October 31, 2023

California's 2024 Housing Laws: What You Need to Know

Expansion of Affordable Housing Streamlining and First Steps Toward Addressing CEQA Abuse Are Highlights of a Big Year in Housing Law

Holland & Knight Alert

Highlights

- In 2023, the California Legislature enacted and extended significant housing streamlining laws – most, but not all, are limited to projects that pay prevailing wage for construction labor and contain significant amounts of Below Market Rate (BMR) housing.
- The session also saw important signs of legislative frustration at California Environmental Quality Act (CEQA) abuse. A new law will limit localities' ability to refuse to certify an Environmental Impact Report (EIR) or confirm a CEQA exemption for qualifying housing developments, and a new CEQA exemption applies to qualifying 100 percent affordable housing projects. The Legislature also reacted to the University of California, Berkeley "students are pollution" case by providing that noise generated by occupants and their guests is not a significant effect on the environment.
- The Legislature further expanded the State Density Bonus Law, but limited the scope of the Surplus Lands Act – in ways that may increase the complexity of both statutes.
- New laws will allow localities to permit Accessory Dwelling Units (ADUs) to be sold separately as condos and prohibit localities from imposing "owner occupancy" requirements on ADUs.

The 2023 California Legislative session, like the last several, saw the enactment of a large number of significant new housing production laws. (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:
    - **SB 423** (extension and expansion of streamlined ministerial approval law for affordable projects consistent with objective zoning rules)
    - **SB 4** (by-right approval for affordable housing on land owned by religious organizations and higher education institutions)
    - **SB 684** (ministerial approval of up to 10-unit housing projects on small sites)
    - **AB 1490** (adaptive reuse for affordable housing)
    - **AB 1114 and AB 281** (reforms to post-entitlement permitting)
- California Environmental Quality Act (CEQA):
    - **AB 1633** (CEQA reform for infill housing)
    - **AB 1307** (residential noise impacts)
    - **AB 1449** (affordable housing exemption)
    - **SB 406** (financial assistance exemption)
    - **SB 91** (motel conversion exemption)
    - **AB 356** (Dilapidated Building Refurbishment Act)
    - **SB 149** (CEQA administrative record reform)
- Density, Land Use and Planning:
    - **AB 1287** (additional density bonuses for very low- or moderate-income units)
    - **SB 747 and AB 480** (amendments to scale back the Surplus Land Act)
    - **AB 821** (local agency obligation to resolve general plan and zoning conflicts)
    - **SB 272** (sea level rise planning in coastal commission and bay conservation and development commission jurisdiction)
    - **AB 529** (building code updates for adaptive reuse projects)
- Accessory Dwelling Units (ADUs):
    - **AB 1033** (ADUs sold separately as condos)
    - **AB 976** (owner-occupancy requirements prohibited beyond 2025)
    - **AB 1332** (streamlined 30-day approval for preapproved ADU plans)
- Enforcement:
    - **AB 434** (expanded Department of Housing and Community Development (HCD) enforcement authority)
    - **AB 1485** (attorney general right to intervene in housing enforcement suits)
- Anti-Displacement and Affordable Housing:
    - **SB 439** (motion to strike lawsuit challenging affordable housing)
    - **AB 1218** (replacement housing and relocation benefit expansion)
    - **AB 911** (notification and ownership requirements for modifications to recorded covenants restricting development of affordable housing)
    - **SB 469** (exemptions from Article 34 of the California Constitution for affordable housing projects receiving specified funding)
    - **ACA 1** (constitutional amendment to lower threshold for bond measures)
    - **SB 789** (constitutional amendments scheduled for voter consideration at November election)
    - **AB 812** (authorization of conditions of approval for affordable artist housing)
- Financing and Costs:
    - **SB 253** (carbon emission disclosure)

    - **AB 1319** (Bay Area Housing Finance Authority authorizations to facilitate production and preservation of affordable housing)
    - **AB 835** (fire marshal to study safety of requirement for apartments to have more than one staircase)
- Parking:
    - **AB 1308** (no increased minimum parking requirements on single-family home renovations)
    - **AB 1317** (unbundled parking for qualifying residential properties)
    - **AB 894** (shared parking)

Except where noted, the new laws take effect on Jan. 1, 2024.

Streamlining

SB 423 (Sen. Scott Wiener) – Extension and Expansion of Streamlined Ministerial Approval Law for Affordable Projects Consistent with Objective Zoning Rules. SB 423 significantly expands, and extends the "sunset date" of, the streamlined ministerial approval law originally created by SB 35 of 2017 (SB 35). Holland & Knight has substantial experience advising both 100 percent affordable developers and mixed-income developers entitling projects on the basis of this law and litigating cases under SB 35.

SB 35 provides a CEQA-exempt, time-limited ministerial approval process (90-180 days, depending upon whether the project has more or less than 150 units), for residential and mixed-use projects in the majority of California jurisdictions that are not making sufficient progress toward the regional need for housing. To qualify for this ministerial process, projects must comply with a locality's "objective" standards, meet a long list of qualifying criteria designed to capture "infill" sites, commit to paying "prevailing wage" (typically union) rates for construction labor, and meet significant affordable requirements (either 10 percent, 20 percent or 50 percent of units at Below Market Rate (BMR) rents, depending upon a project's location and the local jurisdiction's progress toward meeting its Regional Housing Needs Allocation (RHNA)).

In addition to extending the sunset date of this law from to 2026 to 2036, SB 423 expands the statute in several ways, including:

- **Reduction in Labor Requirements**. The law previously applied a very costly "skilled and trained workforce" labor requirement to many projects. Now, the "skilled and trained workforce" has been removed except for projects that are more than 85 feet in height – and even then, only if a prime contractor receives at least three bids for construction work that can meet the "skilled and trained workforce" requirement. Prevailing wage remains required except for projects of 10 or fewer units, and projects of more than 50 units are newly required to ensure contractors provide specified apprenticeship training and healthcare expenditures to workers.
- **Coastal Zone.** SB 35 previously did not apply in the coastal zone. As amended, the law will apply to areas of the coastal zone that are zoned for multifamily housing, unless the area is not subject to a certified local coastal program or a certified land use plan, is vulnerable to 5 feet of sea level rise, or is within 100 feet of a wetland or on prime agricultural land. Applicability in the coastal zone does not go into effect until Jan. 1, 2025.
- **Housing Element Noncompliance**. Previously, the only criteria that determined whether a jurisdiction was subject to streamlining is the number of housing permits the jurisdiction had issued relative to its RHNA. After SB 423, a jurisdiction's failure to achieve an HCD-certified housing element will also make the jurisdiction subject to SB 35 streamlining – creating yet another negative consequence for failure to adopt a legally compliant housing plan.
- **Flexibility for 100 Percent BMR Projects.** Affordable housing projects have often found that the specific income targets required by state laws such as SB 35 do not match up well with the income levels required by various federal, state or local funding programs. To meet this concern, 100 percent BMR projects can qualify for streamlining as long as they charge a rent that is consistent with the maximum rent levels stipulated by the public program providing financing for the development.
- **Hearing Required in Certain Areas.** A public hearing must be provided if the development is proposed in a census tract designated as either a moderate resource area, low resource area or an area of high segregation and poverty by the California Tax Credit Allocation Committee (CTCAC) and HCD.

Even as amended, SB 35 remains costly. But project applicants should at least give streamlined processing a second look to see if the costs imposed are outweighed by the benefits of a ministerial, CEQA-exempt approval process.

SB 4 (Sen. Wiener) – By-Right Approval for Affordable Housing on Land Owned by Religious Organizations and Higher Education Institutions. SB 4 creates a "by right," CEQA-exempt, time-limited (90-180 day) approval process closely modeled on SB 35 of 2017 and AB 2011 of 2022 for affordable housing projects (including qualifying ground-floor commercial, childcare center and community center uses) on land owned by religious organizations and higher education institutions. Such a project can be entitled to approval even if the project is inconsistent with applicable local general plan and zoning requirements. Instead, a project is entitled to a height of one story above applicable local requirements and to specified minimum residential densities of between 10-40 dwelling units per acre, depending upon the project's location.

To qualify for this process:

- the development must be on land owned on or before Jan. 1, 2024, by an institution of higher education or a religious institution
- the developer must be a local entity; a nonprofit corporation, as specified; a developer that contracts with a nonprofit corporation, as specified; or a developer that the religious or educational institution has contracted with before to construct housing or other improvements
- the housing must be deed-restricted housing affordable to lower-income households, except that up to 20 percent of the units may be for moderate-income households and 5 percent may be for staff of the educational or religious institution
- projects of more than 10 units that are not a public work must ensure construction workers are paid "prevailing wage," unless otherwise provided in a bona fide collective bargaining agreement; projects of more than 50 units are required to ensure contractors provide specified apprenticeship training and healthcare expenditures to workers
- the project site must meet a long list of qualifying criteria – similar to those in SB 35 and AB 2011 – designed to capture "infill" project locations that avoid environmentally sensitive areas and avoid demolition of existing housing

The law sunsets on Jan. 1, 2036. Affordable housing developers should consider whether development opportunities on sites owned by houses of worship or educational organizations might make SB 4 a potentially appealing avenue relative to SB 35 or AB 2011.

SB 684 (Sen. Anna Caballero) – Ministerial Approval of Up to 10-Unit Housing Projects on Small Sites. In an effort to meet the need for "missing-middle" housing types that are not inherently expensive to build, SB 684 requires CEQA-exempt ministerial approval for up to 10 units of housing on qualifying multifamily infill sites of no more than 5 acres. Under the law:

- Local governments must ministerially approve, without discretionary review or a hearing, a parcel map or a tentative and final map for a housing development project that will result in 10 or fewer parcels and 10 or fewer units, if the lot is no larger than 5 acres, and meets numerous other qualifying criteria, most designed to capture "infill" sites with water and sewer supply that are not environmentally sensitive and avoid demolishing existing housing.
- Housing development projects on qualifying sites are exempt from needing to comply with any minimum requirement on the size, width, depth or dimensions of an individual parcel other than a 600-foot minimum parcel size. Qualifying projects are also exempt from the requirement to form a homeowners' association, except as required by the Davis-Sterling Common Interest Development Act.

- A local government must also approve, on a ministerial basis, an application for a housing development project on a lot subdivided by this law and then issue a building permit also on a ministerial basis. A locality may not apply any standards that would preclude development at densities deemed naturally suitable to lower-income household (10-30 units per acre, depending upon the jurisdiction), and the locality is further limited from applying certain setback, parking, floor area and other limitations as specified in the statute.

SB 684 was originally written to be applicable in single-family residential zoning districts but was amended very late in the process to only apply to sites zoned for multifamily housing – to the disappointment of its supporters. Despite this limitation in its scope, the law is notable for being one of few that provide a streamlined, CEQA-exempt approval process for housing without requiring developers to commit to specified labor standards or BMR housing requirements. Developers of small subdivisions should determine whether a potential site may be able to make use of the statute's ministerial approval process.

The primary operative provisions of the law do not take effect until July 1, 2024.

AB 1490 (Assembly Member Alex Lee) – Adaptive Reuse for Affordable Housing. AB 1490 makes "adaptive reuse" – retrofitting and repurposing of an existing building to create new residential units – an "allowable use" for qualifying 100 percent affordable housing projects, even if such a use conflicts with local plans, zoning ordinances or regulations. To qualify, an adaptive reuse project must meet criteria, including:

- the development must be entirely within the existing envelope of a residential building or a commercial building that currently allows temporary dwelling or occupancy (i.e., a hotel or motel)
- all units (other than managers' units) must be dedicated to lower-income households, with at least 50 percent dedicated to very-lower-income households; home prices can be set at an "affordable cost" pursuant to existing California Health and Safety Code definitions or at an affordable rent consistent with rent limits established by the CTCAC
- the site must be 75 percent surrounded by urban uses or within one-half mile of a rail, bus rapid transit or ferry station, or the intersection of two bus routes with a frequency of service interval of 15 minutes or less during peak periods; further, the development cannot be on a site or adjoining a site where more than one-third of square footage is devoted to industrial uses

The law allows jurisdictions to impose objective design standards to the extent consistent with the law, if those restrictions do not limit maximum density or require additional parking or open space or require curing any preexisting deficit or conflict with existing standards. Local governments must determine whether a project meets its design guidelines and the requirements of the law within 60 or 90 days, depending upon whether the project has more or less than 150 units. Failure to meet these deadlines results in the project being "deemed" to comply. The law also requires jurisdictions to include affordable adaptive reuse as an eligible project for affordable housing funding.

This law and AB 529 (discussed further below) only make limited steps toward addressing the clear need to facilitate residential conversions of nonresidential properties. But the law may provide pathways for affordable housing developers to make effective use of hotel and motel properties without needing to seek rezoning of the property.

AB 1114 (Assembly Member Matt Haney) and AB 281 (Assembly Member Tim Grayson) – Reforms to Post-Entitlement Permitting. In 2022, the Legislature established enforceable timelines and procedures for cities and counties when issuing ministerial post-entitlement permits such as building in grading permits. (See Holland & Knight's previous alert, "California's 2023 Housing Laws: What You Need to Know," Oct. 10, 2022.)

AB 1114 amends the law to provide that this process also applies to *discretionary* post-entitlement permits and further provides that once a local agency determines that a post-entitlement permit is compliant with applicable standards, the local agency shall not subject the permit to any appeals or additional hearing requirements. AB 281 requires special districts to comply with specified timeframes, similar to those for cities and counties, when reviewing and approving post-entitlement phase permit applications from housing developers for service from the special district.

CEQA

AB 1633 (Assembly Member Phil Ting) – CEQA Reform for Infill Housing. AB 1633 was inspired by the San Francisco Board of Supervisors' vote to uphold a CEQA appeal of a proposed 495-unit infill development project. The legislation is the most direct reform in recent years aiming to crack down on excessive CEQA review practices that are weaponized against residential development.

Rather than amending CEQA directly, AB 1633 operates by defining two new violations of the Housing Accountability Act (HAA), which can expose jurisdictions to litigation and vulnerability to pay attorneys' fees and penalties. First, under AB 1633, it is now an HAA violation to refuse to make a CEQA exemption determination when dealing with an AB 1633-protected project that is entitled to a CEQA exemption. This addition is designed to prevent local governments from insisting on full CEQA analysis when a project is entitled to bypass CEQA. AB 1633 also creates a 90-day notice procedure, whereby applicants who believe they are entitled to CEQA exemptions may protest when local governments proceed with CEQA review. If there is substantial evidence that the project is entitled to a CEQA exemption, then the agency has 90 days to make an exemption determination. Failure to do so constitutes an HAA violation.

Second, it is now an HAA violation for a local government to hold a meeting at which an Environmental Impact Report (EIR) or similar CEQA document is considered, but decline to approve that document, if there is substantial evidence to support EIR certification and the project is protected by AB 1633. This addition directly addresses the San Francisco development project situation, wherein the Board of Supervisors indicated they were seeking to disapprove the project but avoided liability by technically only rejecting certification of the project's EIR.

AB 1633 does not apply statewide. Instead, it applies to project sites that are within an urbanized area and that meet one of four requirements:

1. It is within one-half mile of a high-quality transit corridor or a major transit stop.
2. It is located in a very low vehicle travel area.
3. It is "proximal" to six or more amenities (bus stations or ferry terminals, grocery stores, parks, community centers, pharmacies, clinics or hospitals, libraries or schools).
4. It is adjoined on three sides by parcels with urban uses (or 75 percent if not a four-sided site).

Further, the project must be at least 15 units per acre. High and very high fire hazard severity zones are excluded, and sites must also meet SB 35 criteria designed to capture "infill" project locations. Beyond this, however, there are no requirements to "use" AB 1633 (e.g., no labor or BMR housing requirements). The law also provides cities with some protection against having to pay CEQA petitioners' attorneys' fees if the petitioner sues the city for approving project subject to AB 1633.

Although it remains to be seen how often the law can be effectively invoked, the law makes important steps toward making a CEQA exemptions something an applicant can insist on – rather than something lead agencies can simply decline to adopt at their preference.

AB 1307 (Assembly Member Buffy Wicks) – Residential Noise Impacts. AB 1307 is a direct reaction to the University of California, Berkeley "students are pollution" case, holding that an EIR for UC-Berkeley's 2036-37 long-range development plan – and specifically the university's immediate plan to build student housing on the site of "People's Park" – failed to assess potential noise impacts from loud student parties in residential neighborhoods near the campus. The case has been appealed to the California Supreme Court, which granted review. In the meantime, AB 1307 specifies that, for residential projects, noise generated by occupants and

their guests is not a significant effect on the environment. The law's author notes that the law will reestablish existing precedent that minor noise nuisances such as from human voices will be addressed through local nuisance ordinances and not via CEQA. As such, CEQA cannot be used to consider "people as pollution."

Less broadly applicable, AB 1307 also provides that an EIR prepared for a project proposed by a higher education institution shall not be required to study off-site alternatives if 1) the residential or mixed-use housing project is located on a site that is no more than 5 acres and is substantially surrounded by urban uses and 2) the residential mixed-use project has already been evaluated in the EIR for the most recent long-range development plan for the applicable campus.

As an "urgency statute," the law took effect when signed into law on Sept. 7, 2023.

AB 1449 (Assembly Member David Alvarez) – Affordable Housing Exemption. AB 1449 adds a new exemption not only for the entitlement of qualifying affordable housing but also for the actions leading up to and following project approval, including general plan amendments and rezonings, the lease or sale of property and financing decisions. The fact that the exemption also applies to the actions leading up to a project helps address the line of cases addressing when an action becomes a “project” under CEQA, holding that a lead agency's actions that commit an agency to a project require CEQA review.

Such projects must be 100 percent low-income housing projects (except for managers' units), meet prevailing wage and other labor standards identified in AB 2011, be located in an infill location and meet a range of criteria intended to ensure the site has access to transit or other amenities. The qualifying criteria include a slightly more permissible definition of "infill" than other statutes (requiring a site to be surrounded by urban uses on three sides rather than 75 percent). It is also notable that the site location criteria can be met either by one-half mile proximity to a high-quality transit corridor or a major transit stop or location in very low vehicle travel area (which is intended to capture areas that do not have access to transit but otherwise have lower vehicle miles traveled averages than surrounding areas). Another new option for meeting the location criteria has been added for projects that are within one mile (or two miles for a parcel in a rural area) of six or more designated amenities (e.g., a grocery store, public park, community center, pharmacy, library or school).

This CEQA exemption sunsets on Jan. 1, 2033.

SB 406 (Sen. Dave Cortese) – Financial Assistance Exemption. An existing CEQA exemption exempts HCD and the California Housing Finance Agency (CalHFA) actions providing financial assistance or insurance for affordable housing projects. SB 406 expands the exemption to a local agency not acting as the lead agency as long as the project receiving funding will be reviewed pursuant to CEQA by another public agency. Similar to AB 1449, this exemption avoids any need for a public agency providing funding to conduct CEQA review as such CEQA review will separately be conducted by the lead agency.

SB 91 (Sen. Tom Umberg) – Motel Conversion Exemption. SB 91 extends indefinitely the CEQA exemption for projects that convert motels, hotels, residential hotels or hostels to supportive or transitional housing that was otherwise set to expire in January 2025. In addition, SB 91 extends CEQA streamlining provisions for "environmental leadership transit projects" located within the County of Los Angeles that meet certain specified requirements.

AB 356 (Assembly Member Devon Mathis) – Dilapidated Building Refurbishment Act. This law extends the sunset date from 2024 until 2029 on an existing provision that waives consideration of aesthetic impacts under CEQA for projects that refurbish, convert, repurpose or replace an existing building and meet certain

criteria. The author stated that the purpose is to encourage beautification projects in disadvantaged communities.

SB 149 (Sen. Caballero) – CEQA Administrative Record Reform. Holland & Knight previously reported on the package of laws intended to streamline infrastructure processing and implement CEQA reform. Most relevant to housing projects, the new law provides that a petitioner bringing a CEQA lawsuit has 60 days to prepare the administrative record of proceedings before the lead agency, and if they fail to do so, the agency can prepare the record at taxpayer expense (for public agency projects) or at an applicant's expense (for affordable housing projects, for example). Existing law requires parties who file CEQA lawsuits challenging agency approvals of housing or other projects to either prepare the administrative record themselves (at their expense) or pay to have the agency they have sued prepare the record. Accordingly, this "reform" actually makes it much cheaper and easier for project opponents to file CEQA lawsuits challenging projects. The amendments also authorize a lead agency (at its own cost or the real party in interest's cost) to opt to prepare the record without waiting for the petitioner to so do. This may lead to a faster administrative record preparation process.

As budget laws, these laws took effect when signed this summer.

Density, Land Use and Planning

AB 1287 (Assembly Member Alvarez) – Additional Density Bonuses for Very-Low or Moderate Income Units. This year's State Density Bonus Law amendments provide benefits to projects that provide additional very-low or moderate-income units. AB 1287 requires that a project maximize the production of very-low, low or moderate units, as allowed by the current State Density Bonus Law (i.e., 15 percent very-low, 24 percent low or 44 percent moderate, which must be for-sale units) before utilizing the bonuses in AB 1287. Where these maximums are met, additional bonuses can be stacked on top of the prior maximum bonus. As an example, if a project includes 25 percent very-low income units, it can now achieve an 88.75 percent bonus by coupling the prior maximum bonus of 50 percent with an additional 38.75 percent bonus awarded by AB 1287. Additionally, a project that includes 59 percent moderate for-sale units can achieve a 100 percent bonus by coupling the prior maximum bonus of 50 percent with an additional 50 percent bonus granted by AB 1287.

Other amendments include:

- **Concessions and Incentives:** The above-described projects that exceed the prior maximum bonus tiers are now eligible for four incentives or concessions. The number of incentives or concessions for 100 percent affordable projects located within one-half mile of a major transit stop or within a low vehicle travel area in a designated area has also been increased from four to five.
- **Documentation:** The obligation for an applicant to provide reasonable documentation in connection with a request for incentives or concessions or development standard waivers has been eliminated.
- **Maximum Density:** AB 1287 removes language stating that for purposes of determining a project's base density, the greater density prevails if the density allowed under the zoning ordinance is "inconsistent" with a general or specific plan or specific plan. After this removal, the law now provides that the base density for the State Density Bonus Law is the greatest number of units allowed under the zoning ordinance, specific plan or land use element of the general plan – with no specific requirement that the zoning must necessarily be "inconsistent" for this to apply.
- **Nonprofit Corporation Eligibility:** AB 1287 provides additional specification of criteria for nonprofit corporations that may purchase affordable for-sale units.

SB 747 (Sen. Caballero) and AB 480 (Assembly Member Ting) – Amendments to Scale Back the Surplus Land Act (SLA). The SLA significantly limits the ability of local governments to dispose of surplus property for the purpose of affordable housing development without first proceeding with a noticing process. SB 747 and AB 480 are intended to significantly roll back amendments to the SLA that were adopted in 2019 via AB 1486 (Ting) and were broadly reported to result in bureaucratic delays. The full universe of this year's SLA amendments is beyond the scope of this alert, but the primary focus of the amendments is to add new exemptions and clarifications to the exemptions from the SLA. Some of the notable amendments include:

- **Leases:** Clarifies that a lease less than 15 years or a lease for property on which no development or demolition will occur is exempt
- **Small Size:** Increases the "small size" exemption for sites up to one-half acre that are not contiguous to land owned by a state or local agency used for open space or affordable housing purposes
- **Affordable Housing:** Eliminates the obligation to conduct competitive bidding for qualifying affordable housing projects
- **Third-Party Intermediary:** Allows an agency to transfer property to a third-party intermediary for a receiving agency's use
- **Valid Legal Restrictions:** Provides additional clarifications on the types of valid legal restrictions that may qualify for an exemption
- **Transportation System:** Allows agencies whose mission is to supply the public with a transportation system to transfer property for the sole purpose of investment or generation of revenue

There are still other exemptions that apply to other unique scenarios such as California public-use airports and community land trusts.

The new amendments also identify activities that may be conducted prior to the obligation to issue a notice of availability under the SLA such as issuing a request for proposals in certain instances. Most scenarios are tied to specific exemptions and again require careful review.

Finally, a penalty for noncompliance with the SLA will now be based on the final sales price of the land or the fair market value of the land at the time of the sale, whichever is greater. Since land may be sold at less than fair market value, this provision tying the penalty to fair market value could increase the penalty amount in the event of a violation.

While the intent of these amendments is to reduce bureaucratic delays, a learning curve is anticipated to digest and implement the new provisions.

AB 821 (Assembly Member Grayson) – Local Agency Obligation to Resolve General Plan and Zoning Conflicts. AB 821 provides that if a local agency receives a development application for a project that is consistent with the general plan but not the zoning, the agency must either: 1) amend the zoning ordinance within 180 days from the receipt of the development application or 2) process the application based on the general plan standards and ignore inconsistent zoning standards. AB 821 further provides a legal remedy for challenging an agency that does not comply. This provision does not apply to housing projects subject to the HAA, since the HAA already provides a mechanism requiring approval of a project that is consistent with the general plan that is inconsistent with the zoning. This law is intended to address the numerous instances in which agencies adopt general plan updates but corresponding zoning amendments never materialize.

SB 272 (Sen. John Laird) – Sea Level Rise Planning in Coastal Commission and Bay Conservation and Development Commission (BCDC). SB 272 requires sea-level rise planning as part of local coastal programs in the coastal zone and areas covered by the BCDC. By 2024, the California Coastal Commission (CCC) and BCDC

are required to establish guidelines for the preparation of sea level rise plans under their respective jurisdictions, and all local governments must then prepare plans by 2034. Implementation of SB 272 remains expressly contingent on an appropriation by the Legislature in the annual budget or another statute.

AB 529 (Assembly Member Jesse Gabriel) – Building Code Updates for Adaptive Reuse Projects. AB 529 was one of the few laws to address the obvious need in the post-COVID-19 era to facilitate conversion of office (or other use) buildings to residential. Rather than address entitlement processing of such projects, AB 529 made minor changes to existing law. First, AB 529 adds facilitation of the conversion projects (including the adoption of reuse ordinances) to the list of examples of pro-housing policies that HCD may consider in awarding grants to local governments. AB 529 also requires HCD to convene a working group with various state agencies to identify challenges and opportunities that may help support conversion projects. HCD must issue a report by Dec. 31, 2025, of its findings and thereafter research and consider proposing amendments for adoption by the California Building Standards Commission adaptive reuse building standards in within each agency's respective authority for the next code adoption cycles in 2025 and 2026.

Given the astronomical statistics regarding underutilized office buildings, hopes and tensions continue to run high that more significant conversion laws will be adopted next year.

ADUs

AB 1033 (Assembly Member Ting) – ADUs Sold Separately as Condos. State ADU law has historically allowed local agencies to prohibit the separate sale or conveyances of ADUs from the primary dwelling. The sole exception to that rule has been that qualified nonprofits can sell or convey an ADU separately from the primary residence to a qualified low-income buyer, through the establishment of a tenancy in common. The original intent behind this regime was to support ADUs' role in adding rental unit stock throughout the state as opposed to being a viable source of homeownership. AB 1033 now authorizes (but does not require) local agencies to adopt local ordinances allowing ADUs to be conveyed as condominiums separately from the primary dwelling. Condominium projects approved under this legislation will remain subject to the Subdivision Map Act and Davis-Stirling Common Interest Development Act.

AB 976 (Assembly Member Ting) – Owner-Occupancy Requirements Prohibited Beyond 2025. Current state ADU law prohibits local agencies from imposing "owner-occupancy" conditions on ADUs permitted between Jan. 1, 2020, and Jan. 1, 2025. AB 976 extends the prohibition indefinitely, meaning local agencies cannot impose owner-occupancy conditions on ADU projects permitted after Jan. 1, 2025. Local agencies are still required to impose owner-occupancy requirements on Junior ADUs (JADU), which are defined as units that are no more than 500 square feet, contained entirely within a single-family residence and equipped with separate or shared sanitation facilities.

AB 1332 (Assembly Member Juan Carrillo) – Streamlined (30-Day) Review of Preapproved ADU Plans. Even prior to the enactment of AB 1332, local agencies were required to approve or deny a complete ADU application within 60 days (including approvals and sign-offs from all interagency departments, special districts and utilities). AB 1332 creates an even more streamlined approval process for locally "preapproved" ADU designs. By Jan. 1, 2025, local agencies must develop a program for the preapproval of ADU plans whereby the local agency accepts ADU plan submissions for preapproval. Once an ADU plan is approved, local agencies are required to either approve or deny an ADU application utilizing a preapproved ADU plan within 30 days. The bill also specifies that local agencies must maintain a website page with preapproved ADU plans and the contact information of companies offering preapproved ADU plans. Lastly, AB 1332 specifies that ADU plans approved by the local agency or "other agencies within the state" (i.e., HCD) can be

admitted into the local preapproval program. While some cities such as San Josehave already enjoyed success with preapproved ADU design programs, such programs will now become mandatory across the state.

Enforcement

AB 434 (Assembly Member Grayson) – Expanded HCD Enforcement Authority. AB 434 significantly expands the scope of HCD's enforcement authority over state housing laws. AB 72 of 2017 granted HCD express enforcement authority with respect to four statutes: the HAA, State Density Bonus Law, fair housing law and the "no net loss" requirements for replacing housing element sites that are not developed as projected. Subsequent legislation broadened HCD's enforcement authority to cover nine additional statutes, including 2017's SB 35, 2019's SB 330 and 2022's AB 2011.

AB 434 brings 13 more areas of law into HCD's enforcement authority, including five statutes adopted this year. Now, the following state housing laws are enforceable by HCD: several provisions streamlining approvals for ADUs, along with a provision allowing certain ADUs to be sold separately from the primary residence; several requirements of 2021's SB 9, concerning ministerial processing of lot splits in single-family residential zones; 2022's SB 6, which allows residential development in certain commercial zones; the so-called "five hearing rule" applicable to code-compliant residential projects; this year's SB 684, requiring ministerial approval of certain small multifamily infill projects (discussed herein); this year's SB 4, concerning ministerial approval of affordable housing on religious sites (discussed herein); and this year's AB 1218, addressing replacement of demolished housing units (discussed herein).

Separately, AB 434 shortens the timeline for HCD to review housing elements that have already been adopted from 90 to 60 days.

AB 1485 (Assembly Member Haney) – Attorney General Right to Intervene in Housing Enforcement Suits. Prior to AB 1485, in order to intervene in housing-related litigation brought by third parties, the California Department of Justice was required to petition the court for permission to participate in the litigation. This process was both time-consuming and uncertain. AB 1485 now gives both the attorney general and HCD an unconditional statutory right to intervene in cases concerning the enforcement of housing laws.

Anti-Displacement and Affordable Housing

SB 439 (Sen. Nancy Skinner) – Motion to Strike Lawsuit Challenging Affordable Housing. SB 439 creates a new procedural option for defending against litigation challenging 100 percent affordable housing projects, modeled on California's "anti-SLAPP" law that protects defendants from lawsuits designed to chill political participation and free speech. SB 439 creates a new "special motion to strike" any portions of a pleading that challenge the approval or permitting of a 100 percent affordable project. If the plaintiff challenging the project does not establish a probability of prevailing in the litigation, the party filing the special motion to strike is entitled to recover their attorney's fees and costs.

AB 1218 (Assembly Member Josh Lowenthal) – Revisions to Requirements for Replacement Units and Relocation Benefits Applicable to Demolition of Protected Housing. This law creates a new article within the Government Code for replacement housing and relocation benefit requirements that were previously contained within the Housing Crisis Act of 2019. The revised provisions expand replacement requirements to nonresidential developments. Development projects that demolish vacant or occupied protected units or that are located on sites where protected units were demolished in the last five years will be required to replace all protected units that currently exist or were demolished after January 2020. Only industrial projects in zones that prohibit residential uses, which demolish residential units that are nonconforming uses,

are exempt from the law's replacement requirement. Nonresidential projects may satisfy the replacement requirement by contracting with a third party to develop the units, which may be located offsite within the jurisdiction of the project.

The law's amendments include a number of clarifications that aim to address confusion arising from implementation of the Housing Crisis Act of 2019's replacement unit and relocation benefit requirements. In particular, the law clarifies that notice of construction must be given six months in advance and that relocation benefits provided by private developers must be equivalent to those provided by public entities. Other amendments define the terms "housing development project" and "very low income households" through cross-references to existing definitions in the Government Code and Health and Safety Code.

Although the clarifications resolve some ongoing issues, the clarifications do not confirm when occupants qualify as "existing" for purposes of relocation benefits, nor do the amendments address how an occupant's income level should be documented. Early coordination with the jurisdiction and use of a relocation consultant may help to resolve these open questions, but the law does not yet provide clarity on these important aspects of implementing the law's demolition protections.

AB 911 (Assembly Member Pilar Schiavo) – Notification and Ownership Requirements for Modifications to Recorded Covenants Restricting Development of Affordable Housing. Two years ago, AB 721 authorized owners of qualifying affordable housing developments to remove restrictive covenants that limit residential development. AB 911 amends AB 721 to clarify notice requirements and ownership qualifications for modifications and to specify timelines for lawsuits challenging modifications.

As amended by AB 911, the law requires a county to notify a property owner who has submitted a restrictive covenant modification request of the county counsel's determination regarding the modification request. This notification then allows (but does not require) the owner to inform interested parties – such as a party with an interest in the covenant that is being redacted – that the county has approved the removal of the covenant. If such notice is provided, it triggers a 35-day statute of limitations for any party receiving such notice to file a suit to challenge the removal of the covenant.

AB 911 confirms that any record title owner of the property, any beneficial owner of a property or any person with site control (such a right to acquire the property under an option agreement, purchase and sale agreement, or similar agreement) may request that the county redact a covenant. However, an owner may not actually *record* a modification documents until they close escrow and receive title.

SB 469 (Sen. Ben Allen) – Exemptions from Article 34 of the California Constitution for Affordable Housing Projects Receiving Specified Funding. Article 34 of the California Constitution requires voter approval prior to a jurisdiction's development of a state- or locally financed or funded "low-rent housing project." In advance of ballot measures seeking to repeal Article 34, SB 469 adds projects that receive federal and state grants or tax credits to the list of projects exempt from Article 34. The law specifies that the definition of "low-rent housing project" does not apply to rural and urban residential projects receiving funding in the following forms: 1) funding from HCD, CalHFA and Business, Consumer Services and Housing (BCSH) pursuant to the Zenovich-Moscone-Chacon Housing and Home Financing Act, 2) grants from the Affordable Housing and Sustainable Communities program and 3) allocations of federal or state low-income housing tax credits from the CTCAC. Exempting affordable housing projects receiving funding from these sources from Article 34's requirements removes a layer of uncertainty and delay resulting from voter approval from the development of these housing projects without risking state funding for local jurisdictions that is tied to compliance with Article 34.

Assembly Constitutional Amendment (ACA) 1 (Assembly Member Cecilia Aguiar-Curry) – Constitutional Amendment to Lower Voter Threshold for Affordable Housing General Obligation Bonds. If passed, ACA 1 would lower the voter threshold required for approval of certain special taxes and General Obligation (GO) bonds for improvements to and acquisition or construction of affordable housing, permanent supportive housing and public infrastructure projects. The current (two-thirds) supermajority required to pass such measures would be lowered to 55 percent. Proceeds from the bonds may only be spent on the authorized improvements, subject to an annual performance audit and oversight by a citizens' committee. Funded projects must service the approving jurisdiction, and local officials are prohibited from bidding on contracts for the project if the official voted to place a measure to fund the project on the ballot.

SB 789 (Sen. Allen) – Two Constitutional Amendments Facilitating Affordable Housing Set for the General Election Ballot. SB 789 consolidates two constitutional amendments set for special election on March 5, 2024, with the general election on Nov. 5, 2024: 1) Senate Constitutional Amendment No. 2 would repeal Article 34 of the California Constitution (see above), and 2) ACA 1 would lower the voter threshold for bonds to fund affordable housing, public infrastructure and permanent supportive housing (see above).

AB 812 (Assembly Member Tasha Boerner) – Authorization of Conditions of Approval for Affordable Artist Housing. AB 218 authorizes local governments to impose as a condition of approval a reservation of up to 10 percent of a development's affordable housing units for "artist housing," as defined, within one-half mile of a designated state or local cultural district. When signing the law, Gov. Newsom explained that he would be "disinclined" to sign bills providing "statutory carve outs for specific professions" in the future.

Financing and Costs

SB 253 (Sen. Wiener) – Carbon Emission Disclosure. The law will require the California Air Resources Board (CARB), on or before Jan. 1, 2025, to develop and adopt regulations requiring companies that do business in California to disclose to the state's emissions registry information. It remains unclear how this requirement will be clarified and enforced, but given the large number of different products used to build a home and the complexity of determining how each such product impacts greenhouse gas (GHG) emissions throughout the product's entire life cycle, the process of tracking and ensuring compliance with this law may impose significant new costs on homebuilding.

AB 1319 (Assembly Member Wicks) – Bay Area Regional Housing Finance Authority Authorizations to Facilitate Production and Preservation of Affordable Housing. AB 1319 amends the San Francisco Bay Area Regional Housing Finance Act (Act), expanding the Act's scope and the governing powers of the Bay Area Housing Finance Authority and Governing Board (Board). The amendments expand the Act's definition of "affordable housing" to include rental housing and revise the definition of "authority revenues" to include special taxes, other charges, investment income, income from operation and ownership of property and loan repayments. Other key provisions increase the membership total of the Act's advisory committee, specifying that members should have construction workforce and finance experience. Significantly, Board actions funding affordable housing and technical assistance are exempt from CEQA.

AB 835 (Assembly Member Lee) – Fire Marshal to Study Safety of Requirement for Apartments to Have More than One Staircase. AB 835 requires the state fire marshal to analyze and report to the Legislature on standards for "single-exit, single stairway apartment houses." The report will assess "fire and life safety" issues with respect to the requirement to have more than one exit in apartment buildings with three or more stories and at least two dwelling units. Proponents of the bill contend that California's current requirement of two exits in certain apartment buildings limits the location and design of potential housing and contributes to California's ongoing housing crisis.

Parking

AB 1308 (Assembly Member Sharon Quirk-Silva) – No Increased Minimum Parking Requirements on Single-Family Home Renovations. AB 1308 prohibits public agencies from increasing minimum parking requirements applicable to single-family residences as a condition of approval for projects remodeling, renovating or adding to a single-family residence, as long as the project does not cause the residence to exceed applicable zoning regulations (e.g., floor area ratio, lot coverage and height). The Legislature declared the prohibition necessary because the imposition of minimum parking standards "can increase the cost of housing, limit the number of available units" and "lead to an oversupply of parking spaces."

AB 1317 (Assembly Member Carrillo) – Unbundled Parking for Qualifying Residential Properties. Requires owners of "qualifying residential properties" in certain counties to unbundle the cost of parking from the total rent for the housing unit. The law defines "unbundled parking" as the practice of selling or leasing parking spaces separate from the lease of the residential property. To be subject to this law, the property must:

- have received a certificate of occupancy on or after Jan. 1, 2025
- include 16 or more residential units
- be located in Alameda, Fresno, Los Angeles, Riverside, Sacramento, San Bernardino, San Joaquin, Santa Clara, Shasta or Ventura counties

Tenants of a qualifying residential property have a right of first refusal to parking spaces built for their property, which if not exercised may be leased by the property owner to other residential users onsite or offsite "on a month-to-month basis."

Affordable housing that is 100 percent deed-restricted or financed through tax credits for low-income housing or tax-exempt bonds, as well as properties designed with a garage that is "functionally a part of the property or unit" (e.g., townhomes and row houses), are exempt from the unbundling requirements.

AB 894 (Assembly Member Laura Friedman) – Shared Parking. Local agencies generally establish parking standards for various land uses or properties in their zoning ordinances. AB 894 mandates local agencies allow shared parking plans if applicable parking is "underutilized" and the entities proposing shared parking provide an agreement meeting certain criteria and an explanation of the benefits of the proposal. Parking is "underutilized" if at least 20 percent of parking spaces in a development are vacant during the time that the parking will be shared. For projects receiving public funding after June 30, 2024, local agencies and developers must analyze the possibility of shared parking, but local agencies may not "compel private parties to enter into a shared parking agreement." Local agencies must count shared parking spaces identified in a shared parking agreement toward local parking requirements for existing or proposed uses and development if the parking meets certain locational requirements. Shared parking agreements that include a parking analysis based on specified "peer-reviewed methodologies" and that ensure long-term parking or include provisions for periodic review by the local agency must be approved. Approval of shared parking agreements that do not include this analysis is discretionary. Local agencies may not condition approval on the remedying of existing parking deficits nor "withhold approval" because the shared plan will reduce the parking included in the originally proposed use. Provisions of AB 894 may not reduce parking spaces needed to meet accessibility or electric vehicle requirements.