

2019 HOUSING LEGISLATIVE UPDATE

Preparing Housing Elements Under New State Laws

Sacramento Area Council of Governments

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9:30 AM – 11:00 AM



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Presenter

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OVERVIEW

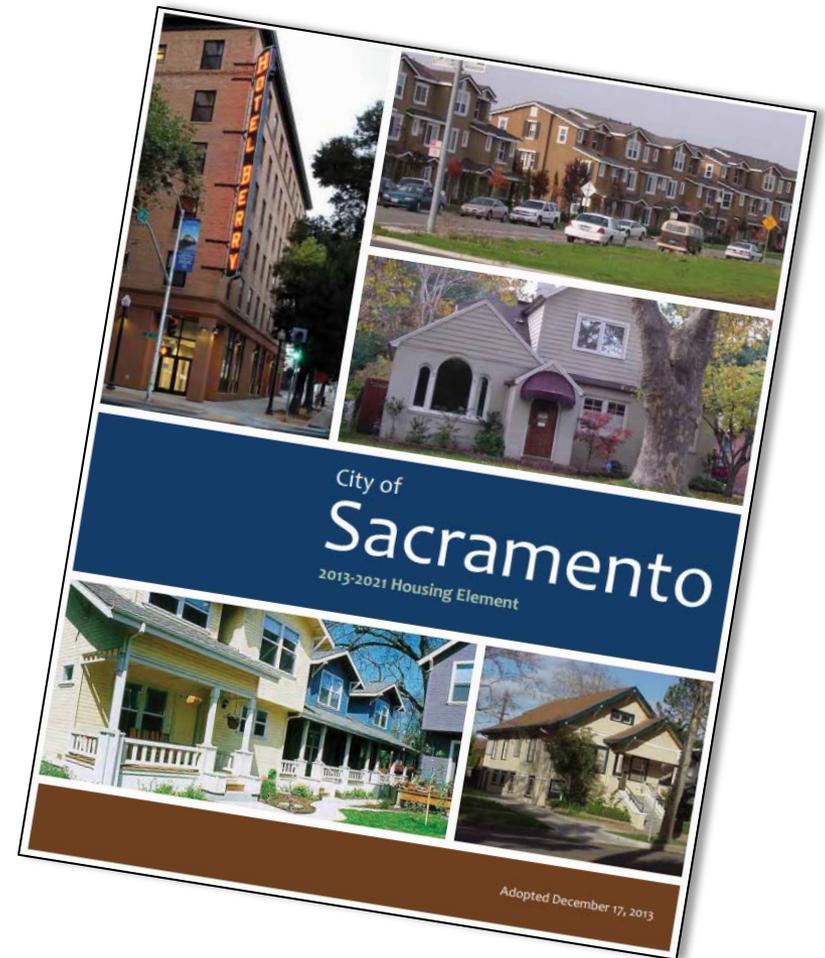
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- Legislature substantially changed housing and planning laws in 2017 and 2018
 - ▣ Expect more changes in 2019!
- Housing Element Law
 - ▣ RHNA increases expected
 - ▣ Harder to identify appropriate parcels to accommodate growth
- “No Net Loss” Provisions
 - ▣ Need for continuous monitoring for adequate site capacity
 - ▣ Requirements apply to all jurisdictions, including charter cities

Housing Element Law Key Concepts

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- Cities and counties must show adequate land zone for housing to accommodate Regional Housing Need Allocation (RHNA)
- Sixth Cycle update: est. Aug 31, 2021 SACOG due date



RHNA ALLOCATION

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- RHNA divided by income category
 - ▣ Typically: 40% low and very low; 20% moderate; 40% above moderate
 - ▣ Actual percentages vary by jurisdiction

Model City

| Lower Income (Very Low and Low) | Moderate Income | Above Moderate Income | TOTAL RHNA |
|---------------------------------------|-----------------|--------------------------|-------------|
| 400 units | 200 units | 400 units | 1,000 units |

SITE INVENTORY

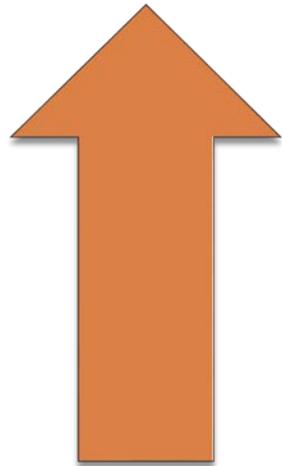
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- Must designate specific sites that can “accommodate” the RHNA at each income level during the planning period (65583.2)
- Sites “accommodating” lower income housing must be at “default densities” of 20 – 30 du/A in metro areas

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

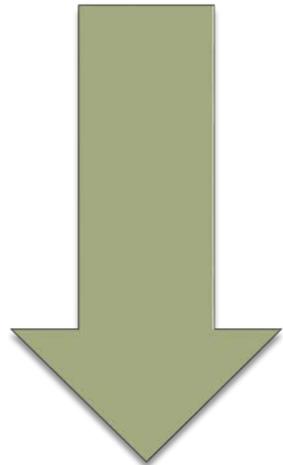
Rezoning Obligation

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R-30

- If not enough sites available to accommodate RHNA, Housing Element must identify specific sites for rezoning
 - ▣ Must complete necessary rezoning within 3 years (up to 4 years if certain findings are made)



R-6

- Rezoned sites must allow housing development with 20% lower income housing as a “use by right”
 - ▣ No CEQA review
 - ▣ Limited to objective design standards

RHNA ALLOCATION PROCESS

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- Revised by AB 1771 and SB 828
- RHNA likely to be higher because **existing** overcrowding and cost burdens of existing households are added to need
 - ▣ No longer limited to **projected** household growth
- HCD must approve final determination of regional need

RHNA Distribution Methodology

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New Factors Must Be Considered

- ▣ GHG reductions
- ▣ Low-wage jobs and affordable housing balance
- ▣ 'Affirmatively further fair housing'

Some Factors Can't Be Considered

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

RHNA PROCESS: METHODOLOGY

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COG or Subregion Completes Draft Methodology

Submitted to HCD

HCD Review

HCD determines if consistent with objectives

Final Decision by COG or Subregion on Methodology

Can modify in response to HCD comments or find it is consistent

RHNA PROCESS: DISTRIBUTION

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COG or Subregion Completes Draft Allocation

Submitted to cities and counties



Appeals

Can appeal the allocation of any jurisdiction; HCD can also appeal

All appeals on website



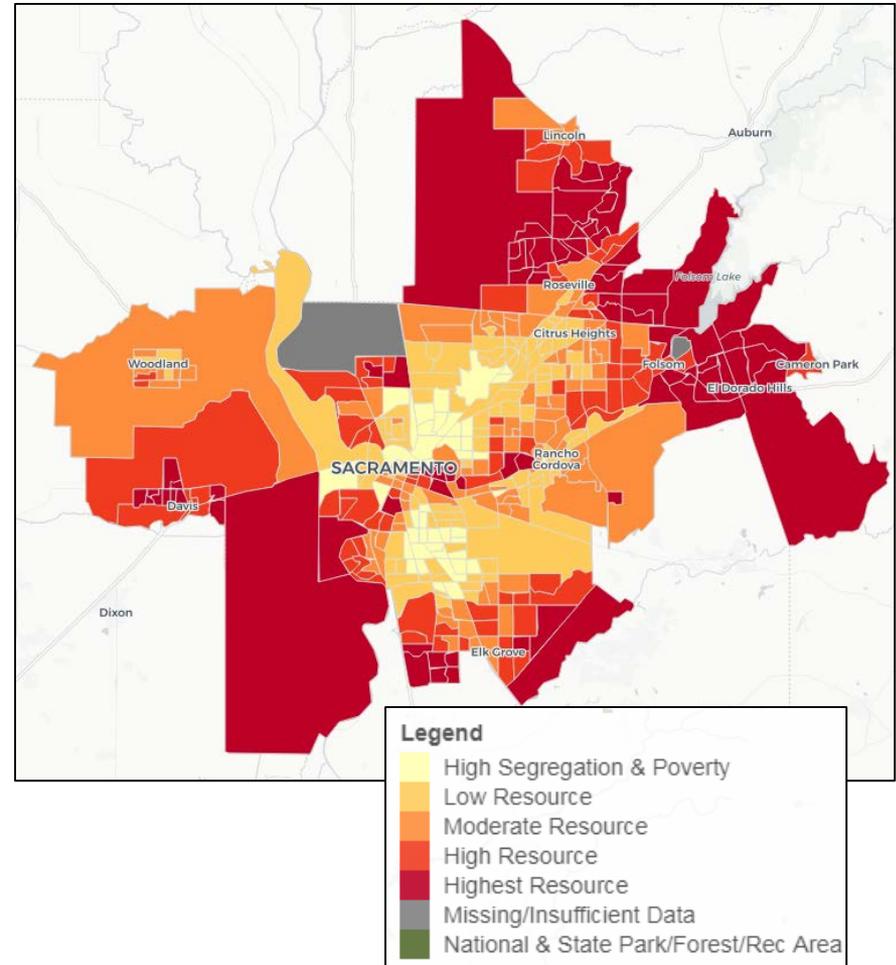
Final Decision

Decide all appeals and adopt final RHNA

Affirmatively Furthering Fair Housing

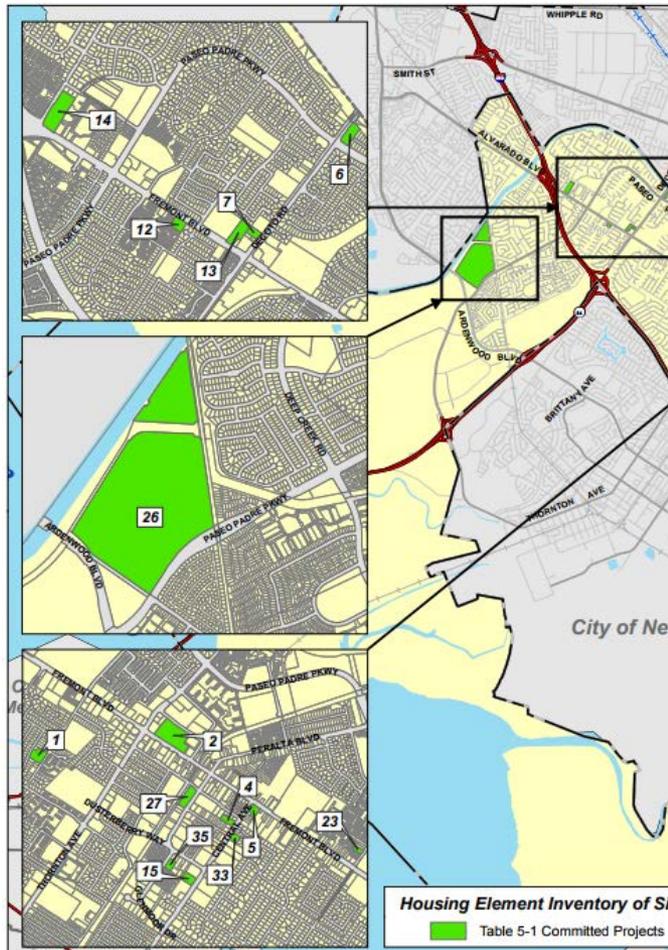
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- RHNA distribution and each local housing element must affirmatively further fair housing
 - AFFH means “taking meaningful actions...that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to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



Site Inventory Requirements

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- Site Inventory “realistic & demonstrated potential”
 - ▣ Show income category of each site
 - ▣ Access to water, sewer, & dry utilities

- Units per Site “realistically accommodated”
 - ▣ Density of similar projects with similar affordability on similar sites

REPLACEMENT OBLIGATIONS

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- Replacement housing for all sites in inventory
 - Sites with residences
 - Sites that in past five years had residences that were deed restricted, rent-controlled, or occupied by lower income households
- Must replace these units as in density bonus law (65915(c))

NON-VACANT SITES ANALYSIS

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- Development potential requires analysis of:
 - Extent to which existing uses are an impediment
 - Development trends
 - Regulatory incentives
 - ***Prior experience converting to higher density residential***
 - ***Market demand***
 - ***Leases and existing contracts for current use***

Vacant Sites Analysis

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- If more than 50% of lower income sites on non-vacant sites, existing uses presumed to impede development absent findings
- Very strict definition of vacant v. non-vacant



HOUSING ELEMENT REQUIREMENTS: SITES SUITABLE FOR LOWER INCOME HOUSING

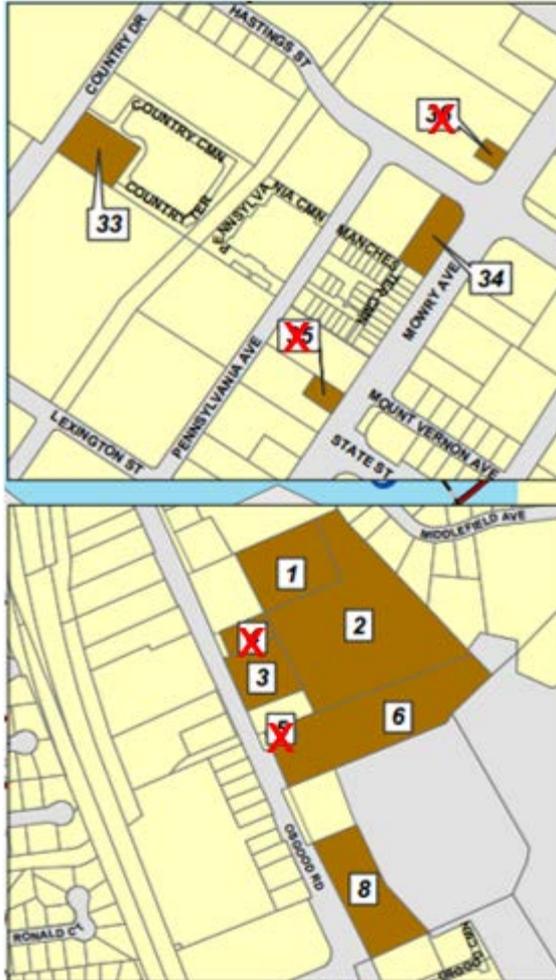
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Previously Identified Sites

- Presumed *inappropriate* for housing affordable to lower income households:
 - ▣ Vacant sites listed in two or more housing elements
 - ▣ Non-vacant sites listed in one housing element
- Unless program to rezone within three years:
 - ▣ Zoning for ‘default density’; and
 - ▣ Zoning allows development by-right if 20% of units are lower income (low or very low)

HOUSING ELEMENT REQUIREMENTS: SITES SUITABLE FOR LOWER INCOME HOUSING

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□ Site Size

Presumed *inappropriate* for housing affordable to lower income households

- Less than 1/2 Acre
- Greater than 10 Acres

□ Evidence to rebut presumption

- Affordable project proposed or approved on site of this size; or
- Provide other evidence.

NO NET LOSS PROVISIONS (SECTION 65863)

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- Applies when:
 - ▣ Any site in inventory either downzoned to reduce density; or approved at lower density than shown; OR
 - ▣ Site approved with fewer units at the income level shown in the inventory.
- Now applicable to all jurisdictions, including general law cities (SB 1333)

NO NET LOSS EXAMPLE

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REQUIRED FINDINGS

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- OK if:
 - ▣ Reduction consistent with GP and Housing Element; and
 - ▣ Remaining sites in Element are adequate at all income levels. Must quantify unmet need and remaining capacity by income level.
- If remaining sites are not adequate, can ID “additional, adequate, and available sites” so ‘no net loss.’
- Solely city’s responsibility unless developer’s application had lower density; developer has no responsibility for income level. City cannot deny because developer’s project results in need for additional sites.

OPTIONS FOR FINDINGS

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- Remaining sites in Element adequate to meet the RHNA at all income levels; or
- City approved more units on some site than shown in inventory or has other units at that income category; or
- Other sites NOT in Element can make up difference; or
- Another site “identified and made available.” Time limit of 180 days for income category only.

NO NET LOSS PRACTICE TIPS

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- Build in a buffer of adequate sites
- Maximize inclusionary percentages
 - ▣ Limit in-lieu fee options in favor of actual production of units
 - ▣ Consider all options to create affordable units, including ADUs and conversion/preservation
- Keep a log of:
 - ▣ All housing element sites;
 - ▣ All approved housing by income category on other sites;
 - ▣ All sites not in housing element identified as 'available.'

HCD AUTHORITY

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- Under AB 72, HCD may:
 - ▣ Revoke finding of housing element compliance
 - ▣ Refer violations to Attorney General
- HCD certification necessary for access to certain state funding sources
- Recent experience suggests increased focus on “objective standards”

What Is An “Objective” Standard?

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SB 35 definition:

- “Standards that involve **no personal or subjective judgment** by a public official and are **uniformly verifiable** by reference to an external and uniform benchmark or criterion available and **knowable** by both the development applicant and the public official **prior to submittal.**”
- Examples:
 - ▣ Height, setbacks, lot coverage, % open space, density, FAR, etc.

What Is Not “Objective”?

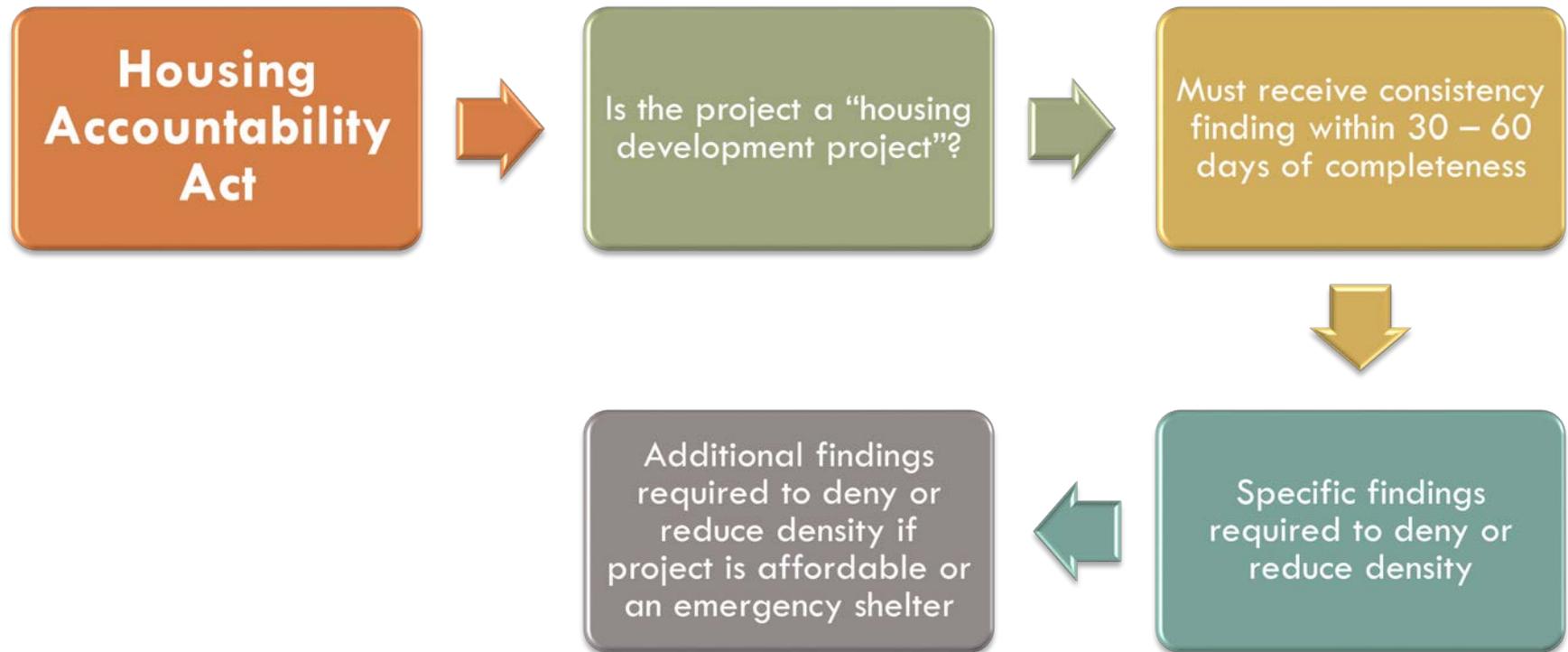
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Standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”
- *Honchariw*: Map Act finding that “the site is not physically suitable for the proposed development.”

Gov. Code Sec. 65589.5 At A Glance

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HAA Criteria for Project Review

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- If housing development project complies with “**objective**” standards, the City can only reduce density or deny if it finds:
 - ▣ A specific adverse impact to public health & safety; AND
 - ▣ The impact can’t be mitigated in any other way.
- Additional protections for affordable projects
 - ▣ Must make specific findings to deny, reduce density, or add condition making project infeasible
- Standards include general plan, zoning, and subdivision requirements
 - ▣ Strict consistency with zoning not necessarily required if consistent with objective general plan standards

SOME CONCLUDING THOUGHTS

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Begin thinking about next cycle now

- Access available SB 2 funding for rezoning now
- Very important to be involved with COG's allocation process
- Explore regional collaboration
- Begin site identification process
- CEQA challenges need to be built into timeline, especially if significant rezoning required

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