



California's Housing Laws

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Presentation Overview

- **The Major State Housing Laws:**
 - **The Housing Accountability Act: Hard to Deny Housing Projects**
 - **Replacing Local Planning with State Planning (Housing Elements, AB 2097, AB 2011/SB 6, Density Bonus Law)**
 - **Ministerial and ‘By Right’ Approvals (SB 35, AB 2011, ADUs, SB 9)**
- **Consequences of Non-Compliance**

Major Housing Laws

The Housing Accountability Act

Making It Hard to Deny Housing Projects

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

Key Provisions

Applies to a “housing development project” which is:

- Two or more residential units
- Mixed use with 2/3 of square footage residential
- Transitional or supportive housing

Key Provisions

“Preliminary application” freezes development standards

- But project must meet these timelines:
 - Project application must be filed within 180 days
 - Must complete application within 90 days of receiving incomplete letter
- Can change project by up to 20% of square footage or number of units or invoking density bonus and still rely on initial preliminary application

Key Provisions

- Once complete, staff must notify applicant in short time (30 to 60 days) if there are any “inconsistencies” - or “deemed consistent”
- Assumed to be consistent if “substantial evidence would allow a reasonable person to assume consistency”
- No rezoning required if general plan is “inconsistent” with zoning



Key Provisions

Denial only if:

- Project doesn't comply with “objective standards” OR
- Results in “specific adverse impact” on public health & safety
 - A “significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards” that can't be mitigated

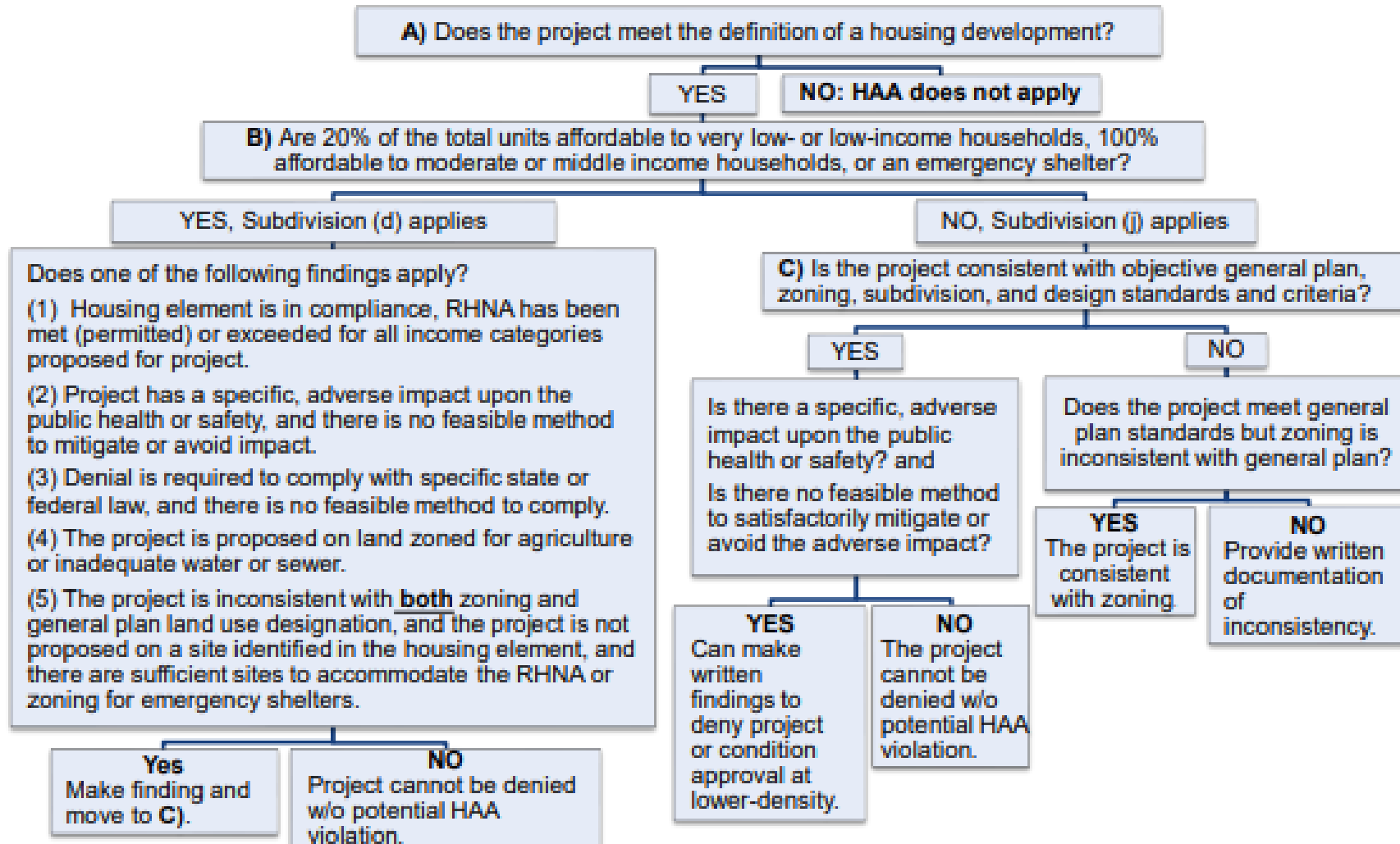
Key Provisions

Additional finding to deny project with 20% lower income units:

1. City meeting RHNA numbers
2. Specific adverse impact to public health and safety
3. Deny to comply with state or federal law
4. Proposed on agricultural land or water/sewer inadequate
5. Inconsistent with Zoning Ordinance & GP land use designation; must have a housing element in substantial conformance with state law, and not on a housing element site

Housing Accountability Act Decision Matrix

This decision tree generally describes the components of the HAA. Both affordable and market-rate developments are protected by components of the HAA. The statute contains detailed requirements that affect the applicability of the HAA to a specific housing project based on its characteristics.



What Is an “Objective Standard”?

Involves **no personal or subjective judgment** by a public official and verifiable by referring to an **external benchmark**.

OBJECTIVE	SUBJECTIVE
DENSITY REQUIREMENTS	REFLECT THE LOOK AND FEEL OF THE COMMUNITY
HEIGHT LIMITS	SITE IS NOT PHYSICALLY SUITABLE FOR THE PROPOSED USE
LOT COVERAGE	MUST BE COMPATIBLE WITH ADJACENT USES
SETBACKS	
FAR REQUIREMENTS	

What Is NOT an “Objective Standard”?

- “If height varies by more than one story between buildings, a transition or step in height is necessary.”



Why Isn't This Standard “Objective”?

- Could be a “transition” of trees and a trellis instead of a setback
- Not clear how far upper floors must step back
- Not clear how far along building the setback must run
- Not clear how many floors must step back

The “Reasonable Person” Standard

- Staff and consultant concluded that the project conformed to the standard, whereas Planning Commission and City Council found it did not.
- Both interpretations “reasonable” which court construed as proof positive that it is not objective
- Under “reasonable person standard” either interpretation works, so it must be approved.
- Burden of proof on city.

Implications for Folsom

- Tight timelines and penalties for errors
- Strict standard for “objective”
- Subjective standards adopted before 1-1-20 can be used to apply conditions but cannot:
 - Reduce density
 - Make affordable project infeasible
 - Effectively deny project.
- **CEQA applies**

Q & A

Major Housing Laws

State Planning for Cities: Loss of Local Control

What Cities Must Approve

- Housing Elements: more sites must be zoned at 30 units/acre
- Housing Crisis Act: cannot reduce existing housing capacity
- AB 2097: no parking required within ½ mile of major transit stop
- AB 2011/SB 6: housing may be built in commercial zones
- Accessory Dwelling Units and SB 9: more units may be built on single-family lots
- Density Bonus Law: projects with affordable housing entitled to increased density and waiver of development standards



FOLSOM RHNA

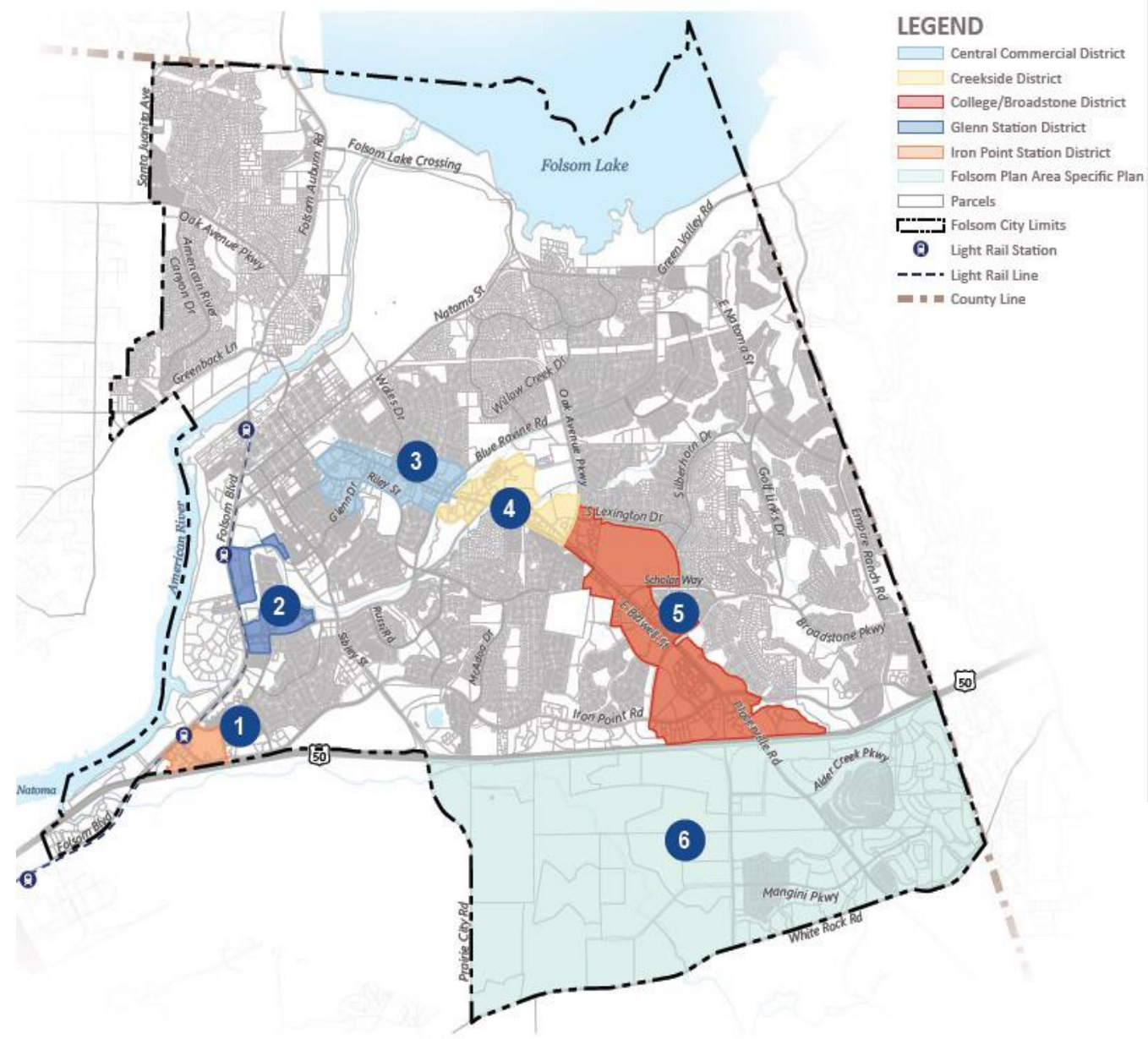
- 2013 -2021 (5th Cycle):
- 4,633 units

- 2021-2028 (6th Cycle):
- 6,363 units



NO NET LOSS

- Lower income RHNA = **3,567 units**
- Must maintain capacity at all times (30 du/acre)
- Only sufficient state \$\$ for 20,000 units/year



Housing Crisis Act of 2019

- **Cannot reduce density** below that existing on January 1, 2018
 - Unless “concurrent” density increases
 - Includes reductions in height, FAR, increased setbacks
- No moratorium without HCD consent

Parking Requirements - AB 2097

- Projects within ½ mile of an existing or planned major transit stop = cannot require or enforce parking requirements
 - **UNLESS** study shows “substantially negative impact” on low or very low income RHNA, housing needs of elderly or disabled, or residential/commercial parking within ½ mile
- Even if findings are made no parking requirements for housing development projects with a minimum of 20% affordable or fewer than 20 units

Residential Development in Commercial Zones

AB 2011 and SB 6 allow multi-family residential development where it may not have been permitted previously:





- Applies in zones where commercial, retail or parking are principally permitted uses
- AB 2011: ministerial approval without CEQA
- Effective July 1, 2023

Site & Project Criteria (All Projects)


- Multi-family housing development projects only
- Sites in a neighborhood area plan must permit multi-family housing (if either adopted by 1/1/22; or NOP issued by 1/1/22 & plan adopted by Jan 1, 2024)
- **Prevailing wages**; SB 6 also requires union labor
- Affordable housing required by AB 2011
- No parking can be required except disabled, EV, & for bikes

Mixed-Income Minimum Housing Density

DENSITY SHALL MEET OR EXCEED THE FOLLOWING:

	 <p>Site Site size less than 1 acre</p>	 <p>Commercial Corridor ROW <100'</p> <p>Site Site size 1 acre or more</p>	 <p>Commercial Corridor ROW >100'</p> <p>Site Site size 1 acre or more</p>	 <p>w/in 1/2 mile of major transit stop</p> <p>Site</p>
Density Metropolitan Jurisdictions	30 du/acre	40 du/acre	60 du/acre	80 du/acre

Mixed-Income Housing Height Limits

		Commercial Corridor ROW <100'	Commercial Corridor ROW >100'	pop > 100k & w/in 1/2 mi. of major transit stop 
	Site	Site	Site	Site
HEIGHT LIMIT SHALL BE THE GREATER OF THE FOLLOWING:	Currently permitted height	35'	45'	65'

Residential Development in Commercial Zones

Application to Historic District:

- Development cannot be located on a site where the development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

Density Bonus Law

- Eligible project: 5% to 100% affordable housing
- Eligible projects entitled to receive:
 - A **density bonus** [20 - 80%, or unlimited];
 - 1 - 4 “**incentives / concessions**” [based on affordability]
 - **Unlimited waivers** of development standards
 - Reduced **parking** requirements.
- Density Bonus project = consistent with City standards

Density Bonus Law

- Inclusionary units can qualify project for density bonus (*Latino Unidos v. County of Napa*)
- Example:
 - City requires 3% very low and 7% low income housing for for-sale projects; or in-lieu fee
 - If units provided: project qualifies for 20 percent bonus (plus parking reductions, one concession, unlimited waivers)

Implications for Folsom

- City is required to accept and approve plans that conform with state law
 - Even if inconsistent with City's adopted policies
 - Regardless of City or community concerns

Q & A

Major Housing Laws

Ministerial and 'By Right' Approvals

What Is a Ministerial Approval?

- A governmental decision involving little or no personal judgment by the public official.
- Involves only the use of fixed standards and objective requirements.
- **Exempt from CEQA.**
- State has imposed strict timelines for approval.

Projects that Must Be Approved Ministerially

- Accessory Dwelling Units
- SB 9 projects: Two-unit developments and urban lot splits
- SB 35: Streamlined Ministerial Review
- AB 2011: Housing projects in commercial zones

ADUs: Housing in Residential Zones

- Allows for construction of ADUs and JADUs within all residential zones.
- Requires ministerial approval.
- Overrides City standards that would physically preclude ADUs.
- **New** state-mandated development standards include: increased height limits, building in front yard setback, lesser fire sprinkler requirements, restrictions on code enforcement.



ADUs: Housing in Residential Zones

- In historic district:
 - ADUs allowed
 - City can impose standards to prevent adverse impacts on property listed in California Register of Historic Places
 - These standards do not apply to state exempt/subdivision (e) ADU
 - Cannot impose parking requirements

SB 9: Housing in Single-Family Zones

- Allows for construction of up to four units on single-family zoned lots (either on one existing lot or after divided into two lots).
- Requires that two-unit housing development projects be approved ministerially and overrides City standards that would physically preclude this type of development.
- SB 9 standards include: minimum setbacks, minimum parking standards, and minimum unit sizes that must be approved.

SB 9: Housing in Single-Family Zones

- Application to Historic District:
 - Project is not eligible for SB 9 if it is located within a historic district or included on the State Historic Resources Inventory or within a site designated or listed as a city or county landmark or historic property or district pursuant to city ordinance

SB 35 Projects (“Streamlined Review Process”)

Qualifying Projects:

- Multifamily residential with 50% lower income in Folsom
- 2/3 residential square footage
- General plan or zoning allows residential or mixed use
- No housing occupied by tenants within last 10 years
- Consistent with objective standards; but can request density bonus waivers if not
- Prevailing wages required if more than 10 units

SB 35 Projects (“Streamlined Review Process”)

- Consistency review in 60 - 90 days after submittal
- Design review and decision in 90 - 180 Days
- AB 2011 prescribes identical process
- SB 6 allows SB 35 to be used on sites zoned commercial, with only 50% residential
- Can only apply standard conditions

SB 35 Projects (“Streamlined Review Process”)

- Application to Historic District:
 - Development cannot be located on a site that would require demolition of a historic structure that was placed on a national, state, or local historic register

‘By Right’ Approvals

- No CEQA review
- Only objective design review; may impose conditions
- Applies to:
 - Certain **housing element sites** designated for lower income housing if project has 20% lower income units and no subdivision is needed.
 - Certain supportive housing developments.
 - Low barrier navigation centers.
- No accelerated timelines

Implications for Folsom

- Very fast timelines = big demands on staff
- Limited community input
- Scope of public hearings limited
- Decision-makers have very limited discretion

Q & A

Major Housing Laws

Consequences of Non-Compliance

HCD and Attorney General Enforcement

- HCD Housing Accountability Unit with at least 25 staff
- Broader and broader authority
- Letters of Technical Advice
- Notices of Violation
- Referral to Attorney General
- Attorney General has 12-person strike force that acts independently

Active Third-Party Litigants

- Have sued at least 10 SoCal cities and 12 Bay Area cities (Californians for Homeownership, YIMBY, California Housing Defense Fund) on housing elements
- Often join in, or are plaintiffs, in litigation related to denials of housing development

Housing Cases in General

- Courts:
 - Generally very pro-housing
 - Uphold housing approvals
 - Overturn denials
- City risks:
 - Significant attorneys fees exposure
 - High defense costs
 - Possible damages

Q & A

Thank You!