (ii) of subparagraph (A) and satisfies subparagraph* (B) below:

(A) (i) For a development located in a locality that is in its sixth or earlier housing element cycle, the development is located in either of the following:

~~(A)~~ *(I)* ~~Is located in~~ *In* a locality that the department has determined is subject to this ~~subparagraph~~ *clause* on the basis that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this ~~subparagraph~~ *subclause* until the department's determination for the next reporting period.

(II) In a locality that the department has determined is subject to this clause on the basis that the locality did not adopt a housing element that has been found in substantial compliance with housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3) by the department. A locality shall remain eligible under this

subclause until such time as the locality adopts a housing element that has been found in substantial compliance with housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3) by the department.

(ii) For a development located in a locality that is in its seventh or later housing element cycle, is located in a locality that the department has determined is subject to this clause on the basis that the locality did not adopt a housing element that has been found in substantial compliance with housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3) by the department by the statutory deadline, or that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not *adopt a housing element pursuant to Section 65588 that has been found in substantial compliance with the housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3) by the department, did not* submit its latest production report to the department by the time period required by Section 65400, or that production report *submitted to the department* reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project does ~~either~~ *one* of the following:

(I) For for-rent projects, the project dedicates a minimum of 10 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at or below 50 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 50 percent of the area median income, that local ordinance applies.

~~(I)~~ *(II)* ~~The~~ *For for-sale projects, the* project dedicates a minimum of 10 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.

~~(II)~~ *(III)* (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause ~~(I), dedicates~~ *(I) or (II), may opt to abide by this subclause. Projects utilizing this subclause shall dedicate* 20 percent of the total number of units, before calculating any density bonus, to housing affordable to households making below ~~120~~ *100* percent of the area median income with the average income of the units at or below ~~100~~ *80* percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below ~~120~~ *100* percent of the area median income, or requires that any of the units be dedicated at a level deeper than ~~120~~ *100* percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and ~~120~~ *100* percent of the area median income shall not exceed 30 percent of the gross income of the household.

(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law. *If a local requirement for affordable housing requires units that are restricted to households with incomes higher than the applicable income limits required in subparagraph (B), then units that meet the applicable income limits required in subparagraph (B) shall be deemed to satisfy those local requirements for higher income units.*

(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).

(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).

(D) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards ~~granted~~ *for which the development is eligible* pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) It is the intent of the Legislature that the objective zoning standards, objective subdivision standards, and objective design review standards described in this paragraph be adopted or amended in compliance with the requirements of Chapter 905 of the Statutes of 2004.

(D) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(E) A project that satisfies the requirements of Section 65852.24 shall be deemed consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project is consistent with the provisions of subdivision (b) of Section 65852.24 and if none of the square footage in the project is designated for hotel, motel, bed and breakfast inn, or other transient lodging use, except for a residential hotel. For purposes of this subdivision, "residential hotel" shall have the same meaning as defined in Section 50519 of the Health and Safety Code.

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

~~(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.~~

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

~~(D)~~ *(C)* 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)~~ *(D)* A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous ~~waste~~ *substances release* site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

(i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5.

(ii) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

~~(F)~~ *(E)* 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)~~ *(F)* 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)~~ *(G)* 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)~~ *(H)* 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)~~ *(I)* 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)~~ *(J)* Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) ~~The development proponent has done both of the following,~~ *Except as provided in paragraph (9), a proponent of a development project approved by a local government pursuant to this section shall require in contracts with construction contractors, and shall certify to the local government, that the following standards specified in this paragraph will be met in project construction,* as applicable:

~~(A) Certified to the locality that either of the following is true, as applicable:~~

~~(i)~~ *(A)* ~~The entirety of the development is~~ *A development that is not in its entirety* a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor ~~Code.~~ *Code and approved by a local government pursuant to Article 2 (commencing with Section 65912.110) or Article 3 (commencing with Section 65912.120) shall be subject to all of the following:*

~~(ii)~~ *(i)* ~~If the development is not in its entirety a public work, that all~~ *All* construction workers employed in the execution of the development ~~will~~ *shall* be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. ~~If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:~~

~~(I)~~ *(ii)* The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the *work for those portions of the development that are not a public* work.

(iii) All contractors and subcontractors for those portions of the development that are not a public work shall comply with both of the following:

~~(II)~~ *(I)* ~~All contractors and subcontractors shall pay~~ *Pay* to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

~~(III)~~ *(II)* ~~Except as provided in subclause (V), all contractors and subcontractors shall maintain and~~ *Maintain and* verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided ~~therein.~~ *in that section. This subclause does not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subclause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.*

(B) (i) The obligation of the contractors and subcontractors to pay prevailing wages pursuant to this paragraph may be enforced by any of the following:

(I) The Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development.

(II) An underpaid worker through an administrative complaint or civil action.

(III) A joint labor-management committee through a civil action under Section 1771.2 of the Labor Code.

~~(IV)~~ *(ii)* ~~Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code.~~ If a civil wage and penalty assessment is ~~issued,~~ *issued pursuant to this paragraph,* the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

~~(V)~~ *(iii)* ~~Subclauses (III) and (IV) shall~~ *This paragraph does* not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

~~(VI)~~ *(C)* Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing ~~shall not apply~~ *does not apply to those portions of development that are not a public work* if otherwise provided in a bona fide collective bargaining agreement covering the worker. ~~The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.~~

(D) The requirement of this paragraph to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

~~(B)~~ *(E)* ~~(i)~~ *A* ~~For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:~~ *development of 50 or more housing units approved by a local government pursuant to this section shall meet all of the following labor standards:*

(i) The development proponent shall require in contracts with construction contractors and shall certify to the local government that each contractor of any tier who will employ construction craft employees or will let subcontracts for at least 1,000 hours shall satisfy the requirements in clauses (ii) and (iii). A construction contractor is deemed in compliance with clauses (ii) and (iii) if it is signatory to a valid collective bargaining agreement that requires utilization of registered apprentices and expenditures on health care for employees and dependents.

(ii) A contractor with construction craft employees shall either participate in an apprenticeship program approved by the California Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code, or request the dispatch of apprentices from a state-approved apprenticeship program under the terms and conditions set forth in Section 1777.5 of the Labor Code. A contractor without construction craft employees shall show a contractual obligation that its subcontractors comply with this clause.

(iii) Each contractor with construction craft employees shall make health care expenditures for each employee in an amount per hour worked on the development equivalent to at least the hourly pro rata cost of a Covered California Platinum level plan for two adults 40 years of age and two dependents 0 to 14 years of age for the Covered California rating area in which the development is located. A contractor without construction craft employees shall show a contractual obligation that its subcontractors comply with this clause. Qualifying expenditures shall be credited toward compliance with prevailing wage payment requirements set forth in this paragraph.

(iv) (I) The development proponent shall provide to the local government, on a monthly basis while its construction contracts on the development are being performed, a report demonstrating compliance with clauses (ii) and (iii). The reports shall be considered public records under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be open to public inspection.

(II) A development proponent that fails to provide the monthly report shall be subject to a civil penalty for each month for which the report has not been provided, in the amount of 10 percent of the dollar value of construction work performed by that contractor on the development in the month in question, up to a maximum of ten thousand dollars ($10,000). Any contractor or subcontractor that fails to comply with clauses (ii) and (iii) shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of clauses (ii) and (iii).

(III) Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the procedures for issuance of civil wage and penalty assessments specified in Section 1741 of the Labor Code,

and may be reviewed pursuant to Section 1742 of the Labor Code. Penalties shall be deposited in the State Public Works Enforcement Fund established pursuant to Section 1771.3 of the Labor Code.

(v) Each construction contractor shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code. Each construction contractor shall submit payroll records directly to the Labor Commissioner at least monthly in a format prescribed by the Labor Commissioner in accordance with subparagraph (A) of paragraph (3) of subdivision (a) of Section 1771.4 of the Labor Code. The records shall include a statement of fringe benefits. Upon request by a joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), the records shall be provided pursuant to subdivision (e) of Section 1776 of the Labor Code.

(vi) All construction contractors shall report any change in apprenticeship program participation or health care expenditures to the local government within 10 business days, and shall reflect those changes on the monthly report. The reports shall be considered public records pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) and shall be open to public inspection.

(vii) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall have standing to sue a construction contractor for failure to make health care expenditures pursuant to clause (iii) in accordance with Section 218.7 or 218.8 of the Labor Code.

(F) For any project having floors used for human occupancy that are located more than 85 feet above the grade plane, the following skilled and trained workforce provisions apply:

(i) Except as provided in clause (ii), the developer shall enter into construction contracts with prime contractors only if all of the following are satisfied:

(I) ~~On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.~~ *The contract contains an enforceable commitment that the prime contractor and subcontractors at every tier will use a skilled and trained workforce, as defined in Section 2601 of the Public Contract Code, to perform work on the project that falls within an apprenticeable occupation in the building and construction trades. However, this enforceable commitment requirement shall not apply to any scopes of work where new bids are accepted pursuant to subclause (I) of clause (ii).*

(II) ~~On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.~~ *The developer or prime contractor shall establish minimum bidding requirements for subcontractors that are objective to the maximum extent possible. The developer or prime contractor shall not impose any obstacles in the bid process for subcontractors that go beyond what is reasonable and commercially customary. The developer or prime contractor must accept bids submitted by any bidder that meets the minimum criteria set forth in the bid solicitation.*

(III) ~~On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.~~ *The prime contractor has provided an affidavit under penalty of perjury that, in compliance with this subparagraph, it will use a skilled and trained workforce and will obtain from its subcontractors an enforceable commitment to use a skilled and trained workforce for each scope of work in which it receives at least three bids attesting to satisfaction of the skilled and trained workforce requirements.*

~~(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.~~

~~(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.~~

~~(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.~~

~~(iii)~~ *(IV)* ~~If the development proponent has certified~~ *When a prime contractor or subcontractor is required to provide an enforceable commitment* that a skilled and trained workforce will be used to complete ~~the development and the~~

~~application is approved, the following shall apply:~~ *a contract or project, the commitment shall be made in an enforceable agreement with the developer that provides the following:*

(ia) The prime contractor and subcontractors at every tier will comply with this chapter.

(ib) The prime contractor will provide the developer, on a monthly basis while the project or contract is being performed, a report demonstrating compliance by the prime contractor.

(ic) The prime contractor shall provide the developer, on a monthly basis while the project or contract is being performed, the monthly reports demonstrating compliance submitted to the prime contractor by the affected subcontractors.

(ii) (I) If a prime contractor fails to receive at least three bids in a scope of construction work from subcontractors that attest to satisfying the skilled and trained workforce requirements as described in this subparagraph, the prime contractor may accept new bids for that scope of work. The prime contractor need not require that a skilled and trained workforce be used by the subcontractors for that scope of work.

(II) The requirements of this subparagraph shall not apply if all contractors, subcontractors, and craft unions performing work on the development are subject to a multicraft project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. The multicraft project labor agreement shall include all construction crafts with applicable coverage determinations for the specified scopes of work on the project pursuant to Section 1773 of the Labor Code and shall be executed by all applicable labor organizations regardless of affiliation. For purposes of this clause, "project labor agreement" means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.

(III) Requirements set forth in this subparagraph shall not apply to projects where 100 percent of the units, exclusive of a manager's unit or units, are dedicated to lower income households, as defined by Section 50079.5 of the Health and Safety Code.

(iii) If the skilled and trained workforce requirements of this subparagraph apply, the prime contractor shall require subcontractors to provide, and subcontractors on the project shall provide, the following to the prime contractor:

(I) ~~The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use~~ *An affidavit signed under penalty of perjury that* a skilled and trained workforce ~~to complete the development.~~ *shall be employed on the project.*

(II) Reports on a monthly basis, while the project or contract is being performed, demonstrating compliance with this chapter.

(iv) Upon issuing any invitation or bid solicitation for the project, but no less than seven days before the bid is due, the developer shall send a notice of the invitation or solicitation that describes the project to the following entities within the jurisdiction of the proposed project site:

(I) Any bona fide labor organization representing workers in the building and construction trades who may perform work necessary to complete the project and the local building and construction trades council.

(II) ~~Every contractor and subcontractor shall use a skilled and trained workforce~~ *Any organization representing contractors that may perform work necessary* to complete the ~~development.~~ *project, including any contractors' association or regional builders' exchange.*

(v) The developer or prime contractor shall, within three business days of a request by a joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation 8 Act of 1978 (29 U.S.C. Sec. 175a), provide all of the following:

(I) The names and Contractors State License Board numbers of the prime contractor and any subcontractors that submitted a proposal or bid for the development project.

(II) The names and Contractors State License Board numbers of contractors and subcontractors that are under contract to perform construction work.

(vi) (I) For all projects subject to this subparagraph, the development proponent shall provide to the locality, on a monthly basis while the project or contract is being performed, a report demonstrating that the self-performing prime contractor and all subcontractors used a skilled and trained workforce, as defined in Section 2601 of the Public Contract Code, unless otherwise exempt under this subparagraph. A monthly report provided to the locality pursuant

to this subclause shall be a public record under the California Public Records Act Division 10 (commencing with Section 7920.000) of Title 1 and shall be open to public inspection. A developer that fails to provide a complete monthly report shall be subject to a civil penalty of 10 percent of the dollar value of construction work performed by that contractor on the project in the month in question, up to a maximum of ten thousand dollars ($10,000) per month for each month for which the report has not been provided.

~~(III)~~ *(II)* ~~Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails~~ *Any subcontractors or prime contractor self-performing work subject to the skilled and trained workforce requirements under this subparagraph that fail* to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the ~~development~~ *project* using the same ~~procedures for~~ issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor ~~Code,~~ *Code* and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. *Prime contractors shall not be jointly liable for violations of this subparagraph by subcontractors.* Penalties shall be paid to the State Public Works Enforcement ~~Fund.~~ *Fund or the locality or its labor standards enforcement agency, depending on the lead entity performing the enforcement work.*

(III) Any provision of a contract or agreement of any kind between a developer and a prime contractor that purports to delegate, transfer, or assign to a prime contractor any obligations of or penalties incurred by a developer shall be deemed contrary to public policy and shall be void and unenforceable.

~~(IV)~~ *(G)* ~~Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.~~ *A locality, and any labor standards enforcement agency the locality lawfully maintains, shall have standing to take administrative action or sue a construction contractor for failure to comply with this paragraph. A prevailing locality or labor standards enforcement agency shall distribute any wages and penalties to workers in accordance with law and retain any fees, additional penalties, or assessments.*

~~(C)~~ *(9)* Notwithstanding ~~subparagraphs (A) and (B),~~ *paragraph (8),* a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing ~~wages or use a skilled and trained workforce if it meets~~ *wages, use a workforce participating in an apprenticeship, or provide health care expenditures if it satisfies* both of the following:

~~(i)~~ *(A)* The project ~~includes~~ *consists of* 10 or fewer units.

~~(ii)~~ *(B)* The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

~~(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:~~

~~(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).~~

~~(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).~~

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) (A) (i) Before submitting an application for a development subject to the streamlined, ministerial approval process described in subdivision (c), the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of the information described in Section 65941.1, as that section read on January 1, 2020.

(ii) Upon receipt of a notice of intent to submit an application described in clause (i), the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development. In order to expedite compliance with this subdivision, the local government shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development.

(iii) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

(I) The local government shall provide a formal notice of a development proponent's notice of intent to submit an application described in clause (i) to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

(ia) A description of the proposed development.

(ib) The location of the proposed development.

(ic) An invitation to engage in a scoping consultation in accordance with this subdivision.

(II) Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

(III) If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate in a scoping consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(i) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(ii) The development proponent and its consultants engage in the scoping consultation in good faith.

(iii) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements:

(i) Section 7927.000.

(ii) Section 7927.005.

(iii) Subdivision (c) of Section 21082.3 of the Public Resources Code.

(iv) Subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

(v) Any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a scoping consultation conducted pursuant to this subdivision.

(2) (A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in subdivision (c). The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in subdivision (c).

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(i) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(ii) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(3) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent’s notice of intent to submit an application pursuant to subclause (I) of clause (iii) of subparagraph (A) of paragraph (1) did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to subclause (II) of clause (iii) of subparagraph (A) of paragraph (1) but substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe.

(C) The parties to a scoping consultation pursuant to this subdivision find that no potential tribal cultural resource will be affected by the proposed development pursuant to subparagraph (A) of paragraph (2).

(D) A scoping consultation between a California Native American tribe and the local government has occurred in accordance with this subdivision and resulted in agreement pursuant to subparagraph (B) of paragraph (2).

(4) A project shall not be eligible for the streamlined, ministerial process described in subdivision (c) if any of the following apply:

(A) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(B) There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted pursuant to this subdivision do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2).

(C) The parties to a scoping consultation conducted pursuant to this subdivision do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(5) (A) If, after a scoping consultation conducted pursuant to this subdivision, a project is not eligible for the streamlined, ministerial process described in subdivision (c) for any or all of the following reasons, the local government shall provide written documentation of that fact, and an explanation of the reason for which the project is not eligible, to the development proponent and to any California Native American tribe that is a party to that scoping consultation:

(i) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project, as described in subparagraph (A) of paragraph (4).

(ii) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2) and subparagraph (B) of paragraph (4).

(iii) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development, as described in subparagraph (C) of paragraph (4).

(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(6) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(7) For purposes of this subdivision:

(A) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research.

(B) "Scoping" means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(8) This subdivision shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before the effective date of the act adding this subdivision.

(c) (1) ~~If a local government~~ *Notwithstanding any local law, if a local government's planning director or equivalent position* determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a) and pursuant to paragraph (3) of this subdivision, ~~it~~ *the local government* shall approve the development. ~~If a local government determines~~ *Upon a determination* that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), ~~it~~ *the local government staff or relevant local planning and permitting department that made the determination* shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local ~~government~~ *government's planning director or equivalent position* fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning

standards specified in subdivision (a).

(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. The local government shall not determine that a development, including an application for a modification under subdivision ~~(g),~~ *(h),* is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(4) Upon submittal of an application for streamlined, ministerial approval pursuant to this section to the local government, all departments of the local government that are required to issue an approval of the development prior to the granting of an entitlement shall comply with the requirements of this section within the time periods specified in paragraph (1).

(d) (1) Any design review ~~or public oversight~~ of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for ~~review and approval of development projects, or the city council or board of supervisors, as appropriate.~~ *design review.* That design review ~~or public oversight~~ shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review ~~or public oversight~~ shall be completed, and if the development is consistent with all objective standards, the local government shall approve the development as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(3) If a local government determines that a development submitted pursuant to this section is in conflict with any of the standards imposed pursuant to paragraph (1), it shall provide the development proponent written documentation of which objective standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that objective standard or standards consistent with the timelines described in paragraph (1) of subdivision (c).

(e) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) Notwithstanding any law, a local government shall not require any of the following prior to approving a development that meets the requirements of this section:

(1) Studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development.

(2) (A) Compliance with any standards necessary to receive a postentitlement permit.

(B) This paragraph does not prohibit a local agency from requiring compliance with any standards necessary to receive a postentitlement permit after a permit has been issued pursuant to this section.

(C) For purposes of this paragraph, "postentitlement permit" has the same meaning as provided in subparagraph (A) of paragraph (3) of subdivision (j) of Section 65913.3.

~~(f)~~ *(g)* (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project satisfies both of the following requirements:

(A) The project includes public investment in housing affordability, beyond tax credits.

(B) At least 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(2) (A) If a local government approves a development pursuant to this section, and the project does not satisfy the requirements of subparagraphs (A) and (B) of paragraph (1), that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided construction activity, including demolition and grading activity, on the development site has begun pursuant to a permit issued by the local jurisdiction and is in progress. For purposes of this subdivision, "in progress" means one of the following:

(i) The construction has begun and has not ceased for more than 180 days.

(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If the development proponent requests a modification pursuant to subdivision ~~(g),~~ *(h),* then the time during which the approval shall remain valid shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended during the pendency of the litigation. The extension required by this paragraph shall only apply to the first request for a modification submitted by the development proponent.

(4) The amendments made to this subdivision by the act that added this paragraph shall also be retroactively applied to developments approved prior to January 1, 2022.

~~(g)~~ *(h)* (1) (A) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided in subdivision (c) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(B) Except as provided in paragraph (3), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.

(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (c).

(D) A guideline that was adopted or amended by the department pursuant to subdivision ~~(i)~~ *(n)* after a development was approved through the streamlined, ministerial approval process described in subdivision (c) shall not be used as a basis to deny proposed modifications.

(2) Upon receipt of the development proponent's application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification, or within 90 days if design review is required.

(3) Notwithstanding paragraph (1), the local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:

(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more. The calculation of the square footage of construction changes shall not include underground space.

(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact. The calculation of the square footage of construction changes shall not include underground space.

(C) (i) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, may be applied to all modification applications that are submitted prior to the first building permit application. Those standards may be applied to modification applications submitted after the first building permit application if agreed to by the development proponent.

(ii) The amendments made to clause (i) by the act that added clause (i) shall also be retroactively applied to modification applications submitted prior to January 1, 2022.

(4) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

~~(h)~~ *(i)* (1) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(2) (A) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (c). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. The local government shall consider the application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the development proponent agrees to a change in objective standards. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (c), and includes, but is not limited to, demolition, grading, encroachment, and building permits and final maps, if necessary.

(B) The amendments made to subparagraph (A) by the act that added this subparagraph shall also be retroactively applied to subsequent permit applications submitted prior to January 1, 2022.

(3) (A) If a public improvement is necessary to implement a development that is subject to the streamlined, ministerial approval pursuant to this section, including, but not limited to, a bicycle lane, sidewalk or walkway, public transit stop, driveway, street paving or overlay, a curb or gutter, a modified intersection, a street sign or street light, landscape or hardscape, an above-ground or underground utility connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining wall, and any related work, and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development.

(B) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall do all of the following:

(i) Consider the application based upon any objective standards specified in any state or local laws that were in effect when the original development application was submitted.

(ii) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval pursuant to this section.

(C) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall not do either of the following:

(i) Adopt or impose any requirement that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(ii) Unreasonably delay in its consideration, review, or approval of the application.

~~(i)~~ *(j)* (1) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.

~~(j)~~ *(k)* The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(1) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(l) For purposes of establishing the total number of units in a development under this chapter, a development or development project includes both of the following:

(1) All projects developed on a site, regardless of when those developments occur.

(2) All projects developed on sites adjacent to a site developed pursuant to this chapter if, after January 1, 2023, the adjacent site had been subdivided from the site developed pursuant to this chapter.

~~(k)~~ *(m)* For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) (A) Subject to the qualification provided by ~~subparagraph (B),~~ *subparagraphs (B) and (C),* "affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(B) For a development for which an application pursuant to this section was submitted prior to January 1, 2019, that includes 500 units or more of housing, and that dedicates 50 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at, or below, 80 percent of the area median income, affordable rent for at least 30 percent of these units shall be set at an affordable rent as defined in subparagraph (A) and "affordable rent" for the remainder of these units shall mean a rent that is consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(C) For a development that dedicates 100 percent of units, exclusive of a manager's unit or units, to lower income households, "affordable rent" shall mean a rent that is consistent with the maximum rent levels stipulated by the public program providing financing for the development.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits ~~an application for streamlined approval~~ *a housing development project application to a local government under the streamlined, ministerial review process* pursuant to this section.

(5) "Completed entitlements" means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Health care expenditures" include contributions under Section 401(a), 501(c), or 501(d) of the Internal Revenue Code and payments toward "medical care," as defined in Section 213(d)(1) of the Internal Revenue Code.

(7) "Housing development project" has the same meaning as in Section 65589.5.

~~(6)~~ *(8)* "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

~~(7)~~ *(9)* ~~"Moderate income~~ *"Moderate-income* housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

~~(8)~~ *(10)* "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

~~(9)~~ *(11)* "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

~~(10) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.~~

~~(11)~~ *(12)* "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

~~(12)~~ *(13)* "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

~~(l)~~ *(n)* The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(m)~~ *(o)* The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (c) is not a "project" as defined in Section 21065 of the Public Resources Code.

(p) Notwithstanding any law, for purposes of this section and for development in compliance with the requirements of this section on property owned by or leased to the state, the Department of General Services may act in the place of a locality or local government, at the discretion of the department.

(q) (1) For developments proposed in a census tract that is designated either as a moderate resource area, low resource area, or an area of high segregation and poverty on the most recent "CTAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development, within 45 days after receiving a notice of intent, as described in subdivision (b), and before the development proponent submits an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c), the local government shall provide for a public meeting to be held by the city council or county board of supervisors to provide an opportunity for the public and the local government to comment on the development.

(2) The public meeting shall be held at a regular meeting and be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(3) Comments may be provided by testimony during the meeting or in writing at any time before the meeting concludes.

(4) The development proponent shall attest in writing that it attended the meeting described in paragraph (1) and reviewed the public testimony and written comments from the meeting in its application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(5) If the local government fails to hold the hearing described in paragraph (1) within 45 days after receiving the notice of intent, the development proponent shall hold a public meeting on the proposed development before submitting an application pursuant to this section.

(r) (1) This section shall not apply to applications for developments proposed on qualified sites that are submitted on or after January 1, 2024, but before July 1, 2025.

(2) For purposes of this subdivision, "qualified site" means a site that meets the following requirements:

(A) The site is located within an equine or equestrian district designated by a general plan or specific or master plan, which may include a specific narrative reference to a geographically determined area or map of the same. Parcels adjoined and only separated by a street or highway shall be considered to be within an equestrian district.

(B) As of January 1, 2024, the general plan applicable to the site contains, and has contained for five or more years, an equine or equestrian district designation where the site is located.

(C) As of January 1, 2024, the equine or equestrian district applicable to the site is not zoned to include residential uses, but authorizes residential uses with a conditional use permit.

(D) The applicable local government has an adopted housing element that is compliant with applicable law.

(3) The Legislature finds and declares that the purpose of this subdivision is to allow local governments to conduct general plan updates to align their general plan with applicable zoning changes.

(s) The provisions of clause (iii) of subparagraph (E) of paragraph (8) of subdivision (a) relating to health care expenditures are distinct and severable from the remaining provisions of this section. However, the remaining portions of paragraph (8) of subdivision (a) are a material and integral part of this section and are not severable. If any provision or application of paragraph (8) of subdivision (a) is held invalid, this entire section shall be null and void.

~~(n)~~ *(t)* It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

~~(o)~~ *(u)* This section shall remain in effect only until January 1, ~~2026,~~ *2036,* and as of that date is repealed.

SEC. 3. *The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 2 of this act amending Section 65913.4 of the Government Code applies to all cities, including charter cities.*

SEC. 4. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

Date of Hearing: July 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 423 (Wiener) – As Amended June 30, 2023

SENATE VOTE: 29-5

SUBJECT: Land use: streamlined housing approvals: multifamily housing developments

SUMMARY: Extends and expands by right approval (i.e., not subject to the California Environmental Quality Act (CEQA) or other discretionary review by the relevant city or county) of both affordable and market-rate multifamily housing projects pursuant to SB 35 (Wiener), Chapter 366, Statutes of 2017, including extending the sunset from 2026 to 2036, relaxing specified construction labor requirements, expanding to parcels where parking is a permitted use, and removing the exclusion of the coastal zone.

EXISTING LAW:

1) Allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." (California Constitution, Article XI, Section 7)

2) Establishes Planning and Zoning Law, which requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including housing and land use elements, and requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans. (Government Code (GC) Sections 65000 – 66301)

3) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code (PRC) 21000, et seq.)

4) Exempts from CEQA any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an EIR has been certified after January 1, 1980, unless substantial changes or new information require the preparation of a supplemental EIR for the specific plan, in which case the exemption applies once the supplemental EIR is certified. (GC 65457)

5) Exempts from CEQA specified residential housing projects which meet detailed criteria established to ensure the project does not have a significant effect on the environment, including:

    a) Affordable agricultural housing projects not more than 45 units within a city, or 20 units within an agricultural zone, on a site not more than five acres in size;

b) Urban affordable housing projects not more than 100 units on a site not more than five acres in size; and,

c) Urban infill housing projects not more than 100 units on a site not more than four acres in size which is within one-half mile of a major transit stop.

(PRC 21159.20-21159.24)

6) Requires metropolitan planning organizations (MPOs) to include a sustainable communities strategy (SCS), as defined, in their regional transportation plans, or an alternative planning strategy (APS), for the purpose of reducing greenhouse gas (GHG) emissions, aligns planning for transportation and housing, and creates specified incentives for the implementation of the strategies, including CEQA exemption or abbreviated review for residential or mixed-use residential "transit priority projects" if the project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either an approved SCS or APS. (PRC 21155.1)

7) Exempts from CEQA residential, mixed-use, and "employment center" projects, as defined, located within "transit priority areas," as defined, if the project is consistent with an adopted specific plan and specified elements of an SCS or APS. (PRC 21155.4)

8) Exempts from CEQA multi-family residential and mixed-use housing projects on infill sites within cities and unincorporated areas that are within the boundaries of an urbanized area or urban cluster. (PRC 21159.25)

9) The CEQA Guidelines include a categorical exemption for infill development projects, as follows:

a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;

b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;

c) The project site has no value as habitat for endangered, rare, or threatened species;

d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and,

e) The site can be adequately served by all required utilities and public services.

(CEQA Guidelines 15332)

10) Establishes a ministerial approval process for certain multifamily housing projects that are proposed in local jurisdictions that have not met regional housing needs. Requires eligible projects to meet specified standards, including paying prevailing wage to construction workers and use of a skilled and trained workforce. Includes exclusions of several types of environmentally sensitive sites, including the entire coastal zone. (GC 65913.4, added by SB 35)

11) Establishes a ministerial approval process for affordable housing projects in commercial zones. Requires eligible projects to pay prevailing wage to construction workers and requires projects of 50 units or more to participate in an apprenticeship program and make specified healthcare contributions for construction workers. The coastal zone is not excluded, but specified height requirements apply and neither the Coastal Act nor the Coastal Commission's land use authority is preempted. (GC 65912.100 et seq., added by AB 2011 (Wicks), Chapter 647, Statutes of 2022)

12) Pursuant to the California Coastal Act of 1976 (Coastal Act):

    a) Regulates development in the coastal zone and requires a new development to comply with specified requirements. (PRC 30000)

    b) Requires any person wishing to perform or undertake any development in the coastal zone, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit (CDP). (PRC 30600)

    c) Provides that the scenic and visual qualities of coastal areas must be considered and protected as a resource of public importance. Permitted development must be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (PRC 30251)

    d) Requires all new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard; assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; be consistent with requirements imposed by an air pollution control district or the Air Resources Board as to each particular development; minimize energy consumption and vehicle miles traveled; and, where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. (PRC 30253 (f))

    e) Provides that the Legislature finds and declares that it is important for the California Coastal Commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low- and moderate-income in the coastal zone. (PRC 30604 (g))

THIS BILL:

1) Extends the sunset for SB 35 from January 1, 2026 to January 1, 2036.

2) Amends SB 35's labor standards, as follows:

a) Removes the requirement to meet the skilled and trained workforce provisions for any project that does not have floors *used for human occupancy* that are located more than 85 feet above the grade plane.

b) For any project having floors used for human occupancy that are located more than 85 feet above the grade plane, amends the existing workforce provisions as follows:

i) Removes the requirement that the provisions only apply to projects of 50 units or more in highly populated coastal counties and 25 units or more in other counties, as specified;

ii) Requires the developer to enter into contracts with the prime contractor to utilize a skilled and trained workforce, as defined, for each scope of construction work, unless:

I) The prime contractor fails to receive at least three responsive bids that attest to satisfying the skilled and trained workforce requirements; or

II) All contractors, subcontractors and craft unions performing work on the development are subject to a multi-craft project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure, as specified.

iii) Requires the prime contractor, except where they fail to receive three bids, to provide an affidavit under penalty of perjury that it will use a skilled and trained workforce, and that the prime contractor obtain from its subcontractors an enforceable commitment to use a skilled and trained workforce for each scope of work.

iv) Requires subcontractors, if the skilled and trained requirements apply, to provide the prime contractor with:

I) An affidavit signed under penalty of perjury that a skilled and trained workforce will be employed; and

II) A monthly compliance report.

v) Requires the developer, upon issuance of the invitation or bid solicitation for the project, and no less than seven days before the bid is due, to send a notice or solicitation that describes the project to the following entities within the jurisdiction of the proposed project site:

I) Any bona fide labor organization representing workers in the building and construction trades and the local building and construction trades council; and

II) Any organization representing contractors that may perform work necessary to complete the project, including any contractors' association or regional builder's exchange.

c) Requires that, for a development of 50 or more housing units, the development proponent must require both of the following:

i) Contractors and subcontractors with construction craft employees must either participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards, as specified, or request the dispatch of apprentices from a state-approved apprenticeship program, as specified; and

ii) Contractors and subcontractors with construction craft employees must make health care expenditures for each employee, as specified. This requirement is severable from the rest of the bill.

d) Adds the following enforcement requirements:

i) The obligation of the contractors and subcontractors to pay prevailing wages may be enforced by an underpaid worker through an administrative complaint or civil action, and by a joint labor-management committee through a civil action;

ii) The requirement to provide health care may be enforced by a joint labor-management cooperation committee, as specified; and

iii) A locality, and any labor standards enforcement agency the locality lawfully maintains, has standing to take administrative action or sue a construction contractor for failure to comply with this bill.

3) Strikes out SB 35's exclusion of the coastal zone.

4) Applies SB 35 to apply to local governments until they adopt a compliant housing element, as determined by the Department of Housing and Community Development (HCD).

5) Removes the applicability of SB 35 until July 1, 2025 on specified qualified sites located within an equestrian district designated by a general plan or specific or master plan. Specifies that this provision is intended to allow local governments to conduct general plan updates to align it with applicable zoning changes.

6) Provides the following regarding the approval of an SB 35 project:

a) Requires the governing body of a city or county to hold a public hearing within 45 days of receiving a notice of intent to submit an application pursuant to SB 35, if the proposed project is located in a census tract designated as a moderate or low resource area, or an area of high segregation and poverty, as specified;

b) The local determination about a project's compliance with the objective planning standards must be made by the local government's planning director or other equivalent position;

c) All departments of the local government that are required to issue an approval of the development prior to the granting of an entitlement must comply with the requirements of this section within the law's specified time periods;

d) Removes the provision that public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate; and

e) Local governments cannot request studies, information or other materials that are not related to determining whether the development is consistent with the objective standards applicable to a development, nor can the local government require compliance with any standards necessary to receive a post-entitlement permit before the issuance of the project's entitlement.

7) Authorizes the Department of General Services (DGS), at its discretion, to act in the place of a locality or local government, for development on property owned by or leased to the state that is developed pursuant to SB 35.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- HCD estimates minor and absorbable costs for staff to conduct any additional monitoring and enforcement efforts, update guidelines, and provide technical assistance to local agencies and developers. HCD notes that it may require additional resources for the cumulative workload associated with this bill in conjunction with several other measures, should they all be enacted. (General Fund)

- Unknown, potentially significant ongoing costs for the Department of Industrial Relations to conduct oversight and enforcement activities related to prevailing wage and apprenticeship standards on projects constructed pursuant to SB 35 streamlining provisions. There would also be unknown annual penalty revenue gains to partially offset these costs. Actual costs and penalty revenues would depend upon the number of qualifying projects constructed under SB 35 streamlining provisions and the number of complaints and referrals to the Division of Labor Standards and Enforcement that require enforcement actions, investigations, and appeals. (State Public Works Enforcement Fund)

- DGS does not anticipate any fiscal impacts related to provisions that authorize it to act in place of a local agency for development of property on property owned or leased to the state. (General Fund)

- Unknown local costs to update guidance and continue to conduct streamlined project reviews, make determinations, conduct expedited design reviews, and include SB 35 information in annual progress reports. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds)

COMMENTS:

1) **CEQA exemptions for housing**. CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines, for a wide range of residential projects. Since 1978, CEQA has included statutory exemptions for housing. There are now at least 14 distinct CEQA exemptions for housing projects. The majority of residential projects are

approved via exemption or negative declaration under CEQA, or through ministerial permits where CEQA does not apply.

A few existing CEQA exemptions are specific to projects with an affordable housing fraction, the rest are available to affordable and market-rate projects alike. Each exemption includes a range of conditions, including requirements for prior planning-level review, as well as limitations on the location and characteristics of the site. These conditions are intended to guard against the approval of projects with significant environmental impacts that go undisclosed and unmitigated – endangering workers, residents and the greater environment. More recently, bills such as SB 35 and AB 2011 have established ministerial approval for multifamily housing projects, where local discretionary review, including CEQA, is replaced with construction labor requirements, exclusion of specified sensitive sites, and a checklist of "objective" criteria.

2) **Author's statement:**

SB 423 extends the sunset on one of California's most successful housing laws, SB 35, which expedites the approval of new homes. California has failed to create enough housing at all income levels. Currently, California ranks 49th out of 50 states in per capita housing units. The Legislative Analyst's Office recommends the state produce 100,000 units annually beyond the expected 100,000 to 140,000 units per year. To help address this crisis, the Legislature passed SB 35 in 2017. The Terner Center reported that over 18,000 units have been proposed under SB 35, with 13,000 built. Of those proposed, 13,000 are affordable to very low- or low-income categories. The Mission Economic Development Agency utilized SB 35 for a 130-unit, 100% affordable project, and, decreased timelines between 6 months and 1 year. Although the bill has successfully increased affordable housing production, SB 35 under-performed producing market-rate housing, something SB 423 seeks to address.

Without an extension, SB 35 will expire on Jan. 1, 2026. SB 423 extends SB 35 to 2036, keeping a primary mechanism for streamlining housing production in place. This bill also helps California's construction workforce thrive. Construction workers will be protected by the requirement to pay prevailing wages, and on projects over 50 units, contractors must offer apprentices employment and cover health care expenditures. This creates an economic base and opportunities for construction workers and provides our state with the highly skilled workforce it needs to build our future. SB 423 ensures California does not take a step back in addressing the housing crisis, but rather leans in to assist localities in streamlining much needed housing.

3) **Fire hazard severity zone exclusion includes outdated and subjective exemptions**. The site exclusion for high fire hazard severity zones (on page 12, lines 5-15) remains unchanged since SB 35 passed in 2017. However, since SB 35, the authority of local agencies to exempt state-designated fire zones was repealed by AB 2911 (Friedman), Chapter 641, Statutes of 2018. In addition, other housing streamlining bills (including AB 2011 in 2022 and AB 1449 (Alvarez) and AB 1633 (Ting) this year) have not included an exemption based on unspecified "mitigation measures" in this bill. *The author and the committee may wish to consider* amending this provision as follows:

(C) 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.~~

4) **To coast or not to coast**? The Coastal Commission regulates proposed development along the coast and in nearby areas. Generally, any development activity in the coastal zone requires a CDP from the Commission or local government with a certified local coastal program (LCP). Eighty-five percent of the coastal zone is currently governed by LCPs drafted by cities and counties, and certified by the Commission. In these certified jurisdictions, local governments issue the CDP with detailed planning and design standards. There are 14 jurisdictions without LCPs – also known as "uncertified" jurisdictions – where the Commission is still the direct permitting authority. The width of the coastal zone varies, but it can extend up to five miles inland from the shore, including private and public property.

   The original Coastal Act of 1976 included PRC 30213, which stated:

   > *Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided.*

   The definition of low- and moderate-income households was anyone earning up to 120% of the median income, which included about 2/3 of California households at the time.

   In the first five years of the Coastal Act, the Commission successfully required the construction of more than 5,000 affordable, deed-restricted, owner-occupancy and rental units in high-priced areas such as Laguna Nigel, San Clemente, and Dana Point. It also collected about $2 million in in-lieu fees for additional housing opportunities throughout the state.

   Over time, however, many local governments objected to the loss of local control and stated that the Coastal Act's housing policies were preventing them from preparing LCPs. Subsequently, the Legislature passed SB 626 (Mello), Chapter 1007, Statutes of 1981, to remove the housing polices from the Coastal Act and instead provide that "*No local coastal program shall be required to include housing policies and programs."* (PRC 30500.1) That legislation allowed any developer who had not yet completed a coastal housing project to require the Commission to remove the affordable requirements from the permit and prohibited the Commission from requiring local governments to include affordable housing in their LCPs. As a result, affordable housing development waned in the coastal zone.

   Despite this, the Commission has maintained its mandate to protect the coast and, as of 2019, had approved more than 90% of all development applications. In fact, the Coastal Act continues to require the Commission to encourage housing opportunities for persons of low and moderate income. It further prohibits, in reviewing residential development applications for low- and moderate-income housing, the issuing local agency, or the Commission on appeal, from requiring measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional permitted density.

The Commission, in fact, has never denied a single affordable housing project in its history. Furthermore, permit review doesn't appear to be a roadblock to development. In terms of affordable housing project application turnaround times, permits are subject to the Permit Streamlining Act, thus the Commission must comply with those deadlines. Further, the Commission finds 'No Substantial Issue' on most of the appeals received, and turns permit applications around in 49 days.

SB 35 included a blanket exclusion of the coastal zone, and this bill repeals that exclusion. The Coastal Commission is a state agency, with land use authority emanating from the Coastal Act, as well as other authorities delegated by federal law. Review by the Commission (or even a city implementing a LCP) of a CDP application is different than a city reviewing a project under CEQA. GC 65913.4 does not explicitly preempt the Coastal Act, so it's not clear what application of this bill's by right process in the Coastal Zone means and how it would (or wouldn't) work.

Regardless, advocates on both sides are now fighting over whether this bill should exclude or include the coastal zone. If the bill passes in its current form, and developers attempt to build by right in the coastal zone, the fight is likely to extend to the Commission and/or the courts. Whether one thinks protecting public access or unchecked development better serves the coast, removing the coastal zone exclusions without addressing the unique complications of coastal land use is hardly a recipe for streamlining.

In the absence of a compromise, *the author and the committee may wish to consider* restoring the coastal zone exclusion, as follows:

> 65913.4(a)(6)(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

5) **Other loose ends**. This bill has also drawn concerns from a range of environmental justice, housing justice, and other community groups regarding gentrification, displacement, inadequate affordability requirements, locating housing in hazardous areas, inadequate/subjective cleanup standards for toxic sites, and lack of community input in the development process.

   All of this is an expected consequence of the by right process, which eliminates not only CEQA review, but other forms of public consultation regarding individual development projects, and may also disregard prior community planning work. Many of these concerns could be addressed by limiting by right eligibility, particularly for market-rate projects, to sites covered by, and consistent with, an HCD-approved housing element (as many of the issues listed above would have been addressed at the community level in the housing element process).

   An additional issue has been raised regarding June 19 author's amendments, which changed the 85 foot threshold for skilled and trained construction labor requirements as follows:

   > (F) For any project ~~over 85 feet in height above grade,~~ *having floors used for human occupancy that are located more than 85 feet above the grade plane*, the following skilled and trained workforce provisions apply:

The effect of this change is that only the residential stories built above parking or retail levels, for example, will count toward the 85 foot limit. This represents a substantial change in the effect of this provision, added by May 23 Senate Appropriations Committee amendments.

6) **Double referral**. This bill was approved by the Assembly Housing and Community Development Committee on June 28, 2023 by a vote of 7-1.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP
Abundant Housing LA
Active San Gabriel Valley
Associated General Contractors of California
Bay Area Council
Build Casa
California Apartment Association
California Catholic Conference
California Community Builders
California Community Economic Development Association
California Housing Consortium
California Housing Partnership Corporation
California State Council of Service Employees International Union
California YIMBY
Carpenter Local Union 1599
Carpenters Local 152
Carpenters Local 22
Carpenters Local 35
Carpenters Local 701
Carpenters Local Union #1109
Carpenters Local Union 1789
Carpenters Local Union 2236
Carpenters Union Local 180
Carpenters Union Local 217
Carpenters Union Local 405
Carpenters Union Local 46
Carpenters Union Local 505
Carpenters Union Local 605
Carpenters Union Local 713
Carpenters Union Local 751
Central City Association
Central Valley Urban Institute
Chico Councilmember Addison Winslow
City of Bakersfield
City of Berkeley Councilmember Rashi Kesarwani
City of Buena Park Council Member José Trinidad-Castañeda
City of Gilroy Council Member Zach Hilton

City of Mountain View Council Member Emily Ramos
City of Mountain View Council Member Lucas Ramirez
City of Santa Monica Council Member Jesse Zwick
City of Santa Monica Councilmember Gleam Davis
City of Sunnyvale Council Member Richard Mehlinger
City of Ventura Councilmember Mike Johnson
CivicWell
Community Coalition
Construction Employers' Association
Council of Infill Builders
Culver City for More Homes
Cupertino for All
Dignitymoves
District Council of Plasterers and Cement Masons of Northern California
Drywall Lathers Local 9109
Drywall Lathers Union Local 9068
Drywall Lathers Union Local 9083
Drywall Local Union 9144
East Bay for Everyone
East Bay Housing Organizations
East Bay YIMBY
Eastside Housing for All
Episcopal Communities Services
Episcopal Community Services of San Francisco
Fieldstead and Company
Fremont for Everyone
Greenbelt Alliance
Grow the Richmond
Habitat for Humanity California
Housing Action Coalition
How to ADU
Icon CDC
Inclusive Lafayette
Inner City Law Center
LeadingAge California
League of Women Voters of California
LISC San Diego
Livable Communities Initiative
Los Altos City Council Member Jonathan Weinberg
Los Angeles Area Chamber of Commerce
Mayor of City & County of San Francisco London Breed
Menlo Park Mayor Jen Wolosin
Mercy Housing California
Meta
MidPen Housing
Millwrights Local 102
Milpitas Councilmember Anthony Phan
Mothers Out Front California
Mountain View YIMBY

Napa-Solano for Everyone
Neighborhood Housing Services of Los Angeles County
New Way Homes
Nor Cal Carpenters Union
Northern Neighbors
Northern Neighbors SF
Passive House California
PATH (People Assisting the Homeless)
Peninsula for Everyone
Peninsula Interfaith Climate Action
People for Housing - Orange County
Pile Drivers Local 34
Place Initiative
Progress Noe Valley
Redwood Coalition for Climate and Environmental Responsibility
Resources for Community Development
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley Community Foundation
Silicon Valley Leadership Group
South Bay YIMBY
Southern California Association of Non-profit Housing
Southside Forward
Southwest Mountain States Regional Council of Carpenters
Streets for All
Streets for People
Sunnyvale City Council Member Alysa Cisneros
Supervisor Jaron Brandon, Tuolumne County
Supportive Housing Alliance
Sustainable Growth Yolo
The Pacific Companies
The Passive House Network
United Contractors
United Way of Greater Los Angeles
Urban Environmentalists
Urban League of San Diego County
Valley Industry and Commerce Association
Ventura County YIMBY
Wall and Ceiling Alliance
West Hollywood Mayor Pro Tempore John M Erickson
Western Wall and Ceiling Contractors Association
Westside for Everyone
YIMBY Action
YIMBY Democrats of San Diego County

Opposition

Association of California Cities – Orange County
California Cities for Local Control
California Contract Cities Association
Catalysts for Local Control
City of Beverly Hills
City of Camarillo
City of Carlsbad
City of Carson
City of Chino
City of Corona
City of Del Mar
City of Eastvale
City of Elk Grove
City of Fairfield
City of Indian Wells
City of Jurupa Valley
City of Laguna Niguel
City of Norwalk
City of Ontario
City of Palo Alto
City of Pleasanton
City of Rancho Cucamonga
City of Rancho Palos Verdes
City of Rosemead
City of San Marcos
City of Santa Clarita
City of Simi Valley
City of Stockton
City of Thousand Oaks
City of Torrance
City of Wildomar
League of California Cities
Livable California
Marin County Council of Mayors and Councilmembers
Midcoast Community Council
Pacific Palisades Community Council
San Francisco Latino Task Force
San Gabriel Valley Council of Governments
State Alliance for Firesafe Road Regulations
Sunnyvale United Neighbors
Sustainable Tamalmonte
Town of Truckee
West Torrance Homeowners Association
Western Regional Advocacy Project

Oppose Unless Amended

Azul
Ballona Wetlands Institute

California Coastal Commission
California Coastal Protection Network
California Coastkeeper Alliance
California Environmental Justice Alliance Action
Calle 24 Latino Cultural District
Center for Biological Diversity
Chinatown Community Development Center
Citizens Preserving Venice
City of Dublin
City of Half Moon Bay
City of Livermore
City of San Ramon
Coalition on Homelessness, San Francisco
Coastal Environmental Rights Foundation
Coastal Lands Action Network
Communities for a Better Environment
Crenshaw Subway Coalition
Defend Ballona Wetlands
Endangered Habitats League
Environmental Action Committee of West Marin
Environmental Center of San Diego
Environmental Justice Coalition for Water
Friends, Artists and Neighbors of Elkhorn Slough
Housing Rights Committee of San Francisco
Mission Economic Development Agency
Ocean Conservation Research
Orange County Coastkeeper
Poder
Public Trust Alliance
Resource Renewal Institute
San Francisco Community Land Trust
Save Capp Street
Sierra Club California
Smith River Alliance
SoCal 350 Climate Action
Soma Pilipinas Filipino Cultural Heritage District
Surfrider Foundation
The River Project
Town of Danville
Turtle Island Restoration Network
United to Save the Mission
Young Community Developers

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /