SB 35 and SB 167

In Pursuit of Streamlined Process and Objective Decision Making

Elizabeth A. Camacho
LAO Conclusions: Why Do Coastal Areas Not Build Enough Housing?

- **Environmental Review.** CEQA Slow Approvals, Increases Costs, and Allows Housing Projects to be Challenged in Court after Approval

- **Community Resistance to New Housing.** Use of Community Land Use Authority to Resist Housing

- **Local Finance Structure Favors Nonresidential Development**

- **Limited Vacant Developable Land**
Previous CEQA Streamlining Efforts

- SB 226 – Infill Projects
- SB 375 – Sustainable Community Projects
- SB 743 – Projects consistent with a specific plan
- SB 743 – Partial Exemption (Parking & Aesthetics)
- CEQA Exemptions
  - Infill (Class 32)
Ministerial Approvals

- Density Bonus (SB 1818)
- Transit Oriented Communities (Los Angeles Measure JJJ)
SB 35: Streamlining the Approval Process

• **Procedural Benefits**
  • “Ministerial” approval process
  • Expedited design review or “public oversight” (90-180 days)

• **Substantive Benefits**
  • No parking requirement for projects:
    • 0.5 mile of public transit
    • Certain historic districts
    • On-Street parking permits required but not offered to occupants
    • Car share vehicle within one block of development
  • Maximum parking requirement of one space per unit
SB 35: Streamlining the Approval Process

• Ministerial Process
  • Written notification of compliance with objective planning standards within 60 or 90 days (with explanation of any non-compliance)
    • Failure to provide notification results in deemed satisfaction of objective planning standards

• No CEQA Review for Ministerial Process

• Design Review/Public Oversight
  • May be conducted by Planning Commission or City Council
  • Must be completed within 90 to 180 days of submittal
  • Objective and strictly focused on assessing compliance with
    • criteria required for streamlined projects and
    • any “reasonable objective design standards” adopted by ordinance or resolution
  • May not inhibit, chill or preclude the ministerial approval or its effect
SB 35: Streamlining the Approval Process

Requirements include (among others):

- Residential zoning (or residential mixed-use)
- 2 or more residential units (ADUs but not SF)
- Consistent with objective zoning and design review standards
  - Excluding density bonus/incentives/waivers under Gov. Code 65915
- Failure to meet RHNA
  - Above or below 80% AMI
- No subdivision
  - Unless receive low-income housing tax credit and pay prevailing wage
Requirements include (among others):

- Affordable component

  - Failure to Meet RHNA Above Moderate Income: 10% of units below 80% AMI (10 units or more)

  - Failure to Meet RHNA Below Moderate Income: 50% of units below 80% AMI

(or greater amount required by local jurisdiction)
Exclusions Include:

• Coastal zone
• very high fire hazard; earthquake fault zone, flood plain or floodway, protected species habitat, hazardous waste site
• Sites requiring demolition (rent controlled, covenanted or tenant occupied housing or designated historic structures)
• Sites where previous occupied housing was demolished within 10 years
SB 35: Streamlining the Approval Process

**Additional Project Requirements:**

- Prevailing Wage
- Labor Standards
- Local agency reporting requirements
Housing Accountability Act

- “Anti-NIMBY Law”
- Limits local agency discretion to deny or downsize housing projects
- Applies to projects that are consistent with applicable, objective zoning standards and criteria
- Adverse public health and safety findings required to deny or downsize
Housing Accountability Act

- Originally enacted in 1982 to assure that local governments did not ignore their own housing development policies and general plans when reviewing housing projects.

- Expanded in 1990, in response to growing concerns over lack of affordable housing caused in part by local governments’ policies limiting approval of affordable housing.

- 1999 amendments strengthened law by eliminating local agency’s ability to deny projects based on a subjective development policy.
HAA Prior to SB 167

- Applies to:
  - Housing and Some Mixed Use Projects
  - Market Rate
  - Affordable
  - Transitional and Supportive Housing
  - Emergency Shelters
  - Farmworker Housing

- Significantly Limits a Local Agency’s Discretion to Deny or Downsize a Housing Project
  - Still Allows a Local Agency to Review and Condition a Project (subject to limitations)
HAA Prior to SB 167

• Protections Apply to all housing projects when:

  • The Housing Project Complies with all “Applicable, *Objective General Plan and Zoning Standards and Criteria, Including Design Review Standards*” at the time the application is complete

• Additional Protections Apply housing projects for very low, low- or moderate-income households and emergency shelters
  • 20% of total units sold or rented to lower income households; or
  • 100% of units sold or rented to persons and families of moderate income or middle income.
HAA Prior to SB 167 – All Housing Projects

- **Prohibits** Denial or Downsizing Unless the Local Agency makes Two Separate Findings Supported by Substantial Evidence:
  
  - (1) The Project Would Have a “Specific, Adverse Impact” on Public Health or Safety.

  and

  - (2) There is “No Feasible Method” to Mitigate or Avoid the Impact Other than to Disapprove or Downsize the Project
HAA Prior to SB 167

• What kind of Specific, Adverse Impact allows a Project to be Disapproved or Downsized?

• A “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”
HAA Prior to SB 167

- Precludes Reliance on Subjective Development Policy, such as “Compatibility” or “Suitability” to Deny or Downsize a Project

  Reduces deference to local government determination of consistency (reasonable person standard)
Courts Have Enforced the HAA

  - Confirms that the HAA Prohibits Denial or Downsizing Based on Findings of Compatibility and Suitability
  - Clarifies that the HAA Prevails Over Statutes and Ordinances that Require Findings of Compatibility and or Suitability as Conditions of Approval (Map Act)

  - Upheld a Local Agency’s Finding that a Reduced-Density EIR Alternative was Legally Infeasible Because the HAA Prohibited the Agency from Downsizing the Project

- **Kalnel Gardens vs. City of Los Angeles**
  - HAA does not apply in the Coastal Zone
Housing Accountability Act – Prior to SB 167

- Additional Protections for Certain Affordable Projects
  - Cannot disapprove or condition in a manner that renders the housing project infeasible for development (including through design review standards) unless it makes findings:
    - The jurisdiction has met or exceeded its share of RHNA
    - The project would have a specific adverse impact upon health and safety, which impact cannot be feasibly mitigated or avoided without rendering the project financially infeasible
    - Denial or imposition of conditions is required by state or federal law and there is no way to comply without rendering project (1) unaffordable to low and moderate income households or (2) financially infeasible
    - Project is on agricultural land
    - Project is inconsistent with zoning and general plan (unless the site is identified in housing element as available low income households or the jurisdiction has failed to meet certain requirements of housing element law)
Housing Accountability Act – Prior to SB 167

• Additional Protections for Certain Affordable Projects

• Failure to comply with Permit Streamlining Act may require same denial findings
Housing Accountability Act – Prior to SB 167

- Remedies:
  - Writ Setting Aside the Local Agency’s Disapproval or Downsizing
  - Direct Approval of Wrongfully Denied Housing Projects
“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and 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 for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.”
Expanded Application to Mixed Use Projects:

- 2/3 square footage designated for residential use
Housing Accountability Act SB 167

- Higher Standard for denial/downsizing findings
  - “Preponderance of the evidence” (vs. substantial evidence)
- Reduces deference to local government determination of consistency (reasonable person standard)
Housing Accountability Act – SB 167

- Makes it easier to establish that the HAA applies to a project (i.e., project is consistent with applicable, objective zoning standards):
  - Written notice of inconsistency (with explanation)
  - 30-60 days after application deemed complete
  - Deemed consistent if notice not given
Housing Accountability Act – SB 167

Remedies and Penalties:

• Bad faith: court can order project approval in first instance

• Failure to comply within 60 days: minimum fine $10,000 per unit

• Failure to comply AND bad faith: multiply fine by factor of five
Housing Accountability Act – SB 167

• Density Bonus:

• Not a basis for finding project not in conformity with zoning standards and criteria
Anti-NIMBY Movement

GO BIG
OR I CAN’T
GO HOME

75 Howard St
31-stories
186 units
original plan
YIMBY Movement

Yes, In My Backyard
Meet the grassroots urbanists fighting back against the no-growth lobby.
WWW.THEAMERICANCONSERVATIVE.COM
Recent Litigation to Enforce HAA

- **San Francisco Bay Area Renter vs. City of Berkeley (7/21/17)**
  - City’s denial of demolition permit violated previous settlement agreement to make findings required under the HAA

- **Trauss vs. City of Lafayette (2/22/17)**
  - Applicant’s voluntary project downsizing did not violate the HAA
What are the Implications of SB 35 and SB 167?

- Encourages the Focus on Community Planning Rather than Project-by-Project Review
- Discourages the Back Room Deal Culture Reviled by the Public
- Can Help Change the Culture of Land Use Decision-Making in CA