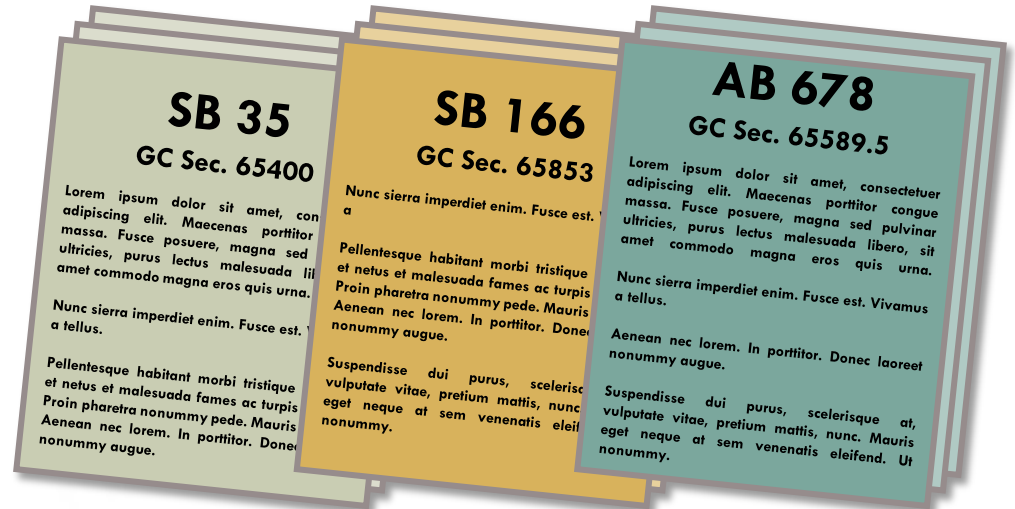


IMPACT OF NEW HOUSING LEGISLATION City of Concord

March 6, 2018

Goldfarb & Lipman LLP

1300 Clay Street, 11th Floor
Oakland, California 94612
(510) 836-6336



THE STATE'S VIEW OF THE HOUSING CRISIS

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

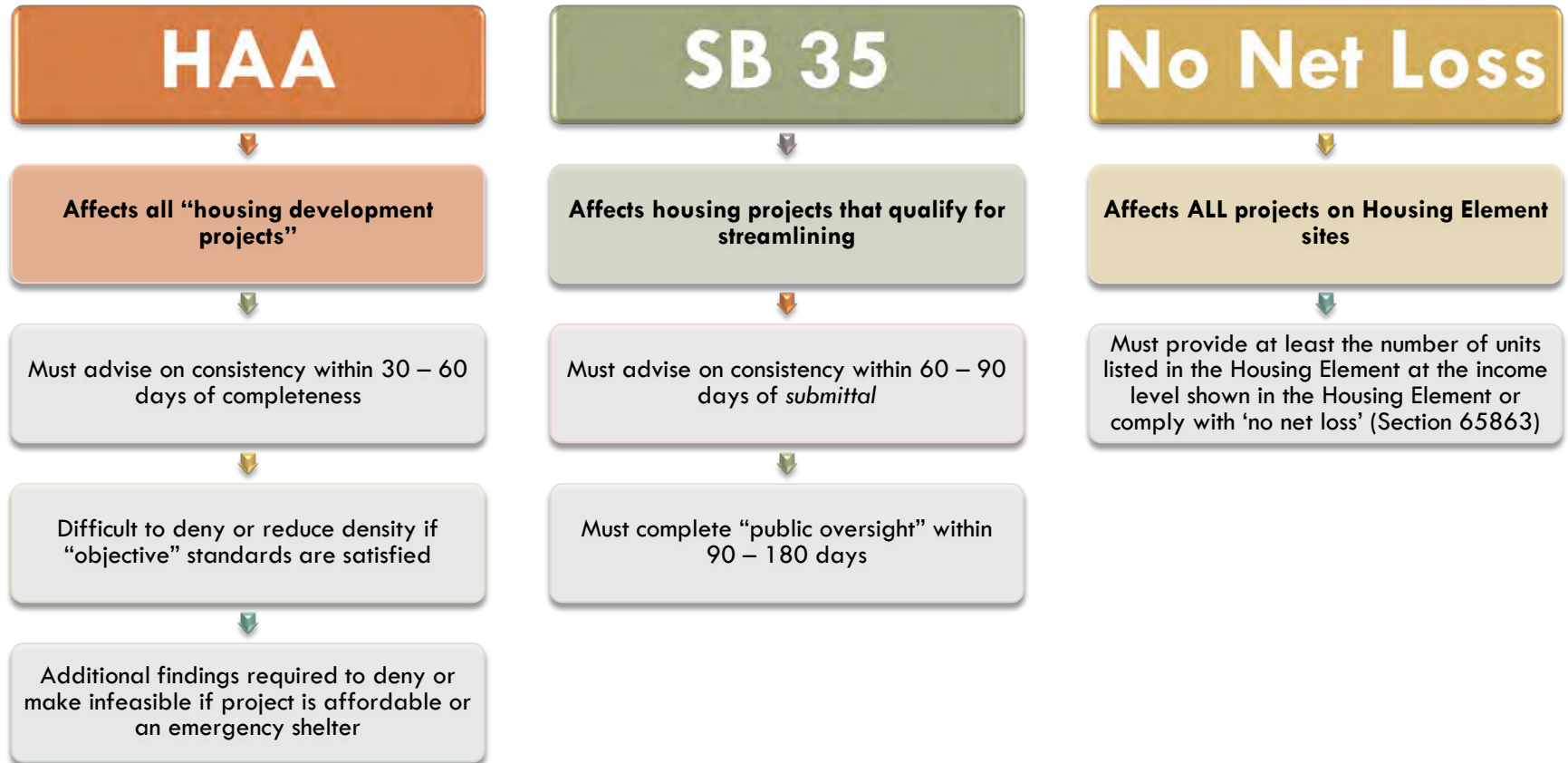
OVERVIEW

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- Changes in Processing Housing Applications Effective January 1, 2018
 - ▣ Housing Accountability Act (SB167/AB678/AB1515)
 - ▣ SB 35
 - ▣ 'No Net Loss' (SB 166)
- Return of Rental Inclusionary Requirements
- It's Not Over Yet! [More in 2018...]

PROCESSING HOUSING APPLICATIONS: OVERVIEW

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PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5)

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Applies to **ALL** “housing development projects” and emergency shelters:

- ▣ Residences only;
- ▣ Transitional & supportive housing;
- ▣ Mixed use projects with at least 2/3 the square footage designated for residential use.

Affordable AND market-rate

PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5(j))

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- If complies with “objective” general plan, zoning, and subdivision standards, can only reduce density or deny if “specific adverse impact” to public health & safety that can’t be mitigated in any other way.”

Honchariw v. County of Stanislaus (2011)

PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5(j))

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What Is an “**Objective**” Standard?

SB 35:

- “Standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official prior to submittal.”

PROCESSING HOUSING APPLICATIONS: MARKET RATE PROJECTS (65589.5)



PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5(j))

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Standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”

Honchariw: SMA finding that “the site is not physically suitable for the proposed development.”

PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5(j))

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- If desire to deny or reduce density:
 - ▣ Identify **objective** standards project does not comply with.
 - ▣ If project complies with all, must find specific adverse effect on public health & safety.
- “Specific adverse effect” must be significant, quantifiable, direct, and unavoidable based on written health & safety standards on date project deemed complete, & no way to mitigate

PROCESSING HOUSING APPLICATIONS: AFFORDABLE HOUSING (65589.5(d))

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- Additional protections for projects:
 - Emergency shelters;
 - 20% low income; or
 - 100% moderate (120% of median) or middle income (150% of median).
- Must make specific findings to deny, **reduce density**, or add condition making project infeasible

PROCESSING HOUSING APPLICATIONS: SB167/AB678; AB 1515

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- City must provide list of any inconsistencies with:
 - “Plan, program, policy, ordinance, standard, requirement or similar provision”;
 - Within 30-60 days of completeness;
 - Explaining why inconsistent; or
 - “Deemed consistent.”

PROCESSING HOUSING APPLICATIONS: SB167/AB678; AB 1515

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Much less deference given to City:

- City findings must be based on ‘preponderance of the evidence,’ not merely ‘substantial evidence’
- Also “deemed consistent” if: “substantial evidence that would allow a reasonable person to conclude” is consistent
- Attorneys’ fees to both market-rate & affordable
- \$10K/unit fine if ignore court

PROCESSING HOUSING APPLICATIONS: HAA & CEQA

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CEQA still applies:

- *Schellinger Bros. v. City of Sebastopol* (2009): must complete CEQA before can invoke HAA

PROCESSING HOUSING APPLICATIONS: WHAT DOES HAA MEAN FOR CONCORD?

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- *Can usually only **deny** or **reduce density** of housing development based on “objective” standards*
 - *Most findings and design criteria are subjective. Example: “The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment.”*
 - *May attach **conditions** to achieve this, but can’t reduce density*
 - *City working to make standards more objective.*

PROCESSING HOUSING APPLICATIONS: WHAT DOES HAA MEAN FOR CONCORD?

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- *Need to inform applicants early of any inconsistencies or risk “deemed consistent”*
 - ▣ *City is working to implement this*
- *If there are disagreements over “consistency,” must draft findings carefully*
- *Harsh penalties if City loses case: attorneys’ fees for all projects*

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING'

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Determine if Jurisdiction is Subject to SB 35

Not enough building permits to satisfy RHNA

No Annual Report for 2 Years

Determine if Project is Eligible for Streamlining

2 or more m-f units in urbanized area
zoned or planned for residential

Meets all objective standards

Meets affordable housing and labor
requirements

Determine if Exclusion Applies

Project site may not be on list of exclusions

Project must not require subdivision unless LIHTC-funded
and/or meets labor requirements

PROCESSING HOUSING APPLICATIONS: SB 35: PROJECT BENEFITS

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- Key benefits to project:
 - ▣ No CEQA review
 - ▣ Ministerial review ONLY based on ‘objective’ standards
 - ▣ Review can’t last more than 90 – 180 days from submittal

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': ELIGIBILITY

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- Regional Housing Need Allocation (RHNA)
 - ▣ Concord: 36% low and very low; 16% moderate; 48% above moderate
- Eligible for SB 35 because not enough permits issued

Lower Income (Very Low and Low)	Moderate Income	Above Moderate Income	TOTAL RHNA
1,242	559 units	1,667 units	3,478 units

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': PROJECT REQ'MTS

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- Developer must request SB 35 review
- Eligible Projects:
 - Two or more multifamily units proposed in urban area with 75% of perimeter developed;
 - Site zoned or shown in general plan for residential use;
 - Two-thirds of floor area is residential;

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': PROJECT REQ'MTS

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- Eligible Projects (cont.):
 - Consistent with 'objective' zoning and design review standards;
 - Consistent with zoning if consistent with maximum density in general plan, without consideration of maximum unit allocation;
 - Density bonuses are consistent;
 - General plan standards trump inconsistent zoning standards;

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': PROJECT REQ'MTS

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- Eligible Projects (cont.):
 - ▣ Projects with 10 or more units must pay prevailing wages and provide at least 10% low income or higher City standard [Concord: 10% low for rental; 10% moderate or 6% low for ownership housing]
 - ▣ In Concord must use “skilled and trained workforce” if 75 units or more.

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': EXCLUSIONS

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- Exclusions:
 - Site must not have contained housing occupied by tenants within last 10 years
 - Site must not be in the coastal zone, agricultural land, wetlands, habitat, former mobilehome park, others; if floodplain, floodway, fault zone, fire hazard areas, or hazardous waste sites must meet specific standards
 - Project may not involve a subdivision unless financed with low income housing tax credits AND pays prevailing wage; or uses “skilled and trained workforce”

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': PARKING REQ'MTS

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- No parking standards may be imposed if the project is:
 - Located within one-half mile of public transit
 - Located within an architecturally and historically significant historic district
 - In an area where on-street parking permits are required but not offered to the occupants of the development
 - Within one block of a car share vehicle
- No more than 1 space/unit for all other projects

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': PROCESSING

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- Within 60 to 90 days of **submittal**:
 - ▣ Provide list of all inconsistencies with 'objective' zoning and design review standards in effect at submittal or project "deemed consistent"
 - 'Development is consistent with density requirements if within the **maximum** density permitted by general plan or zoning
 - Cannot apply 'any specified maximum unit allocation'
 - Density bonus is 'consistent'

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING': PROCESSING

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- Within 90 to 180 days of **submittal**:
 - ▣ Complete any design review or “public oversight” of a housing development
 - Prohibited from in any way “inhibiting, chilling or precluding” the ministerial approval of a project
 - Review must be “objective and be strictly focused on assessing compliance with criteria required for streamlined projects”

PROCESSING HOUSING APPLICATIONS: WHAT DOES SB 35 MEAN FOR CONCORD?

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- *City must act very fast when a developer requests SB 35 review*
 - ▣ *City has new, detailed application form*
- *Need to inform applicants early of any inconsistencies*
 - ▣ *Only “objective” standards can be used*
- *Very limited role for the public*
 - ▣ *How does City want to process these?*

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' OF INVENTORY SITES (65863)

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- Applies when:
 - ▣ Any site in inventory either downzoned to reduce density; or approved at lower density than shown;
OR
 - ▣ Site approved with fewer units at the income level shown in the inventory.

KEY HOUSING ELEMENT CONCEPTS:

ADEQUATE SITES

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- Must designate specific sites that can “accommodate” the RHNA at each income level during the planning period (65583.2)
- In Concord, sites “accommodating” lower income housing must be at “default density” of 30 u/A

Address	Zone	DU/A	Acres	Units	Existing Use	Income Category
1520 Detroit	RH	100 du/ac	0.47	15	SF Home	Lower*
1600-1650 Concord Ave.	RH	100 du/ac	0.61	39	Recycling, carpet shop	Lower*
1811 Broadway	RH	100 du/ac	0.92	48	Older retail center	Lower*

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' REQUIRED FINDINGS

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- Issue if *either*:
 - Fewer units; **OR**
 - Different income category.
- Then must make finding that adequate sites still available.
- Developer has no responsibility for income level.
City cannot deny because developer's project results in need for additional sites.

PROCESSING HOUSING APPLICATIONS: ADEQUACY OF SITES AT ALL INCOME LEVELS

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- Concord's Housing Element shows high-density sites for 3,551 units
 - ▣ Not including Naval Base
- Lower and moderate income RHNA totals only 1,801 units
- Other sites listed in Housing Element should be adequate even if some sites developed at higher income level or different density

PROCESSING HOUSING APPLICATIONS: WHAT DOES SB 166 MEAN FOR CONCORD?

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- *Make required findings if project proposed on ‘high-density’ site listed in housing element either has fewer total units or fewer affordable units*
- *But City appears to have adequate surplus sites in element to accommodate any loss*

RETURN OF RENTAL INCLUSIONARY HOUSING

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- AB 1505 restores the ability of cities and counties to adopt inclusionary housing ordinances for **rental** projects. Possible economic feasibility study required by HCD if require more than 15% low income.
- City's ordinance requires rental affordable units (but not enforced after *Palmer* decision)

RETURN OF RENTAL INCLUSIONARY HOUSING: WHAT DOES AB 1505 MEAN FOR CONCORD?

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- *City may enforce existing ordinance (10% low, 6% very low).*
 - ▣ *But City has decided to delay until permits issued for 600 multifamily units*
- *If City wants to amend ordinance, economic feasibility study recommended if more than 15% low income required.*

IT'S NOT OVER YET!

SOME PROPOSED BILLS

35

- **SB 827 (Weiner)**
 - Allows housing to be 45 to 85 feet high depending on distance from 'transit corridor' or 'major transit stop,' with no limits on density, design review, etc.
- **SB 828 (Weiner)**
 - Must zone at 200 percent of **RHNA**
 - Any unbuilt affordable housing added to the **RHNA**
- **AB 2631 (Allen)**
 - **Ministerial approval** for less than 25 units; no parking, no inclusionary, low to moderate income housing

IT'S NOT OVER YET!

SOME PROPOSED BILLS

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- **Accessory Dwelling Units** (SB 831, AB 2071, AB 2939, SB 1226)
 - No minimum lot sizes
 - No local fees of any type
 - Within multifamily structures
 - Reduced code standards to legalize existing illegal units
- **Density Bonuses** (5 bills)
 - 60 days to approve or disapprove

IT'S NOT OVER YET!

SOME PROPOSED BILLS

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- AB 3147 (Caballero)
 - ▣ No **fee** increases after project deemed complete
- AB 3194 (Daly)
 - ▣ Cannot disapprove under HAA if **zoning doesn't allow maximum density in general plan or housing element**
- AB 3000 (Friedman)
 - ▣ No **parking** requirements for housing

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