2020 Legislative Update

American Planning Association
Orange County Section

April 15, 2021

Presented by: David Snow, AICP and Diana Varat
Outline of Today’s Update

- **Housing**
  - Density Bonus Law
  - ADUs
  - SB 35
  - Housing Elements
  - Entitlement Extensions
  - Religious Institution Housing Projects

- **CEQA**
  - SB 288

- **Backup Generators for Wireless Cell Towers**
  - AB 2421

- **Joshua Trees**

- **Preparing for More Housing Bills ...**
HCD Guidance Documents

- ADU Handbook (December 2020)
- Housing Element Completeness Checklist (January 2021)
- SB 35 Guidelines (April 2021)
- Surplus Land Act Guidelines (April 2021)
- HCD memos
  - Housing Accountability Act (HAA)
  - Housing Element Req’ts & Sites Inventory Guide
Density Bonus Law: An Overview

- Qualifying projects entitled to receive:
  - A density bonus;
  - Specific number of “incentives & concessions” based on housing type;
  - Waivers or reductions of development standards (if they would “physically preclude” the construction of the development); and
  - Reductions in minimum parking requirements
DBL – Qualifying Projects

- 10 percent Lower Income HHs (or 20 percent for Lower Income Students)
- 5 percent Very Low Income HHs
- Senior Citizen Housing Development
- 10 percent Moderate Income (Condos)
- 10 percent Transitional Foster Youth, Disabled Veterans, or Homeless Persons
- 100 % Affordable (at least 80 % LI, 20 % Mod)
DBL – Changes under AB 2345

- **Increase in Maximum Density Bonus**
  - Sliding scale, but now up to **50 Percent** above base density

- **Incentives for Lower Income Projects**
  - To qualify for 2 and 3 incentives, applicant must now reserve **17 %** and **24 %** for Lower Income households, respectively
### DBL – Parking Ratios under AB 2345

<table>
<thead>
<tr>
<th>Number of Bedrooms</th>
<th>Parking Requirement (Per Unit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio / 1 Bedroom</td>
<td>1 onsite space</td>
</tr>
<tr>
<td>2 and 3 Bedrooms</td>
<td>1.5 onsite spaces</td>
</tr>
<tr>
<td>4 + Bedrooms</td>
<td>2.5 onsite spaces</td>
</tr>
</tbody>
</table>
Overview of ADU Requirements

- Two-pronged approval process:
  - "Building Permit Only" Process
    - State standards only
    - Residential or Mixed-Use Zone
      - Gov. Code § 65852.2, subd. (e)
  - Local Ordinance Process
    - Local ADU Standards
      - But must comply with standards in Gov. Code § 65852.2, subd. (a)
“Building Permit Only” Categories

**Single Family Homes**
- One ADU *and* one JADU
- One detached ADU (800 sq. ft.) + JADU

**Existing Multi-Family Structures**
- Two detached ADUs
- Conversion of non-livable spaces (garages, storage rooms, basements...)

---

9
“Building Permit Only” Process

- One ADU and one JADU per lot
  - Within proposed single-family dwelling (SFD)
  - Within existing space of SFD
  - Within existing space of accessory structure (including expansion of up to 150 square feet for ingress / egress)
    - Exterior access required
    - Side and rear setbacks for fire and safety
    - JADU must comply with 65852.22
SB 35: Clarifications & Tribal Consultation

- Streamlined, ministerial approval process for multi-family residential developments
- Substantially limits City’s ability to impose parking and other requirements on developments applying under SB 35 process
- No CUP, Planned Development, or other discretionary review may be imposed
- Projects are statutorily exempt from CEQA review (ministerial)
SB 35 – Eligible Projects

- Multi-family projects with at least 2 units
  - If mixed-use, at least 2/3 of the proposed development’s square footage must be designated for residential use

- Project must be consistent with the “objective zoning standards and objective design review standards” established before the application is submitted
SB 35 – Tribal Consultation

- Applicant submits “Notice of Intent”
  - “Preliminary Application” (GC § 65941.1)
- Tribal Consultation Process
- Local Agency accepts SB 35 application **only if**:
  - No tribe engaged in scoping consultation;
  - Tribe and local agency agree that no resource will be affected by the project; or
  - Tribe and local agency enter into agreement
SB 35 – Other Clarifications

- **Modifications to Approved SB 35 Projects**
  - Request before Building Permit
  - Must Be Approved within 60 (or 90) days if Consistent with Pre-Existing Objective Planning Standards
  - Limited Opportunity for the Agency to Apply *New* Objective Planning Standards

- **Subsequent Permits related to Public Infrastructure**
AB 1561 – Tribal Consultation

- Slightly (and temporarily) extends CEQA tribal consultation process for housing projects requiring discretionary permits
  - Allows tribes 60 days instead of 30 days to respond
- Applies to housing development applications determined to be complete between March 4, 2020 and December 31, 2021
Housing Elements – Quick Tips

- **Site Inventory**
  - Be mindful of “No Net Loss” - “Buffer”
  - AB 725 (N/A to SCAG in 6th Cycle)

- **Housing Programs**
  - Be mindful of SB 330 Limitations
  - Requirements for “up-zoning”

- **Affirmatively Further Fair Housing**
Housing Entitlement Extensions (AB1561)

- Adopted in response to COVID-19 pandemic
- Automatically extends deadlines for HOUSING ENTITLEMENTS for 18 months
  - Tentative and vesting tentative maps,
  - Parcel maps
  - “Residential development” (which is not further defined)
  - Mixed-use with at least 2/3 of the square footage dedicated to residential
    - See Govt. Code Sec. 65914(d)(3)(C)(i and ii) for formulas
Housing Entitlement Extensions (AB1561)

- Applies to:
  - Approvals/ permits / entitlements issued by state or local agencies
  - Local ministerial approvals and entitlements required as prerequisite for issuance of building permits
  - Local requirement to submit building permit application within a set period of time
  - Exercise of a vested right related to approvals or permits
Housing Entitlement Extensions (AB1561)

- Does NOT apply to:
  - Development Agreements
  - Tentative Map approval that was or is extended for a minimum of 18 months after March 4, 2020
  - Preliminary Applications per 65941.1
  - Application for development / permits for SB 35 multi-family housing projects

- Does not apply if, between March 4 and December 31, 2020, the agency extends the deadline by 18 months
  - Less clear if extension is for less than 18 months
  - 18 months from the original expiration date?
Housing Entitlement Extensions (AB1561)

- Some confusion because AB 1561 was not urgency legislation taking immediate effect, and instead became effective January 1, 2021.

- Language says extension should be given to all housing entitlements “issued prior to … and in effect on March 4, 2020” and “will expire prior to December 31, 2021”.
  
  - So, if an approval expired in April 2020, was it invalid until January 1, 2021, when the bill “revived” it?

- Overall intent suggests that it is to broadly extend housing development approvals.
“Religious Institution Affiliated Housing Development Project”

- Housing project located on one or more contiguous parcels each owned entirely by a religious institution
- Project “near” collocated religious-use parking, or within one-tenth of a mile of a parcel containing the parking
- Projects quality for density bonuses

Local Agencies can’t require:

- Replacement of religious-use parking spaces that would be eliminated by the project
- Cure any preexisting parking deficit
AB 1851 – Religious Institution Housing Projects – Parking

- Local Agencies can’t:
  - Deny based on parking reductions, provided that the total reduction does not exceed 50% of existing spaces
- Local agencies don’t have to approve a parking ratio of less than 1 space per residential unit, UNLESS the project is within ½ mile walking distance of public transit or within one block of a car share vehicle.
- Local agencies must allow the number of religious-use parking spaces available after the housing project to count toward the number of parking space required for the housing project.
- Housing shortage = Statewide Concern; thus applicable to charter cities.
CEQA - SB 288 (PRC §21080.25)

- New Exemption for Sustainable Transportation Projects

- Intent to:
  - Spur investment in Transit / Sustainable Transportation
  - Further State environmental goals
  - Create Jobs in light of COVID-19

- Valid for two years - 1/1/23
# CEQA - SB 288 (PRC §21080.25)

## Nine Project Types
- Pedestrian and Bicycle Facilities
- Improving transit, bicycle and pedestrian information and wayfinding
- Transit prioritization projects (signal coordination, timing, and phasing; ramp metering; dedicated transit /very high occupancy lanes, etc.)
- City/County projects to reduce parking requirements

## Statutory Exemptions
- Designating/Converting General purpose lanes to Bus Only lanes
- Institute or Increase bus rapid transit, bus or light rail – including transit stations
- Utility infrastructure maintenance/repair, etc., associated with exempt activities
- Any combination of these
CEQA - SB 288 (PRC §21080.25)

- Parking Reductions – Automatically exempt
- Requirements for other activities:
  - In an Urbanized area (100,000 population for either incorporated city or combination with two contiguous incorporated cities)
  - On or within existing public right-of-way
  - Can’t increase automobile capacity
  - Can’t involve demolition of affordable housing
  - Commitment to use skilled and trained construction workforce (e.g., PLA)
CEQA - SB 288 (PRC §21080.25)

- If project cost exceeds $100 million, must also meet the following:
  - Incorporated in Regional Transportation Plan or other planning document that underwent programmatic environmental review within 10 years of project approval.
  - Construction impacts must be fully mitigated
  - Lead agency must consider “project business case”
  - Lead Agency must consider “racial equity analysis”
  - Must hold at least 3 noticed public meetings prior to exemption determination
  - Must hold at least 2 meetings annually during construction, subject to specific notice requirements.

- Notice of Exemption REQUIRED
CEQA - SB 288 (PRC 21080.20)

- Bicycle Transportation Plan Exemption Modified
- Extended from 1/1/2021 to 1/1/2030
- Plans for urbanized areas to:
  - Restripe
  - Bicycle parking/ storage
  - Intersection signal timing
  - Signage
- Must hold hearings before using exemption
- Notice of Exemption REQUIRED
- Vehicular traffic, bicycle, and pedestrian safety assessment / mitigation no longer required
AB 2421 – Cell Tower Standby Generators (GC §65850.75)

- Requires streamlined process for permitting emergency standby generators for EXISTING permitted macro cell sites
  - Does NOT include rooftop, small cell, or indoor/outdoor distributed antenna system sites
- Ministerial Review – Must meet criteria set forth in the law
- Maximum 60-day review period or deemed approved
- 10 days to deem incomplete – need to provide list of outstanding items
- Can’t require information beyond what is required for other backup generators
AB 2421 – Cell Tower Standby Generators (GC §65850.75)

- Can’t require property owner consent as part of application, but can require it prior to installation of generator

- California Public Utilities Commission Decision 20-07-011
  - New rule regarding wireless resiliency in high fire threat areas
  - Plans required to describe how service will be maintained in event of power outage for emergency communications
  - These areas may see a rush of applications to meet a July 2021 requirement for 72-hour backup power.
Western Joshua Tree – Potential State Listing

- Petition filed in 2019 seeking listing of Western Joshua Tree
- September 24, 2020 California Fish and Game Commission issued notice of findings
  - "substantial possibility that the requested listing could occur"
  - Western Joshua Tree is a "candidate species" and thus protected like endangered / threatened species. (Cal. Fish and Game Code Sec. 2085)
- Department of Fish and Game must issue report within a year of the notice
Housing Laws – Preparing for More

- SB 6 / AB 115 (Housing in Commercial Zones)
- SB 9 (Ministerial Approval of Duplexes and Lot Splits)
- SB 12 (Planning and Wildfire Risk)
- AB 1398 / AB 1486 (RHNA and Planning)
- SB 778 (ADU Law and Conversion of Commercial Space in Mixed-Use Structures)
- AB 571 / SB 728 / SB 55 / SB 290 + (Density Bonus)
Thank you! Questions?

David Snow, AICP, Esq.
dsnow@rwglaw.com

Diana Varat, Esq.
dvarat@rwglaw.com