HOUSING ACCOUNTABILITY ACT

Government Code §§ 65589.5, 65589.5.1, 65589.5.2

INTRODUCTION

The Housing Accountability Act (HAA) limits local governments' ability to disapprove, condition, or reduce the density of housing development projects, emergency shelters, or farmworker housing that are consistent with local objective development standards and contribute to meeting housing need. As the legislative findings that accompany the HAA note, local decisionmakers in their review of housing development projects must consider "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."

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

The policy intent of the HAA is to increase approval and construction of new housing at all affordability levels, build more housing in urban areas, and provide additional protections for developments containing units for very low-, low-, or moderate-income households, including for applications deemed complete while a jurisdiction's housing element is not substantially compliant with state law (builder's remedy).

KEY PROVISIONS

The HAA has two key provisions:

Provision #1 Applies to All Housing Development Applications

The first is a general provision that applies to all housing development applications, both market-rate and affordable, that are consistent with the objective general plan, zoning, design, and subdivision standards for the site that were in effect at the time that the project application was deemed complete. "Deemed complete" means that the applicant has submitted a preliminary application pursuant to Government Code section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943.

A housing development proposal that meets those criteria cannot be disapproved or approved with a condition that reduces the density of the project unless the jurisdiction makes both of the following findings:

Finding #1. **Specific, Adverse Impact on Public Health or Safety**. That the proposed development 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." 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, *and*

Finding #2. **No Possible Mitigation.** That "there is no feasible method to satisfactorily mitigate or avoid the adverse impact."

Provision #2 Applies Only to Certain Affordable Housing (including Farmworker Housing), Emergency Shelters, and Smaller Housing Projects

The second provision applies to a narrower category of projects: emergency shelters and housing developments, including farmworker housing, that are affordable to very low-, low-, or moderate-income households or certain smaller housing projects. A housing development project must meet *one* of the following criteria to be covered by this provision:

- **Lower-Income or Moderate-Income Units.** 100 percent of the units are deed-restricted for lower-income households (includes very low-income and low-income) or moderate-income households.
- **Extremely Low-Income Units.** 7 percent of the total units (excluding density bonus) are deed-restricted for extremely low-income households.
- **Very Low-Income Units.** 10 percent of the total units (excluding density bonus) are deed-restricted for very low-income households.
- **Lower-Income Units.** 13 percent of the total units (excluding density bonus) are deed-restricted for lower-income households.
- **Smaller Housing Projects.** 10 or fewer total units (excluding density bonus) on a site that is less than one acre and has a minimum density of 10 units per acre. Can include 100 percent market-rate projects.

Under the limits of this second provision, a jurisdiction can only deny a qualifying housing development project or impose conditions on that project that render it infeasible if it can make one of several specified findings:

Finding #1. **Compliant Housing Element and Meets Housing Targets**. The jurisdiction has adopted a housing element that substantially complies with the law and has already met or exceeded its regional housing needs allocation (RHNA) for all income groups that would be served by the housing, or in the case of an emergency shelter, has already met or exceeded the need for shelter as identified in the housing element.

Finding #2. **Specific, Adverse Impact on Public Health or Safety**. The housing or shelter "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."

Finding #3. **Compliance with State or Federal Law.** The denial or conditions are necessary to comply with state or federal law and there is no other feasible alternative to the denial or conditions.

Finding #4. **Agricultural Land or Resource Preservation.** The housing or shelter is proposed on land that is zoned for agricultural or resource preservation and either a) the land on at least two sides surrounding the property is currently used for agricultural or resource preservation or b) there are not adequate water or wastewater facilities available to serve the project.

Finding #5. **Compliant Housing Element, Inconsistent with Zoning and General Plan Land Use, and Non-Housing Element Site *or* Emergency Shelter Project.** The jurisdiction has an adopted, substantially compliant housing element and the proposed housing development or shelter is inconsistent with both the zoning code and general plan land use designation for the site, *and* either (1) the proposed project is not proposed on a site or candidate rezone site identified in the housing element for very low-, low-, or moderate-income households at the density specified in the housing element, *or* (2) the project is an emergency shelter and the local jurisdiction has zoned for by-right emergency shelters or zoned sufficiently to accommodate emergency shelters as identified in the housing element.

Finding #6. **Non-Compliant Housing Element and Not a Builder's Remedy Project**. The jurisdiction's housing element is out of compliance and the proposed project (1) does not qualify as a builder's remedy project *and* (2) is not consistent with the objective general plan, zoning, design, and subdivision standards for the site that were in effect at the time that the project application was deemed complete (see Provision #1 above.)

There are several practical implications to these limitations on projects that are important to note.

- **Non-Compliant Housing Element and Builder's Remedy**. A jurisdiction that has failed to adopt a housing element in compliance with state law may be prohibited from disapproving of an affordable housing development or certain smaller housing projects, even if the proposed project is inconsistent with the zoning and general plan land use designation on the site. In order to qualify as a builder's remedy project, the proposed project must not be located on or near a heavy industrial use and meet the density limits as specified within Government Code section 65589.5 subdivision (h)(11).
- **Compliant Housing Element and Insufficient Rezoning.** Jurisdictions that have adopted a substantially compliant housing element may face limits in denying an affordable housing development or emergency shelter unless the jurisdiction has zoned enough land to accommodate all of its housing and shelter needs.

HAA Consistency Review Timeline

After an application is determined to be complete, local agencies have a set timeline to determine in writing whether the application is inconsistent with objective general plan, zoning, subdivision, and design standards and criteria; otherwise, the application is deemed consistent by default. In the event that a local government misses a 30-day completeness deadline and the application becomes complete under operation of law, a 30- or 60-day consistency determination clock still begins. Projects containing 150 or fewer units must be reviewed within 30 calendar days and projects containing more

than 150 units must be reviewed within 60 calendar days. Any additional density or any concessions and development standard reductions or waivers to which the project is entitled under State Density Bonus Law (SDBL) shall be considered consistent with objective zoning, design review, and subdivision standards.

Postentitlement Phase Permits and the HAA

While requirements for postentitlement phase permits are not part of the HAA, a project is considered disapproved under the HAA if a local agency does not adhere to the time limits specified for reviewing and processing a postentitlement permit (i.e., building permits, demolition permits, and permits for standard off-site improvements and excavation and grading). Local agencies have 15 business days to determine whether a postentitlement permit application contains all the information required from an applicant, and 30 or 60 days to determine whether the application complies with permit standards depending on the number of units proposed. For certain smaller housing development projects, the local agency must inspect permitted work within 10 days of receiving a notice of completion.

HAA Enforcement

The HAA can be enforced by the applicant, any person who would be eligible to live in the proposed housing or shelter, or a housing organization. Housing organizations are defined as either 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." Housing organizations must have provided their comments orally or in writing to the local agency prior to its action and can only challenge disapproval of a project. The statute does not provide standing for housing organizations to challenge a violation that does not involve a denial of the project.

A jurisdiction that violates the HAA can be subject to both an order compelling it to take action to come into compliance and fines if it fails to comply with the court's order. If the court finds that the denial or conditional approval was in bad faith, the court can effectively order the housing development or emergency shelter proposal approved.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of San Jose, February 7, 2025	A builder's remedy project is not automatically precluded from meeting the conditions required for a CEQA Class 32 infill exemption determination.
City of Menlo Park, November 26, 2024	Local jurisdictions cannot require a general plan amendment or zoning change for a builder's remedy project.
City of Gilroy, July 23, 2024	Local jurisdictions must separate incompleteness and inconsistency review items, and builder's remedy prevents disapproval for inconsistency with either general plan or zoning.

LEGISLATION HIGHLIGHTS

Mixed-use development criteria SB 838, Durazo (2025); amended Gov. Code, § 65589.5.	Redefines a "mixed-use development" to exclude any portion used as a hotel, motel, bed and breakfast inn, or other transient lodging with the exception of a residential hotel.
Building Permit Inspections AB 1308, Hoover (2025); amended Gov. Code, § 65589.5, and added Health and Safety Code § 17970.3.	Specifies a 10-day time limit for building permit inspection of certain smaller permitted housing development projects. Failing to meet the time limit would constitute a local agency's disapproval of the housing development project.
Builder's Remedy, and Expanded Definitions, Criteria AB 1893, Wicks (2024); amended Gov. Code, § 65589.5.	Expands the definition of "disapprove the housing development" to include administrative actions and certain provisions of the Permit Streamlining Act among others. Amended the definition of "housing for lower income households, mixed-income households, and housing for moderate-income households" to include a range of affordability mix. Prescribes residential density standards and objective development standards that apply to a builder's remedy project.
CEQA Disapproval Procedures AB 1413, Ting (2024); added Gov. Code, §§ 65589.5.1 and 65589.5.2	Expands CEQA disapproval criteria when a local agency fails to make a CEQA exemption determination or adopt a CEQA environmental document. Requires a local agency to file notice within 5 days of receiving a timely written notice from the applicant. Requires a minimum 60-day public comment period and consideration of the applicant's objectives, comments, evidence, and concerns in their notice.
CEQA Disapprovals AB 1633, Ting (2023); amended Gov. Code, § 65589.5.	Establishes that a local agency's failure to make a determination that the project is exempt from CEQA; abuse of discretion; or failure to adopt, approve, or certify an environmental review document constitutes a disapproval.
General Plan Consistency AB 3194, Daly (2018); amended Gov. Code, § 65589.5	Establishes that a housing development project need not be consistent with the zoning if it is consistent with the general plan designation. Includes a statement of legislative intent disfavoring denials based on an adverse impact to health and safety, noting that conditions allowing for such a finding should "arise infrequently."

Preponderance of Evidence; Lower Density Definition AB 678, Bocanegra & SB 167, Skinner (2017); amended Gov. Code, § 65589.5	Expands findings to be reviewed under the more restrictive "preponderance of the evidence" standard rather than the "substantial evidence" test that had previously applied. Expands the definition of "lower density" to include any action that has the same impact on the ability of the project to provide housing as reducing the density. Authorizes fines and other remedies for noncompliant jurisdictions.
Reasonable Person Standard AB 1515, Daly (2017); amended Gov. Code, § 65589.5	Requires jurisdictions make findings that a housing development project is consistent with local plans, programs, ordinances, standards, and policies if a reasonable person would conclude that the project is consistent.