San Diego Association of Governments SANDAG

DISCLAIMER: This document is intended solely as a technical overview of new housing-related legislation. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel before taking any action to implement these changes.

2023 New Housing Legislation Summary

This document was prepared for the Association of Bay Area Governments (ABAG) Regional Housing Technical Assistance (RHTA) program, in collaboration with the San Diego Association of Governments (SANDAG), to be shared with local planning staff. Below is a summary of significant housing legislation that was passed in the 2023 legislative session and subsequently signed into law by Governor Newsom. All bills become effective on January 1, 2024, unless otherwise noted.

How to use this document:

Text in green denotes an "**action item**," yellow denotes something that "**impacts your job**," and blue denotes information that is "**good to know**." Wherever colors are used, the text is labeled for accessibility.

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Processing Requirements (SB 4, SB 423, SB 684, AB 821, AB 1218, AB 1490)

SB 4: Affordable Housing on Faith and Higher Education Land (Government Code § 65913.16).

SB 4 requires that, upon the request of an applicant, a housing development project be a "use by right" on land owned by an independent institution of higher education or a religious institution if specified criteria are met.

Good to Know: "Use by right" means a development project that does not require a conditional use permit, planned unit development permit, or other discretionary local government review, although design review may be required. It is not a "project" for purposes of CEQA.

Significant Provisions

To qualify for this "use by right" provision, the development site must meet fifteen requirements: (1) the land must be owned on or before January 1, 2024 by an independent institution of higher education or a religious institution; (2-4) the parcel must satisfy the requirements of Government Code §65913.4(a)(2)(A)-(B), (a)(6)(B)-(K), and (a)(7) (SB 35 Streamlined Ministerial Approval); (5) the development cannot be adjoining any site where more than one-third of the square footage on the site is dedicated to light industrial uses; (6-8) the housing units on the development may not be located within 1,200 feet of a site that is currently a heavy industrial use or where the most recent permitted use was heavy industrial, within 1,600 feet of a site that is either a site that is currently a Title V industrial use or where that was the most recent permitted use, and for a site where multifamily housing is not an existing permitted use, the housing units must not be located within 3,200 of a facility that actively extracts or refines oil or natural gas; (9) at least 80 percent of the development's total units, except for a manager's unit, must be for lower income households, up to 20 percent may be for moderate-income households and the units that are rented must be restricted for 55 years. The units that are sold must be restricted for 45 years or participate in an equity sharing agreement; (10) the development must comply with objective development standards that are not in conflict with the provisions of the statute; (11) if the development project requires demolition of existing residential units, or if residential units have been demolished in the last five years, it must comply with the replacement housing provisions in Government Code §66300(d) (Housing Crisis Act), whether or not the project is located in an affected city or county; (12) the applicant must certify that the project is either a public work or, if it includes more than ten units and is not in its entirety a public work, the applicant will ensure all construction workers are paid prevailing wages and other labor requirements provided in the statute are met; (13) the applicant must complete a Phase I environmental assessment and, if warranted, a Phase II environmental assessment; (14) if the development is 500 feet from a freeway, regularly occupied areas of the building must have air filtration media; and (15) the site may not contain tribal cultural resources that could be affected by the development and cannot be mitigated.

Housing developments eligible for by right approval under this statute may include certain ancillary uses on the ground floor: childcare centers and facilities operated by community-based

organizations for recreational, social, or education services in single family residential zones; and in all other zones the development may include commercial uses that are permitted without a conditional use permit or planned unit development permit. A project that is eligible as a use by right includes any use that was previously existing and legally permitted on the site if it meets specified criteria: the total square footage of nonresidential space does not exceed the amount that previously existed or was permitted by a conditional use permit; the total parking requirement for the nonresidential space does not exceed the lesser of the amount existing or required by a conditional use permit; and the new uses abide by the same operational conditions as contained in the previous conditional use permit.

Housing developments eligible for approval are allowed the following density: (1) if the development is located in a zone that allows residential uses, it shall be allowed the default density specified for lower income housing in the community's housing element and a height of one story above the maximum height otherwise applicable; however, if the local government allows for greater residential density or building heights on an adjoining parcel, the greater density or building height shall apply; (2) if the project is located in a zone that does not allow residential uses, the development project shall be allowed a density of 40 units per acre and a height of one story above the maximum height otherwise applicable; however, if the local government allows for greater residential density or building heights on an adjoining parcel, the greater density or building height shall apply, but the project may not use an incentive, waiver, or concession to increase the height of the development to greater than specified in the statute.

Good to Know: Development projects eligible for by right approval under this statute may utilize state density bonus law for density bonuses, incentives and concessions, and waivers, except as provided above. These development projects qualify as housing development projects entitled to protections under the Housing Accountability Act (Government Code § 65589.5).

The proposed development must provide off-street parking of up to one space per unit, unless a state law or local ordinance provides for less parking, in which case that standard shall apply. However, a parking requirement may not be imposed if the parcel is located within one-half mile walking distance of a high-quality transit corridor or a major transit stop, or there is a car share vehicle located within one block of the parcel.

Approval of the development project under SB 4 is subject to expiration timeframes, modification requirements, necessary public improvements, and approval of subsequent permits as specified in SB 35.

Design review may be conducted by a local government's planning commission or equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as applicable. The design review must be objective and focused on assessing compliance with criteria required for streamlined, ministerial review of projects, and reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submittal of the development.

Good to Know: The local government may not adopt or impose any requirements, including increased fees, which apply to a project solely or partially on the basis that it is eligible to receive streamlined, ministerial review pursuant to this statute.

Good to Know: In addition to the above, if a housing development is consistent with all objective subdivision standards in a local subdivision ordinance, the subdivision application is also exempt from CEQA.

Impacts Your Job: If the local government determines that the proposed SB 4 development is in conflict with any objective planning standards, it must provide the development proponent written documentation of which standards the development conflicts with and an explanation for the reason the development conflicts with the standards. This must be provided within 60 days of project submittal for projects with 150 or fewer housing units, or 90 days if the development contains more than 150 housing units. A development is consistent with objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent. The development shall be "deemed consistent" with objective planning standards if the required documentation is not provided within the above time frames. Agencies may want to establish checklists for SB 4 projects as they have been established for SB 35 and AB 2011 projects.

Impacts Your Job: Design review must be completed within 90 days of submittal of the development proposal if the development contains 150 or fewer housing units, or 180 days if the development contains more than 150 housing units.

Good to Know. Government Code § 65913.16 sunsets on January 1, 2036, unless extended by the Legislature.

SB 423: Modifications to Streamlined Approval (Government Code § 65913.4)

SB 423 amends the streamlined, ministerial approval process (generally known as the "SB 35" process) for qualifying multifamily and mixed-use affordable housing projects in most localities.

Significant Provisions

SB 423 expands the jurisdictions to which SB 35 may apply to include a locality that has not adopted a housing element that has been found in substantial compliance with housing element law by the California Department of Housing and Community Development (HCD). SB 423 also extends SB 35 to the Coastal Zone, with certain exceptions, and removes the prohibition against an SB 35 project being located within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection. However, unless the site has adopted specified fire hazard mitigation measures, the SB 35 streamlined, ministerial process is prohibited in very high fire hazard severity zones (as determined by the Department of Forestry and Fire Protection) and the statutorily defined state responsibility area. The SB 35 streamlined, ministerial process is also not applicable to housing development applications on sites within an equine or equestrian district (and meeting certain other requirements) submitted on or after January 1, 2024, but before July 1, 2025.

Good to Know: Within the coastal zone, sites are not eligible unless they are zoned for multifamily housing. Sites within 100 feet of a wetland, estuary, or stream; on prime agricultural land; in a community that does not have a certified local coastal program or land use plan; that is vulnerable to sea level rise; or located between the sea and first public road or within 300 feet of a

beach or high tide or coastal bluff cannot utilize the streamlined process. For sites that are eligible, the local agency must approve a coastal development permit if it conforms with all objective standards of the certified local coast program or land use plan. Any density bonus, concessions, waivers, or parking ratios allowed under density bonus law are not a basis to find the development inconsistent with the local coastal program.

Impacts Your Job: For the purposes of determining the total number of units in the development (to determine, among other things, which review and approval timelines apply to the housing development project and the number of required affordable units), the total units in a development now includes both (i) all projects developed on a site regardless of when those developments occur and (ii) all projects developed on adjacent sites pursuant to SB 35 if the adjacent site had been subdivided from the site development pursuant to SB 35 after January 1, 2023.

Previously, to be eligible for the SB 35 ministerial approval process, any project (rental or for-sale) in a jurisdiction that did not issue enough above moderate-income housing building permits was required to dedicate a minimum of 10 percent of total number of units to households making at or below 80 percent of area median income (AMI). With the SB 423 changes, rental projects in a jurisdiction that (i) did not issue enough above moderate-income housing permits or (ii) has not adopted a housing element that has been found in substantial compliance with housing element law by HCD or (iii) has not submitted an Annual Progress Report to HCD are now required to provide either (i) at least 10 percent of the total units to households making at or below 50 percent of AMI or (ii) comply with the locality's inclusionary ordinance where that ordinance requires greater than 10 percent of the units to be dedicated to households making at or below 50 percent AMI. If the local inclusionary policy requires units that are restricted to households with incomes higher than 50 percent AMI (in jurisdictions subject to the 10 percent requirement) or 80 percent AMI (in jurisdictions that have not met their very low or low income RHNA), then providing the 10 percent at 50 percent AMI or 50 percent at 80 percent AMI, as applicable, is deemed sufficient to satisfy the local inclusionary requirement.

Good to Know: For a 100 percent lower-income housing development approved under SB 35, "affordable rent" shall mean "rent that is consistent with the maximum rent levels stipulated by the public program providing financing for the development."

SB 423 eliminates the ability of the local government to conduct public oversight of the development; design review may still be conducted by the planning commission or other equivalent board or commission responsible for design review. However, if the development is in a moderate resource area, low resource area, or an area of high segregation and poverty, the local government is required to provide for a public meeting within 45 days of receiving a notice of intent before the development proponent submits an application for the proposed development. The meeting must be held by the jurisdiction's planning commission if the development would be located within a city with a population greater than 250,000 people or an unincorporated area of a county with a population greater than 250,000 people, and the applicant must attend the meeting and state that it reviewed the comments.

If the local government's planning director or equivalent position determines the housing development project is consistent with objective planning standards, SB 423 requires approval of

the development. The California Department of General Services may act in place of a local government for determining a development's compliance with and eligibility for the SB 35 streamlined, ministerial process when the development is located on land owned by or leased to the state.

Impacts Your Job: Local agencies will need to arrange for public meetings in advance of the submission of certain projects; however, they cannot require applicants to modify the project in response to public comments.

Impacts Your job: Prior to approving a development that meets the requirements of the SB 35 streamlining provisions, a local government is prohibited from requiring compliance with any standards necessary to receive a postentitlement permit or studies, information, or other materials that do not pertain directly to determining whether the development is consistent with objective planning standards. This could result in approval of projects that do not conform to building code or other standards not included in objective planning standards. Agencies may wish to inform applicants of these issues even if compliance cannot be required as part of the planning approval.

SB 423 requires a development proponent to certify to the local government that certain wage and labor standards will be met, including that all construction workers will be paid prevailing wages. These requirements do not apply to a project that consists of 10 or fewer units and is not a public work. Requirements to use a skilled and trained workforce have been substantially modified. Projects with over 50 units must also comply with apprenticeship requirements. Those more than 85 feet high must use a skilled and trained workforce unless qualified contractors are not available.

Impacts Your Job: Local agencies should ensure that their internal review processes and any administrative documents reflecting such practices comply with the changes in **SB 423**, particularly elimination of public oversight, coordination with all departments to ensure compliance with the statutory review deadlines, and development of a process to meet the new public meeting requirements for developments in moderate resource areas, low resource areas, or areas of high segregation and poverty.

Good to Know: **SB 423** extends the provisions of SB 35 by ten years to provide a new sunset date of January 1, 2036.

SB 684: Subdivisions for 10 Units or Fewer (Government Code §§ 65852.28, 65913.4.5, 66499.41).

SB 684 creates a streamlined approval process for development projects of 10 or fewer residential units on urban lots under 5 acres.

SB 684 adds three new sections to the Government Code related to projects of 10 or fewer units: Section 66499.41 sets forth the streamlined process for parcel maps or tentative and final maps, Section 65852.28 sets forth the streamlined process for housing development applications, and Section 65913.4.5 sets forth the streamlined process for building permits. Local ordinances may be adopted to implement the provisions of SB 684 and the three statutes discussed below, which shall not be considered a project under the California Environmental Quality Act.

Significant Provisions

Parcel Maps; Tentative and Final Maps (Government Code § 66499.41)

SB 684 requires local agencies to ministerially consider, without discretionary review or a hearing, a parcel map or a tentative and final map for a housing development project that meets certain size, density, and other requirements. The proposed subdivision must result in ten or fewer parcels and the proposed development project contains ten or fewer residential units. The lot to be subdivided must be zoned for multifamily development, not larger than five acres, substantially surrounded by qualified urban uses, as defined in the statute, and located either in a city that includes some portion of an urban area or in an urbanized area or urban cluster in a county with a population greater than 600,000. The newly created parcels may not be smaller than 600 square feet, unless otherwise authorized by the local agency in an ordinance. The parcels must comply with applicable objective standards of the Subdivision Map Act, be served by a public water system and municipal sewer system, may not have been created by an urban lot split (Government Code §66411.7), and must comply with the housing development provisions added by this bill (Government Code §65852.28). If a parcel has been created through this subdivision, a local agency is not required to permit further subdivision through an urban lot split (Government Code §66411.7).

The lot proposed to be subdivided may not be located on a site that is any of the following:

1. Prime farmland or farmland of statewide importance;
2. Wetlands;
3. In a very high fire hazard severity zone;
4. A hazardous waste site (with limited exceptions);
5. Within an earthquake fault zone, unless the development complies with applicable seismic protection building codes;
6. In a special flood hazard area (with limited exceptions);
7. In a regulatory floodway;
8. Land identified for conservation in a community conservation plan, habitat conservation plan, or other natural resource protection plan;
9. Habitat for certain protected species; or
10. Under conservation easement.

Other requirements include the average total area of floor space of the proposed housing units cannot exceed 1,750 net habitable square feet, and that the proposed housing units must be one of the following: (a) constructed on fee simple ownership lots, (b) part of a common interest development, (c) part of a housing cooperative, or (d) owned by a community land trust. The housing development on the lot proposed to be subdivided cannot require demolition or alteration of housing (1) subject to a recorded covenant restricting affordability levels, (2) subject to local rent or price control, or (3) occupied by tenants within the preceding five years from the date of application, or (4) on a parcel where an owner withdrew accommodations from rent or

lease within 15 years before the date of project application. Lots do not need to comply with any local requirements for size, width, depth, or dimensions of a parcel.

The project must comply with the local agency's inclusionary ordinance, if such ordinance has been adopted, objective zoning and design standards that are not inconsistent with the provisions of the bill, result in at least as many units as the maximum allowable residential density, unless the parcel is identified in the jurisdiction's current housing element, in which case the project must result in at least as many units as projected for that parcel in the housing element and at the affordability levels and subject to a recorded affordability restriction of at least 45 years, and a local agency is not required to allow development of an accessory dwelling unit or junior accessory dwelling unit.

Finally, in jurisdictions that have adopted a compliant housing element, SB 684 shall not apply to sites located in a single-family residential horse keeping zone.

Section 66499.41 goes into effect on July 1, 2024, except for the subsection related to sites in single family residential horse keeping zones, which goes into effect on January 1, 2024.

Housing Development Project Applications (Government Code § 65852.28)

Local agencies may impose objective zoning standards, subdivision standards, or objective design standards that do not conflict with this section or the ministerial subdivision provisions of SB 684.

However, a local agency may not impose objective zoning, subdivision, or design standards that:

1. Physically preclude the development of a project built to densities deemed appropriate to accommodate housing for lower income households as specified in Housing Element Law (Government Code § 65583.2(c)(3)(B))
2. Apply solely or partially because the subdivision or development was approved under this Section;
3. Require a setback between units, except as required in the California Building Code;
4. Require enclosed or covered parking;
5. Impose side and rear setbacks inconsistent with SB 9 (Government Code § 65852.21(b)(2)(B));
6. Impose parking requirements inconsistent with SB 9 (Government Code § 65852.21(c)(1)); or
7. Impose a floor area ratio standard of less than (a) 1.0 for projects with 3-7 units or (b) 1.25 for projects with 8-10 units.

Section 65852.28 goes into effect on July 1, 2024.

Building Permits (Government Code § 65913.4.5)

SB 684 provides that, for housing development projects consisting of 10 or fewer units, local agencies shall issue building permits based on the tentative or parcel map and its conditions of approval if the applicant has (1) received a tentative map approval or parcel map approval for the subdivision, and (2) submitted a building permit application that the local agency deemed complete pursuant to Government Code § 65913.3 (applications for post entitlement phase

permits). At the time of issuance, any dedication, improvement, and sewer requirements identified in the tentative map approval must be guaranteed.

Section 65913.4.5 also authorizes local agencies to:

- Condition issuance of the building permit on submission of a recorded covenant and agreement that states the applicant agrees that the building permit is issued on condition that a certificate of occupancy or equivalent final approval for the building will not be issued unless the final map has been recorded; and
- Require security in an amount no greater than 300% of the total estimated cost of the improvements or the acts to be performed, in the form of bonds, instrument of credit when a public agency provides at least 20% of the financing for the portion of the agreement requiring security, pledge from a financial institution that the funds necessary to carry out the agreement are on deposit and guaranteed for payment, or a letter of credit, to ensure faithful performance of the requirements contained in the tentative or parcel map or conditions of approval.

The local agency may deny issuance of a building permit, tentative map, or development approval if the building official makes a written finding, based on a preponderance of the evidence, that construction of the proposed structure before recordation of a final map would have a specific, adverse impact to public health and safety and for which there is no feasible method to satisfactorily mitigate or avoid the impact.

Section 65913.4.5 goes into effect on July 1, 2024.

Impacts Your Job: Local agencies must approve or deny applications under this section within 60 days of receiving the completed application, or the application will be deemed approved. If the agency denies the application, it must, within 60 days of receiving the completed application, provide a full set of comments in writing with a list of items that are defective or deficient and a description of how the application can be remedied. As with SB 4, agencies may wish to create checklists and application forms for developments proposing to utilize this statute. They may also need to develop processes for entering into guaranteeing improvement construction absent a final map.

AB 821: General Plan and Zoning Consistency (Government Code § 65850).

AB 821 addresses what happens when a zoning ordinance is not consistent with the general plan when a project application that does not fall within the Housing Accountability Act and is consistent with the general plan, but not the zoning, is submitted. A local agency must either amend the zoning ordinance within 180 days of receipt of the development application to be consistent with the general plan; or, if the zoning ordinance is not amended within that time period, the local agency must process the development application and apply objective general plan standards, but not inconsistent zoning standards.

Any resident or property owner may bring an action in superior court to enforce compliance with the provisions of AB 821 within 90 days of either the enactment or amendment of a zoning ordinance or the agency's failure to comply with this section.

Impacts Your Job: The Housing Accountability Act now requires cities to process housing developments without a rezoning if the general plan and zoning are inconsistent, but the project is consistent with the general plan. This bill extends this process to non-residential developments but gives the local agency 180 days to adopt consistent zoning.

AB 1218: Replacement Housing Requirements (Government Code §§ 65912.114, 65912.124, 65940, 66300, 66300.5, and 66300.6)

AB 1218 amends the Housing Crisis Act to expand replacement housing and relocation assistance requirements that apply when housing units are demolished. AB 1218 adds Government Code Sections 66300.5 and 66300.6, which now covers all the replacement housing and relocation requirements.

Significant Provisions

Under existing law, the following demolition protections apply to housing development projects that will require the demolition of residential units:

- The project must replace all existing or demolished protected units;
- Any existing tenants must be allowed to occupy their units until six months before start of construction, with proper notice; and
- The developer must provide income-eligible occupants of any protected units with relocation benefits and a right of first return for a comparable unit affordable to the household in the new development.

A "housing development project" is a use consisting of (1) residential units only, (2) a mixed-use development with at least two thirds of the square footage designated for residential use, or (3) transitional or supportive housing. AB 1218 extends these protections to ***all*** development projects and to sites where protected housing units were demolished in the last five years, unless all of the following conditions are met: (i) the project is an industrial use; (ii) the project site is entirely within a zone that does not allow residential uses; (iii) the applicable zoning was adopted before January 1, 2022; and (iv) the protected units that are or were on the project site are or were nonconforming uses.

Further, for development projects that are *not* housing development projects, AB 1218 provides that the required replacement housing must be developed prior to or concurrently with the development project and must be located within the same jurisdiction. The development proponent may contract with another entity to develop the replacement housing.

Finally, under current law, notice must be provided to existing occupants of units to be demolished 90 days before requiring the occupant to move, in accordance with Relocation Assistance Law requirements. AB 1218 amends these notice requirements, as described below.

Impacts Your Job: At least six months before requiring existing occupants to vacate, the project proponent must provide written notice of (1) the planned demolition, (2) the date the occupant must vacate, and (3) the occupant's rights under Section 66300.6 of the Government Code.

AB 1490: Affordable Adaptive Reuse Projects (Government Code §§ 65913.12 and 65960.1)

AB 1490 provides incentives, such as guaranteed permit turnaround times, for statutorily defined "extremely affordable adaptive reuse projects" (i.e., motel and hotel conversions).

Significant Provisions

For qualifying "extremely affordable adaptive reuse projects," AB 1490 provides that a city's or county's planning agency must provide development determinations within 60 days of submittal of the completed proposal for the development project for projects of 150 or fewer housing units, and within 90 days for projects of 150 or more units. The application is "deemed consistent" if the jurisdiction does not respond within these timeframes.

To qualify for adaptive reuse incentives, multifamily housing development projects must satisfy certain criteria (i.e., be an "extremely affordable adaptive reuse project"), including:

- Occupancy of 100% of non-managers' units must be restricted to lower income households, with at least 50% of units dedicated to very low-income households, subject to a recorded deed restriction;
- The development must involve retrofitting and repurposing a building that currently allows temporary dwelling or occupancy, and be entirely within the envelope of the existing building;
- The site must be an infill parcel, but not a site or adjoined to any site where more than one-third of the footage on the site is dedicated to industrial use;
- Housing developments of 50 units or more must provide onsite management services; and
- The housing development does not eliminate any existing open space on the parcel.

A local agency may impose objective design review standards for a housing development project submitted pursuant to AB 1490, except that it may not impose or require the curing of any preexisting conflict with: (i) maximum density requirements; (ii) maximum floor area ratio requirements; (iii) requirement to add additional parking; or (iv) requirement to add additional open space. A local agency may deny a project that satisfies the above criteria if the project is on or adjoining an industrial-use site and the local agency makes a finding that the development would have an adverse effect on public health and safety.

Finally, any local source of funding that can be used for affordable housing development must include adaptive reuse (i.e., the retrofitting and repurposing of an existing building to create new residential units) as an eligible type of project.

Impacts Your Job: Local agencies may wish to create new application checklists for these types of projects and be made aware of the review deadlines for these types of projects. Lastly, local

agencies should ensure that they are including adaptive reuse as an eligible type of project on any notices of funding availability for local affordable housing development funds.

California Environmental Quality Act (SB 69, SB 91, SB 406, AB 1449, AB 1633, AB 1307, AB 356)

This section summarizes bills amending the California Environmental Quality Act (CEQA).

AB 1449: Affordable Housing CEQA Exemption (Public Resources Code § 21080.40)

AB 1449 exempts from CEQA numerous public agency actions for an "affordable housing project," as defined below.

Significant Provisions

If a housing development meets the requirements to be considered an "affordable housing project," then the issuance of an entitlement; lease, conveyance, or encumbrance of public agency land (including any action to facilitate the lease, conveyance, or encumbrance of public agency land or land to be purchased by a public agency); actions to provide financial assistance; and rezoning, specific plan amendments, or general plan amendments required for construction of an affordable housing project, are all exempt from CEQA.

Good to Know: "Affordable housing project" for purposes of the **AB 1449** exemption is a project consisting of multifamily residential uses only, or a mix of multifamily residential and nonresidential with at least two-thirds of the square footage designated for residential; where all the units within the project, excluding managers' units, are reserved for lower income households; the project meets labor standards set forth in AB 2011 (Government Code Section 65912.130 or 65912.131); the project is located on a legal parcel(s) that is either in an urbanized area or urban cluster, within one-half mile walking distance to a high-quality transit corridor or major transit stop, in a low vehicle travel area, or proximal to six or more amenities as of the date of submission of the project; and at least by 75 percent of the perimeter is developed with urban uses (not defined).

Additionally, to qualify for the exemption, the affordable housing project must be subject to a recorded California Tax Credit Allocation Committee regulatory agreement and adequately served by existing utilities or extensions, and the public agency must confirm that: (i) the project site meets the requirements of Government Code 65913.4(a)(6)(B)-(K); (ii) the development proponent has completed a phase I environmental assessment and specified mitigation if a recognized environmental condition or hazardous substances are found; (iii) if the site is vacant, the project site does not contain tribal cultural resources that could be affected by the development and could not be mitigated; and (iv) if multifamily housing is not a permitted use on the project site, the project cannot include housing within 500 feet of a highway, within 3,200 feet of an active facility that extracts or refines oil or natural gas, or within a very high fire hazard zone.

Impacts Your Job: Many affordable housing projects will be exempt from CEQA under this section. If the lead agency determines the project is exempt under AB 1449, the lead agency shall

file a notice of exemption with the Office of Planning and Research and the county clerk of the county in which the activity will occur.

Good to Know. This exemption sunsets January 1, 2033, unless extended by the Legislature.

AB 1633: Certain CEQA Violations Made Violations of the Housing Accountability Act (Government Code § 65589.5(h))

AB 1633 amends the Housing Accountability Act to expand the definition of disapproval of a housing development project to include certain circumstances when a public agency fails to make determinations under CEQA or requires additional analysis before approving CEQA documents.

Significant Provisions

This legislation is intended to prohibit public agencies from using CEQA as a means of delaying or denying project approvals. Under AB 1633, applicants may utilize the remedies of the HAA to sue local agencies that use CEQA as a means to disapprove or delay a housing development.

AB 1633 amends Government Code Section 65589.5(h) to expand the definition of "disapprove the housing development project" to include (1) a failure to make a determination on whether a project is exempt from CEQA, or an abuse of discretion as defined in the legislation; or (2) the failure to adopt a negative declaration, addendum or to certify an EIR under certain circumstances.

The protections of AB 1633 only apply if there is substantial evidence in the record that the project meets the environmental eligibility standards for streamlining under SB 35 (Government Code §65913.4). Additionally, development projects utilizing this provision must be either:

a) within one-half mile walking distance from a high-quality transit stop;

b) located in a very low vehicle travel area;

c) proximal, meaning within one mile (or two miles in a rural area) to six or more amenities as specified in the legislation such as a bus station, ferry terminal, pharmacy, supermarket, public library, school; or

d) parcels where at least 75% of the perimeter adjoins parcels that are developed with urban uses.

The density of the housing development must also meet or exceed 15 dwelling units per acre.

If the basis for the protections afforded by AB 1633 is that the development is exempt from CEQA, there must be substantial evidence in the record that the housing development is eligible for a CEQA exemption.

For purposes of a housing development project eligible for a CEQA exemption under the legislation, an abuse of discretion means all of the conditions set forth above are met but the public agency does not determine that the project is exempt.

If the basis for the protection is that the public agency failed to adopt a negative declaration, addendum or EIR there must be a negative declaration, addendum or EIR or other comparable document prepared that if adopted would satisfy the requirements of CEQA, the public agency must have held a meeting to adopt the CEQA document, and the public agency either committed an abuse of discretion or failed to decide whether to adopt the CEQA document or require additional study. Abuse of discretion involving the preparation of an environmental review document means the public agency failed to adopt the appropriate CEQA document in bad faith without substantial evidence in the record to support a fair argument that further environmental analysis or study is required, and the public agency decided to require further environmental study.

Applicants must give the public agency timely notice that the agency's action or inaction violates these provisions. If a public agency determines that a developer is not exempt from CEQA, the applicant must give notice within 35 days of the date the local agency gave the applicant notice of the determination. If the public agency has not taken any action on an exemption, timely notice from the applicant means notice given at least 60 days after the project application has been accepted as complete or deemed complete. If the public agency fails to adopt or certify an environmental review document, timely notice means notice given within 35 days of the public agency determining to require additional study. If the public agency has not taken action on an environmental review document, timely notice means notice given within the time periods set out in CEQA for the preparation of the applicable environmental review document, or if there is no time period in CEQA, within 180 days.

The applicant's notice must include excerpts from the record supporting the project's eligibility for the protections of the legislation.

Once a notice is received from an applicant, the local agency has 90 days to make the appropriate determination but may extend that time period if the notice involves a finding of exemption under CEQA for another 90 days by giving the applicant notice of the need for an extension. The legislation does not provide an option to extend the 90-day response period for notices related to the adoption, approval, or certification of an environmental review document. For applicant notices related to CEQA exemptions, the public agency is required to file the applicant's notice with the County Clerk, and the County Clerk is to post the notice.

AB 1633 also provides additional protections for local government sued by opponents of a housing development project by limiting the circumstances under which the court may award attorneys' fees to the opponents. The statute states that attorneys' fees should rarely be awarded if the local agency acted in good faith in approving a housing development project.

Impacts Your Job: Applicants may assert that they are entitled to an exemption and give the local agency only a limited time (no more than 180 days) to examine the project and make a determination.

Good to Know. These provisions sunset January 1, 2031, unless extended by the Legislature.

Other CEQA Bills (AB 356, SB 69, SB 91, SB 406, AB 1307)

AB 356 (Public Resources Code § 21081.3) extends the sunset date from January 1, 2024, to January 1, 2029, of the Dilapidated Building Refurbishment Act. Existing law provides that a lead agency is not required to evaluate the aesthetic effects of a project and aesthetic effects shall not be considered significant effects on the environment if the project involves refurbishment, conversion, repurposing, or replacement of an existing building that meets specified requirements.

Impacts Your Job: If the lead agency determines that it is not required to evaluate the aesthetic effects of a project, the lead agency shall file a notice with the Office of Planning and Research and the county clerk of the county in which the project is located.

SB 69 (Public Resources Code § 21152) requires that when a local agency files a notice of determination or notice of exemption, as applicable, with the county clerk of each county in which a project is located that it will also file the notice of determination with the State Clearing House in the Office of Planning and Research. The notice, including any subsequent or amended notice, must be posted by the Office of Planning and Research within 24 hours of receipt in the office and on the State Clearinghouse internet website and remain posted for 30 days.

SB 91 (Public Resources Code §§ 21080.50 and 21168.6.9) extends indefinitely the CEQA exemption for projects related to the conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing. The exemption was previously set to sunset January 1, 2025. This bill also extends the application for the procedures for environmental leadership transit project approved on or before January 1, 2025 (previously on or before January 1, 2024) to January 1, 2026 (previously only in effect until January 1, 2025).

SB 406 (Public Resources Code § 21080.10) extends a CEQA exemption to local agencies not acting as the lead agency (previously only available for the Department of Housing and Community Development and California Housing Finance Agency) providing financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in the Health & Safety Code, if the project that is the subject of the application for financial assistance or insurance will be reviewed by another public agency.

AB 1307 (Public Resources Code §§ 21085 and 21085.2) provides that noise generated by occupants of residential projects is not a significant effect on the environment. Public Resources Code § 21085 states that "[f]or purposes of this division, for residential projects, the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment."

Good to Know: AB 1307 was a direct response to the First District Court of Appeal's opinion in *Make UC a Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th 656. That case, published in February 2023, held that the environmental impact report ("EIR") for the proposed student housing project in People's Park was inadequate due to its failure to (1) consider reasonably feasible alternative sites, and (2) analyze potential noise impacts from student parties.

Public Resources Code § 21085.2 also establishes that, in an EIR for a residential or mixed-use housing project, an institution of higher education shall not be required to consider alternatives to the location of such project if the project is located on a site that is no more than five acres, the site is substantially surrounded by qualified urban uses, and the project has already been evaluated in the EIR for the most recent long-range development plan for the applicable campus.

Good to Know. **AB 1307** is an urgency bill and thus took effect immediately.

Density Bonus (SB 713, AB 323, AB 1287)

AB 1287: Additional Density Bonuses (Government Code § 65915)

AB 1287 increases the maximum density bonus to nearly 90 percent for the inclusion of more very low income, low income, or moderate-income housing.

Significant Provisions

AB 1287 requires a local jurisdiction to grant an ***additional*** density bonus where:

1. The housing development would not restrict more than 50 percent of the total units to moderate-income, lower income, or very low-income households;
2. The housing development does any one of the following: (i) provides 24 percent of the total units to lower income households; (ii) provides 15 percent of the total units to very low-income households; or (iii) provides 44 of the total units to moderate income-households; and
3. The development provides five to 10 percent additional very low-income units, or five to 15 percent additional moderate-income units. In that case, the development is entitled to an additional density bonus of 20 to 38.75 percent. For instance, a development with 25 percent very low-income units (15 percent plus 10 percent) is entitled to a total density bonus of 88.75 percent (50 percent bonus for 15 percent very low income, plus 38.75 percent bonus for an additional 10 percent very low income).

The bill also changes the definition of "maximum allowable residential density" or "base density" to mean "the *greatest* number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or if a range of density is permitted, means the *greatest* number of units allowed by the specific zoning range, specific plan, or land use element of the general plan" and removes from the same definition the provision stating that the greater density prevails if the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan.

AB 1287 also increases the number of incentives and/or concessions for 100 percent lower-income projects from four (4) to five (5) and requires a jurisdiction to grant at least four (4) incentives and/or concessions for a for-sale housing development project that provides either a total of 16 percent very low-income units or 45 percent moderate-income units.

Currently, density bonus law states that a local government may require reasonable documentation from an applicant to establish eligibility for a requested density bonus, incentives, concessions, waivers, reductions of development standards, and parking ratios. AB 1287 modifies

this provision, such that a local government may now only request reasonable documentation to establish eligibility for a requested density bonus and parking ratios.

Impacts Your Job: Agencies will need to update their density bonus handouts and guidelines to accommodate these additional bonuses and concessions, and to remove requirements for reasonable documentation of eligibility for concessions and waivers.

SB 713: Definition of "Development Standard" (Government Code § 65915)

SB 713 modifies the definition of "development standard" to provide that it includes "a regulation that is adopted by the local government or that is enacted by the local government's electorate exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local government."

Good to Know. Most agencies have already interpreted the definition of "development standard" to include standards adopted by initiative.

AB 323: Sale of Affordable Units (Government Code § 65915)

AB 323 provides that any for-sale unit(s) that qualified an applicant for the award of a density bonus must be (i) sold to and occupied by a very, low, or moderate-income household for an affordable housing cost and subject to an equity sharing agreement, or (ii) if any such unit is not purchased by an income-qualified household within 180 days after the issuance of the certificate of occupancy, then it is sold to a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies the requirements of Revenue & Taxation Code Section 402.1(a)(10). For the purposes of the latter, "qualified nonprofit housing corporation" must meet all of the following criteria:

1. Has a determination letter from the Internal Revenue Service affirming its tax-exempt status pursuant to Internal Revenue Code Section 501(c)(3);
2. Not a private foundation (as defined in Internal Revenue Code Section 509);
3. Based in California;
4. All of the board members of the nonprofit corporation have their primary residence in California; and
5. The primary activity of the nonprofit corporation is the development and preservation of affordable home ownership housing in California; and
6. Incorporates within its initial purchase contracts a repurchase option requiring a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property pursuant to an equity sharing agreement or affordability restrictions on the sale and conveyance of the property ensuring at least 45 years of affordability.

Good to Know. This definition largely limits qualified nonprofits to Habitat-type organizations.

This bill also adds Section 714.7 to the Civil Code to prohibit a developer from selling any for-sale unit constructed pursuant to a local inclusionary ordinance to a purchaser that does not meet the

income eligibility requirements unless such unit is not purchased by an income-qualifying household within 180 days of the issuance of the certificate of occupancy. In such case, the developer may sell the unit(s) to qualified nonprofit housing corporation as defined. Violations of this new Civil Code Section 714.7 are punishable by a civil penalty of up to $15,000 for each violation.

Impacts Your Job: Some developers have formed nonprofits which then have purchased units that are intended for sale to lower income or moderate-income homeowners. These provisions seem intended to require sale to homeowners in most instances.

Good to Know. These changes to density bonus law are applicable to projects regardless of whether they are consistent with local density bonus ordinances.

Accessory Dwelling Units (AB 671, AB 976, AB 1033, AB 1332)

Currently local agencies cannot require owner occupancy for accessory dwelling units until 2025. **AB 976** extends the prohibition indefinitely.

Additionally, **AB 1033** amends Government Code section 65852.2 to permit local agencies to allow properties with accessory dwelling units to be subdivided as a condominium, allowing the accessory dwelling unit to be conveyed separately from the primary dwelling unit. If the local agency wants to allow this, it must adopt an implementing ordinance. Through **AB 671**, the CalHome Program was also revised to ensure the program would not prohibit this subdivision if the accessory dwelling unit will be separately conveyed to a lower income household.

AB 1332 adopts Government Code section 65852.27 to require local agencies to adopt a program by January 1, 2025, for the ministerial preapproval of accessory dwelling unit plans.

Significant Provisions

The CalHome Program is administered by the California Department of Housing and Community Development to provide funds for lower income homeownership opportunities. CalHome grant funds can finance the construction, repair, reconstruction, or rehabilitation of accessory dwelling units or junior accessory dwelling units. **AB 671 (Health and Safety Code § 50650.3)** provides that CalHome Program restrictions will not prohibit the separate transfer of an accessory dwelling unit to a lower income household.

AB 976 (Government Code § 65852.2) makes permanent the prohibition on owner occupancy requirements for accessory dwelling units. Owner-occupancy is still required to construct a junior accessory dwelling unit.

AB 1033 (Government Code §§ 65852.2 and 65852.26) allows local agencies to adopt an ordinance to permit the separate conveyance of accessory dwelling units and the primary dwelling unit as condominiums. The ordinance must require the following:

1. The development is considered a common interest development subject to the California Davis Stirling Act (Civil Code §§ 4000 et seq).

2. The development must be created in conformance with all applicable objective requirements of the Subdivision Map Act (Government Code §§ 66410 et seq) and all objective requirements of a local subdivision ordinance.
3. A safety inspection of the accessory dwelling unit must be conducted before recording the condominium plan.
4. The subdivision map or condominium plan cannot be recorded against the property until the lienholder(s) consents. The lienholder can opt to not consent, effectively prohibiting the subdivision.
5. The local agency must provide certain information about the process for converting the development into condominiums on submittal checklists and public information about accessory dwelling units.
6. The homeowner will be required to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.
7. If the property is in a planned development with an existing association, the property owner must first obtain the express written authorization of the existing association before recording a condominium map.

AB 1332 (Government Code § 65852.27) requires local agencies to develop a program to preapprove accessory dwelling unit plans by January 1, 2025. The program must meet the following requirements:

1. The local agency must accept accessory dwelling unit plan submissions for preapproval without restricting who may submit plans for preapproval.
2. The review must be based on the standards in Government Code Section 65852.2.
3. The local agency may charge the applicant for the preapproval of plans the same fees that the local agency would charge an applicant seeking approval of an accessory dwelling unit.
4. The local agency must post the preapproved accessory dwelling unit plans and the contact information of the applicant of a preapproved accessory dwelling unit plan on the local agency's internet website. The plan must be removed from the website within 30 days of receiving a request for removal from the applicant.

The local agency must approve or deny an application for a detached ADU ministerially without discretionary review within 30 days from the date the local agency receives a completed application if the application either (1) utilizes a plan for an accessory dwelling unit that has been preapproved by the local agency within the current triennial California Building Standards Code rulemaking cycle, or (2) utilizes a plan that is identical to a plan used in an application for a detached accessory dwelling unit approved by the local agency within the current triennial California Building Standards Code rulemaking cycle.

Impacts Your Job: Agencies will need to amend their ADU ordinances if they require owner-occupancy after 2025.

Impacts Your Job: Each agency can determine whether they wish to allow ADUs and the primary dwelling unit to be separately conveyed. If so, it must adopt an ordinance consistent with AB 1033.

Impacts Your Job: Agencies have until January 1, 2025, to adopt a preapproved ADU plan program conforming with AB 1332.

Parking (AB 894, AB 1308, AB 1317)

AB 894: Shared Parking (Government Code § 65863.1)

AB 894 allows underused parking lots to satisfy parking requirements on a different site.

Significant Provisions

When at least 20 percent of a development's parking spaces are not occupied during the period in which shared parking is proposed, the owner may propose entering into a shared parking agreement to satisfy the parking requirements on another site, if the parcels sharing the parking are on the same, or contiguous parcels, separated by no more than 2,000 feet of travel by the shortest walking route, or if there is a plan for shuttles or other means to move people between the parking lot and the serviced site.

If the underutilized parking is not used by the receiving parcel to meet the local agency's parking requirements, the local agency must accept the shared parking agreement.

If the underutilized parking is being used by the receiving parcel to meet the local agency's parking requirements, the local agency must approve the shared parking agreement if the agreement includes a parking analysis using peer-reviewed methodologies developed by a professional planning association and the agreement either secures the long-term provision of parking or allows periodic review and approval by the local agency. If the shared parking agreement does not include a professional planning association study and the local agency has not adopted an ordinance that provides for shared parking agreements, the local agency must decide whether to approve or deny the shared parking agreement. Prior to acting on a shared parking agreement, if the parties to the shared parking agreement include developments of at least 10 residential units or at least 18,000 square feet, the local agency must notify all property owners within 300 feet of the proposed shared parking agreement and, if a request for a meeting is received within 14 days, hold a public meeting.

Additionally, in certain publicly funded projects, the public agency providing the most funding must examine the feasibility of shared parking before funding is granted for parking lots or garages.

Action Items: A locality can adopt a "shared parking agreement" ordinance. Adopting this ordinance allows the public agency to avoid the noticing and hearing requirements under the statute and would allow the public agency to require that shared parking agreements be recorded against the parcels that are a part of the agreement. Local agencies should also adopt requirements for recording the agreements and may wish to include requirements for the content of the agreements.

AB 1317: Unbundled Parking (Civil Code § 1947.1)

AB 1317 requires that parking be separately leased to tenants in ten counties starting in 2025.

Significant Provisions

Residential rental properties with 16 or more units for which a certificate of occupancy was issued after January 1, 2025, and are located in one of ten specified counties must "unbundle" parking from rent. Unbundling parking means that the parking will be leased under a separate contract (e.g., rental agreement addendum or separate rental agreement), and the cost of parking will not be included in the price of rent. Tenants have the right of first refusal for parking spaces; spaces that are not claimed by the tenants can be leased to other on-site users or off-site residential uses on a month-to-month basis. Failure of the tenant to pay the fee associated with parking may not constitute the basis for an unlawful detainer action, but the owner may revoke the tenant's right to the parking if the associated fees remained unpaid for 45 days after the date on which they were due. The requirements do not apply to 100 percent affordable housing projects or to townhouses and row houses. In ABAG's jurisdiction, only Alameda and Santa Clara Counties are subject to this requirement. San Diego County is excluded.

Impacts Your Job: Local agencies are not required to enforce this legislation. Some apartment owners currently charge separately for parking. If the properties include an affordable housing agreement imposed by the local agency, it is not clear if the cost of parking can be included in the maximum rent that may be charged to the tenant.

AB 1308: Parking for Single-Family Home Remodels (Government Code § 65863.3)

AB 1308 provides that if an owner of a single-family home seeks to remodel, renovate, or add to the single-family home and the single-family home will not exceed any maximum size limitations (e.g., height, lot coverage, floor-to-area ratio) imposed by local zoning regulations, then the public agency cannot increase the minimum parking requirement as a condition of approval.

Financial Issues Related to Housing (SB 469, AB 516)

SB 469: Article 34 Exemption (Health & Safety Code § 469)

SB 469 expands the exemptions from the election requirement of Article 34 of the California Constitution ("Article 34").

Significant Provisions

Article 34, as interpreted by California Supreme Court decisions, generally requires that certain "low rent housing projects" which are "constructed, developed, or acquired" by State public bodies must be approved by a majority vote of the electors in the jurisdiction where the housing is proposed. Section 37001 of the Health & Safety Code provides that certain programs and activities of State public bodies (State agencies, cities, counties, and special districts) do not constitute construction, development, or acquisition of low rent housing when the housing activities are primarily carried out by private parties. The following programs have been added to the list of exemptions by SB 469:

- Projects that receive assistance under a program with funds appropriated and disbursed under Division 31 of the Health & Safety Code (starting with Section 50000) and Division 44 of the Public Resources Code, which includes:
    - Department of Housing and Community Development programs that use funds appropriated and disbursed by the State.
    - California Housing Finance Agency Programs that use funds appropriated and disbursed by the State.
    - Affordable Housing and Sustainable Communities programs that use funds appropriated and disbursed by the State.
- Projects that receive an allocation of federal or state low-income housing tax credits from the California Tax Credit Allocation Committee.

Good to Know: HCD is expected to provide guidance regarding which HCD programs are exempted from Article 34 election requirements by SB 469. This change does not exclude local funding from the requirements of Article 34. Currently, agencies without Article 34 authority may be able to restrict only 49% of units as low income, unless a larger percentage of affordable units is a land use requirement, such as a 100 percent affordable project utilizing provisions of state density bonus law.

AB 516: Mitigation Fee Act Amendments (Government Code §§ 66006 and 66023)

AB 516 amends provisions of the Mitigation Fee Act related to reporting and audits.

Significant Provisions

Currently, the Mitigation Fee Act requires a local agency that collects a development fee for offsite or public improvements to deposit the fee in a separate capital facilities account or fund, and to annually make available to the public certain information about the account or fund. AB 516 expands the information to be disclosed to include (i) identification of each public improvement identified in a previous report and whether construction began on the approximate date noted in the previous report and (ii) if any project did not commence by the approximate date, the reason for the delay and a revised approximate date for the commencement of the construction of improvement.

The AB 516 amendments also require a local agency to inform any person paying a fee of their right to request an audit pursuant to Government Code Section 66023 and of their right to file a written request for mailed notice of the local agency's meeting to review information made public. The local agency must also send said person a link to the page on the local agency's website where the information about the account or fund is available for review.

Finally, AB 516 provides that any person can request an audit to determine: (i) whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, or service provided by the local agency; (ii) when the revenue generated by a fee or charge is scheduled to be expended; and (iii) when the public improvement is

scheduled to be completed. If such a request is made, the legislative body of the local agency may retain an independent auditor to make the above-mentioned determinations.

Good to Know: The legislative body of the local agency is not required to conduct an audit requested by a person under Government Code § 66023 for a fee or charge levied by the local agency if an audit has been performed for the same fee or charge within the last 12 months.

Action Item: Each year, the local agency makes available certain information about the fund or account for the fees collected in connection with the approval of a development project. The local agency must expand the list of information provided to include the (i) identification of each public improvement identified in a previous report and whether construction began on the approximate date noted in the previous report and (ii) if any project did not commence by the approximate date, the reason for the delay and a revised approximate date for the commencement of the construction of improvement. Agencies must also include in their invoices or receipts for fee payment the person's right to request an audit.

Surplus Land Act (SB 747, AB 480)

Significant Provisions

SB 747 and AB 480 (Government Code §§ 54221, 54222, 54222.5, 54223, 54224, 54225, 54226, 54227, 54230, 54230.5., 54234) make substantial changes to the Surplus Land Act. These two bills have a Section 1, which was each individual author's desired amendments, and a Section 1.5 which was the negotiated changes. Section 1.5 was supposed to be identical in both bills, however, there are differences in this section between the bills. This creates confusion as to which Section 1.5 will be effective. Since AB 480 was chaptered last, this summary reflects the amendments contained in that bill.

The Surplus Land Act imposes noticing and affordability requirements on local agencies selling or leasing their surplus real property that is no longer necessary for "agency use." The definition of "agency use" has been expanded to include property owned by a port that is used to support logistics uses; sites for broadband equipment or wireless facilities; and buffer sites near sensitive governmental uses including waste disposal sites.

Impacts Your Job: Certain properties are exempt from the Surplus Land Act. Previously, local agencies had to declare properties as "exempt surplus land" at a public meeting. Under AB 480, the local agency can identify the land as "exempt surplus land" in a notice that is published and available for public comment as opposed to declaring the land exempt at a public meeting. The notice must be sent to local public entities with jurisdiction over the property and to housing sponsors at least 30 days before the exemption takes effect.

The scope of what is considered "exempt surplus land" has been amended. Exempt surplus land now includes the following (see the statute for a comprehensive list):

- Surplus land that is not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes and less than one-half acre in size.

- Surplus land when a local agency is exchanging surplus land for another property necessary for the agency's use, including easements necessary for the agency's use.
- Surplus land transferred to a third-party intermediary for future dedication for the receiving agency's use pursuant to a legally binding agreement at the time of transfer to the third-party intermediary.
- Surplus land to be developed as a housing development, which may have ancillary commercial ground floor uses, that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households. Property with such proposed development is no longer subject to the requirement that the local agency invite local public entities with jurisdiction where the land is located and housing sponsors to an open, competitive bid to qualify for the exemption. The requirements must be contained in a covenant or restriction recorded against the surplus land at the time of sale.
- The following types of surplus land are subject to the requirement that the local agency invite local public entities with jurisdiction where the land is located and housing sponsors to an open, competitive bid to qualify for the exemption:
    - Surplus land to be developed as a mixed-use development that is more than one acre in area, which includes not less than 300 residential units, and that restricts at least 25 percent of the residential units to lower income households. The property now must be less than 10 acres in area (consisting of either a single parcel, or two or more adjacent or non-adjacent parcels combined for disposition). The affordability requirements must be contained in a covenant or restriction recorded against the surplus land at the time of sale.
    - Surplus land totaling 10 or more acres, consisting of either a single parcel, or two or more adjacent or non-adjacent parcels combined for disposition to one or more buyers pursuant to a plan or ordinance adopted by the legislative body of the local agency, or a state statute. The development on the surplus land must include the greater of (a) 300 residential units or (b) the lesser of 10 times the number of acres or 10,000 residential units. The project must restrict at least 25 percent of the residential units to lower income households. The affordability requirements must be contained in a covenant or restriction recorded against the surplus land at the time of sale.
- Surplus land to be developed as a mixed-use development that is not located in an urbanized area that restricts at least 25 percent of the residential units to lower income and at least 50 percent of the square footage of the new construction associated with the development is designated for residential use.
- Surplus land that is owned by a California public-use airport on which residential uses are prohibited.
- Surplus land that is transferred to a community land trust that will be developed or rehabilitated as owner occupied housing, a member occupied limited equity housing

cooperative, or a rental housing development. Improvements on the property must be made available to qualified persons, as defined in Revenue and Taxation Code Section (c)(6).

- Surplus land owned by local agencies whose primary mission or purpose is to supply the public with a transportation system and which has adopted a land use plan or policy that meets specified conditions related to housing can be exempt if the land is developed for commercial, or industrial uses or activities, including nongovernmental retail, entertainment, or office development or for the sole purpose of investment or generation of revenue if the local agency. Prior to disposing of a parcel for non-residential development, the local agency must dispose of 25% of the land designated in the land use plan or policy for affordable housing. If the land is disposed of for residential purposes, the local agency must invite local public entities with jurisdiction over the property and housing sponsors to an open, competitive bid.

Impacts Your Job: Typically, affordability restrictions must be recorded against the property. Check the requirements under the Surplus Land Act to see what must be included in the recorded restrictions (as applicable) so that the property can qualify as exempt surplus.

If surplus land is not exempt, prior to disposing of the land or "participating in negotiations," the local agency must provide a written notice of availability to parties specified in the statute. The amendments clarify that "participating in negotiations" does not include issuing requests for proposals or request for qualifications to the parties specified in the statute for certain exempt surplus land activities; negotiating a lease, exclusive negotiating agreement, or option agreement for certain exempt surplus land activities; and negotiating with a developer to determine if a local agency can satisfy the disposal requirements when there are either leases for 15 years or less or no development or demolition on the property.

If an entity successfully purchases or leases surplus property pursuant to the Surplus Land Act, the entity must agree to restrict at least 25% of the units as affordable. Currently, ownership units are only subject to an equity share agreement, as defined in the Density Bonus Law. However, under SB 747 and AB 480, the ownership units will be subject to a 45-year affordability term, or to a 50-year term for ownership or rental housing on tribal trust lands.

Good to Know: The definition of "dispose" has been added to the statute and includes (a) the sale of the surplus land, and (b) entering into a lease for the surplus land, which is for a term longer than 15 years, including any extension or renewal options included in the terms of the initial lease, entered into on or after January 1, 2024. A lease does not fall under the definition of "dispose" if it is 15 years or less, including extensions, or if no development or demolition will occur, regardless of the term of the lease.

Good to Know: Government Code § 54226 was amended to clarify that the Surplus Land Act does not limit the local agency's authority or discretion to approve land use, zoning, or entitlement decisions in connection with surplus land. Further, it does not require a local agency to dispose of land that is surplus.

The Legislature also amended the penalty for violating the Surplus Land Act. Previously, the penalty was based on the final price of the land sold. Now, the penalty is a percentage of the

"applicable disposition value" which is the greater of the final sale price of the land or the fair market value of the land at the time of sale; in the case of a lease, the disposition value is the discounted net present value of the fair market value of the lease.

Action Item: If a local agency entered into an exclusive negotiation agreement or legally binding agreement to dispose of property as of September 30, 2019 (or December 31, 2020 for land that has been designated in a long-range property management plan prepared by a successor agency or held in the Community Redevelopment Property Trust Fund), the provisions of the Surplus Land Act as it existed on December 31, 2019 will apply if the disposition is completed by December 31, 2027. Depending on the location, the previous deadline was December 31, 2022, or December 31, 2024. If a local agency terminated an exclusive negotiating agreement or legally binding agreement to dispose of property due to the lapse of the 2022 statutory deadline for completing the disposition of property, the local agency may elect to ask the party to the terminated exclusive negotiating agreement or legally binding agreement to consider reviving the terminated agreement. If the local agency and other party fully execute an instrument reviving the terminated agreement before January 1, 2024, on substantially the same terms and conditions as the terminated agreement, the revived agreement shall be subject to the provisions of the Surplus Land Act as it existed on December 31, 2019, if the disposition is completed by December 31, 2027. Agencies which desire to revive these agreements need to act immediately.

HOA Fees and Affordable Housing (AB 572)

AB 572: Mitigation Fee Act Amendments (Civil Code § 5605)

AB 572 limits increases in homeowners' association dues for deed-restricted affordable housing.

Significant Provisions

AB 572 amends the Davis-Stirling Common Interest Development Act to restrict the amount by which a homeowners' association can annually increase a "regular assessment" on the owner of a deed-restricted affordable housing unit. The fees can only increase by five percent plus the percentage change in the Consumer Price Index, not to exceed 10 percent. The association may impose an assessment on the owner of a deed-restricted affordable housing unit in the development that is lower than the assessment imposed against other owners according to the proportional ownership of total subdivision interests subject to assessments.

Good to Know: This bill only applies to a common interest development that records its original declaration on or after January 1, 2025.

AB 572 does not apply to any of the following:

- A development where the percentage of the units (excluding manager's unit(s)) that are deed-restricted affordable housing units exceeds the percentage required by any applicable zoning ordinance in effect at the time the development received final approval;
- A development that is located within a jurisdiction that does not have any applicable zoning ordinance requiring a percentage of deed-restricted affordable housing units and either (i) the percentage of the units (excluding manager's unit(s)) that are deed-restricted

affordable exceeds 10 percent of the total number of units in the development or (ii) the development meets the affordability requirements in AB 2011 (Government Code Section 65912.122(b)(1)(B)), was approved pursuant to AB 20100 (Government Code Section 65912.124), and the percentage of units (excluding manager's unit(s)) that are deed-restricted affordable exceeds 15 percent of the total number of units in the development.

- A development of 20 units or fewer.

Impacts Your Job: Local agencies have often found that lower income homeowners cannot afford continuing increases in HOA fees. This bill is intended to moderate those increases for lower income homeowners.

Action Item: Local agencies should make sure that any local policies related to the imposition of assessments on affordable housing units in a common interest development do not conflict with AB 572.

Miscellaneous (AB 281, AB 812, AB 835)

Significant Provisions

AB 281: Special District Postentitlement Permits (Government Code § 65913.3.1) requires that a special district that receives an application for service or postentitlement approval provide written notice of next steps in the review process, including any additional information necessary to review the application. A special district that receives any requested additional information shall respond to the applicant with an additional written notice of next steps in the review process, again including any additional information necessary to review the application.

Impacts Your Job: Under AB 281, the special district has 30 business days (for housing developments with 25 units or less) or 60 days (for housing developments with 26 units or more) to provide written notice to the applicant regarding next steps and request additional information for review. This timeline applies to any follow-up notices provided under AB 281.

AB 812: **Artist Housing (Government Code § 65914.8)** allows local agencies to adopt an ordinance that requires development proponents to reserve a percentage of the project units for artists. The reserved artist units must be located within one-half mile from or within a certified state-designated cultural district (pursuant to Government Code § 8758) or within any similar locally designated cultural district. If an insufficient number of artists apply for and occupy the reserved units, the unoccupied units may be offered to general members of the public.

Good to Know: Artist means the creator of any work of visual, graphic, or performing art of any media, including, but not limited to, a painting, print, drawing, sculpture, craft, photograph, film, or performance.

The local agency can require up to 10 percent of the locally restricted affordable units to be reserved for artists.

Action Item: To impose this artist housing requirement, the local agency must adopt an ordinance that is consistent with the Local Tenant Preferences to Prevent Displacement Act; that prevents an existing tenant from being evicted in favor of an artist; and that contains a fair and

comprehensive vetting process that includes, but is not limited to, initial and annual income verification consistent with applicable affordable housing laws and artist status verification.

AB 835: Single-Exit Apartment Houses (Health & Safety Code § 13108.5.2) requires the State Fire Marshal to research standards for single-exit, single stairway apartment houses, with more than two dwelling units, in buildings above three stories. After performing this research, the State Fire Marshall must provide a report to the Senate Committee on Governmental Organization, the Assembly Committee on Emergency Management, the Joint Legislative Committee on Emergency Management, and the California Building Standards Commission by January 1, 2026. The report must address fire and life safety or emergency activities in the apartment houses studied.

Good to Know: Local agencies need take no action related to this legislation.

Enforcement and Other HCD Responsibilities (SB 555, AB 434, AB 1485)

Significant Provisions

AB 1485: Attorney General Intervention in Housing Litigation (Government Code § 65585.01) authorizes the Attorney General to intervene in an action or proceeding regarding housing.

AB 1485 gives HCD and the Attorney General (AG) the unconditional right to directly intervene in housing litigation against a local government. Currently a non-party who wishes to join a lawsuit by intervention must seek leave of court pursuant to Code of Civil Procedure Section 387(c). The court must permit intervention if a provision of law confers an unconditional right to intervene under Section 387(d)(1)(A).

AB 1485 establishes that in any lawsuit brought to enforce housing laws, including the laws listed in Government Code Section 65585(j) (which includes the Housing Accountability Act, the State Density Bonus Law, the Housing Crisis Act of 2019, and other enumerated laws), HCD or the AG shall have an unconditional right to intervene. As a result, a court must permit intervention upon application by HCD or the AG for leave of court to intervene in a lawsuit.

AB 434: HCD Authority to Enforce Housing Laws (Government Code § 65585) continues the strengthening of the state's enforcement powers. It amends Government Code Section 65585(j) to add specific housing laws to the list that HCD is required to enforce, if the HCD finds that a local government has taken an action in violation of that law. Section 65585(j) currently lists thirteen laws that HCD is required to enforce; AB 434 would add thirteen more. The new laws on this list include laws pertaining to accessory dwelling units and junior accessory dwelling units, SB 6 (2022), SB 9 (2021), AB 1218 (2023), SB 4 (2023), and SB 684 (2023).

SB 555: **Stable Affordable Housing Act of 2023 (Government Code §§ 50610 et seq.)** requires HCD to complete a California Social Housing Study by December 31, 2026. The study shall consist of a comprehensive analysis of the opportunities, resources, obstacles, and recommendations for the creation of affordable housing and social housing, at scale, to assist in meeting the need identified in the statewide projections for below market rate housing affordable to households

with extremely low, very low, low, and moderate incomes in the Sixth Regional Housing Needs Assessment cycle. HCD is required to enlist participation of residents unable to afford market rents, public agencies, and mission-driven nonprofit entities and make recommendations to the state based on the study.

Impacts Your Job: Agencies should respond to any opportunities to participate in the study to ensure that the report reflects the challenges that face local agencies in meeting their RHNA allocations.