AGENDA NO: A-1 C-1 D-1

MEETING DATE: March 21, 2023

AGENDA CORRESPONDENCE RECEIVED BY THE PLANNING COMMISSION FOR PUBLIC REVIEW PRIOR TO THE MEETING

From: Dana Swanson
To: PlanningCommission
Subject: FW: Public Comments for March 21 Planning Commission (Terry Simons)
Date: Monday, March 20, 2023 8:04:37 AM
Attachments: CA housing law 2023.pdf

For tomorrow's Meeting.

Dana Swanson
City Clerk
City of Morro Bay
Phone (805) 772-6205
dswanson@morrobayca.gov

From: Terry Simons [redacted]
Sent: Saturday, March 18, 2023 5:39 PM
To: Dana Swanson <dswanson@morrobayca.gov>
Subject: Comments for March 21 Planning Commission

Dana,
Please forward the following to the Planning Commission for inclusion in their March 21st meeting
Thanks,
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For the Planning Commission March 21, 2023 meeting.

As to A-1 Current Processing items-
Specifically Item #34-Murphy: 2440 Laurel Ave.
This item was previously heard by the Planning commission and was conditionally approved by the PC to be referred back to Staff for resolution. However, the original Appellant and the Project Owner have both appealed this item to the City Counsel.

It would seem appropriate prior to a "Receive and File" action by the PC that the Commission get a report from Staff as to what efforts, if any, Staff initiated to facilitate resolution of the issues in this project that may or may not have resulted in the subsequent appeals by both parties in the project.

It seems reasonable that, based on this report from Staff, that the PC should make further recommendations directly to the CC as to the PC's proposed resolution of this issue.

As to C-1 Information session on Historic Preservation-
It has become clear for prior presentation by "historic members" of the community that the concerns related to preservation of historic aspects of Morro Bay that have been lost of or the potential loss of building demolished or significantly modified or proposed to be demolished and/or modified using the current Development Review Process. A great number of these project are statutorily compliant with current city General Plan and Zoning and are administratively approved with a minimum of opportunity for public input. The current Administrative Hearing process is limited in notification scope and hearing process as to effectively preclude general public input.

To this end, I have continued to encourage the Planning Commission to recommend to the CC the creation of a more comprehensive Design Review Commission that would be empowered to review a specific set of development proposals (all commercial projects; residential projects on sensitive sites or lacking design compatibility within the neighborhoods where they are proposed). This DRC review would be focused on the Architectural and Neighborhood Compatibility including Historical Issues of projects and be comprised of members of the community that have specific understanding the planning, design, construction and other development related fields.

The lack of a Staff report on this item (as previously lacking) make it very difficult to comment on the item itself until after the fact. Hopefully the Commission and Staff can coordinate more effectively to make it possible for the public to understand in advance, the nature of the proposed presentation.

As to D-1 Recommendation as to City Council Goals-
I have previously commented on the ongoing work to define CC Goals.
Please add to these comments the following:

The Prior Staff report referenced the topic of "Advice CC as to new CA laws regarding development of housing. I have been unable to find any specifics as to this topic where in there are Staff Presentations to the CC.

Attached are some comments by a legal firm that specializes in Development Representation in CA as to California 2023 Housing Laws. Please review as it is an extensive discussion on the issue from the perspective of the development community as opposed to the Staff position on the new laws related to City Housing policy. See Attached-New State Laws.

As to D-2 Public Benefit Subcommittee Report on Public Benefit

I first became aware of the work being done on "Public Benefit" when I attended a PC hearing on a small residential project in the PD zone. This project was eventually approved but there was significant comment for the PC as to the need for Public Benefit from the project. In trying to understand the definition for this applied additional oversight, I was surprised that there was in fact no current definition of Public Benefit with in City Standards other than a reference that it was to be applied in properties zoned PD overlay.

I have two issues I would like the PC to discuss:

1) What is the statutory basis for requiring Public Benefits above and beyond those current conditions applied as mitigations to projects when a deficit or perceived deficit of public facilities exists in a Project EIR.

2) How do individual parcels in Morro Bay receive a PD overlay and what City actions precede this designation and how can this designation be removed from a property once so designated.

The concept of Public Benefit as discussed in the subcommittee report seems overly subjective and unsupported by statutory basis in either State of local law or ordinance.

New State Laws:

OCTOBER 10, 2022 California's 2023 Housing Laws:

What You Need to Know Streamlined Approval for Housing on Commercially Zoned Sites, Parking and Density Reforms, and New Timelines for PostEntitlement Permits Are Highlights of Big Year for Housing Law Holland & Knight Alert Chelsea Maclean | Daniel R. Golub | Kevin J. Ashe | William E. Sterling | Paloma Perez-McEvoy PDF Highlights

The centerpiece of a significant 2022 legislative session is Assembly Bill (AB) 2011, which provides a ministerial, California Environmental Quality Act (CEQA)-exempt approval pathway for qualifying multifamily projects on commercial zoned land that pay prevailing wages and meet specified affordable housing targets.

Other important laws that take effect in 2023 include AB 2097, which generally prohibits public agencies from imposing minimum parking requirements within a half-mile of public transit; AB 2334, which makes important changes to the Density Bonus Law to define development capacity; and AB 1551, which reinstates the ability to seek State Density Bonus

Law benefits for commercial projects.

A relatively underreported, but significant, new law is AB 2234, which creates a major change to local agency norms by establishing strict timelines – and potential Housing Accountability Act liability – for localities when issuing post
entitlement ministerial permits such as grading and building permits. As in previous years, the California Legislature enacted a large volume of housing production laws in the 2022 session, some of which may have a significant effect on housing production in 2023. (See Holland & Knight's previous annual recaps of California Housing Laws in the final section below.) This Holland & Knight alert takes a closer look at some of the most significant housing laws that the Legislature passed and that Gov. Gavin Newsom has signed into law, grouped into following categories:

Streamlining: AB 2011 (CEQA-exempt ministerial approval pathway on commercially zoned land for qualifying residential development that meets affordable housing targets and pays prevailing wages)

SB 6 (allowing residential use on commercially zoned property without requiring a rezoning for projects that pay prevailing wages and meet "skilled and trained workforce" requirements)

AB 2234 (enforceable timelines for local governments to issue post-entitlement ministerial building permits)

AB 2295 (allowing educational employee housing on land owned by school districts or county office of education)

SB 886 (CEQA exemption for qualifying university housing development projects) AB 2668 ("cleanup" of SB 35's streamlined ministerial approval process)

Density: AB 2334 (reforms to the State Density Bonus Law to define "base density" and provide further concessions for 100 percent BMR projects in low VMT areas) AB 1551 (Density Bonus Law benefits for mixed-use projects) AB 682 (Density Bonus Law benefits for shared/coliving housing)

Parking Reform and Other Cost Reductions: AB 2097 (prohibiting minimum parking requirements within a half-mile of public transit) AB 2536 (limits on agencies' ability to adopt connection fees and capacity charges) Accessory Dwelling Units (ADUs) and Increased Bedroom Counts: AB 2221 (comprehensive "cleanup" of ADU laws) SB 897 (increased height limits for ADUs; allowing detached ADUs on lots with proposed multifamily dwellings) AB 916 (maximizing bedroom counts within existing units)

Surplus Property: SB 561, AB 2233 and AB 2592 (codification and expansion of Surplus Lands Executive Order prioritizing the use of surplus state-owned land for affordable housing)

Planning, Equity and Lower-Income Housing Opportunities: SCA 2 (propose for 2024 ballot the repeal of state constitutional article requiring voter approval of certain "low rent housing projects") AB 2094 and AB 2653 (greater requirements for annual reports on housing progress) AB 2339 (planning for emergency shelters and clarifying Housing Element Law) AB 2873 (promoting diversity in affordable housing development)

Except where noted, the new laws take effect Jan. 1, 2023. Streamlining AB 2011 (Assembly Member Buffy Wicks) and SB 6 (Sen. Anna Caballero) – Housing Development on Commercially Zoned Sites. The centerpiece of this year's housing production legislation are two different laws that aim to advance residential development on sites currently zoned and planned for commercial and retail use. Particularly notable is Assembly Bill (AB) 2011, which provides a streamlined ministerial approval pathway, comparable to Senate Bill (SB) 35 of 2017, for qualifying multifamily projects on commercial zoned land that pay prevailing wages and meet specified affordable housing targets. A previous Holland & Knight alert provides a high-level analysis of the two laws to help project applicants and property owners identify whether these laws should be explored further to advance housing production on commercially zoned sites, a long-discussed goal in the state and throughout the country. Unlike most other laws, these laws do not take effect until July 1, 2023. AB 2234 (Assembly Members Robert Rivas and Tim Grayson) – Timelines for Post-Entitlement Permits.

Recent housing laws such as the Housing Crisis Act of 2019 (also known as SB 330) have given new teeth to the Permit Streamlining Act (PSA), a law that establishes timelines for local governments to determine the completeness of a permit application, and a timeline to act on the application once it is complete. If a local agency fails to meet the deadlines, the application can be "deemed complete, " and under certain circumstances, the permit can even become "deemed approved." However, the PSA only applies to discretionary approvals such conditional use permits or tentative subdivision maps (approvals commonly referred to as "entitlements, " which are typically issued by Planning Commissions or City Councils). The PSA's timelines do not apply to ministerial acts, such as building and grading permits that developers must seek from building department staff, often long after entitlement approvals issue. As a result, there are usually no clear timelines governing the postentitlement permit process, and the process of actually beginning construction on an approved project can become bogged down in indefinite review or delay even after all discretionary entitlements have issued. To address this, AB 2234 borrows familiar aspects of the PSA process and applies those standards to defined "post-entitlement housing development permits" such as building permits, demolition permits and permits for minor or standard excavation, grading or off-site improvements. Specifically: Public agencies must publish formal application checklists for post-entitlement housing development permits, as well as examples of complete applications

for specific types of housing developments. Local agencies must respond within 15 business days after an agency receives an application by identifying any specific information from the published checklist that was missing from the application, or else the application becomes "deemed complete." Local agencies must complete their review of any complete application within 30 business days (for developments with 25 homes or fewer) or 60 days (for developments with more than 25 homes). Exceptions to this timing requirement only apply if the application requires review by an outside agency or if the local government makes formal findings that the application permit might have a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions" in effect at the time the application was deemed complete. Most critically, AB 2234 provides that a local agency's failure to comply with the specified timelines is a violation of the Housing Accountability Act (HAA), exposing the local agency to the attorney's fees, mandamus relief and potential fines provided by the HAA. This time-limited process for issuing ministerial building permits is a significant change from the current process in many localities. The law reflects recent reports that projects that have received entitlement approvals (typically assumed to be the riskiest development stage) are getting stalled in the permitting phase because of ministerial permit process delays and continually escalating construction costs.

AB 2295 (Assembly Member Richard Bloom) – Educational Employee Housing. This law addresses the dire need for teacher housing. It will allow a qualifying rental housing development project to be an "allowable use, " entitled to certain exemptions from applicable local regulations, if the development is located on real property owned by an "educational agency" (a school district or county office of education). A qualifying development must comply with most "objective" zoning, subdivision and design review standards, but is entitled to be exempt from any use, density and height limitations that would preclude a residential development of at least 35 feet in height, and a minimum density ranging from 10 to 30 dwelling units per acre depending upon whether the jurisdiction is metropolitan, suburban or unincorporated. A qualifying development is also exempt from various requirements regarding the disposal of surplus land. To qualify: Units must be offered for rent with priority given first to employees of the educational agency, then for employees of adjacent educational agencies, and next for public employees of other local agencies. A majority of the units must be Below Market Rate units affordable to lower- or moderate-income households, and at least 30 percent of the units must be affordable to lower-income households. The project must have at least 10 housing units, be located on an infill site adjacent to a property that permits residential uses as a principally permitted use, and meet other specific criteria. The law does not take effect until Jan. 1, 2024, and the bill would require the Department of Housing and Community Development (HCD) to provide a specified notice to the planning agency of each county and city on or before Jan. 31, 2023. The law sunsets Jan. 1, 2033. This law should avoid the need for zoning changes for some projects, but it does not create an exemption under the California Environmental Quality Act (CEQA) or other streamlined

permitting pathway, so it might be best combined with other applicable laws such as SB 35 or AB 2011, or in jurisdictions where avoiding an antihousing voter referendum is a key consideration.

SB 886 (Senator Scott Wiener) – CEQA Exemption for Qualifying University Housing Development Projects. SB 886, intended to provide a CEQA exemption for university student and faculty housing, received significant attention and support from the many Californians who were dismayed to see CEQA litigation used to bar the University of California, Berkeley from making admissions offers to new students. By the end of the legislative process, however, the same Legislature that acted to rescue UC-Berkeley from CEQA litigation had laden SB 886's simple CEQA exemption with numerous qualifying conditions. Under SB 886, a student housing project or a faculty and staff housing project carried out by a public university on real property owned by the public university can qualify for a CEQA exemption, but only if it meets numerous criteria including: Construction workers are paid prevailing wages and, in most cases, participate in "skilled and trained workforce" apprentice programs. The project is consistent with the university or college's Long Range Development Plan or Master Plan for which an Environmental Impact Report (EIR) has previously been certified. The project achieves no net additional emission of greenhouse gases, as verified by an independent third-party evaluation. Each building within the development is Leadership in Energy and Environmental Design (LEED) platinum certified. Construction impacts are "fully mitigated consistent with applicable law." The site cannot be designated as farmland, wetlands, for conservation or habitat, or a very high fire hazard severity zone, and cannot be in flood zones, hazardous waste sites or earthquake fault zones unless certain additional criteria apply. The project will not demolish any housing that has been occupied by tenants in the past 10 years or take place on any site where housing was occupied by tenants within the past 10 years. The project must include a transportation demand management program. No more than 33 percent of the square footage be used for dining, academic or student support spaces, and have a maximum of 2,000 units or 4,000 beds. Projects must be located within a half-mile of a major transit stop, a half-mile of the campus boundary or have 15 percent lower per capita Vehicle Miles Traveled (VMT). Since the exemption requires that there be a prior planlevel EIR in place with which the project is consistent, it is not clear what CEQA coverage is provided by SB 886 that would not already be provided by "tiering, " or preparing an addendum from, that prior EIR. AB 2668 (Assembly Member Grayson) – SB 35 "Cleanup." AB 2668 makes a series of technical and clarifying changes to SB 35 of 2017, a law that provides for streamlined ministerial approval of qualifying housing and mixed-use projects that conform to objective zoning requirements, pay prevailing wages and meet minimum affordable housing requirements. Specifically, AB 2668 revises SB 35 to: Make explicit that a local government is required to approve a development if it determines that the development is consistent with SB 35's criteria (a proposition that has always been implicit in the law, since SB 35 creates a "ministerial" duty for a city to grant a permit, as confirmed in case law). Confirms that the minimum percentage of total units that a development must dedicate for lower-income

housing is calculated before calculating any density bonus. SB 35 projects are entitled to use the State Density Bonus Law (discussed below). Provides opportunities to use SB 35 on a hazardous waste site, if the local agency has otherwise determined that the site is suitable for residential use or residential mixed uses or the site is an underground storage tank site and has received a uniform closure letter based on criteria established by the State Water Resources Control Board, as specified. Confirms that a city cannot find a project inconsistent with applicable standards on the grounds that application materials were not included, as long as the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. Confirms that although SB 35 has a process to allow additional "design review" or "public oversight" over the ministerial application, a locality still must provide written documentation of any applicable standards with which the project conflicts within the applicable deadline calculated from application submittal (60 days for projects with 150 or fewer homes; 90 days for projects with more than 150 homes). For further information on SB 35's streamlined ministerial approval process, see Holland & Knight's previous alerts on the firm's legal victories using SB 35 to achieve project approvals: "Holland & Knight First in California to Secure Housing Approval Through Litigation Under Streamlining Law, " Sept. 11, 2020; and "California Court of Appeal Sides with Holland & Knight Clients in Landmark Housing Case, " April 26, 2021.)

Density AB 2334 (Assembly Member Wicks) – State Density Bonus Law Amendments – Defining "Base Density"; Concessions in Very Low Vehicle Travel Areas. The State Density Bonus Law allows developers to increase density, access concessions to reduce development costs, waive development standards and reduce parking in exchange for providing affordable housing. It is amended nearly every year in an effort to unlock more housing production potential. This year, AB 2334 updates the definition of maximum allowable residential density for the purpose of determining the "base density" to which bonus density may be added. Specifically, AB 2334 provides that if the density under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the greater shall prevail. The law also dictates a method for determining the "base density" in terms of units in the many local jurisdictions where the general plan, specific plan or zoning does not provide dwelling unit per acre standard for density. This method involves estimating the realistic development capacity of the site based on applicable "form-based" objective development standards, such as floor area ratio, site coverage and height limits, and then translating that development capacity into a specific number of units, to which the bonus density is then added. An applicant may now provide a base density study and the local agency "shall" accept it, provided that it includes all applicable objective standards. This method is common in some jurisdictions (such as the City of Berkeley, whose standards were affirmed in a leading Density Bonus Law Court of Appeal opinion in 2011), but in many others is a significant departure from local agency practice. Project applicants working in cities or counties that use "form-based" standards to determine "base density" should carefully review project and application plans to conform to the newly adopted standard. AB 2334 also makes

100 percent affordable housing projects that are located in a very low vehicle travel area in a designated county eligible for four incentives or concessions, unlimited density bonuses as well as an automatic height increase of up to three stories or 33 feet. These benefits were previously only available to 100 percent affordable housing projects within a half-mile of a major transit stop. A "very low vehicle travel area" is defined as an urbanized areas where the existing residential development generates VMT per capita that is below 85 percent of regional or city VMT per capita. The law makes other changes applicable to facilitate affordable housing financing by aligning maximum rent levels as determined by the California Tax Credit Allocation Committee and provides that as part of an equity-sharing agreement a local government may defer to the recapture provisions of a public funding source. Finally, the law changes the resident age requirement for a specified development to receive an elimination of parking minimums from the current 62 years of age or older to instead be 55 years or older.

AB 1551 (Assembly Member Miguel Santiago) – State Density Bonus Law Benefits for Mixed-Use Projects. AB 2551 reenacts a law that previously sunset on Jan. 1, 2022, that provided State Density Bonus Law benefits for commercial projects that include affordable housing. After going into effect on Jan. 1, 2023, the new law will continue until Jan. 1, 2028. In order to qualify, a commercial developer must partner with a housing developer or provide housing that contains 30 percent low income units or 15 percent very low-income units. The housing must be on the site of the commercial development or on a site that is within the boundaries of the local government, in close proximity to public amenities including schools and employment center and be within a half-mile of a major transit stop. If eligible, the commercial development may be granted the following incentives, including but not limited to: up to a 20 percent increase in maximum allowable intensity in the General Plan up to a 20 percent increase in maximum allowable floor area ratio up to a 20 percent increase in maximum height requirements use of a limited use/limited applicable elevator for upper floor accessibility; an exception to a zoning ordinance or other land use regulation This tool may be useful in jurisdictions that want housing developed in tandem with commercial uses and where State Density Bonus Law benefits can make a mixed-use project more financially feasible to support the residential component.

AB 682 (Assembly Member Bloom) – State Density Bonus Law Benefits for Shared Housing or Co-Living Buildings. AB 682 aims to ease roadblocks facing coliving housing projects by creating a new category of "shared housing" projects eligible for benefits under the State Density Bonus Law. A shared-housing building is defined as a residential or mixed-use structure with five or more housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. A sharedhousing building qualifies for State Density Bonus Law benefits if it contains 10 percent lower-income units; 5 percent very low-income units; or is a senior housing development. The law prohibits jurisdictions from requiring any minimum unit size requirements or minimum bedroom

requirements for an eligible shared-housing building project. This is an important benefit as many shared-housing projects cannot meet local requirements because of the small size of the units.

Parking Reform and Other Cost Reductions AB 2097 (Assembly Member Laura Friedman) – No Parking Minimums within Half-Mile of Public Transit. This law prohibits public agencies from imposing minimum parking requirements on residential, commercial or other development projects located within a half-mile of public transit. Public agencies may only impose parking minimums on such projects if the agency can make certain written findings that the inability to impose parking requirements would have substantial negative impacts on 1) a jurisdiction's ability to meet its regional housing needs for low- and very low-income households; 2) a jurisdiction's ability to meet special housing needs for the elderly or persons with disabilities; 3) existing residential or commercial parking facilities located within a half-mile of the housing development project. While project opponents typically argue that a "lack of adequate parking" negatively impacts the surrounding community, AB 2097 requires such findings to be supported by a preponderance of the evidence and such determination and findings must be made within 30 days of receiving a complete project application. Additionally, the foregoing exception does not apply to (meaning that a jurisdiction cannot deny a parking reduction for) housing development projects, including but not limited to residential-only and mixed-use projects, if 1) a minimum of 20 percent of the units are dedicated to very low-, low- or moderate-income households, students, the elderly or persons with disabilities; 2) the development contains 20 residential units or less; or 3) the development is subject to other applicable parking reductions provided by law. While the law provides flexibility for builders to respond to market conditions and voluntarily provide parking, such parking may be required by the public agency to require spaces for car-share vehicles to be shared with the public, or to charge parking owners for the parking stall. Additionally, public agencies may still require builders to provide electric vehicle supply equipment and/or accessible parking spaces that would otherwise apply to the development project. There has been some controversy regarding this law and whether it will result in less frequent use of the State Density Bonus Law to reduce parking in exchange for affordable housing. AB 2097 does not require any provision of affordable housing.

AB 2536 (Assembly Member Grayson) – Connection Fees and Capacity Charges. This law requires agencies to evaluate the amount of a new fee or capacity charge prior to levying it. The evaluation must include evidence to support that the fee or capacity charge does not exceed the estimated reasonable cost of providing service. All information constituting the evaluation must be made publically available at least 14 days prior to hearing on the new fees or capacity charge. Accessory Dwelling Units (ADUs) and Increased Bedroom Counts AB 2221 (Assembly Member Sharon Quirk-Silva) – ADU Law "Cleanup." AB 2221 contains clean-up language and clarifications to reduce permitting hurdles for ADU applicants, including: Existing law requires local agencies to "act on" an ADU application within 60 days of issuing a

"completeness determination, " and if not, an ADU application is deemed approved as a matter of law. However, some local agencies have used internal intermediary "actions" (e.g., inter-departmental referrals, issuing design comments) to bypass the 60- day deadline. AB 2221 eliminates that practice by expressly requiring agencies to "approve or deny" an ADU application within 60 days of the completeness determination. Agencies that deny an ADU application must now provide a full set of comments to the applicant with a list of items that are deficient and a description of how the application can be remedied. Clarifies that the construction of an ADU does not trigger a change in "Group R" occupancy of the residential building (thereby requiring stricter building code standards), unless the agency makes specific findings that the ADU would create an adverse impact on health and safety. Expands the definition of "permitting agency" to include any entity involved in the review of an ADU permit, rather than simply the agency responsible for issuing the permit. This change makes clear that other agency departments, as well as special districts (water, sanitary) are subject to the 60-day deadline following a completeness determination. Clarifies that the construction of an ADU (attached or detached) cannot trigger a requirement to install fire sprinklers in an existing multifamily dwelling. Finally, AB 2221 adds front setbacks to the list of objective development standards that local agencies are precluded from imposing if they would prevent construction of an ADU that is 800 square feet or smaller and adheres to 4 feet of rear and side yard setbacks and revised height limits. Front setbacks remain inapplicable to the "state exempt" class of ADUs found in Subdivision (e) of the state law.

SB 897 (Sen. Bob Wieckowski) – Increased Height Limits for ADUs; Detached ADUs at Proposed Multifamily Projects. SB 897 increases the minimum height limits that local governments may impose on ADUs. Specifically, SB 897 provides minimum height limits of 16 feet (for detached ADUs on same lot with an existing or proposed single-family or multifamily dwelling); 18 feet (for detached ADUs located on lot that is within a half-mile of a major transit stop, or detached ADUs on lot with an existing or proposed multistory, multifamily dwelling); or 25 feet or base zone height, whatever is lower (for attached ADUs). The law introduces the potential for two-story ADUs if certain conditions are met, but ensures local agencies are not required to permit three-story ADUs. Lastly, SB 897 now clarifies that two detached ADUs may be constructed (and qualify for building permit ministerial review under Subdivision (e)) on lots with proposed multifamily dwellings. This change will allow developers to include two detached ADUs in their design and planning processes for new multifamily residential projects.

AB 916 (Assembly Member Rudy Salas) – Maximizing Bedroom Counts within Existing Units. AB 916 prevents local agencies from requiring a public hearing as a condition for proposals to reconfigure existing space within a dwelling unit to increase bedroom count. AB 916 applies to applications that seek to add no more than two additional bedrooms in an existing dwelling in a residential zone. The law does not prohibit agencies from holding public hearings for proposals that would increase the number of units, provided such proposals are not subject to

other state laws that mandate ministerial review (e.g., ADUs, SB 9).

Surplus Property SB 561 (Sen. Bill Dodd), AB 2233 (Assembly Member Quirk-Silva), and AB 2592 (Assembly Member Kevin McCarty) – Codification and Expansion of Surplus Lands Executive Order. In 2019, Gov. Newsom issued an executive order (EO) prioritizing the use of surplus stateowned land for affordable housing. Specifically, the EO required the Department of General Services (DGS) to determine what state-owned land is not needed by the state, and to work with the HCD to designate surplus land suitable for affordable housing development. This year's law further implement the EO. SB 561 and AB 2233 collectively codify this executive order, requiring DGS to develop a plan with HCD to update screening tools to identify surplus stateowned property by June 1, 2023, to develop criteria to evaluate the suitability of state-owned parcels to be used for affordable housing by Sept. 1, 2023, to conduct a comprehensive survey of state-owned land by July 1, 2024, to update the digitized inventory surplus state-owned by Jan. 1, 2024, and every four years thereafter, and to report its progress annually to the Legislature. AB 2592, meanwhile, focuses on state-owned buildings, and specifically requires DGS to prepare and report to the Legislature a streamlined plan to transition underutilized multistory state-owned buildings into "all types of housing."

Planning, Equity and Lower-Income Housing Opportunities State Constitutional Amendment 2 (Sen. Ben Allen) – Repeal of Article 34. Enacted by a 1950 statewide ballot proposition as part of a backlash to federal investment in public housing, Article 34 of the California Constitution purports to give local voters the power to veto any "low rent housing project, " as defined, receiving certain forms of public funding. The practical effect of this constitutional provision is somewhat blunted by clarifying statutory language which limits its scope. However, it continues to pose significant obstacles and increased costs for affordable housing developers and public agencies, who must carefully design projects and funding sources to ensure that projects are either exempt from Article 34 or comply with it, and affordable housing developers often must seek more costly sources of funding to avoid triggering its requirements. SCA 2, if approved by the voters at the 2024 statewide election, will repeal Article 34 in its entirety.

AB 2094 (Assembly Member Rivas) and AB 2653 (Assembly Member Santiago) – Greater Requirements for Annual Reports on Housing Progress. Existing law requires that local governments provide annual reports to the state that detail their progress in meeting their regional housing needs assessment (RHNA) targets. AB 2094 and AB 2653 each provide greater specificity with respect to the information that these annual reports must contain: AB 2094 requires that the annual report specifically detail the local government's progress in meeting RHNA targets for the "extremely low income" category. AB 2653 requires that the annual report additionally provide: the number of new housing units built, the number of housing units demolished, information specifying rental versus for-sale housing and details regarding approved projects that benefit from AB 2011 or the State Density Bonus Law. AB

2653 also authorizes HCD to require corrections to the annual report, and to reject non-compliant portions of the report. AB 2339 (Assembly Member Bloom) –

Planning for Emergency Shelters and Clarifying Housing Element Law. AB 2339 makes two changes to housing element law. First, existing law requires local governments to plan for emergency shelters in their housing elements. AB 2339 provides that the sites identified for emergency shelters must be in residential areas or are otherwise suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services. The law also seeks to ease constraints on the development of emergency shelters by requiring that any development standards applied to emergency shelters be "objective." Second, AB 2339 also clarifies the application of the "No Net Loss" law. Under existing law, each local government must maintain a sufficient supply of adequate sites in its housing element throughout the entirety of the planning period. At the same time, local governments that fail to zone for their full RHNA share are required to rezone for the outstanding "carryover portion" within the first year of the new housing element planning period. Although existing law plainly requires local governments to consider this carryover portion when calculating the amount of housing to plan for in the next cycle, it is unclear whether they must also maintain adequate inventory for the carryover portion under the No Net Loss law. AB 2339 resolves this ambiguity by clarifying that local governments must account for the carryover portion when determining the amount of inventory required by the No Net Loss law.

AB 2873 (Assembly Member Reginald Byron JonesSawyer) – Promoting Diversity in Affordable Housing Development. AB 2873 is designed to encourage affordable housing developers to employ minority- owned business enterprises. It accomplishes this goal by requiring affordable housing developers to report on their efforts to employ women, minority, disabled veteran and LGBT owned business enterprises. This requirement applies to affordable housing developers that receive low-income housing tax credit (LIHTC) on or after Jan. 1, 2024, and that have either: 1) completed five or more housing projects by Jan. 1, 2023; or 2) received an annual LIHTC allocation of at least $1 million

OCTOBER 10, 2022

California's 2023 Housing Laws: What You Need to Know

Streamlined Approval for Housing on Commercially Zoned Sites, Parking and Density Reforms, and New Timelines for Post-Entitlement Permits Are Highlights of Big Year for Housing Law

Holland & Knight Alert

Chelsea Maclean | Daniel R. Golub | Kevin J. Ashe |
William E. Sterling | Paloma Perez-McEvoy

Highlights

- The centerpiece of a significant 2022 legislative session is Assembly Bill (AB) 2011, which provides a ministerial, California Environmental Quality Act (CEQA)-exempt approval pathway for qualifying multifamily projects on commercial zoned land that pay prevailing wages and meet specified affordable housing targets.

- Other important laws that take effect in 2023 include AB 2097, which generally prohibits public agencies from imposing minimum parking requirements within a half-mile of public transit; AB 2334, which makes important changes to the Density Bonus Law to define development capacity; and AB

1551, which reinstates the ability to seek State Density Bonus Law benefits for commercial projects.

- A relatively underreported, but significant, new law is AB 2234, which creates a major change to local agency norms by establishing strict timelines – and potential Housing Accountability Act liability – for localities when issuing post-entitlement ministerial permits such as grading and building permits.

As in previous years, the California Legislature enacted a large volume of housing production laws in the 2022 session, some of which may have a significant effect on housing production in 2023. (See Holland & Knight's

previous annual recaps of California Housing Laws in the final section below.) This Holland & Knight alert takes a closer look at some of the most significant housing laws that the Legislature passed and that Gov. Gavin Newsom has signed into law, grouped into following categories:

- **Streamlining:**
  - **AB 2011** (CEQA-exempt ministerial approval pathway on commercially zoned land for qualifying residential development that meets affordable housing targets and pays prevailing wages)
  - **SB 6** (allowing residential use on commercially zoned property without requiring a rezoning for

projects that pay prevailing wages and meet "skilled and trained workforce" requirements)

- **AB 2234** (enforceable timelines for local governments to issue post-entitlement ministerial building permits)
- **AB 2295** (allowing educational employee housing on land owned by school districts or county office of education)
- **SB 886** (CEQA exemption for qualifying university housing development projects)
- **AB 2668** ("cleanup" of SB 35's streamlined ministerial approval process)

- **Density:**
  - **AB 2334** (reforms to the State Density Bonus Law to define "base density" and provide further concessions for 100 percent BMR projects in low VMT areas)
  - **AB 1551** (Density Bonus Law benefits for mixed-use projects)
  - **AB 682** (Density Bonus Law benefits for shared/co-living housing)
- **Parking Reform and Other Cost Reductions:**

- **AB 2097** (prohibiting minimum parking requirements within a half-mile of public transit)
- **AB 2536** (limits on agencies' ability to adopt connection fees and capacity charges)

- **Accessory Dwelling Units (ADUs) and Increased Bedroom Counts:**
  - **AB 2221** (comprehensive "cleanup" of ADU laws)
  - **SB 897** (increased height limits for ADUs; allowing detached ADUs on lots with proposed multifamily dwellings)

- **AB 916** (maximizing bedroom counts within existing units)

- **Surplus Property:**
  - **SB 561, AB 2233 and AB 2592** (codification and expansion of Surplus Lands Executive Order prioritizing the use of surplus state-owned land for affordable housing)

- **Planning, Equity and Lower-Income Housing Opportunities:**
  - **SCA 2** (propose for 2024 ballot the repeal of state constitutional article requiring voter approval of

certain "low rent housing projects")

- **AB 2094 and AB 2653** (greater requirements for annual reports on housing progress)
- **AB 2339** (planning for emergency shelters and clarifying Housing Element Law)
- **AB 2873** (promoting diversity in affordable housing development)

Except where noted, the new laws take effect Jan. 1, 2023.

Streamlining

AB 2011 (Assembly Member Buffy Wicks) and SB 6 (Sen. Anna Caballero) – Housing Development on Commercially Zoned Sites. The centerpiece of this year's housing production legislation are two different laws that aim to advance residential development on sites currently zoned and planned for commercial and retail use. Particularly notable is Assembly Bill (AB) 2011, which provides a streamlined ministerial approval pathway, comparable to Senate Bill (SB) 35 of 2017, for qualifying multifamily projects on commercial zoned land that pay prevailing wages and meet specified affordable housing targets. A previous **Holland & Knight alert** provides a high-level analysis of the two laws to

help project applicants and property owners identify whether these laws should be explored further to advance housing production on commercially zoned sites, a long-discussed goal in the state and throughout the country. Unlike most other laws, these laws do not take effect until July 1, 2023.

AB 2234 (Assembly Members Robert Rivas and Tim Grayson) – Timelines for Post-Entitlement Permits. Recent housing laws such as the Housing Crisis Act of 2019 (also known as SB 330) have given new teeth to the **Permit Streamlining Act (PSA)**, a law that establishes timelines for local governments to determine the completeness of a permit application, and a timeline to act on the application once it is

complete. If a local agency fails to meet the deadlines, the application can be "deemed complete," and under certain circumstances, the permit can even become "deemed approved." However, the PSA only applies to discretionary approvals such conditional use permits or tentative subdivision maps (approvals commonly referred to as "entitlements," which are typically issued by Planning Commissions or City Councils). The PSA's timelines do not apply to ministerial acts, such as building and grading permits that developers must seek from building department staff, often long after entitlement approvals issue. As a result, there are usually no clear timelines governing the post-entitlement permit process, and the process of actually beginning construction on an approved project can

become bogged down in indefinite review or delay even after all discretionary entitlements have issued.

To address this, AB 2234 borrows familiar aspects of the PSA process and applies those standards to defined "post-entitlement housing development permits" such as building permits, demolition permits and permits for minor or standard excavation, grading or off-site improvements. Specifically:

- Public agencies must publish formal application checklists for post-entitlement housing development permits, as well as examples of complete applications for specific types of housing developments.

- Local agencies must respond within 15 business days after an agency receives an application by identifying any specific information from the published checklist that was missing from the application, or else the application becomes "deemed complete."

- Local agencies must complete their review of any complete application within 30 business days (for developments with 25 homes or fewer) or 60 days (for developments with more than 25 homes). Exceptions to this timing requirement only apply if the application requires review by an outside agency or if the local government makes formal findings that the application permit might have a "significant, quantifiable, direct, and unavoidable impact, based

on objective, identified, and written public health or safety standards, policies, or conditions" in effect at the time the application was deemed complete.

- Most critically, AB 2234 provides that a local agency's failure to comply with the specified timelines is a violation of the Housing Accountability Act (HAA), exposing the local agency to the attorney's fees, mandamus relief and potential fines provided by the HAA.

This time-limited process for issuing ministerial building permits is a significant change from the current process in many localities. The law reflects recent reports that projects that have received entitlement

approvals (typically assumed to be the riskiest development stage) are getting stalled in the permitting phase because of ministerial permit process delays and continually escalating construction costs.

AB 2295 (Assembly Member Richard Bloom) – Educational Employee Housing. This law addresses the dire need for teacher housing. It will allow a qualifying rental housing development project to be an "allowable use," entitled to certain exemptions from applicable local regulations, if the development is located on real property owned by an "educational agency" (a school district or county office of education). A qualifying development must comply with most "objective" zoning, subdivision and design review standards, but is

entitled to be exempt from any use, density and height limitations that would preclude a residential development of at least 35 feet in height, and a minimum density ranging from 10 to 30 dwelling units per acre depending upon whether the jurisdiction is metropolitan, suburban or unincorporated. A qualifying development is also exempt from various requirements regarding the disposal of surplus land. To qualify:

- Units must be offered for rent with priority given first to employees of the educational agency, then for employees of adjacent educational agencies, and next for public employees of other local agencies.

- A majority of the units must be Below Market Rate units affordable to lower- or moderate-income households, and at least 30 percent of the units must be affordable to lower-income households.

- The project must have at least 10 housing units, be located on an infill site adjacent to a property that permits residential uses as a principally permitted use, and meet other specific criteria.

The law does not take effect until Jan. 1, 2024, and the bill would require the Department of Housing and Community Development (HCD) to provide a specified notice to the planning agency of each county and city on or before Jan. 31, 2023. The law sunsets Jan. 1, 2033.

This law should avoid the need for zoning changes for some projects, but it does not create an exemption under the California Environmental Quality Act (CEQA) or other streamlined permitting pathway, so it might be best combined with other applicable laws such as SB 35 or AB 2011, or in jurisdictions where avoiding an anti-housing voter referendum is a key consideration.

SB 886 (Senator Scott Wiener) – CEQA Exemption for Qualifying University Housing Development Projects. SB 886, intended to provide a CEQA exemption for university student and faculty housing, received significant attention and support from the many Californians who were dismayed to see CEQA litigation used to bar the University of California,

Berkeley from making admissions offers to new students. By the end of the legislative process, however, the same Legislature that acted to rescue UC-Berkeley from CEQA litigation had laden SB 886's simple CEQA exemption with numerous qualifying conditions. Under SB 886, a student housing project or a faculty and staff housing project carried out by a public university on real property owned by the public university can qualify for a CEQA exemption, but only if it meets numerous criteria including:

- Construction workers are paid prevailing wages and, in most cases, participate in "skilled and trained workforce" apprentice programs.

- The project is consistent with the university or college's Long Range Development Plan or Master Plan for which an Environmental Impact Report (EIR) has previously been certified.

- The project achieves no net additional emission of greenhouse gases, as verified by an independent third-party evaluation.

- Each building within the development is Leadership in Energy and Environmental Design (LEED) platinum certified.

- Construction impacts are "fully mitigated consistent with applicable law."

- The site cannot be designated as farmland, wetlands, for conservation or habitat, or a very high fire hazard severity zone, and cannot be in flood zones, hazardous waste sites or earthquake fault zones unless certain additional criteria apply.

- The project will not demolish any housing that has been occupied by tenants in the past 10 years or take place on any site where housing was occupied by tenants within the past 10 years.

- The project must include a transportation demand management program.

- No more than 33 percent of the square footage be used for dining, academic or student support spaces,

and have a maximum of 2,000 units or 4,000 beds.

- Projects must be located within a half-mile of a major transit stop, a half-mile of the campus boundary or have 15 percent lower per capita Vehicle Miles Traveled (VMT).

Since the exemption requires that there be a prior plan-level EIR in place with which the project is consistent, it is not clear what CEQA coverage is provided by SB 886 that would not already be provided by "tiering," or preparing an addendum from, that prior EIR.

AB 2668 (Assembly Member Grayson) – SB 35 "Cleanup." AB 2668 makes a series of technical and

clarifying changes to SB 35 of 2017, a law that provides for streamlined ministerial approval of qualifying housing and mixed-use projects that conform to objective zoning requirements, pay prevailing wages and meet minimum affordable housing requirements. Specifically, AB 2668 revises SB 35 to:

- Make explicit that a local government is required to approve a development if it determines that the development is consistent with SB 35's criteria (a proposition that has always been implicit in the law, since SB 35 creates a "ministerial" duty for a city to grant a permit, as confirmed in case law).

- Confirms that the minimum percentage of total units that a development must dedicate for lower-income housing is calculated before calculating any density bonus. SB 35 projects are entitled to use the State Density Bonus Law (discussed below).

- Provides opportunities to use SB 35 on a hazardous waste site, if the local agency has otherwise determined that the site is suitable for residential use or residential mixed uses or the site is an underground storage tank site and has received a uniform closure letter based on criteria established by the State Water Resources Control Board, as specified.

- Confirms that a city cannot find a project inconsistent with applicable standards on the grounds that application materials were not included, as long as the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

- Confirms that although SB 35 has a process to allow additional "design review" or "public oversight" over the ministerial application, a locality still must provide written documentation of any applicable standards with which the project conflicts within the applicable deadline calculated from application submittal (60

days for projects with 150 or fewer homes; 90 days for projects with more than 150 homes).

For further information on SB 35's streamlined ministerial approval process, see Holland & Knight's previous alerts on the firm's legal victories using SB 35 to achieve project approvals: "**Holland & Knight First in California to Secure Housing Approval Through Litigation Under Streamlining Law**," Sept. 11, 2020; and "**California Court of Appeal Sides with Holland & Knight Clients in Landmark Housing Case**," April 26, 2021.)

Density

AB 2334 (Assembly Member Wicks) – State Density Bonus Law Amendments – Defining "Base Density"; Concessions in Very Low Vehicle Travel Areas. The State Density Bonus Law allows developers to increase density, access concessions to reduce development costs, waive development standards and reduce parking in exchange for providing affordable housing. It is amended nearly every year in an effort to unlock more housing production potential. This year, AB 2334 updates the definition of maximum allowable residential density for the purpose of determining the "base density" to which bonus density may be added. Specifically, AB 2334 provides that if the density under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan

or specific plan, the greater shall prevail. The law also dictates a method for determining the "base density" in terms of units in the many local jurisdictions where the general plan, specific plan or zoning does not provide dwelling unit per acre standard for density. This method involves estimating the realistic development capacity of the site based on applicable "form-based" objective development standards, such as floor area ratio, site coverage and height limits, and then translating that development capacity into a specific number of units, to which the bonus density is then added. An applicant may now provide a base density study and the local agency "shall" accept it, provided that it includes all applicable objective standards. This method is common in some jurisdictions (such as the City of Berkeley,

whose standards were affirmed in a leading Density Bonus Law Court of Appeal opinion in 2011), but in many others is a significant departure from local agency practice. Project applicants working in cities or counties that use "form-based" standards to determine "base density" should carefully review project and application plans to conform to the newly adopted standard.

AB 2334 also makes 100 percent affordable housing projects that are located in a very low vehicle travel area in a designated county eligible for four incentives or concessions, unlimited density bonuses as well as an automatic height increase of up to three stories or 33 feet. These benefits were previously only available to 100 percent affordable housing projects within a half-mile

of a major transit stop. A "very low vehicle travel area" is defined as an urbanized areas where the existing residential development generates VMT per capita that is below 85 percent of regional or city VMT per capita.

The law makes other changes applicable to facilitate affordable housing financing by aligning maximum rent levels as determined by the California Tax Credit Allocation Committee and provides that as part of an equity-sharing agreement a local government may defer to the recapture provisions of a public funding source.

Finally, the law changes the resident age requirement for a specified development to receive an elimination of

parking minimums from the current 62 years of age or older to instead be 55 years or older.

AB 1551 (Assembly Member Miguel Santiago) – State Density Bonus Law Benefits for Mixed-Use Projects. AB 2551 reenacts a law that previously sunset on Jan. 1, 2022, that provided State Density Bonus Law benefits for commercial projects that include affordable housing. After going into effect on Jan. 1, 2023, the new law will continue until Jan. 1, 2028. In order to qualify, a commercial developer must partner with a housing developer or provide housing that contains 30 percent low income units or 15 percent very low-income units. The housing must be on the site of the commercial development or on a site that is within the boundaries

of the local government, in close proximity to public amenities including schools and employment center and be within a half-mile of a major transit stop. If eligible, the commercial development may be granted the following incentives, including but not limited to:

- up to a 20 percent increase in maximum allowable intensity in the General Plan
- up to a 20 percent increase in maximum allowable floor area ratio
- up to a 20 percent increase in maximum height requirements

- use of a limited use/limited applicable elevator for upper floor accessibility; an exception to a zoning ordinance or other land use regulation

This tool may be useful in jurisdictions that want housing developed in tandem with commercial uses and where State Density Bonus Law benefits can make a mixed-use project more financially feasible to support the residential component.

AB 682 (Assembly Member Bloom) – State Density Bonus Law Benefits for Shared Housing or Co-Living Buildings. AB 682 aims to ease roadblocks facing co-living housing projects by creating a new category of

"shared housing" projects eligible for benefits under the State Density Bonus Law. A shared-housing building is defined as a residential or mixed-use structure with five or more housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. A shared-housing building qualifies for State Density Bonus Law benefits if it contains 10 percent lower-income units; 5 percent very low-income units; or is a senior housing development. The law prohibits jurisdictions from requiring any minimum unit size requirements or minimum bedroom requirements for an eligible shared-housing building project. This is an important benefit as many shared-housing projects cannot meet

local requirements because of the small size of the units.

Parking Reform and Other Cost Reductions

AB 2097 (Assembly Member Laura Friedman) – No Parking Minimums within Half-Mile of Public Transit. This law prohibits public agencies from imposing minimum parking requirements on residential, commercial or other development projects located within a half-mile of public transit. Public agencies may only impose parking minimums on such projects if the agency can make certain written findings that the inability to impose parking requirements would have substantial negative impacts on 1) a

jurisdiction's ability to meet its regional housing needs for low- and very low-income households; 2) a jurisdiction's ability to meet special housing needs for the elderly or persons with disabilities; 3) existing residential or commercial parking facilities located within a half-mile of the housing development project. While project opponents typically argue that a "lack of adequate parking" negatively impacts the surrounding community, AB 2097 requires such findings to be supported by a preponderance of the evidence and such determination and findings must be made within 30 days of receiving a complete project application. Additionally, the foregoing exception does not apply to (meaning that a jurisdiction cannot deny a parking reduction for) housing development projects, including

but not limited to residential-only and mixed-use projects, if 1) a minimum of 20 percent of the units are dedicated to very low-, low- or moderate-income households, students, the elderly or persons with disabilities; 2) the development contains 20 residential units or less; or 3) the development is subject to other applicable parking reductions provided by law.

While the law provides flexibility for builders to respond to market conditions and voluntarily provide parking, such parking may be required by the public agency to require spaces for car-share vehicles to be shared with the public, or to charge parking owners for the parking stall. Additionally, public agencies may still require builders to provide electric vehicle supply equipment

and/or accessible parking spaces that would otherwise apply to the development project. There has been some controversy regarding this law and whether it will result in less frequent use of the State Density Bonus Law to reduce parking in exchange for affordable housing. AB 2097 does not require any provision of affordable housing.

AB 2536 (Assembly Member Grayson) – Connection Fees and Capacity Charges. This law requires agencies to evaluate the amount of a new fee or capacity charge prior to levying it. The evaluation must include evidence to support that the fee or capacity charge does not exceed the estimated reasonable cost of providing service. All information constituting the evaluation must

be made publically available at least 14 days prior to hearing on the new fees or capacity charge.

Accessory Dwelling Units (ADUs) and Increased Bedroom Counts

AB 2221 (Assembly Member Sharon Quirk-Silva) – ADU Law "Cleanup." AB 2221 contains clean-up language and clarifications to reduce permitting hurdles for ADU applicants, including:

- Existing law requires local agencies to "act on" an ADU application within 60 days of issuing a "completeness determination," and if not, an ADU application is deemed approved as a matter of law.

However, some local agencies have used internal intermediary "actions" (e.g., inter-departmental referrals, issuing design comments) to bypass the 60-day deadline. AB 2221 eliminates that practice by expressly requiring agencies to "approve or deny" an ADU application within 60 days of the completeness determination.

- Agencies that deny an ADU application must now provide a full set of comments to the applicant with a list of items that are deficient and a description of how the application can be remedied.

- Clarifies that the construction of an ADU does not trigger a change in "Group R" occupancy of the

residential building (thereby requiring stricter building code standards), unless the agency makes specific findings that the ADU would create an adverse impact on health and safety.

- Expands the definition of "permitting agency" to include any entity involved in the review of an ADU permit, rather than simply the agency responsible for issuing the permit. This change makes clear that other agency departments, as well as special districts (water, sanitary) are subject to the 60-day deadline following a completeness determination.

- Clarifies that the construction of an ADU (attached or detached) cannot trigger a requirement to install fire

sprinklers in an existing multifamily dwelling.

- Finally, AB 2221 adds front setbacks to the list of objective development standards that local agencies are precluded from imposing if they would prevent construction of an ADU that is 800 square feet or smaller and adheres to 4 feet of rear and side yard setbacks and revised height limits. Front setbacks remain inapplicable to the "state exempt" class of ADUs found in Subdivision (e) of the state law.

SB 897 (Sen. Bob Wieckowski) – Increased Height Limits for ADUs; Detached ADUs at Proposed Multifamily Projects. SB 897 increases the minimum height limits that local governments may impose on ADUs.

Specifically, SB 897 provides minimum height limits of 16 feet (for detached ADUs on same lot with an existing or proposed single-family or multifamily dwelling); 18 feet (for detached ADUs located on lot that is within a half-mile of a major transit stop, *or* detached ADUs on lot with an existing or proposed multistory, multifamily dwelling); or 25 feet or base zone height, whatever is lower (for attached ADUs). The law introduces the potential for two-story ADUs if certain conditions are met, but ensures local agencies are not required to permit three-story ADUs. Lastly, SB 897 now clarifies that two detached ADUs may be constructed (and qualify for building permit ministerial review under Subdivision (e)) on lots with *proposed* multifamily dwellings. This change will allow developers to include

two detached ADUs in their design and planning processes for new multifamily residential projects.

AB 916 (Assembly Member Rudy Salas) – Maximizing Bedroom Counts within Existing Units. AB 916 prevents local agencies from requiring a public hearing as a condition for proposals to reconfigure existing space within a dwelling unit to increase bedroom count. AB 916 applies to applications that seek to add no more than two additional bedrooms in an existing dwelling in a residential zone. The law does not prohibit agencies from holding public hearings for proposals that would increase the number of *units*, provided such proposals are not subject to other state laws that mandate ministerial review (e.g., ADUs, SB 9).

Surplus Property

SB 561 (Sen. Bill Dodd), AB 2233 (Assembly Member Quirk-Silva), and AB 2592 (Assembly Member Kevin McCarty) – Codification and Expansion of Surplus Lands Executive Order. In 2019, Gov. Newsom issued an executive order (EO) prioritizing the use of surplus state-owned land for affordable housing. Specifically, the EO required the Department of General Services (DGS) to determine what state-owned land is not needed by the state, and to work with the HCD to designate surplus land suitable for affordable housing development. This year's law further implement the EO.

- SB 561 and AB 2233 collectively codify this executive order, requiring DGS to develop a plan with HCD to update screening tools to identify surplus state-owned property by June 1, 2023, to develop criteria to evaluate the suitability of state-owned parcels to be used for affordable housing by Sept. 1, 2023, to conduct a comprehensive survey of state-owned land by July 1, 2024, to update the digitized inventory surplus state-owned by Jan. 1, 2024, and every four years thereafter, and to report its progress annually to the Legislature.

- AB 2592, meanwhile, focuses on state-owned buildings, and specifically requires DGS to prepare and report to the Legislature a streamlined plan to

transition underutilized multistory state-owned buildings into "all types of housing."

Planning, Equity and Lower-Income Housing Opportunities

State Constitutional Amendment 2 (Sen. Ben Allen) – Repeal of Article 34. Enacted by a 1950 statewide ballot proposition as part of a backlash to federal investment in public housing, Article 34 of the California Constitution purports to give local voters the power to veto any "low rent housing project," as defined, receiving certain forms of public funding. The practical effect of this constitutional provision is somewhat

blunted by clarifying statutory language which limits its scope. However, it continues to pose significant obstacles and increased costs for affordable housing developers and public agencies, who must carefully design projects and funding sources to ensure that projects are either exempt from Article 34 or comply with it, and affordable housing developers often must seek more costly sources of funding to avoid triggering its requirements. SCA 2, if approved by the voters at the 2024 statewide election, will repeal Article 34 in its entirety.

AB 2094 (Assembly Member Rivas) and AB 2653 (Assembly Member Santiago) – Greater Requirements for Annual Reports on Housing Progress. Existing law

requires that local governments provide annual reports to the state that detail their progress in meeting their regional housing needs assessment (RHNA) targets. AB 2094 and AB 2653 each provide greater specificity with respect to the information that these annual reports must contain:

- AB 2094 requires that the annual report specifically detail the local government's progress in meeting RHNA targets for the "extremely low income" category.

- AB 2653 requires that the annual report additionally provide: the number of new housing units built, the number of housing units demolished, information

specifying rental versus for-sale housing and details regarding approved projects that benefit from AB 2011 or the State Density Bonus Law. AB 2653 also authorizes HCD to require corrections to the annual report, and to reject non-compliant portions of the report.

AB 2339 (Assembly Member Bloom) – Planning for Emergency Shelters and Clarifying Housing Element Law. AB 2339 makes two changes to housing element law. First, existing law requires local governments to plan for emergency shelters in their housing elements. AB 2339 provides that the sites identified for emergency shelters must be in residential areas or are otherwise

suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services. The law also seeks to ease constraints on the development of emergency shelters by requiring that any development standards applied to emergency shelters be "objective."

Second, AB 2339 also clarifies the application of the "No Net Loss" law. Under existing law, each local government must maintain a sufficient supply of adequate sites in its housing element throughout the entirety of the planning period. At the same time, local governments that fail to zone for their full RHNA share are required to rezone for the outstanding "carryover portion" within the first year of the new housing

element planning period. Although existing law plainly requires local governments to consider this carryover portion when calculating the amount of housing to plan for in the next cycle, it is unclear whether they must also maintain adequate inventory for the carryover portion under the No Net Loss law. AB 2339 resolves this ambiguity by clarifying that local governments must account for the carryover portion when determining the amount of inventory required by the No Net Loss law.

AB 2873 (Assembly Member Reginald Byron Jones-Sawyer) – Promoting Diversity in Affordable Housing Development. AB 2873 is designed to encourage affordable housing developers to employ minority-

owned business enterprises. It accomplishes this goal by requiring affordable housing developers to report on their efforts to employ women, minority, disabled veteran and LGBT owned business enterprises. This requirement applies to affordable housing developers that receive low-income housing tax credit (LIHTC) on or after Jan. 1, 2024, and that have either: 1) completed five or more housing projects by Jan. 1, 2023; or 2) received an annual LIHTC allocation of at least $1 million.

Conclusion

The 2022 legislative session produced some significant new housing production laws which present new

opportunities to streamline the housing approval process, take greater advantage of increased density, and a new focus on post-entitlement processing to speed up the time frame to get construction underway. For more information about to maximize these and other state housing laws to advance the approval of your project, contact the authors or your Holland & Knight **West Coast Land Use & Environmental Practice Group** attorney.

Previous California Housing Law Alerts

- **A Closer Look at California's New Housing Production Laws**, Dec. 6, 2017

- California's 2019 Housing Laws: What You Need to Know, Oct. 8, 2018
- California's 2020 Housing Laws: What You Need to Know, Oct. 18, 2019
- California's 2021 Housing Laws: What You Need to Know, Nov. 4, 2020
- California's 2022 Housing Laws: What You Need to Know, Oct. 13, 2021

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