TOWN OF LOS GATOS
JOINT SPECIAL MEETING OF THE TOWN COUNCIL AND PLANNING COMMISSION STUDY SESSION AGENDA
APRIL 7, 2025
110 EAST MAIN STREET AND VIA TELECONFERENCE TOWN COUNCIL CHAMBERS
5:15 PM

Matthew Hudes, Mayor
Rob Moore, Vice Mayor
Mary Badame, Council Member
Rob Rennie, Council Member
Maria Ristow, Council Member

IMPORTANT NOTICE

This is a hybrid meeting and will be held in-person at the Town Council Chambers at 110 E. Main Street and virtually through Zoom Webinar (log-in information provided below). Members of the public may provide public comments for agenda items in-person or virtually through the Zoom Webinar by following the instructions listed below. The live stream of the meeting may be viewed on television and/or online at www.LosGatosCA.gov/TownYouTube.

HOW TO PARTICIPATE

The public is welcome to provide oral comments in real-time during the meeting in three ways:

Zoom Webinar (Online): Join from a PC, Mac, iPad, iPhone or Android device. Please click this URL to join: https://losgatosca-gov.zoom.us/j/83911327574?pwd=zz1uCbFXUpRacoTBe04CT8S5cNnmIC.1
Passcode: 472234 You can also type in 839 1132 7574 in the "Join a Meeting" page on the Zoom website at zoom.us and use passcode 472234.

When the Mayor announces the item for which you wish to speak, click the "raise hand" feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand.

Telephone: Please dial (877) 336-1839 for US Toll-free or (636) 651-0008 for US Toll. (Conference code: 1052180)

If you are participating by calling in, press #2 on your telephone keypad to raise your hand.

In-Person: Please complete a "speaker's card" located on the back of the chamber benches and return it to the Town Clerk before the meeting or when the Mayor announces the item for which you wish to speak.

NOTES: (1) Comments will be limited to three (3) minutes or less at the Mayor's discretion.
(2) If you are unable to participate in real-time, you may email Clerk@losgatosca.gov with the subject line "Public Comment Item #__ " (insert the item number relevant to your comment).
(3) Deadlines to submit written comments are:

11:00 a.m. the Thursday before the Council meeting for inclusion in the agenda packet.
11:00 a.m. the Monday before the Council meeting for inclusion in an addendum.
11:00 a.m. on the day of the Council meeting for inclusion in a desk item.

CALL MEETING TO ORDER

ROLL CALL

APPROVE REMOTE PARTICIPATION *(This item is listed on the agenda in the event there is an emergency circumstance requiring a Council Member to participate remotely under AB 2449 (Government Code 54953)).*

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Council only on matters listed on the agenda. Each speaker is limited to three minutes or such time as authorized by the Mayor.)*

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items.)*

1. Receive Information on and Discuss Recent Updates to State Builder's Remedy Law and the California Environmental Quality Act

ADJOURNMENT *(Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time)*

ADA NOTICE In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk's Office at (408) 354-6834. Notification at least two (2) business days prior to the meeting date will enable the Town to make reasonable arrangements to ensure accessibility to this meeting [28 CFR §35.102-35.104].

NOTE: The ADA access ramp to the Town Council Chambers is under construction and will be inaccessible through June 2025. Persons who require the use of that ramp to attend meetings are requested to contact the Clerk's Office at least two (2) business days prior to the meeting date.

NOTICE REGARDING SUPPLEMENTAL MATERIALS - Materials related to an item on this agenda submitted to the Town Council after initial distribution of the agenda packets are available for public inspection in the Clerk's Office at Town Hall, 110 E. Main Street, Los Gatos and on Town's website at www.losgatosca.gov. Town Council agendas and related materials can be viewed online at https://losgatos-ca.municodemeetings.com/.

TOWN OF LOS GATOS
COUNCIL AGENDA REPORT

MEETING DATE: 04/07/2025
ITEM NO: 1

DATE: April 4, 2025

TO: Mayor and Town Council
Chairperson and Planning Commission

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: Receive Information on and Discuss Recent Updates to State Builder's Remedy Law and the California Environmental Quality Act

RECOMMENDATION:

Conduct a Joint Study Session with the Planning Commission to receive information on and discuss recent updates to the state Builder's Remedy law and CEQA review for Builder's Remedy projects.

BACKGROUND AND DISCUSSION:

The purpose of this Study Session is for the Town Council, the Planning Commission, and members of the public to receive and discuss information regarding:

- Recent updates to the state Builder's Remedy law, which is codified at Government Code Section 65589.5; and
- An overview of the California Environmental Quality Act ("CEQA") and its application to Builder's Remedy projects.

There will be a presentation by Barbara Kautz with the law firm of Goldfarb & Lipman followed by time for questions and answers.

This will not be a forum for the discussion of individual planning applications. Individual planning applications must be discussed at noticed public hearings that are specific to those projects.

Summary of SB 330, the Builder's Remedy, and CEQA

1) Senate Bill 330

Reviewed by: Community Development Director

Senate Bill 330 (2019) enacted Government Code Section 65941.1 (Attachment 1) to authorize a "vesting" process for housing development applicants. If applicants submit a Preliminary Application with the information required by the statute, the applicants vest to the Town standards in place at the time the Preliminary Application was submitted. In cities and towns without HCD-approved housing elements, applicants have submitted SB 330 Preliminary Applications and are "vested" to the jurisdiction's status of not having a certified Housing Element.

2) The Builder's Remedy

The Builder's Remedy is codified in Government Code Section 65589.5 (Attachment 2). This law was not commonly referenced by applicants until recently. Government Code Section 65589.5(d) sets forth five grounds on which a city or town can disapprove or condition a qualifying housing development project.

Per Government Code Section 65589.5(d)(5), one of those grounds is that the city or town has an adopted Housing Element that substantially complies with state law and the project is inconsistent with the zoning ordinance and general plan designation. Subsection (d)(1) is known as the "Builder's Remedy," because, if a city or town does not have an adopted Housing Element complying with state law, this finding cannot be made to deny a project that is inconsistent with the general plan and zoning.

While the Town did adopt a Housing Element on January 30, 2023, the state Housing and Community Development Department ("HCD") has opined that the January 30th Housing Element did not substantially comply with state Housing Element law. In addition, the state's Builder's Remedy law has been revised to provide that local jurisdictions do not have the ability to "self-certify" their Housing Elements and that approval by either a court or HCD is required to have an adequate Housing Element. This provision states that it is "declaratory of existing law." HCD's findings are presumed to be correct.

Subsequent to HCD's letter, Town staff worked with HCD to revise the Housing Element and adopted a substantially compliant Housing Element on June 4, 2024. Based on HCD's letter and state law, SB 330 Preliminary Applications that were submitted prior to June 4, 2024, referencing the Builder's Remedy have been accepted for processing.

Government Code Section 65589.5(d) also sets forth four additional grounds upon which cities or towns can deny or modify projects. One of those grounds is that a proposed project causes a "specific, adverse impact" because it does not conform with an adopted, objective "public health and safety" standard, and the impact cannot be mitigated. Other grounds include a violation of state or federal law that cannot be mitigated, and inadequate water or sewer service.

3) Recent Amendments to State Builder's Remedy Law

The Legislature substantially modified the Builder's Remedy provisions effective January 1, 2025. Key provisions include:

- Reduced required affordability from 20 percent of total units to 13 percent of "base density."
- Defined a "Builder's Remedy project." The chief change was specifying allowed densities. Now at least 80 units/acre (plus density bonus) are allowed in Los Gatos.
- If project meets definition of Builder's Remedy project::
    - Town must use zoning district allowing density and type of development; if none, developer can select standards in other districts.
    - Town cannot take actions to make project infeasible or impose standards that preclude the project from being constructed as proposed by the applicant.
    - Projects considered to conform with zoning and general plan "for all purposes."
    - Existing projects can elect to opt into all or some provisions.

4) CEQA

CEQA sets forth the method by which local jurisdictions analyze the environmental effects of proposed projects. In sum, the process is as follows:

- Identify the project.
- Determine whether there are any applicable exemptions.
- If there are no exemptions, a CEQA consultant prepares an Initial Study.
- Based on the Initial Study, the local jurisdiction prepares one of the following:
    - Negative Declaration, finding that there will be no significant impacts.
    - Mitigated Negative Declaration, finding that there are potential significant impacts but that they will be mitigated to less than significance.
    - Environmental Impact Report, analyzing the significant impacts of the project.

With regard to the cumulative impacts of proposed Builder's Remedy projects, staff proposes to retain a CEQA consultant to prepare a cumulative impacts analysis that can be considered along with the individual CEQA reviews.

COORDINATION:

This report was coordinated with the Community Development Department.

FISCAL IMPACT:

There is no fiscal impact associated with this Study Session.

ENVIRONMENTAL ASSESSMENT:

This Study Session is not a project subject to CEQA, because no action will be taken.

Attachments:
1. SB 330 Preliminary Application Statute
2. Builder's Remedy Statute

Cal Gov Code § 65941.1

Deering's California Codes are current through all legislation of the 2024 Regular and Special sessions

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 7 Planning and Land Use (Divs. 1 — 3) > Division 1 Planning and Zoning (Chs. 1 — 13) > Chapter 4.5 Review and Approval of Development Projects (Arts. 1 — 6) > Article 3 Applications for Development Projects (§§ 65940 — 65945.9)

Notice

This section has more than one version with varying effective dates.

§ 65941.1. Information required for preliminary application to be deemed submitted; Checklist and form; Timelines [Repealed effective January 1, 2030]

(a) An applicant for a housing development project, as defined in paragraph (3) of subdivision (b) of Section 65905.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

(5) The proposed number of parking spaces.

(6) Any proposed point sources of air or water pollutants.

(7) Any species of special concern known to occur on the property.

(8) Whether a portion of the property is located within any of the following:

(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.

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

(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

(D) 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.

(E) 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.

(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

(9) Any historic or cultural resources known to exist on the property.

(10) The number of proposed below market rate units and their affordability levels.

(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.

(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

(B) Environmentally sensitive habitat areas, as defined in *Section 30240 of the Public Resources Code*.

(C) A tsunami run-up zone.

(D) Use of the site for public access to or along the coast.

(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.

(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b)

(1) A development proponent that submits a preliminary application providing the information required by subdivision (a) may include in its preliminary application a request for a preliminary fee and exaction estimate, which the city, county, or city and county shall provide within 30 business days of the submission of the preliminary application.

(2) For development fees imposed by an agency other than a city, county, or city and county, including fees levied by a school district or a special district, the development proponent shall request the fee schedule from the agency that imposes the fee, and the agency that imposes the fee shall provide the fee schedule to the development proponent without delay.

(3) For purposes of this subdivision:

(A) "Exaction" has the same meaning as defined in Section 65940.1.

(B)

(i) "Fee" means a fee or charge described in the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(ii) Notwithstanding clause (i), "fee" does not include either of the following:

(I) The cost of providing electrical or gas service from a local publicly owned utility.

(II) A charge imposed on a housing development project to comply with the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*).

(C) "Fee and exaction estimate" means a good faith estimate of the total amount of fees and exactions expected to be imposed in connection with the project.

(4) Except for the provision of the fee and exaction estimate by the local agency, nothing in this subdivision shall create or affect any rights or obligations with respect to fees or exactions.

(5) The fee and exaction estimate shall be for informational purposes only and shall not be legally binding or otherwise affect the scope, amount, or time of payment of any fee or exaction that is determined by other provisions of law.

(6) A development proponent may request a fee schedule from a city, county, or special district for fees described in Chapter 7 (commencing with Section 66012), or for the cost of providing electrical or gas service from a local publicly owned utility. The city, county, special district, or local publicly owned utility shall provide the fee schedule upon request.

(c)

(1) Each local agency shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.

(2) The Department of Housing and Community Development shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form pursuant to paragraph (1). Adoption of the standardized form 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*.

(3) A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a).

(d) After submittal of all of the information required by subdivision (a), if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, the housing development project shall not be deemed to have submitted a preliminary application that satisfies this section until the development proponent resubmits the information required by subdivision (a) so that it reflects the revisions. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(e)

(1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit

an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.

(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

(3) This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.

(f) Notwithstanding any other law, submission of a preliminary application in accordance with this section shall not preclude the listing of a tribal cultural resource on a national, state, tribal, or local historic register list on or after the date that the preliminary application is submitted. For purposes of Section 65589.5 or any other law, the listing of a tribal cultural site on a national, state, tribal, or local historic register on or after the date the preliminary application was submitted shall not be deemed to be a change to the ordinances, policies, and standards adopted and in effect at the time that the preliminary application was submitted.

(g) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

History

Added *Stats 2019 ch 654 § 8 (SB 330)*, effective January 1, 2020, repealed January 1, 2025. Amended *Stats 2020 ch 166 § 4 (AB 168)*, effective September 25, 2020, repealed January 1, 2025; *Stats 2020 ch 165 § 9 (SB 1030)*, effective September 25, 2020, repealed January 1, 2025 (ch 166 prevails); *Stats 2021 ch 161 § 6 (SB 8)*, effective January 1, 2022, repealed January 1, 2030; *Stats 2022 ch 258 § 27 (AB 2327)*, effective January 1, 2023, operative January 1, 2024, repealed January 1, 2030; *Stats 2024 ch 358 § 2 (AB 1820)*, effective January 1, 2025, repealed January 1, 2030.

Annotations

Notes

Editor's Notes—

Amendments:

Note—

Editor's Notes—

For citation of act and legislative findings & declarations and intent, see the 2019 Note following *Gov C § 65589.5*.

For legislative findings & declarations, see the 2020 Note following *Gov C § 65400*.

Amendments:

2020 Amendment (ch 166):

Added (e) and redesignated former (e) as (f).

2021 Amendment (ch 161):

Substituted “paragraph (3) of subdivision (b) of Section 65905.5” for “paragraph (2) of subdivision (h) of Section 65589.5” in the introductory language of (a); and substituted “January 1, 2030” for “January 1, 2025” in (f).

2022 Amendment (ch 258):

Substituted “Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of” for “Section 25356 of” in (a)(8)(C).

2024 Amendment (ch 358):

Added (b); and redesignated former (b) through (f) as (c) through (g).

Note—

Stats 2024 ch 358 provides:

SEC. 4. The Legislature finds and declares all of the following:

(a) A recent study conducted by the Terner Center for Housing Innovation at the University of California, Berkeley, found that fees and exactions can amount to up to 18 percent of the median home price, that these fees and exactions are extremely difficult to estimate, and that fees and exactions continue to rise in California while decreasing nationally.

(b) Increasing housing production is a matter of statewide concern rather than a municipal affair as that term is used in *Section 5 of Article XI of the California Constitution*, and one of the impediments to housing production is a lack of predictability and transparency when assessing impact fees. Therefore, Section 2 of this act amending *Section 65941.1 of the Government Code*, and Section 3 of this act adding *Section 65943.1 to the Government Code*, both of which increase impact fee transparency, apply to all cities, including charter cities.

Stats 2022 ch 258 provides:

SEC. 131. Any section of any act enacted by the Legislature during the 2022 calendar year, other than a section of the annual maintenance of the codes bill or another bill with a subordination clause, that takes effect on or before January 1, 2023, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is chaptered before or after this act.

Commentary

Law Revision Commission Comments

2022—

> *Section 65941.1(a)(8)(C)*is amended to update a cross-reference in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with *Section 25300) of Division 20 of the Health and Safety Code*.

Research References & Practice Aids

Hierarchy Notes:

Cal Gov Code Title 7, Div. 1

Cal Gov Code Title 7, Div. 1, Ch. 4.5

Cal Gov Code Title 7, Div. 1, Ch. 4.5, Art. 3

End of Document

Cal Gov Code § 65589.5

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 7 Planning and Land Use (Divs. 1 — 3) > Division 1 Planning and Zoning (Chs. 1 — 13) > Chapter 3 Local Planning (Arts. 1 — 14) > Article 10.6 Housing Elements (§§ 65580 — 65589.55)

§ 65589.5. Housing Accountability Act; Legislative findings; Prerequisites to local government's or agency's rejection or disapproval of affordable housing developments or emergency shelters; Rights and duties of local agencies; Charter cities; Burden of proof; Writ

(a)

(1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall home ownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in home ownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) 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, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(4) It is the intent of the Legislature that the amendments removing provisions from subparagraphs (D) and (E) of paragraph (6) of subdivision (h) and adding those provisions to *Sections 65589.5*.1 and 65589.5.2 by Assembly Bill 1413 (2023), insofar as they are substantially the same as existing law, shall be considered restatements and continuations of existing law, and not new enactments.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) For a housing development project for very low, low-, or moderate-income households, or an emergency shelter, a local agency shall not disapprove the housing development project or emergency shelter, or condition approval in a manner that renders the housing development project or emergency

shelter infeasible, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with *Section 65588*, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to *Section 65584* for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by *Section 65008*. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to *Section 65400*. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of *Section 65583*. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

(A) Inconsistency with the zoning ordinance or general plan land use designation.

(B) The eligibility to claim a welfare exemption under subdivision (g) of *Section 214 of the Revenue and Taxation Code*.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction had adopted a revised housing element that was in substantial compliance with this article, and the housing development project or emergency shelter was inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan.

(A) This paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed on a site, including a candidate site for rezoning, that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction’s housing element if the housing development project is consistent with the density specified in the housing element, even though the housing development project was inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation on the date the application was deemed complete.

(B) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate

that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of *Section 65583*, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of *Section 65583*, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of *Section 65583*.

(6) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction did not have an adopted revised housing element that was in substantial compliance with this article and the housing development project is not a builder's remedy project.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with *Section 65088*) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with *Section 30000) of the Public Resources Code*). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to *Section 21081 of the Public Resources Code* or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*).

(f)

(1) Except as provided in paragraphs (6) and (8) of this subdivision, and subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to *Section 65584*. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Nothing in this section shall limit a project's eligibility for a density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to *Section 65915*.

(2) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of *Section 65583* and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of *Section 65583*. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(5) For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(6) Notwithstanding paragraphs (1) to (5), inclusive, all of the following apply to a housing development project that is a builder's remedy project:

(A) A local agency may only require the project to comply with the objective, quantifiable, written development standards, conditions, and policies that would have applied to the project had it been proposed on a site with a general plan designation and zoning classification that allow the density and unit type proposed by the applicant. If the local agency has no general plan designation or zoning classification that would have allowed the density and unit type proposed by the applicant, the development proponent may identify any objective, quantifiable, written development standards, conditions, and policies associated with a different general plan designation or zoning classification within that jurisdiction, that facilitate the project's density and unit type, and those shall apply.

(B)

(i) Except as authorized by paragraphs (1) to (4), inclusive, of subdivision (d), a local agency shall not apply any individual or combination of objective, quantifiable, written development standards, conditions, and policies to the project that do any of the following:

(I) Render the project infeasible.

(II) Preclude a project that meets the requirements allowed to be imposed by subparagraph (A), as modified by any density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to *Section 65915*, from being constructed as proposed by the applicant.

(ii) The local agency shall bear the burden of proof of complying with clause (i).

(C)

(i) A project applicant that qualifies for a density bonus pursuant to *Section 65915* shall receive two incentives or concessions in addition to those granted pursuant to paragraph (2) of subdivision (d) of *Section 65915*.

(ii) For a project seeking density bonuses, incentives, concessions, or any other benefits pursuant to *Section 65915*, and notwithstanding paragraph (6) of subdivision (o) of *Section 65915*, for purposes of this paragraph, maximum allowable residential density or base density means the density permitted for a builder's remedy project pursuant to subparagraph (C) of paragraph (11) of subdivision (h).

(iii) A local agency shall grant any density bonus pursuant to *Section 65915* based on the number of units proposed and allowable pursuant to subparagraph (C) of paragraph (11) of subdivision (h).

(iv) A project that dedicates units to extremely low-income households pursuant to subclause (I) of clause (i) of subparagraph (C) of paragraph (3) of subdivision (h) shall be eligible for the same density bonus, incentives or concessions, and waivers or reductions of development standards as provided to a housing development project that dedicates three percentage points more units to very low income households pursuant to paragraph (2) of subdivision (f) of *Section 65915*.

(v) All units dedicated to extremely low-income, very low income, low-income, and moderate-income households pursuant to paragraph (11) of subdivision (h) shall be counted as affordable units in determining whether the applicant qualifies for a density bonus pursuant to *Section 65915*.

(D)

(i) The project shall not be required to apply for, or receive approval of, a general plan amendment, specific plan amendment, rezoning, or other legislative approval.

(ii) The project shall not be required to apply for, or receive, any approval or permit not generally required of a project of the same type and density proposed by the applicant.

(iii) Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose.

(E) A local agency shall not adopt or impose any requirement, process, practice, or procedure or undertake any course of conduct, 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 a builder's remedy project.

(F)

(i) A builder's remedy project shall be deemed to be in compliance with the residential density standards for the purposes of complying with subdivision (b) of *Section 65912.123*.

(ii) A builder's remedy project shall be deemed to be in compliance with the objective zoning standards, objective subdivision standards, and objective design review standards for the purposes of complying with paragraph (5) of subdivision (a) of *Section 65913.4*.

(G)

(i)

(I) If the local agency had a local affordable housing requirement, as defined in *Section 65912.101*, that on January 1, 2024, required a greater percentage of affordable units than required under subparagraph (A) of paragraph (11) of subdivision (h), or required an affordability level deeper than what is required under subparagraph (A) of paragraph (11) of subdivision (h), then, except as provided in subclauses (II) and (III), the local agency may require a housing development for mixed-income households to comply with an otherwise lawfully applicable local affordability percentage or affordability level. The local agency shall not require housing for mixed-income households to comply with any other aspect of the local affordable housing requirement.

(II) Notwithstanding subclause (I), the local affordable housing requirements shall not be applied to require housing for mixed-income households to dedicate more than 20 percent of the units to affordable units of any kind.

(III) Housing for mixed-income households that is required to dedicate 20 percent of the units to affordable units shall not be required to dedicate any of the affordable units at an income level deeper than lower income households, as defined in *Section 50079.5 of the Health and Safety Code*.

(IV) A local agency may only require housing for mixed-income households to comply with the local percentage requirement or affordability level described in subclause (I) if it first makes written findings, supported by a preponderance of evidence, that compliance with the local percentage requirement or the affordability level, or both, would not render the housing development project infeasible. If a reasonable person could find compliance with either requirement, either alone or in combination, would render the project infeasible, the project shall not be required to comply with that requirement.

(ii) Affordable units in the development project shall have a comparable bedroom and bathroom count as the market rate units.

(iii) Each affordable unit dedicated pursuant to this subparagraph shall count toward satisfying a local affordable housing requirement. Each affordable unit dedicated pursuant to a local affordable housing requirement that meets the criteria established in this subparagraph shall count towards satisfying the requirements of this subparagraph. This is declaratory of existing law.

(7)

(A) For a housing development project application that is deemed complete before January 1, 2025, the development proponent for the project may choose to be subject to the provisions of this section that were in place on the date the preliminary application was submitted, or, if the project meets the definition of a builder's remedy project, it may choose to be subject to any or all of the provisions of this section applicable as of January 1, 2025.

(B) Notwithstanding subdivision (c) of *Section 65941.1*, for a housing development project deemed complete before January 1, 2025, the development proponent may choose to revise their application so that the project is a builder's remedy project, without being required to resubmit a preliminary application, even if the revision results in the number of residential units or square footage of construction changing by 20 percent or more.

(8) A housing development project proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, that is consistent with the density specified in the most recently updated and adopted housing element, and that is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete, shall be subject to the provisions of subparagraphs (A), (B), and (D) of paragraph (6) and paragraph (9).

(9) For purposes of this subdivision, "objective, quantifiable, written development standards, conditions, and policies" means criteria 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, including, but not limited to, any standard, ordinance, or policy described in paragraph (4) of subdivision (o). Nothing herein shall affect the obligation of the housing development project to comply with the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with *Section 18901) of Division 13 of the Health and Safety Code*. In the event that applicable objective, quantifiable, written development standards, conditions, and policies are mutually inconsistent, a development shall be deemed consistent with the criteria that permits the density and unit type closest to that of the proposed project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses that meet any of the following conditions:

(i) At least two-thirds of the new or converted square footage is designated for residential use.

(ii) At least 50 percent of the new or converted square footage is designated for residential use and the project meets both of the following:

(I) The project includes at least 500 net new residential units.

(II) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in *Section 50519 of the Health and Safety Code*..

(iii) At least 50 percent of the net new or converted square footage is designated for residential use and the project meets all of the following:

(I) The project includes at least 500 net new residential units.

(II) The project involves the demolition or conversion of at least 100,000 square feet of nonresidential use.

(III) The project demolishes at least 50 percent of the existing nonresidential uses on the site.

(IV) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in *Section 50519 of the Health and Safety Code*..

(C) Transitional housing or supportive housing.

(D) Farmworker housing, as defined in subdivision (h) of *Section 50199.7 of the Health and Safety Code*..

(3)

(A) "Housing for very low, low-, or moderate-income households" means housing for lower income households, mixed-income households, or moderate-income households.

(B) "Housing for lower income households" means a housing development project in which 100 percent of the units, excluding managers' units, are dedicated to lower income households, as defined in *Section 50079.5 of the Health and Safety Code*, at an affordable cost, as defined by *Section 50052.5 of the Health and Safety Code*, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(C)

(i) "Housing for mixed-income households" means any of the following:

(I) A housing development project in which at least 7 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of *Section 65915*, are dedicated to extremely low income households, as defined in *Section 50106 of the Health and Safety Code*..

(II) A housing development project in which at least 10 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of *Section 65915*, are dedicated to very low income households, as defined in *Section 50105 of the Health and Safety Code*..

(III) A housing development project in which at least 13 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of *Section 65915*, are dedicated to lower income households, as defined in *Section 50079.5 of the Health and Safety Code*..

(IV) A housing development project in which there are 10 or fewer total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of *Section 65915*, that is on a site that is smaller than one acre, and that is proposed for development at a minimum density of 10 units per acre.

(ii) All units dedicated to extremely low income, very low income, and low-income households pursuant to clause (i) shall meet both of the following:

(I) The units shall have an affordable housing cost, as defined in *Section 50052.5 of the Health and Safety Code*, or an affordable rent, as defined in *Section 50053 of the Health and Safety Code*..

(II) The development proponent shall agree to, and the local agency shall ensure, the continued affordability of all affordable rental units included pursuant to this section for 55 years and all affordable ownership units included pursuant to this section for a period of 45 years.

(D) "Housing for moderate-income households" means a housing development project in which 100 percent of the units are sold or rented to moderate-income households, as defined in *Section 50093 of the Health and Safety Code*, at an affordable housing cost, as defined in Section *50052.5 of the Health and Safety Code*, or an affordable rent, as defined in *Section 50053 of the Health and Safety Code*. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to *Section 50093 of the Health and Safety Code*.

(5) Notwithstanding any other law, until January 1, 2030, "deemed complete" means that the applicant has submitted a preliminary application pursuant to *Section 65941.1* or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to *Section 65943*. The local agency shall bear the burden of proof in establishing that the application is not complete.

(6) "Disapprove the housing development project" includes any instance in which a local agency does any of the following:

(A) Votes or takes final administrative action on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of *Section 65950*. An extension of time pursuant to Article 5 (commencing with *Section 65950*) shall be deemed to be an extension of time pursuant to this paragraph.

(C) Fails to meet the time limits specified in *Section 65913.3*.

(D) Fails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action if all of the following conditions are met:

(i) The project applicant provides written notice detailing the challenged conduct and why it constitutes disapproval to the local agency established under *Section 65100*.

(ii) Within five working days of receiving the applicant's written notice described in clause (i), the local agency shall post the notice on the local agency's internet website, provide a copy of the notice to any person who has made a written request for notices pursuant to subdivision (f) of *Section 21167 of the Public Resources Code*, and file the notice with the county clerk of each county in which the project will be located. The county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of *Section 21152 of the Public Resources Code*.

(iii) The local agency shall consider all objections, comments, evidence, and concerns about the project or the applicant's written notice and shall not make a determination until at least 60 days after the applicant has given written notice to the local agency pursuant to clause (i).

(iv) Within 90 days of receipt of the applicant's written notice described in clause (i), the local agency shall issue a written statement that it will immediately cease the challenged conduct or issue written findings that comply with both of the following requirements:

(I) The findings articulate an objective basis for why the challenged course of conduct is necessary.

(II) The findings provide clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing.

(v)

(I) If a local agency continues the challenged course of conduct described in the applicant's written notice and fails to issue the written findings described in clause (iv), the local agency shall bear the burden of establishing that its course of conduct does not constitute a disapproval of the housing development project under this subparagraph in an action taken by the applicant.

(II) If an applicant challenges a local agency's course of conduct as a disapproval under this subparagraph, the local agency's written findings described in clause (iv) shall be incorporated into the administrative record and be deemed to be the final administrative action for purposes of adjudicating whether the local agency's course of conduct constitutes a disapproval of the housing development project under this subparagraph.

(vi) A local agency's action in furtherance of complying with the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*), including, but not limited to, imposing mitigating measures, shall not constitute project disapproval under this subparagraph.

(E) Fails to comply with *Section 65905.5*. For purposes of this subparagraph, a builder's remedy project shall be deemed to comply with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.

(F)

(i) Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of Section 65943 and includes in the determination an item that is not required on the local agency's submittal requirement checklist. The local agency shall bear the burden of proof that the required item is listed on the submittal requirement checklist.

(ii) In a subsequent review of an application pursuant to *Section 65943*, requests the applicant provide new information that was not identified in the initial determination and upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of *Section 65943*. The local agency shall bear the burden of proof that the required item was identified in the initial determination.

(iii) Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of *Section 65943*, a reasonable person would conclude that the applicant has submitted all of the items required on the local agency's submittal requirement checklist, and the local agency upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of *Section 65943*.

(iv) If a local agency determines that an application is incomplete under *Section 65943* after two resubmittals of the application by the applicant, the local agency shall bear the burden of establishing that the determination is not an effective disapproval of a housing development project under this section.

(G) Violates subparagraph (D) or (E) of paragraph (6) of subdivision (f).

(H) Makes a written determination that a preliminary application described in subdivision (a) of *Section 65941.1* has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of *Section 65941.1*.

(I)

(i) Fails to make a determination of whether the project is exempt from the California Environmental Quality Act (Division 13 (commencing with *Section 21000*) of the Public Resources Code), or commits an abuse of discretion, as defined in subdivision (b) of *Section 65589.5*.1 if all of the conditions in *Section 65589.5*.1 are satisfied.

(ii) This subparagraph shall become inoperative on January 1, 2031.

(J)

(i) Fails to adopt a negative declaration or addendum for the project, to certify an environmental impact report for the project, or to approve another comparable environmental document, such as a sustainable communities environmental assessment pursuant to *Section 21155.2 of the Public Resources Code*, as required pursuant to the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*), if all of the conditions in *Section 65589.5*.2 are satisfied.

(ii) This subparagraph shall become inoperative on January 1, 2031.

(7)

(A) For purposes of this section and *Sections 65589.5*.1 and 65589.5.2, "lawful determination" means any final decision about whether to approve or disapprove a statutory or categorical exemption or a negative declaration, addendum, environmental impact report, or comparable environmental review document under the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*) that is not an abuse of discretion, as defined in subdivision (b) of *Section 65589.5*.1 or subdivision (b) of *Section 65589.5*.2.

(B) This paragraph shall become inoperative on January 1, 2031.

(8) Lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(9) Until January 1, 2030, "objective" means involving no personal or subjective judgment by a public official and being 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.

(10) Notwithstanding any other law, until January 1, 2030, "determined to be complete" means that the applicant has submitted a complete application pursuant to *Section 65943*.

(11) Builder's remedy project" means a project that meets all of the following criteria:

(A) The project is a housing development project that provides housing for very low, low-, or moderate-income households.

(B) On or after the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction did not have a housing element that was in substantial compliance with this article.

(C) The project has a density such that the number of units, as calculated before the application of a density bonus pursuant to *Section 65915*, complies with all of the following conditions:

(i) The density does not exceed the greatest of the following densities:

(I) Fifty percent greater than the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of *Section 65583.2*.

(II) Three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater.

(III) The density that is consistent with the density specified in the housing element.

(ii) Notwithstanding clause (i), the greatest allowable density shall be 35 units per acre more than the amount allowable pursuant to clause (i), if any portion of the site is located within any of the following:

(I) One-half mile of a major transit stop, as defined in *Section 21064.3 of the Public Resources Code*.

(II) A very low vehicle travel area, as defined in subdivision (h).

(III) A high or highest resource census tract, as identified by the latest edition of the "CTCAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development.

(D)

(i) On sites that have a minimum density requirement and are located within one-half mile of a commuter rail station or a heavy rail station, the density of the project shall not be less than the minimum density required on the site.

(I) For purposes of this subparagraph, "commuter rail" means a railway that is not a light rail, streetcar, trolley, or tramway and that is for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburb with service operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas, or between urbanized areas and outlying areas, using either locomotive-hauled or self-propelled railroad passenger cars, with multitrip tickets and specific station-to-station fares.

(II) For purposes subparagraph, "heavy rail" means an electric railway with the capacity for a heavy volume of traffic using high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, and high platform loading

(ii) On all other sites with a minimum density requirement, the density of the project shall not be less than the local agency's minimum density or one-half of the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of *Section 65583.2*, whichever is lower.

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

(12) "Condition approval" includes imposing on the housing development project, or attempting to subject it to, development standards, conditions, or policies.

(13) "Unit type" means the form of ownership and the kind of residential unit, including, but not limited to, single-family detached, single-family attached, for-sale, rental, multifamily, townhouse, condominium, apartment, manufactured homes and mobilehomes, factory-built housing, and residential hotel.

(14) Proposed by the applicant" means the plans and designs as submitted by the applicant, including, but not limited to, density, unit size, unit type, site plan, building massing, floor area ratio, amenity areas, open space, parking, and ancillary commercial uses.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the housing development project's application is complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is

consistent with the findings as described in subdivision (d), and that the findings are supported by a preponderance of the evidence in the record, and with the requirements of subdivision (o).

(j)

(1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2)

(A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to *Section 65915* shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(k)

(1)

(A)

(i) The applicant, a person who would be eligible to apply for residency in the housing development project or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii):

(I) The local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section.

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section.

(III)

(ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.

(ib) This subclause shall become inoperative on January 1, 2030.

(IV) The local agency violated a provision of this section applicable to a builder's remedy project.

(ii) If the court finds that one of the conditions in clause (i) is met, the court shall issue an order or judgment compelling compliance with this section within a time period not to exceed 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, provided, however, that the court shall not award attorney's fees in either of the following instances:

(I) The court finds, under extraordinary circumstances, that awarding fees would not further the purposes of this section.

(II)

(ia) In a case concerning a disapproval within the meaning of subparagraph (I) or (J) of paragraph (6) of subdivision (h), the court finds that the local agency acted in good faith and had reasonable cause to disapprove the housing development project due to the existence of a controlling question of law about the application of the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*) or implementing guidelines as to which there was a substantial ground for difference of opinion at the time of the disapproval.

(ib) This subclause shall become inoperative on January 1, 2031.

(B) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within the time period prescribed by the court, the time period prescribed by the court, the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a

local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Trust Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to *Section 65943*. In determining the amount of the fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to *Section 65584* and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Trust Fund for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(D) Nothing in this section shall limit the court's inherent authority to make any other orders to compel the immediate enforcement of any writ brought under this section, including the imposition of fees and other sanctions set forth under *Section 1097 of the Code of Civil Procedure.*

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it violated this section and (2) failed to carry out the court's order or judgment within the time period prescribed by the court, the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. If a court has previously found that the local agency violated this section within the same planning period, the court shall multiply the fines by an additional factor for each previous violation. For purposes of this section, "bad faith" includes, but is not limited to, an action or inaction that is frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit.

(m)

(1) Any action brought to enforce the provisions of this section shall be brought pursuant to *Section 1094.5 of the Code of Civil Procedure*, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of *Section 1094.6 of the Code of Civil Procedure* no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency

imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under *Section 904.1 of the Code of Civil Procedure.* If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(2)

(A) A disapproval within the meaning of subparagraph (I) of paragraph (6) of subdivision (h) shall be final for purposes of this subdivision, if the local agency did not make a lawful determination within the time period set forth in paragraph (5) of subdivision (a) of *Section 65589.5*.1 after the applicant's timely written notice.

(B) This paragraph shall become inoperative on January 1, 2031.

(3)

(A) A disapproval within the meaning of subparagraph (J) of paragraph (6) of subdivision (h) shall be final for purposes of this subdivision, if the local agency did not make a lawful determination within 90 days of the applicant's timely written notice.

(B) This paragraph shall become inoperative on January 1, 2031.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding *Section 1094.6 of the Code of Civil Procedure* or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o)

(1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of *Section 65941.1*, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of *Section 65941.1* was submitted.

(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant to *Section 65941.1* in the following circumstances:

(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*).

(D) The housing development project has not commenced construction within two and one-half years, or three and one-half years for an affordable housing project, following the date that the project received final approval. For purposes of this subparagraph:

(i) "Affordable housing project" means a housing development that satisfies both of the following requirements:

(I) Units within the development are subject to a recorded affordability restriction for at least 55 years for rental housing and 45 years for owner-occupied housing, or the first purchaser of each unit participates in an equity sharing agreement as described in subparagraph (C) of paragraph (2) of subdivision (c) of *Section 65915*.

(II) All of the units within the development, excluding managers' units, are dedicated to lower income households, as defined by *Section 50079.5 of the Health and Safety Code*.

(ii) "Final approval" means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:

(I) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.

(II) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

(E) The housing development project is revised following submittal of a preliminary application pursuant to *Section 65941.1* such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, including any other locally authorized program that offers additional density or other development bonuses when affordable housing is provided. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to *Section 65941.1* to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

(4) For purposes of this subdivision, "ordinances, policies, and standards" includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in *Section 66000*, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with *Section 21000) of the Public Resources Code*).

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential

units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

(8)

(A) This subdivision shall apply to a housing development project that submits a preliminary application pursuant to *Section 65941.1* before January 1, 2030.

(B) This subdivision shall become inoperative on January 1, 2034.

(p)

(1) Upon any motion for an award of attorney's fees pursuant to *Section 1021.5 of the Code of Civil Procedure*, in a case challenging a local agency's approval of a housing development project, a court, in weighing whether a significant benefit has been conferred on the general public or a large class of persons and whether the necessity of private enforcement makes the award appropriate, shall give due weight to the degree to which the local agency's approval furthers policies of this section, including, but not limited to, subdivisions (a), (b), and (c), the suitability of the site for a housing development, and the reasonableness of the decision of the local agency. It is the intent of the Legislature that attorney's fees and costs shall rarely, if ever, be awarded if a local agency, acting in good faith, approved a housing development project that satisfies conditions established in paragraph (1), (2), or (3) of subdivision (a) of *Section 65589.5*.1 or paragraph (1), (2), or (3) of subdivision (a) of *Section 65589.5*.2.

(2) This subdivision shall become inoperative on January 1, 2031.

(q) This section shall be known, and may be cited, as the Housing Accountability Act.

(r) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

History

Added Stats 1982 ch 1438 § 2. Amended *Stats 1990 ch 1439 § 1 (SB 2011)*; *Stats 1991 ch 100 § 1 (SB 162)*, effective July 1, 1991; *Stats 1992 ch 1356 § 1 (SB 1711)*; *Stats 1994 ch 896 § 2 (AB 3735)*; *Stats 1999 ch 968 § 6 (SB 948)*; *Stats 2001 ch 237 § 1 (AB 369)*; *Stats 2002 ch 147 § 1 (SB 1721)*; *Stats 2003 ch 793 § 3 (SB 619)*; *Stats 2004 ch 724 § 4 (AB 2348)*; *Stats 2005 ch 601 § 1 (SB 575)*, effective January 1, 2006; *Stats 2006 ch 888 § 5 (AB 2511)*, effective January 1, 2007; *Stats 2007 ch 633 § 4 (SB 2)*, effective January 1, 2008; *Stats 2010 ch 610 § 2 (AB 2762)*, effective January 1, 2011; *Stats 2015 ch 349 § 2 (AB 1516)*, effective January 1, 2016; *Stats 2016 ch 420 § 1 (AB 2584)*, effective January 1, 2017; *Stats 2017 ch 368 § 1 (SB 167)*, effective January 1, 2018; *Stats 2017 ch 373 § 1 (AB 678)*, effective January 1, 2018; *Stats 2017 ch 378 § 1.5 (AB 1515)*, effective January 1, 2018 (ch 378 prevails); *Stats 2018 ch 92 § 114 (SB 1289)*, effective January 1, 2019; *Stats 2018 ch 243 § 1 (AB 3194)*, effective January 1, 2019 (ch 243 prevails); *Stats 2019 ch 654 § 3 (SB 330)*, effective January 1, 2020; *Stats 2019 ch 665 § 3.1 (AB 1743)*, effective January 1, 2020 (ch 665 prevails); *Stats 2020 ch 165 § 5 (SB 1030)*, effective September 25, 2020; *Stats 2021 ch 161 § 1 (SB 8)*, effective January 1, 2022; *Stats 2021 ch 360 § 8.1 (AB 1584)*, effective January 1, 2022 (ch 360 prevails); *Stats 2022 ch 632 § 2 (SB 1252)*, effective January 1, 2023; *Stats 2022 ch 651 § 1 (AB 2234)*, effective January 1, 2023 (ch 651 prevails); *Stats 2023 ch 768 § 2 (AB 1633)*, effective January 1, 2024, inoperative January 1, 2031; *Stats 2024 ch 265 § 1 (AB 1413)*, effective January 1, 2025; *Stats 2024 ch 268 § 2.5 (AB 1893)*, effective January 1, 2025 (ch 268 prevails).

Annotations

Notes

Amendments:

Note—

Amendments:

1990 Amendment:

(1) Added subds (a)–(i); (2) redesignated the former section to be subd (j); and (3) substituted “paragraph (1)” for “subdivision (a)” in subd (j)(2).

1991 Amendment:

In addition to making technical changes; (1) substituted “subdivision (d)” for “subdivision (c)” at the end of subds (b) and (i); (2) added subdivision designation (h)(3); and (3) redesignated former subd (h)(3) to be subd (h)(4).

1992 Amendment:

In addition to making technical changes, (1) Added the second sentence of subd (d)(2); (2) amended subd (f) by adding (a) “written” after “to comply with”; and (b) “, conditions,” after “development standards”; and (3) added the second sentence of subd (j)(1).

1994 Amendment:

(1) Added “or very low income” after “need of low-income” near the end of subd (d)(1); and (2) amended the first sentence of subd (e) by (a) substituting “or” for “of”; and (b) deleting “Government Code or the” before “California Coastal Act”.

1999 Amendment:

(1) Amended the introductory clause of subd (d) by substituting (a) “very low, low- or” for “low- and” wherever it appears; and (b) “makes written findings, based upon substantial evidence, in the record, as to” for “finds, based upon substantial evidence,”; (2) amended subd (d)(1) by (a) adding “that has been revised in accordance with Section 65588 and that is in substantial compliance with this article,”; and (b) substituting “for very low, low-, or moderate-income” for “of low-income or very low income”; (3) substituted the last sentence of subd (d)(2) for the former last sentence which read: “As used in this paragraph, a 'specific, adverse impact' means a significant, unavoidable impact, as provided in written standards, policies, or conditions.”; (4) substituted “both the jurisdiction's zoning ordinance and” for “the jurisdiction's” after “is inconsistent with” in subd (d)(6); (5) substituted “Nothing in this section shall” for “Nor shall anything in this section” at the beginning of the last sentence of subd (f); (6) deleted the comma after “to charter cities” in subd (g); (7) amended the first sentence of subd (h)(2) by (a) substituting “very low, low- or moderate-income households' means that either (A)” for “low- and moderate-income households' means”; (b) substituting “or (B) 100 percent of the” for “and the remaining”; (c) substituting “moderate-income households” for “either lower income households or persons and families of moderate income,”; and (d) adding “, or middle-income households, as defined in Section 65008 of this code” at the end; (8) substituted “very low or low-income” for “the lower” after “of units for” in the last sentence of subd (h)(3); (9) added subd (h)(5); (10) amended subd (i) by (a) substituting “very low-, low-, or” for “low- and” after “development affordable to”; and (b) adding “and that the findings are supported by substantial evidece in the record” at the end; (11) amended subd (j) by substituting (a) “applicable, objective general plan and zoning standards and criteria” for “the applicable general plan, zoning, and development policies” in the introductory clause; and (b) “quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions. as they existed on the date the application was deemed complete” for “unavoidable impact, as provided in written standards, policies, or conditions” in subd (j)(1); and (12) added subds (k) and (*l*).

2001 Amendment:

(1) Substituted “housing is a critical problem that” for “affordable housing is a critical problem which” in subd (a)(1); (2) amended the last sentence of subd (a)(2) by (a) substituting “that limit the approval of” for “which limit the approval of affordable”; (b) deleting “affordable” after “of land for”; and (c) deleting “potentially affordable” after “by producers of”; (3) amended subd (a)(4) by (a) substituting “that result in disapproval of” for “which result in disapproval of affordable”; and (b) deleting “affordable after “density of”, and after “standards for”; (4) amended subd (b) by substituting (a) “housing developments that” for “affordable housing developments which”; and (b) “complying with” for “meeting the provisions of”; (5) substituted “for” for “to” after “agricultural lands” in the first sentence of subd (c); (6) amended the introductory clause of subd (d) by substituting (a) “for” for “affordable to” after “housing development project”; and (b) “that” for “which” after “in a manner”; (7) substituted “that” for “which” after “resource preservation” in subd (d)(5); (8) deleted “affordable” after “the lack of” in subd (g); (9) amended subd (h) by substituting (a) “Housing for” for “Affordable to” at the beginning of subd (h)(2); and (b) “means” for “shall mean” near the beginning of subd (h)(3); (10) amended subd (i) by substituting “that” for “which” after “percentage of a lot”, and after “Section 65943,”; and (b) “for” for “affordable to” after “a housing development”; (11) amended the first sentence of subd (k) by (a) adding “housing for” after “the development of”; and (b) deleting “properly” after “households without”; and (12) added “and shall award reasonable attorney fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section” at the end of the second sentence of subd (k).

2002 Amendment:

(1) Added “and declares” in subd (a); (2) amended subd (d) by adding (a) “, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code,”; and **(b)** “, including through the use of design review standards,”; (3) added “design changes,” in subd (i); (4) added “, including design review standards,” in subd (j); and (5) added “, including farmworker housing,” in subd (k).

2003 Amendment:

(1) Added subds (h)(2)–(h)(2)(B); and (2) redesignated former subds (h)(2)–(h)(5) to be subds (h)(3)–(h)(6).

2004 Amendment:

(1) Deleted former subd (d)(4) which read: “Approval of the development project would increase concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.”; (2) redesignated former subds (d)(5) and (d)(6) to be subds (d)(4) and (d)(5); (3) amended subd (d)(5) by (a) substituting “element in substantial compliance with this article” for “element pursuant to this article”; and (b) adding the last sentence; (4) added “the Public Resources Code.” in subd (e); (5) amended subd (f) by (a) adding “objective, quantifiable” after “comply with”; (b) substituting “jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project” for “quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583”; and (c) substituting “that are essential” for “which are essential”; and (6) substituted “attorney's fees” for “attorney fees” in the second sentence of subd (k).

2005 Amendment:

(1) Added the comma after “low-” both times it appears in subd (d); (2) amended subd (d) by (a) substituting present subd (d)(1) for former subd (d)(1) which read: “(d)(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.”; (b) added the second paragraph to subd (d)(2); (c) added

subdivision designation to subd (d)(5)(A); (d) substituted" revised housing element in accordance with Section 65588 that is" for "housing element" in subd (d)(5); (e) amending subd (d)(5)(A) by (i) substituting "paragraph" for "subdivision"; (ii) adding "or conditionally approve"; (iii) deleting "defined in subdivision (a)" after "housing development project"; and (iv) adding "as suitable or available"; (f) added subd (d)(5)(B); (3) amended subd (k) by (a) adding the first sentence; and (b) adding ", including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency" at the end; (4) redesignated former subd (l) to be subd (n); (5) added subds (l) and (m); (6) and amended subd (n) by (a) adding "or subdivision (m) of this section", and (b) substituting "prepared" for "filed".

2006 Amendment:

(1) Amended subd (d) by (a) deleting ", including through the use of design review standards," after "condition approval"; and (b) adding ", including through the use of design review standards," after "income households"; (2) amended subd (e) by (a) deleting "Nothing in" in the beginning; (b) substituting "does not" for "shall be construed to"; and (c) substituting "This section also does not" for "Neither shall anything in this section be construed to"; (3) amended subd (f) by (a) deleting "Nothing in" in the beginning, (b) substituting "does not" for "shall be construed to"; and (c) substituting "This section also does not" for "Nothing in this section shall be construed to"; (4) deleted former subd (h)(5) which read: "(5) 'Neighborhood' means a planning area commonly identified in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood."; (5) redesignated former subd (h)(6) to be subd (h)(5); and (6) added subd (o).

2007 Amendment:

(1) Added ", including emergency shelters," in subd (a)(1); (2) substituted ", including emergency shelters, that contribute to meeting the need" for "that contribute to meeting the housing need" in subd (b); (3) substituted "moderate-income households, or an emergency shelter, or" for "moderate-income households or"; and (b) adding "or an emergency shelter," after "moderate-income households," in subd (d); (4) added the fourth sentence in subd (d)(1); (5) amended subd (d)(2) by adding (a) "or emergency shelter" after "The development project"; and (b) "or rendering the development of the emergency shelter financially infeasible"; (6) added "or rendering the development of the emergency shelter financially infeasible" in subd (d)(3)"; (7) added "or an emergency shelter" in subds (d)(4) and (d)(5); (8) added subd (d)(5)(C); (9) amended subd (e) by substituting (a) "Nothing in this section shall be construed to" for "this section does not"; and (b) "Neither shall anything in this section be construed to relieve" for "this section also does not relieve"; (10) added subdivision designation (f)(1); (11) substituted "Nothing in this section shall be construed to prohibit" for "this section does not prohibit" in subd (f)(1); (12) added subd (f)(2); (13) added subdivision designation (f)(3); (14) added "or emergency shelter" in subd (f)(3); (15) added ", including emergency shelter," in subd (g); (16) substituted "any" for "either" after "use consisting of" in subd (h)(2); (17) added subd (h)(2)(C); (18) added "or emergency shelter" after (a) "development" both times it appears; and (b) "the development project" in subd (k); (19) added "an emergency shelter, or" after "the development of" each time it appears in subd (k); and (20) amended subd (*l*) by (a) adding "or emergency shelter" after "housing development"; and (b) substituting "subdivision (k)" for "paragraph (k)".

2010 Amendment:

Deleted "subparagraph (B) of paragraph (1) of" after "specified in" in the first sentence of subd (h)(5)(B).

2015 Amendment:

(1) Substituted "subdivision (h) of Section 50199.7" for "subdivision (d) of Section 50199.50" in the introductory clause of subd (d); (2) deleted "that" after "planning period and" in the first sentence of subd (d)(5)(B); (3) amended

the first sentence of subd (e) by substituting (a) “congestion management program” for “Congestion Management Program”; and (b) “California Coastal Act of 1976” for “California Coastal Act”; (4) amended the first sentence of subd (g)(3) by substituting (a) “persons and families of moderate income” for “moderate-income households”; and (b) “persons and families of middle income” for “middle-income households”; and (5) added the comma after “subdivision (k), the court” in the first sentence of subd (*l*).

2016 Amendment:

(1) Added subdivision designation (k)(1); (2) amended the first sentence of subd (k)(1) by (a) substituting “, a person” for “or any person”; and (b) adding “, or a housing organization”; (3) deleted “the provisions of” following “to enforce” in the second sentence of subd (k)(1); and (4) added subd (k)(2).

2017 Amendment:

Redesignated the former (a)(1)-(a)(4) as (a)(1)(A)-(a)(1)(D); added “development” twice in (a)(1)(D); added (a)(2); substituted “development projects” for “developments” in (b); in the introductory language of (d), added “housing development” preceding “project infeasible” and substituted “a preponderance of the” for “substantial”; added “housing development” following “approve the” in the second sentence of (d)(1); added “housing” preceding “development” in the first sentence of (d)(2), and in (d)(4), (d)(5), and (d)(5)(A); added “housing development” in (d)(3); added the second sentence of (d)(5); substituted “, low-, and moderate-income” for “and low-income” in the second sentence of (d)(5)(B); added “housing” preceding “development” in the first sentence of (f)(1) and in (f)(3); added (f)(4); in (h)(2)(B), substituted “with at least two-thirds of the square footage designated for residential use” for “in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories” and deleted the former second sentence which read: “As used in this paragraph, neighborhood commercial means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.”; added “housing” in the introductory language of (h)(5); added “, including any required land use approvals or entitlements necessary for the issuance of a building permit” in (h)(5)(A); in (i), in the first sentence, substituted “imposes conditions” for “imposes restrictions”, “lower density, or a reduction of” for “a reduction of allowable densities or”, “conditions on the development” for “restrictions on the development”, and “a preponderance of the” for “substantial”, and added “or the imposition of conditions” following “challenges the denial”, and added the second sentence; added designation (j)(1); redesignated former (j)(1) and (j)(2) as (j)(1)(A) and (j)(1)(B); in the introductory language of (j)(1), substituted “, zoning, and subdivision standards” for “and zoning standards”, “impose a” for “approve it upon the”, and “a preponderance of the” for “substantial”; added (j)(2); added designation (k)(1)(A); rewrote former (k)(1)(A) which read: “The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.”; added (k)(1)(B) and (k)(1)(C); in (k)(2), added “housing development” in the first sentence and added the last sentence; in *(l)*, substituted “shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five” for “may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund” in the first sentence, deleted the former second and third sentences

which read: “Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.”, and substituted “includes, but is not limited to,” for “shall mean” in the last sentence; and in (m), added “, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section” in the first sentence, added the second sentence, and in the third sentence, substituted “may” for “shall” and added “, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure”.

2018 Amendment (ch 243):

Added (a)(3); added (j)(4); and redesignated former (j)(4) as (j)(5).

2019 Amendment (ch 665):

Deleted “should” following “section” in (a)(2)(L); in (d)(2), substituted “The following” for “Inconsistency with the zoning ordinance or general plan land use designation” and “safety:” for “safety.”; added (d)(2)(A) and (d)(2)(B); substituted “Except as provided in subdivision (o), nothing in” for “Nothing in this section” in (f)(1) and (f)(2); substituted “Except as provided in subdivision (o), nothing in this section shall be construed to” for “This section does not” in (f)(3); added (h)(5); redesignated former (h)(5) as (h)(6); added (h)(7)–(h)(9); in (i), substituted “housing development project’s the application is complete” for “the application is deemed complete pursuant to Section 65943”, added the comma following “(d)”, added “, and with the requirements of subdivision (o)” and deleted the former last sentence which read: “For purposes of this section, ‘lower density’ includes any conditions that have the same effect or impact on the ability of the project to provide housing.”; substituted “application was deemed complete” for “housing development project’s application is determined to be complete” in (j)(1); deleted former (j)(5) which read: “For purposes of this section, ‘lower density’ includes any conditions that have the same effect or impact on the ability of the project to provide housing.”; rewrote former (k)(1)(A) which read: “The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a the court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney’s fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, ‘lower density’ includes conditions that have the same effect or impact on the ability of the project to provide housing.”; added (o); and redesignated former (o) as (p).

2020 Amendment (ch 165):

Added “this section” in the first sentence of (f)(1) and in (f)(2); added “or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to Section 65943” in (h)(5); substituted “clause (i)” for “clause(i)” in (k)(1)(A)(ii); deleted former designation (k)(1)(B)(i); substituted “Building Homes and Jobs Trust Fund” for “Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Trust Fund” in the first sentence and last sentences of (k)(1)(B);

deleted former (k)(1)(B)(ii) which read: “If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature”; and added “, including any other locally authorized program that offers additional density or other development bonuses when affordable housing is provided” in (o)(2)(E).

2021 Amendment (ch 360):

Substituted “January 1, 2030” for “January 1, 2025” in (h)(5), (h)(8), (h)(9), and (k)(1)(A)(i)(iii)(1b): substituted “the housing development project’s application” for “housing development project’s the application” in (i); added “, incentive, concession, waiver, or reduction of development standards” in (j)(3); in (o)(2)(D), added the introductory paragraph and (i), redesignated former (D) and (D)(i) and (ii) as (ii) and (ii)(I) and (II), deleted the former first sentence in (D)(ii) which read “The housing development project has not commenced construction within two and one-half years following the date that the project received final approval.” and deleted “For purposes of this subparagraph,” from the beginning of the remaining sentence; and in (8), added (8)(A), added designation (B), and substituted “January 1, 2034” for “January 1, 2025” at the end.

2022 Amendment (ch 651):

Added (h)(6)(C); added “for rental housing and 45 years for owner-occupied housing, or the first purchaser of each unit participates in an equity sharing agreement as described in subparagraph (C) of paragraph (2) of subdivision (c) of Section 65915” in (o)(2)(D)(i)(I); and made stylistic changes.

2023 Amendment (ch 768):

Added (h)(6)(D); redesignated former (h)(7) through (h)(9) as (h)(8) through (h)(10); substituted “provided however, that the court shall not award attorney’s fees in either of the following instances” for “except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section” in the introductory language of (k)(1)(A)(ii); added (k)(1)(A)(ii)(I) through (k)(1)(A)(ii)(I)(ib); added the (m)(1) designation; added (m)(2) and (m)(3); added (p); redesignated former (p) as (q); added (r); and made stylistic changes.

2024 Amendment (ch 268):

Added (a)(4); rewrote introductory language of (d); rewrote (d)(5); added (d)(6); in (f)(1), added “paragraphs (6) and (8) of this subdivision, and” in the first sentence and added the last sentence; added (f)(5) through (f)(9); rewrote (h)(2)(B) and (h)(3); deleted the last sentence of (h)(4); added the second sentence of (h)(5); rewrote (h)(6) through (h)(14); deleted “or without making findings supported by a preponderance of the evidence” at the end of (k)(1)(A)(i)(I) and (k)(1)(A)(i)(II); added (k)(1)(A)(i)(IV); added “a time period not to exceed” in the first sentence of (k)(1)(A)(ii); substituted “subparagraph (I) or (J)” for “subparagraph (D) or (E)” in (k)(1)(A)(ii)(II)(ia); substituted “the time period prescribed by the court” for “60 days issued pursuant to subparagraph (A)” in the first sentence of (k)(1)(B); added (k)(1)(D); rewrote (l); in (m)(2)(A), substituted “subparagraph (I)” for “subparagraph (D)” and “paragraph (5) of subdivision (a) of Section 65589.5.1” for “subclause (V) of clause (i) of that subparagraph”; substituted “subparagraph (J)” for “subparagraph (E)” in (m)(3)(A); substituted “paragraph (1), (2), or (3) of subdivision (a) of Section 65589.5.1 or paragraph (1), (2), or (3) of subdivision (a) of Section 65589.5.2” for “subclauses (I), (II), and (III) of clause (i) of subparagraph (D) of paragraph (6) of subdivision (h) or clauses (i), (ii), and (iii) of subparagraph (E) of paragraph (6) of subdivision (h)” in the second sentence of (p)(1); and made stylistic changes.

Note—

Stats 2024 ch 268 provides:

SECTION 1. The Legislature finds and declares all of the following:

Cal Gov Code § 65589.5

(a) California has an ongoing statewide housing shortage crisis. The legislative findings, declarations, and intent set forth in *Section 65580*, *Section 65581*, and subdivision (a) of *Section 65589.5 of the Government Code* are reiterated and incorporated here by reference.

(b) In addition, according to the latest update to the Statewide Housing Plan, updated every four years as required by law under *Section 50423 of the Health and Safety Code*, recent data confirms a need to plan for a minimum of 2,500,000 homes statewide over the next eight-year cycle, including at least 643,352 homes for very low income households, 384,910 homes for low-income households, 420,814 homes for moderate-income households, and 1,051,177 homes for above moderate-income households (Department of Housing and Community Development, A Home for Every Californian: 2022 Statewide Housing Plan (March 2022) available at https://statewide-housing-plan-cahcd.hub.arcgis.com).

(c) The state's statutory housing objectives are not attainable absent the timely cooperation of all local governments, including charter cities, to update and faithfully implement their housing elements without delay. Indeed, the Legislature has long recognized the role local governments have to use the powers vested in them to meet the housing needs of all economic segments of the community.

(d) Relatedly, one of the most efficient and effective means of assuring cooperation from local governments in achieving the statewide goal of planning and permitting enough housing so that supply can meet demand is an effective self-executing remedy that housing developers can avail themselves of when local housing elements are not timely updated and implemented.

(e) To achieve the state's statutory housing objective, the Legislature has amended the Housing Element Law, as set forth in Article 10.6 (commencing with *Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code*, to reflect the complexities of existing land use practices and economic realities, and to prompt local governments to timely adopt and implement their updated housing elements.

(f) While the Legislature has, in recent years, modernized and updated many provisions in the Housing Element Law, provisions setting forth remedial measures that do not require judicial intervention have largely been left untouched.

(g) Although the Legislature recognizes and continues to believe that each locality is best capable of determining how it should meet and address its share of regional housing needs, current land use permitting practices continue to hinder the state's statutory housing objectives in increasing housing supply to meet demand.

(h) Harmonizing the interests of all state and local agencies to eliminate counterproductive actions—such as by prohibiting overly burdensome land use controls, while providing clear guidance at the state level as to the implementation of self-executing remedies—is essential to attaining the state's statutory housing objectives.

(i) Self-executing remedies, such as the existing "builder's remedy" provision set forth in the Housing Accountability Act, can be more effectively deployed by the private sector to develop more housing projects of all levels of affordability, and would encourage local agencies to adopt and implement housing elements in a timely fashion, if the Legislature provides clearer guidance to obviate the need for judicial intervention, and would lower barriers to economic feasibility. To that end, the amendments set forth in this act with respect to "builder's remedy" projects are intended to provide greater clarity of existing law, and should not be interpreted as constraints on or impediments to processing current "builder's remedy" project applications deemed complete.

(j) Absent statewide measures to promote the immediate production of new homes, the imbalance between supply and demand in housing will likely continue in the foreseeable future. Left unabated, the unmet demand will lead to even higher housing costs. According to the Legislative Analyst's Office report, California's High Housing Costs: Causes and Consequences (2015), California needs to produce around 210,000 market rate units annually "to seriously mitigate its problems with housing affordability." Moreover, considerable evidence shows that: new market-rate housing improves overall housing affordability at the statewide, regional, local, and neighborhood levels; when new market-rate production is significantly constrained relative to existing and future demand, existing housing units come under gentrification pressure; and robust market-rate housing production does not, absent

demolishing existing affordable housing units, cause displacement of low-income households (Legislative Analyst's Office, Perspectives on Helping Low-Income Californians Afford Housing (2016) and Chapple, Hwang, Jeon, Zhang, Greenberg, and Shrimali, Housing Market Interventions and Residential Mobility in the San Francisco Bay Area, Federal Reserve Bank of San Francisco Community Development Working Paper 2022-1 (2022); doi: 10.24148/cdwp2022-01). Other recent studies confirm that building new market-rate housing has a positive impact on increasing more housing opportunities for lower income households (Mast, "JUE Insight: The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market" (2023) 133 Journal of Urban Economics; doi.org/10.1016/j.jue.2021.103383).

(k) The provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, 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, the entirety of the Housing Accountability Act, including the amendments set forth below to *Section 65589.5 of the Government Code*, continues to apply to all cities and counties, including charter cities.

Stats 2023 ch 768 provides:

SECTION 1. The Legislature finds and declares the following:

(a) The purpose of this bill is to refine and clarify the standards, as to certain sites, for whether a local agency's failure to exercise discretion, or a local agency's abuse of discretion, as defined by this bill, constitutes a violation of the Housing Accountability Act (HAA) (*Section 65589.5 of the Government Code*), and to establish procedures that will allow an applicant for a housing development project to provide notice to a local government of the evidence that supports the finding required by *Section 21081 of the Public Resources Code* or otherwise complying with the California Environmental Quality Act. As to other sites, it is the intent of the Legislature that the bill not affect judicial decisions about whether, or under what circumstances, the failure to exercise discretion or abuse of discretion constitutes a violation of the HAA.

(b) The bill's provisions will become inoperative on January 1, 2031.

Stats 2021 ch 360 provides:

SEC. 14. The changes made to paragraph (3) of subdivision (j) of *Section 65589.5 of the Government Code* enacted by this act are declaratory of current law.

Stats 2006 ch 888 provides:

> SECTION 1. The Legislature finds and declares the following:
>
> (a) Failure to timely prepare and file an adequate report on a general plan adopted by a city, county, or city and county before the mandatory deadlines as required pursuant to *Section 65400 of the Government Code* is a violation of law and contrary to the state housing goal.
>
> (b) Preventing governmental delays in processing a permit application for a development project is an important state interest. Failure to comply with the mandatory deadlines set forth in *Section 65950 of the Government Code* is contrary to the state housing goal.

Notes to Decisions

1.Generally

2.Construction

2.5.Construction with Other Law

3.Applicability

4.Abuse of Discretion

5.Due Process

6.Time Limitations

7.Review

8.Particular Determinations

1. Generally

Both the statute's plain meaning and its legislative history indicate that *Gov C § 65589.5(j)* is not restricted to low income housing development projects, but instead applies to all housing development projects. *N. Pacifica, LLC v. City of Pacifica (N.D. Cal. 2002), 234 F. Supp. 2d 1053, 2002 U.S. Dist. LEXIS 23862*, aff'd, *(9th Cir. Cal. 2008), 526 F.3d 478, 2008 U.S. App. LEXIS 10257*.

2. Construction

In considering property owners' application for approval of a master plan for development of their property, the town council was not required by *Gov C § 65589.5*, to review the application against the existing general plan. The owners filed their tentative subdivision map during revision of the town's general plan, and thus the proposal was required to be evaluated against the draft general plan. The owners' interpretation of the statutory phrase "applicable general plan" as the adopted general plan in existence at the time they filed their application, and not the proposed or "draft" general plan, would nullify any remedial changes to the existing general plan made during the review process. *Gov C §§ 65350* et seq., provides for the manner of preparation, adoption, and amendment of the general plan, of which the housing element under *Gov C § 65589.5*, is one part. These statutes effectively suspend the provisions of the existing general plan under review to ensure that any proposed development be consistent with the "draft" general plan being considered. *Harroman Co. v. Town of Tiburon (Cal. App. 1st Dist. 1991), 235 Cal. App. 3d 388, 1 Cal. Rptr. 2d 72, 1991 Cal. App. LEXIS 1209*.

Gov C § 65589.5 (j) does not apply only to housing development projects involving affordable housing. The statute expressly defines "housing development project" to include residential units, and nothing in that definition limits the reach of the phrase "housing development project" to projects involving affordable housing. *Honchariw v. County of Stanislaus (Cal. App. 5th Dist. 2011), 200 Cal. App. 4th 1066, 132 Cal. Rptr. 3d 874, 2011 Cal. App. LEXIS 1420*.

Phrase "including design review standards" following the words "applicable, objective general plan and zoning standards and criteria" in *Gov C § 65589.5(j)* means design review standards that are part of applicable, objective general plan and zoning standards and criteria. *Honchariw v. County of Stanislaus (Cal. App. 5th Dist. 2011), 200 Cal. App. 4th 1066, 132 Cal. Rptr. 3d 874, 2011 Cal. App. LEXIS 1420*.

Awards of attorney fees are limited to cases involving affordable housing developments. Thus, a developer of a subdivision project that did not include affordable housing could not recover attorney fees after prevailing on a challenge to the county's disapproval of the application without written findings. *Honchariw v. County of Stanislaus (Cal. App. 5th Dist. 2013), 218 Cal. App. 4th 1019, 160 Cal. Rptr. 3d 609, 2013 Cal. App. LEXIS 630*.

This provision is neither inconsistent with nor intended to preempt local mandatory inclusionary housing ordinances. *California Building Industry Assn. v. City of San Jose (Cal. 2015), 61 Cal. 4th 435, 189 Cal. Rptr. 3d 475, 351 P.3d 974, 2015 Cal. LEXIS 3905*, cert. denied, *(U.S. 2016), 577 U.S. 1179, 136 S. Ct. 928, 194 L. Ed. 2d 239, 2016 U.S. LEXIS 1010*.

Housing Accountability Act did not apply to exempt a housing development project from needing a zone change because lower-density zoning was not inconsistent with the general plan, in light of local authority to develop general plans and regulate land use, and cities are not required to approve all projects within the general plan's maximum allowable density; moreover, findings are not necessary for a project that does not comply with the zoning in effect. *Snowball West Investments L.P. v. City of Los Angeles (Cal. App. 2d Dist. 2023), 314 Cal. Rptr. 3d 864, 96 Cal. App. 5th 1054, 2023 Cal. App. LEXIS 840*.

2.5. Construction with Other Law

Because there was no historic structure, remnants of an ancient shell mound did not preclude ministerial approval of a mixed-use development as an affordable housing project. Home rule authority to regulate historic landmarks was preempted because affordable housing is a matter of statewide concern, as clearly stated in this section, which is in pari materia with the ministerial approval statute and thus to be construed together. *Ruegg & Ellsworth v. City of Berkeley (Cal. App. 1st Dist. 2021), 277 Cal. Rptr. 3d 649, 63 Cal. App. 5th 277, 2021 Cal. App. LEXIS 335*.

3. Applicability

Assuming arguendo *Gov C § 65589.5* (written findings required to accompany denial of approval of housing development project) applied to a charter city, notwithstanding the exemption provided in *Gov C § 65700*, it was inapplicable, by its terms, to a proposed housing development project which did not comply with the zoning policy in effect at the time its application was determined to be complete. Further assuming, arguendo, that written findings were required under § 65589.5, the city council's failure to render such written findings in denying rezone approval for the project was harmless, where substantial evidence in support of the city council's decision was apparent from the transcript of the council meetings. *Mira Development Corp. v. City of San Diego (Cal. App. 4th Dist. 1988), 205 Cal. App. 3d 1201, 252 Cal. Rptr. 825, 1988 Cal. App. LEXIS 1064*.

In an action by landowners against a city seeking to invalidate the results of two referendums by which the city's electorate failed to approve the adoption of a specific plan and a general plan amendment relating to plaintiffs' property, and to allow development of the land, the election results were not invalid for failure to make findings, based on substantial evidence, that the plan would have an adverse impact on public health or safety, and that no alternative method of satisfactorily mitigating or avoiding the impact existed (*Gov C § 65589.5*(j)). *Gov C § 65589.5*, concerns affordable housing developments, and the present case involved a proposed specific plan, not a planning agency's consideration of a housing development project. The definitions of "development" (*Gov C § 65927*), "project" (*Gov C § 65931*), and "development project" (*Gov C § 65928*), apply when a local planning agency is considering a specific construction proposal. Applied to *Gov C § 65589.5*, they would not include the disapproval or conditional approval of a specific plan. Moreover, burdensome statutory requirements mandating that a legislative body provide notice and a public hearing, and make findings to support its decision, need not be satisfied when the legislation is enacted by the electorate via initiative or referendum. Thus, the failure to approve the referendums did not violate *Gov C § 65589.5*(j). *Chandis Sec. Co. v. City of Dana Point (Cal. App. 4th Dist. 1996), 52 Cal. App. 4th 475, 60 Cal. Rptr. 2d 481, 1996 Cal. App. LEXIS 1223*.

Because a developer's proposed project envisioned only a single family dwelling to ultimately be constructed on each of the eight proposed lots, the anticipated use was "residential units only," and the proposed project was therefore a proposed housing development project within the meaning of *Gov C § 65589.5(j)*. Because the county and its board of supervisors failed to show that the developer's proposed project did not comply with applicable, objective general plan and zoning standards and criteria, including design review standards, a trial court thus erred in concluding that the proposed project was not in compliance with the county ordinance at issue. *Honchariw v. County of Stanislaus (Cal. App. 5th Dist. 2011), 200 Cal. App. 4th 1066, 132 Cal. Rptr. 3d 874, 2011 Cal. App. LEXIS 1420*.

4. Abuse of Discretion

In reviewing an environmental impact report (EIR) prepared for a housing development, the city council did not abuse its discretion by rejecting a decreased density alternative on the ground of infeasibility. The California Environmental Quality Act (Pub Res C §§ 21000 et seq.) does not require extended consideration of project alternatives that are not feasible. The EIR discussed the concept of economic feasibility only indirectly by incorporating the project sponsor's comments that, based on market surveys, it had rejected lower density projects on the basis that the houses would necessarily be more expensive. The city council not only accepted the sponsor's evidence of infeasibility, but it also found that requiring a decrease in project density would have been prohibited by Gov C § 65589.5(j) (local planning; housing elements), unless the challenging party showed that the project would have a specific, adverse impact upon public health or safety. The challengers could not meet this burden. Sequoyah Hills Homeowners Assn. v. City of Oakland (Cal. App. 1st Dist. 1993), 23 Cal. App. 4th 704, 29 Cal. Rptr. 2d 182, 1993 Cal. App. LEXIS 1354, ordered published, (Cal. Mar. 17, 1994), 1994 Cal. LEXIS 1383.

5. Due Process

For purposes of a developer's substantive due process claims, Gov C § 65589.5(j) imposes mandatory conditions limiting a city's discretion to deny a development permit application, as under that subsection a decision to disapprove a project that complies with general plan and zoning standards is required to be based on written findings supported by substantial evidence that the project would have an adverse impact on the public health or safety and that there is no feasible method to satisfactorily mitigate or avoid that adverse impact. N. Pacifica, LLC v. City of Pacifica (N.D. Cal. 2002), 234 F. Supp. 2d 1053, 2002 U.S. Dist. LEXIS 23862, aff'd, (9th Cir. Cal. 2008), 526 F.3d 478, 2008 U.S. App. LEXIS 10257.

6. Time Limitations

Because the Pub Res C § 21151.5(a)(1)(A), (2) one-year period to approve an environmental impact report is not a mandatory jurisdictional deadline and Gov C § 65589.5 also does not impose a self-executing deadline, a city's failure to act on a developer's application within one year did not result in approval by operation of law; moreover, the developer could not obtain mandamus relief under CCP § 1094.5 or Pub Res C § 21168.9(a) to compel the exercise of a duty in a particular fashion. Schellinger Brothers v. City of Sebastopol (Cal. App. 1st Dist. 2009), 179 Cal. App. 4th 1245, 102 Cal. Rptr. 3d 394, 2009 Cal. App. LEXIS 1928.

7. Review

Final order under the Housing Accountability Act was not appealable because review of such orders is limited to a writ petition. Kalnel Gardens, LLC v. City of Los Angeles (Cal. App. 2d Dist. 2016), 208 Cal. Rptr. 3d 114, 3 Cal. App. 5th 927, 2016 Cal. App. LEXIS 804.

On remand, the trial court did not err in concluding that it had jurisdiction to resolve whether a city violated the Housing Accountability Act (HAA) when it denied a permit application. While the trial court did not need to decide the HAA issues in order to compel the city to issue the permit, deciding those issues was necessary to fully resolve whether plaintiff was entitled to the relief sought. Ruegg & Ellsworth v. City of Berkeley (Cal. App. 1st Dist. 2023), 305 Cal. Rptr. 3d 782, 89 Cal. App. 5th 258, 2023 Cal. App. LEXIS 186.

8. Particular Determinations

City did not proceed in the manner required by law in denying approval of a housing project based on a local height guideline because the guideline was neither objective nor quantifiable. Moreover, the city's constitutional challenges failed because the Housing Accountability Act does not violate the right to home rule, does not violate the municipal nondelegation doctrine, and does not deprive a project's opponents of a meaningful opportunity to be heard.

California Renters Legal Advocacy & Education Fund v. City of San Mateo (Cal. App. 1st Dist. 2021), 283 Cal. Rptr. 3d 877, 68 Cal. App. 5th 820, 2021 Cal. App. LEXIS 751.

City did not abuse its discretion by approving a mixed-use project that included affordable housing units upon finding consistency with land use plans. The consistency findings were adequate, the Housing Accountability Act does not allow denial based on subjective development standards, and the city was obligated to waive conflicting development standards, such as by allowing a deviation from setback requirements, in the absence of a showing that any exception to the Density Bonus Law applied. *Bankers Hill 150 v. City of San Diego (Cal. App. 4th Dist. 2022), 289 Cal. Rptr. 3d 268, 74 Cal. App. 5th 755, 2022 Cal. App. LEXIS 83*.

In a case in which a citizen's group claimed that a housing development project conflicted with a city's general plan as it existed when the project was revived in 2018, and that a supplemental environmental impact report (EIR) was required, the appellate court concluded that, despite the lengthy delay between certification of the EIR and project approval, the city properly applied the general plan standards in effect when the application was deemed complete. The applicant got a complete project application on file in 2011, and the Housing Accountability Act requires that such a project be assessed against 2011 general plan and zoning standards. *Save Lafayette v. City of Lafayette (Cal. App. 1st Dist. 2022), 301 Cal. Rptr. 3d 773, 85 Cal. App. 5th 842, 2022 Cal. App. LEXIS 979*, modified, *(Cal. App. 1st Dist. Dec. 16, 2022), 2022 Cal. App. LEXIS 1028*.

City approval of an affordable housing project was not inconsistent with standards in a downtown specific plan because the project had a prominent front entrance, suitable parking, vertical windows, and open space areas separate from a public park. Consistency findings were adequate under the Housing Accountability Act because a reasonable person could find each requirement was met. *Save Livermore Downtown v. City of Livermore (Cal. App. 1st Dist. 2022), 304 Cal. Rptr. 3d 103, 87 Cal. App. 5th 1116, 2022 Cal. App. LEXIS 1091*.

Research References & Practice Aids

Cross References:

Burden of proof in action challenging validity of local agency's decision: *Gov C § 65589.6*.

Legal Periodicals

1990 legislative summary. 9 Cal Real Prop J No. 1 p 1.

Treatises:

Cal. Legal Forms, (Matthew Bender) § 30B.22.

Significant new state legislation enacted in 1990. CEB Real Prop L Rep Vol. 14 No. 2 p 45.

Affordable Housing & Growth Management. 1 CEB Land Use Forum 12.

Affordable housing: an attorney's guide to key issues and governing statutes (Part I). 16 CEB Real Prop L Rep 329.

Miller & Starr, Cal Real Estate 2d § 20:97.

8 Witkin Summary (11th ed) Constitutional Law §§ 1136, 1137, 1143.

12 Witkin Summary (11th ed) Real Property § 844.

Hierarchy Notes:

Cal Gov Code Title 7, Div. 1

Cal Gov Code Title 7, Div. 1, Ch. 3

Cal Gov Code Title 7, Div. 1, Ch. 3, Art. 10.6

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