Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

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TO: Current Planning Staff

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HOUSING ACCOUNTABILITY ACT AND HOUSING CRISIS ACT IMPLEMENTATION

OVERVIEW

This memo provides a synopsis of the Housing Accountability Act (HAA) and Housing Crisis Act (SB 330). Specifically, this memo provides an overview of the HAA and SB 330, including: the types of Projects subject to these laws, a new preliminary application process to provide vesting rights to qualifying Projects, new procedures for applicants to appeal staff's determination that an application is incomplete, replacement housing requirements for housing development Projects, the types of development standards applicable to a housing development Project, limits on requiring a zone change where a Project is consistent with the general plan, limits on the number of hearings that may be held to consider a housing development Project, findings that must be met to deny a housing development Project, and the time period under which the provisions of SB 330 are in full force and in effect.

The primary purpose of these laws is to create certainty for developers going through the entitlement process and accelerate housing development. As such, if a housing development Project is consistent with the County's General Plan designation and objective zoning regulations, then the Project cannot be denied or down-sized unless it is found that the Project will have a **specific impact** (i.e. a significant, quantifiable, direct, and unavoidable impact), based on **objective, identified written public health or safety standards, policies, or conditions** (i.e. adverse impact upon public health and safety) and there is **no feasible method to satisfactorily mitigate or avoid** the adverse impact (this is discussed in greater detail later in this memo).

BACKGROUND

The HAA was adopted by the State in 1982 and has been amended at least seven times since. The intent of HAA, according to the State's Department of Housing and Community

Development's HAA Technical Assistance Advisory, was "to overcome the lack of certainty developers experienced by limiting local government's ability to deny, make infeasible, or reduce the density of housing development projects." Separately, but related, Governor Newsom signed SB 330 into law effective January 1, 2020; SB 8, effective January 1, 2022, extends and expands the terms of SB 330 to January 1, 2030. The purpose of SB 330 was to accelerate housing production by enhancing permit streamlining and preserving the existing housing inventory by requiring replacement of existing units.

Specifically, in making amendments to the HAA, Permit Streamlining Act, and other provisions of the California Government Code, SB 330 and SB 8:

- Authorize earlier vesting through a new preliminary application process;
- Clarify when a housing development application shall be deemed complete, requires a local agency to issue a determination as to application completeness within 30 days of application submittal, and provides applicants with a process to appeal a local jurisdiction's determination of application incompleteness;
- Set forth that no new zoning and land use regulations shall apply to applications that have been deemed complete;
- Define "objective standards" to tighten design review of Projects;
- Define a complete application as the submission of all materials listed on an application checklist; and
- Expand provisions that strengthen the law to limit a local government's ability to deny, reduce the density, or render housing development Projects infeasible.

APPLICABILITY

For purposes of the HAA and SB 330, a Housing Development Project (Project), including farm worker housing and emergency shelters, is defined as a use containing any of the following subject to either ministerial or discretionary approval processes:

- Prior to January 1, 2022, two or more residential units (including a single-family residence and accessory dwelling unit proposed concurrently);
- On or after January 1, 2022, a single dwelling unit;
- Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or
- Transitional housing or supportive housing.

A Project can consist of attached or detached units and may occupy more than one parcel so long as the Project is included in the same development application.

Projects that do not meet these parameters are not subject to these provisions.

PRELIMINARY APPLICATION

SB 330 lays out a new "Preliminary Application" process, which allows a Project applicant to submit an initial application prior to the submittal of an application to authorize the proposed development itself.

On the date that the Preliminary Application is deemed complete, the land use and zoning requirements applicable to the Project are frozen and no new standards will be applicable during the review process. The purpose of this Preliminary Application is to increase certainty and to minimize costs to applicants while they aggregate the information needed for submittal of the application for the development itself.

The Preliminary Application and associated checklist are available on Regional Planning's public facing website (https://planning.lacounty.gov/apps under "SB 330 Preliminary Application"). Preliminary applications will be assessed the Zoning Conformance Review fee. If you have questions about the process, please contact the Operations and Major Projects Section.

COMPLETE APPLICATION APPEAL

The Permit Streamlining Act sets forth that an application must be deemed complete or incomplete based on whether the application materials as required on the checklist, have been provided. This determination must be made within 30 days of permit filing and payment; otherwise, the application is automatically deemed complete.

Under the HAA, applicants have the right to appeal staff's determination that an application is incomplete. This appeal option is only available if/when staff transmits a third incomplete letter to the applicant. The incomplete letter templates for both land division Projects and non-land division Projects will be updated to include this appeal option.

If an appeal is filed, it must be considered by the Regional Planning Commission (Commission) within 60 days of the date the appeal is received. If the appeal is sustained, the application is determined to be complete; if the appeal is rejected, the application is considered incomplete. Staff will provide the applicant with a written determination letter reflecting the outcome of the appeal process. Please refer to the Incomplete Application Appeal Process attachment for specifics.

The availability of this appeal procedure should not be interpreted to mean that all applications must receive a minimum of three incomplete letters. If an application becomes inactive or warrants denial on merit prior to the third incomplete letter, that course should be pursued.

REPLACEMENT HOUSING REQUIREMENTS

SB 330 and SB 8 include various replacement housing provisions applicable to site redevelopment Projects where housing units currently exist or have existed. Through

SB 330, State law prohibits the approval of a housing development Project that requires the demolition of these dwelling units unless the housing development Project will create at least as many dwelling units. Note that housing development Projects located within mapped Very High Fire Hazard Severity Zones are exempt from replacement requirements.

SB 330 and SB 8 also contain provisions requiring replacement of units in the new development based on affordability and income level of the tenants, as well as tenant protections. These requirements, as well as replacement of protected units, are addressed by the County's Affordable Housing Preservation Ordinance, State and County rent stabilization regulations, the DRP Pre-Existing Site Conditions and Household Income Certification form, and covenants prepared by the Los Angeles County Development Authority for Projects providing affordable replacement units.

APPLICABLE DEVELOPMENT STANDARDS

The HAA and SB 330 require that housing development Projects are only subject to the ordinances, policies, and standards in effect when a complete preliminary application is submitted. If a preliminary application was not filed for the Project, it is subject to those requirements at the time the development application is deemed complete.

Please note that State law allows for a housing development Project to be subject to ordinances, policies, and standards that come into effect after this determination, where:

- It is necessary to mitigate or avoid a specific, adverse impact upon public health, safety or as identified through California Environmental Quality Act (CEQA) analysis;
- Construction has not commenced within two and one-half (2.5) years of final approval or within three and one-half (3.5) years of final approval for an affordable housing Project; or
- The number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision.

In applying standards, staff shall only apply those standards that are "objective design standards," as defined in the HAA and SB 330. Specifically, it is "…a design standard that involve[s] no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application."

A Project is considered consistent with such a standard if a reasonable person can reach this conclusion. When making this assessment, if you are concerned that a County development standard does not meet this definition, please consult your Section Head.

ZONING CONSISTENCY

The HAA prohibits a local government from requiring a zone change when the Project is consistent with the General Plan, but the zoning is inconsistent with the General Plan. That is, a zone change shall not be required for a proposed Project if the Project is consistent with the general intended uses and density ranges specified by the General Plan land use designation, but the proposed use is prohibited in the zone (for example, the lot is zoned M-1 but is designated CG in the General Plan).

In such cases, the project may be required to comply with the objective standards and criteria of a zone that would be consistent with the General Plan land use designation of the site, provided that:

A. Such objective standards and criteria are applied in a manner that would allow the Project to be built at the densities specified by the General Plan land use designation; and
B. A written explanation of both the Project's inconsistency with the site's existing zoning and the objective standards and criteria that will be applied is provided to the applicant within the following timeframe:
    1. 30 days of the date that the application for the Project is determined to be complete, if the Project contains 150 or fewer dwelling units; or
    2. 60 days of the date that the application for the Project is determined to be complete if the Project contains more than 150 dwelling units.

If the written explanation is **not** provided to the applicant within the timeframe specified above, the Project shall be deemed consistent with the existing zoning of the site, including any applicable requirements in the Community Standards District or Specific Plan where the Project is located.

NUMBER OF HEARINGS LIMITATION

The HAA and SB 330 limit the number of public hearings on a Project to a maximum of five if the proposed Project complies with the applicable, objective general plan and zoning standards in effect at the time an application (or preliminary application, if applicable) is deemed complete.

"Public hearings" per the HAA and SB 330 include public hearings (and appeals), workshops, or similar meetings conducted by the county with respect to the Project. "Hearing" does not include a hearing to review a legislative approval required for a proposed housing development Project, including, but not limited to, a general plan amendment, a specific plan adoption or amendment, or a zoning amendment, or any hearing arising from a timely appeal of the approval or disapproval of a legislative approval, including a plan amendment, specific plan, and development agreement.

Because the HAA and SB 330 define public hearings broadly, Subdivision Committee, Environmental Review Board, Significant Ecological Area Technical Advisory Committee,

Design Control Board, and Interdepartmental Engineering Committee meetings count toward the five-hearing limit. Additionally, public meetings to facilitate the CEQA process (e.g., scoping meetings and Hearing Examiner meetings) count toward the five-hearing limit.

All public hearings as defined herein that occurred prior to January 1, 2020, do not count toward the five-hearing limit.

To ensure decision makers (Hearing Officers and Commissioners) are aware of the number of public hearings that have taken place, the Project information table of the staff analysis template now prompts staff to identify the total number of public meetings held prior to the Hearing Officer or Commission public hearing. Similarly, the Findings template has been updated to include a finding requiring enumeration and description of each public meeting held for the Project.

FINDINGS FOR DENIAL OF A HOUSING PROJECT AND LIMITATIONS

The HAA curbs a local agency's ability to deny or downsize a Project when a Project is consistent with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time the application (or preliminary application, if applicable) was deemed complete. It also prohibits a local agency from imposing conditions that would individually or cumulatively reduce density below what was permitted under the general plan or zoning as of January 1, 2018, or make a Project economically infeasible. Receipt of a density bonus, including incentives concessions, or waivers, shall not constitute a valid basis on which to find a proposal is inconsistent or not in conformity with an applicable objective general plan, zoning, and subdivision standard or criteria. The HAA however, does not prevent denial of a housing development if two specific findings are made (see attached Findings for Denial of Housing Development Projects).

Additional findings for denial must be made for the following Projects (see attached Findings for Denial of Housing Development Projects):

- Affordable Housing Projects (20% lower-income and 100% moderate and/or middle income),
- Transitional and supportive housing,
- Emergency shelters, and
- Farmworker housing

Keep in mind, these findings must be based on a preponderance of the evidence meaning evidence supporting denial of the Project due to the identified adverse impact must outweigh approval of the Project.

EXPIRATION OF SB 330 PROVISIONS

The provisions of SB 330 expire on January 1, 2030, unless further extended by the State Legislature and Governor. Further, vesting rights and protections from denial apply to

Projects that submit a preliminary application before January 1, 2030, and such protections are in effect through January 1, 2034.

If you have any questions, please contact Susan Tae, Kevin Finkel, or Marie Pavlovic.

DD:SMT:KAF:MP:lm

Attachments:
Incomplete Application Appeal Process
Findings for Denial of Housing Development Projects

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Incomplete Application Appeal Process

Under state law, applicants are entitled to appeal staff's determination that a development application is incomplete. The appeal option becomes effective if/when staff transmit a third incomplete letter to the applicant. The process is as follows:

1. In the third incomplete letter from staff to an applicant, staff includes language informing the applicant that they may appeal the incomplete application determination. The incomplete letter template has been updated with this language (note that this language is in the template by default and must be deleted in the first and second versions of the letter).

2. If the applicant opts to pursue an appeal, the applicant initiates the appeal process by emailing appeals@planning.lacounty.gov (the same email address used to submit appeals of Hearing Officer and Regional Planning Commission (RPC) decisions). The applicant is also instructed on what information to include in the email's subject line and body. The appeal must be submitted within 15 days of the date of the third incomplete letter.

3. Submitted appeals are received by Operations and Major Projects/Commission Services (OMP) staff, who will work with the case planner assigned to the application to schedule the appeal before the RPC. The appeal must be considered by the RPC within 60 days of the date the appeal is received. Coordinate with OMP regarding RPC meeting space availability and the appellant for their availability to attend the RPC meeting.

4. When a date is selected, the appeal is placed on the agenda as a discussion item and not as a public hearing. As such, noticing and site posting are not required.

5. Staff prepares a memorandum to the RPC discussing the:
    - Date the development application was submitted;
    - Requested permits;
    - Project location;
    - Project scope;
    - Key dates in the review, including when:
        i. First incomplete letter transmitted to the applicant with a summary of the application checklist items identified as missing,

ii. Applicant submitted missing checklist items and a summary of what was provided to staff in response to first letter (if applicable),
iii. Second incomplete letter transmitted to the applicant with a summary of the application checklist items still missing,
iv. Applicant submitted missing checklist items and a summary of what was provided to staff in response to second letter (if applicable), and
v. Third incomplete letter transmitted to the applicant with a summary of the checklist items that continue to be missing; and

- Copies of the incomplete letters attached to the memorandum.

This memorandum should be prepared, reviewed, and transmitted to the RPC on the same schedule as required for public hearing packages. If this is not possible, on a case-by-case basis, please coordinate with both your Section Head and Assistant Administrator.

6. At the RPC appeal meeting, staff presents the facts of the case. Following staff's presentation, the appellant is provided an opportunity to speak on the merits of their appeal. Upon completion of discussion, RPC renders a decision on completeness status.

7. Following the RPC appeal, staff provides applicant/appellant with a written determination indicating the outcome of the appeal and, where necessary, next steps. This written determination must go out within 60 days from the date the appeal was received.
    - If the appeal is sustained, the application is determined to be complete.
    - If the appeal is rejected, the written determination shall note that the decision is final and attach a detailed list of application checklist items that remain missing for the incomplete application.

The availability of this appeal procedure should not be interpreted to mean that all applications must receive a minimum of three incomplete letters. If an application becomes inactive or warrants denial on merit prior to the third incomplete letter, that course should be pursued.

Denial Findings for all Housing Development Findings

1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified in the first finding other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. As used in this paragraph, “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors

In addition findings 1 and 2 above, the following five findings must be made for affordable housing (20% lower-income and 100% moderate and/or middle income), transitional and supportive housing, emergency shelters and farmworker housing projects:

1) The local government has an adopted housing element in substantial compliance with California’s Housing Element Law, contained in Article 10.6 of Government Code, and has met or exceeded development of its share of the RHNA in all income categories proposed in the housing development project. In the case of an emergency shelter, the local government shall have met or exceeded the need for emergency shelters as identified in the housing element. This requirement to meet or exceed its RHNA is in relationship to units built in the local government, not zoning. A local government’s housing element Annual Progress Report pursuant to Government Code section 65400 can be used to demonstrate progress towards RHNA goals.

2) The housing development project would have a specific, adverse impact upon public health or safety and there is no feasible method to mitigate or avoid the impact without rendering the housing development project unaffordable or financially infeasible. Specific to housing development projects affordable to very low-, low-, or moderate-income housing (including farmworker housing) or emergency shelters, specific, adverse impacts do not include inconsistency with the zoning ordinance or general plan land use designation or eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

3) Denial of the housing development project or the imposition of conditions is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

4) The housing development project is proposed on land zoned for agriculture or resource preservation that is either: (a) surrounded on two sides by land being used for agriculture or resource preservation; or (b) does not have adequate water or wastewater facilities to serve the housing development project.

5) The housing development project meets both the following conditions:

- Is inconsistent with both the local government's zoning ordinance and the general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete. This means this finding cannot be used in situations where the project is inconsistent with one (e.g., the general plan designation), but is consistent with the other (e.g., zoning ordinance).
- The local government has an adopted housing element in substantial compliance with housing element Law.

*Finding (5) *cannot* be used when any of the following occur:

- The housing development project is proposed for a site identified as suitable or available for very low-, low-, or moderate-income households within a housing element and the project is consistent with the specified density identified in the housing element.
- The local government has failed to identify sufficient adequate sites in its inventory of available sites to accommodate its RNHA, and the housing development project is proposed on a site identified in any element of its general plan for residential use or in a commercial zone where residential uses are permitted or conditionally permitted.
- The local government has failed to identify a zone(s) where emergency shelters are allowed without a conditional use or other discretionary permit, or has identified such zone(s) but has failed to demonstrate that they have sufficient capacity to accommodate the need for emergency shelter(s), and the proposed emergency shelter is for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses.