

# **California Housing Legislative Update**

Town of Moraga

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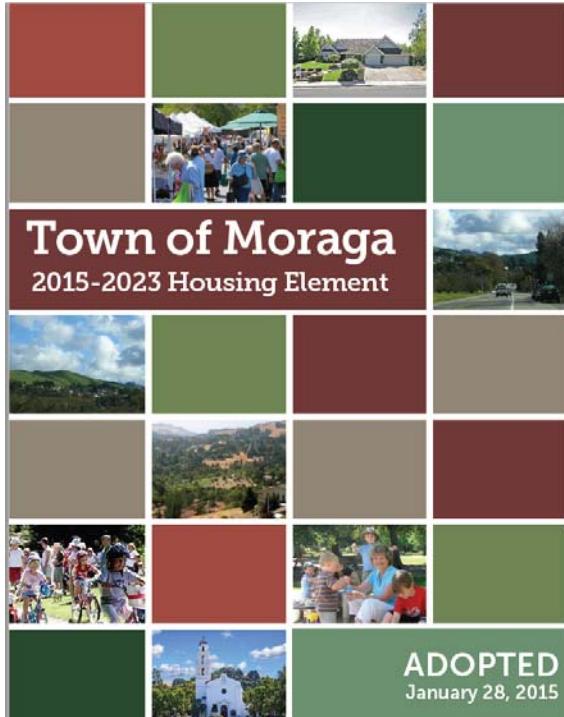


# Special Legal Requirements for Housing Development Projects

- Housing Element Law
- Housing Crisis Act (SB 330)
- Housing Accountability Act
- Ministerial Project Approvals (SB 35, SB 9)

# **HOUSING ELEMENT LAWS**

# Key Housing Element Concepts



Cities and counties must show adequate land zone for housing to accommodate Regional Housing Need Allocation (RHNA)

# What is RHNAs?

## Regional Housing Needs Assessment (RHNAs)

- The number of units needed to meet anticipated household growth, at various income levels
- Each city and county receives a “RHNAs allocation”

Town of Moraga				
Extremely Low and Very Low Income	Low Income	Moderate Income	Above Moderate Income	TOTAL RHNAs
318 Units	183 units	172 units	445 units	1,118 units

# Key Housing Element Concepts



The State and ABAG determine local RHNA



Housing Element requirements determined by the State



The Housing Element must address new State laws and regulations



The Housing Element is reviewed and certified by the State

## Total Regional RHNA

- AB 1771 and SB 828 changed RHNA methodologies in 2018
- RHNA much higher because existing overcrowding and cost burdens of existing households are added to need
  - No longer limited to projected household growth

# RHNA Allocation to Jurisdictions

## New Factors Must Be Considered

- GHG reductions
- Low-wage jobs and affordable housing balance
- ‘Affirmatively further fair housing’

## Some Factors Can't Be Considered

- Existing zoning & growth limits  
[except ag preservation]
- Past failure to meet RHNA
- Stable population

# Accommodating RHNAs: Site Inventory

- Must designate specific sites that can “accommodate” the RHNAs at each income level during the planning period (65583.2)
- Sites “accommodating” lower income housing must be at “default density” 20 du/A

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

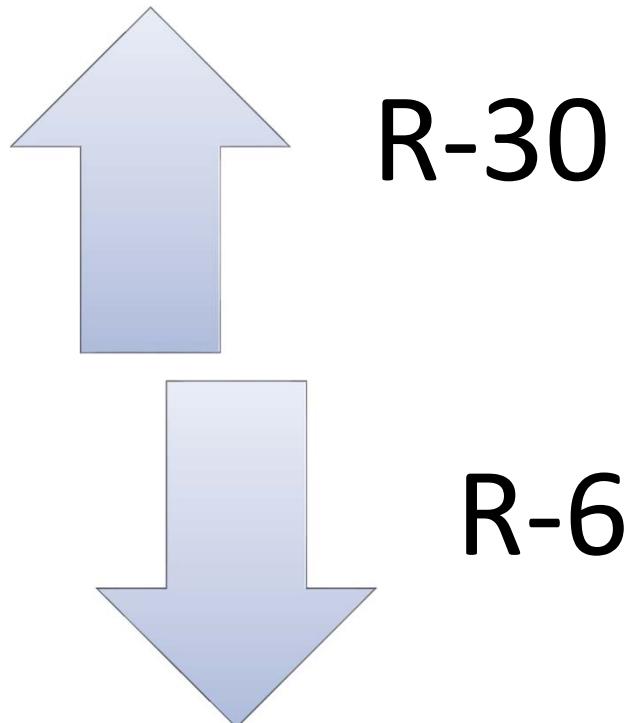
## No Net Loss Provisions (Section 65863)

- Applies when:
  - Any site in inventory either downzoned to reduce density; or approved at lower density than shown; OR
  - Site approved with fewer units at the income level shown in the inventory.

# No Net Loss Example

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

# Accommodating RHNA: Rezoning Obligation



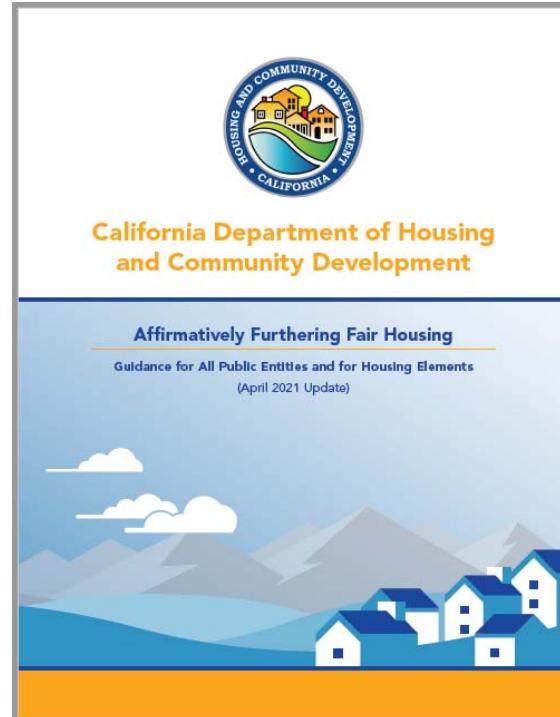
- If not enough sites available to accommodate RHNA, Housing Element must identify specific sites for rezoning
  - Must complete necessary rezoning within 3 years
  - up to 4 years if certain findings are made; time reduces to 1 year if Housing Element adopted late or not certified
- Rezoned sites must allow housing development with 20% lower income housing as a “use by right”
  - No CEQA review
  - Limited to objective design standards

# Re-Use of Previously Identified Sites

- If site is vacant
  - Listed as lower income site in one housing element, ok to use
  - Listed as lower income site in two or more housing elements, presumed inappropriate
- If site is non-vacant
  - Listed as lower income site in one housing element, presumed inappropriate
- If site is “presumed inappropriate,” site may be used if:
  - Site is re-zoned at default density within three years
  - Zoning must allow development by-right if 20% of units are lower income (low or very low)

# Affirmatively Furthering Fair Housing

- RHNA distribution and each local housing element must affirmatively further fair housing
  - AFFH means “taking meaningful actions...that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunities”



# HCD Guidance for Fair Housing Compliance



# Fair Housing Policy Implications

## Examples of Barriers to Fair Housing Opportunities

- Lack of zoning for variety of housing types
- Predominantly single family uses in racially concentrated areas of influence
- Restrictive zoning regulations
- Lack of affordable housing choices
- Barriers to special needs housing

## Examples of Policies to Create Fair Housing Opportunities

- Increased zoning allowances for multifamily, two to four unit developments, ADUs, etc.
- Relaxed unit size, parking, height requirements
- Anti-displacement policies requiring replacement housing and relocation assistance
- Incentives to promote affordable housing development
- Appropriate zoning for accessible development, supportive housing, shelters, group homes, and residential care facilities

# Timeline for Completion

- 6th Cycle Update Due January 31, 2023
- New Review Process (AB 215):
  - 30 days of public review, plus 10 business days to incorporate comments, required before HCD will review
  - HCD has 90 days (increased from 60) to review draft Housing Element Update
- Final Housing Element must be adopted no later than 120 days after the due date (5/31/23) or penalties accrue

## Penalties for Noncompliance

- 1 year to complete rezoning, instead of 3
- Updates required every 4 years, instead of 8
- RHNA may roll-over to future cycles
- Ineligible for certain state funds
- Risk of private lawsuits
- Court take-over of local land use decisions

## New State Focus on Implementation

- HCD's new "Housing Accountability Unit" will monitor implementation
- HCD has authority to:
  - Revoke Housing Element certification or require Housing Element amendments to maintain legal compliance
  - Refer violations to Attorney General or special counsel to pursue legal challenges

# HOUSING CRISIS ACT

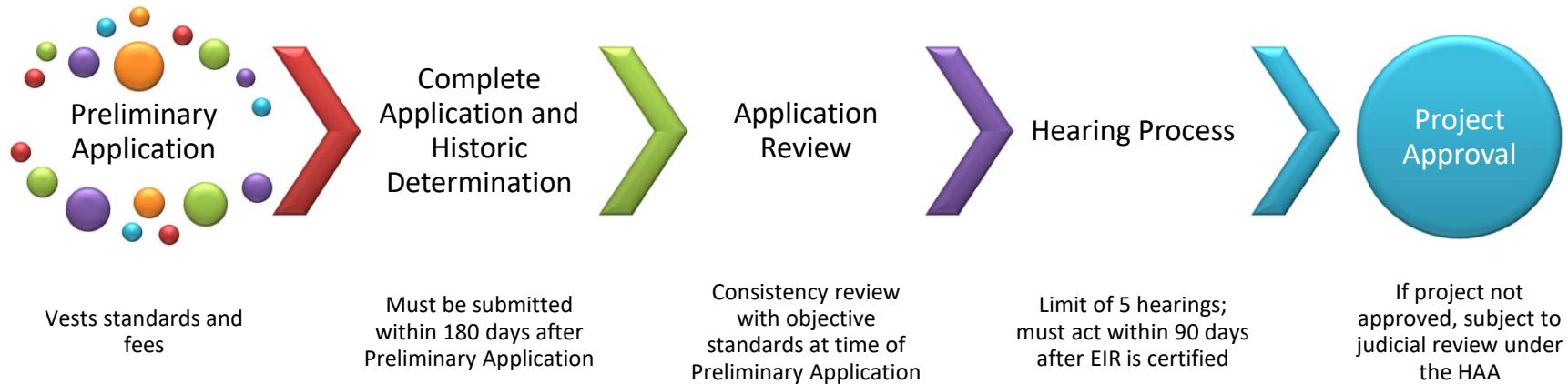
# Housing Crisis Act

- GC Sec. 66300 applies in “affected” cities and counties through January 1, 2030
  - Moraga is designated as “affected”
  - “Affected” city and county includes voters’ initiatives and referenda
- Bans certain housing limitations
- Requires replacement housing and relocation benefits

# Prohibited Housing Limitations

- No residential downzoning or adoption of standards that reduce capacity
  - “No Net Loss” exception allows upzoning to compensate for lost capacity with HCD approval
- No moratorium, except to protect against an imminent threat to the health and safety of persons with HCD approval
- No newly adopted design standards, unless they are objective
- No growth control measures
  - Exception for jurisdictions in predominantly agricultural counties with voter-approved measures in place before 2005

# SB 330's Statewide Changes



# HOUSING ACCOUNTABILITY ACT

# Government Code Section 65589.5

The Housing Accountability Act (HAA) applies to ALL “housing development projects” and emergency shelters

- Residences only
- Transitional & supportive housing
- Mixed use projects with at least 2/3 the square footage designated for residential use

*Affordable AND Market-rate*

# HAA Criteria for Project Review

- If housing development project complies with “objective” standards, the City can only reduce density or deny if it finds:
  - A specific adverse impact to public health & safety AND
  - The impact can’t be mitigated in any other way
- Additional protections for 20% affordable projects

# What Is An “Objective” Standard?

- SB 330 definition:
  - “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
- Examples:
  - Height, setbacks, lot coverage, % open space, density, FAR, etc.
- Sources:
  - General plan, zoning, subdivision standards, design review standards written and in effect in advance

# What Is Not “Objective”?

- Standards found not to be “objective:”
  - “Special care shall be taken to avoid obstructing views”
  - “Produce high quality authentic design”
  - “Reflect look and feel of the community”
  - Honchariw: Map Act finding that “the site is not physically suitable for the proposed development”

# HAA Processing Requirements

- “Deemed consistent” if: “substantial evidence that would allow a reasonable person to conclude” is consistent
- Standards include general plan, zoning, and subdivision requirements
  - Strict consistency with zoning not necessarily required if consistent with objective general plan standards
- City findings must be based on ‘preponderance of the evidence,’ not merely ‘substantial evidence’

# HAA Limitations

- CEQA applies
- Coastal Act applies, and compliance with LCP required
- Conditions of approval still apply
  - If 20% affordable, conditions must not make project infeasible
  - Conditions must be consistent with meeting the jurisdiction's share of RHNA

# OTHER STREAMLINING BILLS

# SB 35 Streamlining

## Determine if Jurisdiction is Subject to SB 35

Not enough building permits to satisfy RHNA

OR

No Annual Report for 2 Years



## Determine if Project is Eligible for Streamlining

2 or more units in urbanized area zoned  
or planned for residential

& Meets all objective standards &

Meets affordable housing and labor  
requirements



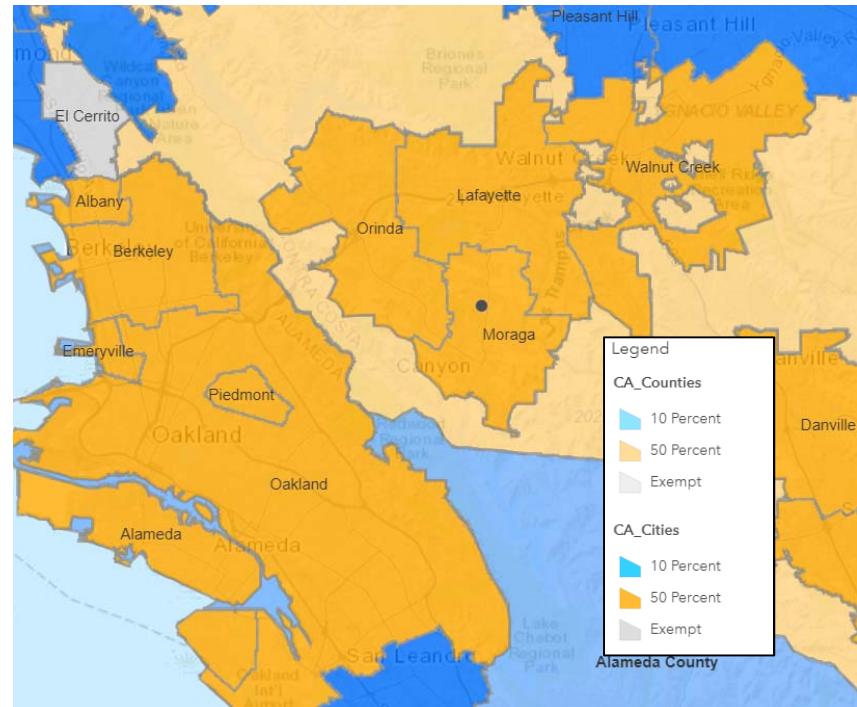
## Determine if Exclusion Applies

Project site may not be on list of exclusions

OR Project must not require subdivision unless LIHTC-funded  
and/or meets labor requirements

# SB 35 Eligible Projects

- Must meet affordable housing requirements – based on RHNA production
- Projects with more than 10 units must pay prevailing wages
- Must use “skilled and trained workforce” for larger projects
  - Threshold varies by location
  - 100% affordable projects exempt



## SB 35 Exclusions

- Site must not have contained housing occupied by tenants within last 10 years
- Site must not be in the coastal zone or other specified areas
- Project may not involve a subdivision unless exception applies

# Other SB 35 Requirements

- Ministerial review if consistent with “objective” standards – no CEQA review
  - A project that receives a density bonus and other regulatory incentives under density bonus law is considered consistent
  - Any 'maximum unit allocation' (e.g., growth control measures) must be ignored
  - Maximum density is the maximum shown in the general plan. Under SB 35, general plan standards trump other standards if inconsistent
- No more than 1 parking space/unit; many projects exempt from any parking requirements
- Extended life for project approvals; some may never expire

## Ministerial Approval of Two Units and Lot Splits (SB 9)

**Requires** ministerial approval of up to two units on a lot in all existing single-family residential zones and/or an urban lot split so long as the parcel is:

- Within an urbanized area;
- Not located on or within prohibited sites pursuant to SB 35, Section 65913.4;
- Does not require the demolition or alteration of moderate to very low-income housing, housing subject to rent control, or housing occupied by a tenant in the last three years; and
- Will not require the demolition of more than 25% of existing walls, unless an ordinance allows such demolition (not applicable to urban lot split).

**Allows** a local agency to:

- Deny an SB 9 project if the project would have a specific, adverse impact upon health and safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact
- Apply local development standards that permit:
  - two units per lot
  - Setbacks of up to 4 feet from the rear and side lot lines
  - Up to one parking space per unit [0 parking near transit]
  - Must require that rentals be longer than 30 days.

# Additional SB 9 Requirements

- Additional requirements specific to urban lot splits:
  - Requires lots to be roughly equal in size (no less than 40% of the original parcel) and no smaller than 1,200 square feet.
  - Conforms to the Subdivision Map Act's requirements.
  - Requires that standards imposed cannot preclude the construction of 2 units on either of the split parcels and result in a unit size of less than 800 feet.
  - Allows requirements for easements and right-of-way.
  - Requires owner occupancy of one unit for a minimum of three years from the date of the approval.
  - Prohibits more than 2 units on parcels subdivided through an urban lot split, including ADUs, Junior ADUs, and primary dwelling units.

***\*\*Adoption of a local ordinance to implement SB 9 is exempt from CEQA\*\****

# QUESTIONS?