


Allen Matkins

LEGISLATIVE LAND-USE HIJACKING?

57th Annual Litigation Seminar
Appraisal Institute



RECENT STATE-LEVEL LEGISLATIVE ACTION
ON “LOCAL” LAND-USE MATTERS AND THE
VALUATION IMPLICATIONS THAT
APPRAISERS – AND MARKET PARTICIPANTS
– WILL WANT TO CONSIDER

YOUR SPEAKERS



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TOPICS COVERED TODAY



- Recent housing legislation
- Affordable Housing on Faith and Higher Education Lands Act
- Recent industrial legislation
- Valuation implications
- Q&A session

RECENT STATE HOUSING LAWS



Expansion and Extension of Senate Bill 35

- SB 35 provides for a streamlined ministerial (i.e., no CEQA) approval process for qualifying housing projects in local jurisdictions that have not made sufficient progress toward their State-mandated Regional Housing Needs Allocation (RHNA) as determined by the CA Department of Housing and Community Development (HCD).
- SB 423 extended and expanded SB 35.
- Extended SB 35 to January 1, 2036.
- Expanded SB 35 to apply when a local jurisdiction fails to adopt a housing element in substantial compliance with State housing element law regardless of RHNA progress.
- Revised the coastal zone development prohibition.
- Removed and modified skilled and trained workforce requirements for certain projects based on height.

RECENT STATE HOUSING LAWS



Additional Density Bonus Under State Density Bonus Law

- Assembly Bill 1287 amends the State Density Bonus Law (Govt. Code 65915) by incentivizing the construction of housing units for both the “missing middle” and very-low-income households by providing for an additional density bonus, and incentive/concession for projects providing moderate-income units or very-low-income units.
- The project must provide the requisite percentage of on-site affordable units to obtain the maximum density bonus (50%) under prior law: 15% very-low-income units, or 24% low-income units, or 44% moderate-income (ownership only) units (the Base Bonus).
- To qualify for an additional density bonus (up to 100%) and an additional incentive/concession under AB 1287, the project must provide additional on-site affordable units, as specified (the Added Bonus).
- The Added Bonus may be obtained by adding moderate-income units to either a rental or ownership project, but that is capped at a total maximum of 50% moderate-income units.
- **Valuation implications:** Potential huge increase in density. Highest and best use.

RECENT STATE HOUSING LAWS



Expansion of Housing Accountability Act Protections: CEQA

- Assembly Bill 1633 closed a loophole in the Housing Accountability Act (HAA) (Govt. Code 65589.5 et seq.) by establishing when a local agency's failure to exercise its discretion under CEQA, or abuse of its discretion under CEQA, constitutes a violation of the HAA.
- To qualify under AB 1633, the project must be a "housing development project" under the HAA and meet other specified requirements.
- The following circumstances constitute "disapproval" of the project, in which case the local agency could be subject to enforcement under the HAA:
 - CEQA Exemptions. 90-day limit.
 - Other CEQA Determinations. If the project qualifies for certain environmental documents, the local agency commits an abuse of discretion by failing to approve the CEQA document in certain circumstances.
- There's a limited exception for local agencies.

RECENT STATE HOUSING LAWS



New Law Reduces Parking Requirements

- Assembly Bill 2097 prohibits cities from imposing a minimum parking requirement on most development projects located within a half-mile radius of a major transit stop (subject to minor exceptions).
- Applies to residential, commercial, and industrial projects.
- Excludes hotel, motel, bed & breakfast inn, or other transient lodging uses.
- A city may impose minimum parking requirements if it makes certain written findings within 30 days of receipt of a completed application for a discretionary development permit. A city must show that not imposing or enforcing minimum parking requirements would have a substantially negative impact on the city's ability to meet its share of regional affordable housing needs, housing needs for elderly or persons with disabilities, or *existing* residential or commercial parking within one-half mile of the housing development project.
- **Valuation implications:** Parking can significantly increase the cost of housing production. Allows projects on smaller parcels to move forward that would have previously been rejected due to lack of parking. Allows for increased density.

ADDITIONAL DENSITY LAWS



New Law Expands Multifamily ADU Opportunities

- Senate Bill 1211 significantly expands multifamily ADU opportunities. Key takeaways:
 - For existing multifamily projects, you can now build by right 8 detached multifamily ADUs per parcel (previously limited to 2). They must comply with certain height and setback requirements.
 - If you convert or replace a garage, carport, covered parking structures, or uncovered parking space with an ADU, you do not need to replace the lost parking.
 - If the project is within a half-mile of public transit (e.g., a bus stop or train station), the municipality cannot require any parking for the ADU.
 - A municipality is now expressly prohibited from imposing on the mandatory approval ADUs in Govt. Code 66323 any objective development or design standard not expressly authorized by that section.
- **Valuation implications:** Potential increase in density. Highest and best use. Overrides CC&Rs.

ADDITIONAL DENSITY LAWS



More Laws that Expand Multifamily ADU Opportunities

- Senate Bill 1077 requires the CA Coastal Commission to develop guidance for municipalities to use in drafting ADU elements of their Local Coastal Plan.
- Assembly Bill 2533 extends amnesty to ADUs built before 2020 and prohibits connection fees as part of legalization.
- Assembly Bill 3057 provides a CEQA exemption for JADU ordinances in single-family neighborhoods.

ADDITIONAL DENSITY LAWS



Other Notable Housing Laws

- In 2021, Senate Bill 9 was approved.
 - Allows for the ministerial approval of duplexes and two-lot subdivisions on qualifying properties without CEQA review.
 - Qualifying lot split can only result in two parcels that are nearly equal (at most a 60/40 split).
 - Senate Bill 450 tightens SB 9 so that it is harder for municipalities to deny lot splits now.
 - **Valuation implications:** Might boost value. Does *not* override CC&Rs.
- Assembly Bill 1123 allows streamlined Subdivision Map Act approval of small homes (10 or fewer units).
- Assembly Bill 1413 extends life of all entitlements by 18 months.
 - **Valuation implication:** Entitlements can multiply the value of raw land.

AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

WHAT IS SB-4?

- Allows for **by-right** multiple family residential housing development on land owned by a bonafide **religious institution** or an **independent institution of higher education**.
- Provides for a streamlined ministerial (i.e., no CEQA) approval process
- Circumvents local zoning ordinance
- Allows for joint use between multiple family housing and prior use
- Developer may or may not be affiliated with a qualified institution

AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

Qualified
“Well Recognized”



AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

Versus Non-Qualified
Not so well recognized...



AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

Qualified...



AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

Versus Non-Qualified



AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

- Allows for **by-right** multiple family residential housing development on land owned by a bonafide religious institution or an independent institution of higher education.
- Limitations/Requirements:
 - 100% of units must be affordable to lower income households, except that 20% may be for moderate-income households.
 - 5% of units may be set aside for staff of the religious or educational institution.
 - Development can't be adjoined by any site with more than **1/3 of square footage** dedicated to **industrial use**.
 - Allows for ancillary uses on the ground floor.
 - Requires one (1) off-street parking space per unit unless a state law or local ordinance provides for a lower standard of parking.
 - Parking exclusions exist for proximity to transit.

AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

DENSITY ALLOWANCE

- For residentially zoned sites (includes sfr), Density is per Section 65583.2(B)(3)(c) and a **height of one story** above the maximum height allowed.
 - At least 10 to at least 30 dwelling units per acre depending on category of jurisdiction.
- If greater density is allowed by the local jurisdiction, or if a greater density or building heights is allowed on an adjacent parcel, then the **greater density or building height** shall apply.

AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

- **Notwithstanding any inconsistent provision of a local government’s general plan, specific plan, zoning ordinance, or regulation, a housing development shall be a use by right if all of the following criteria are met.**
 - Land must have been owned by the institution on or before **January 1, 2024**.
 - Government Code Section 65913.4 (2)(a)-It is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster per the US Census Bureau.
 - Government Code Section 65913.4 (2)(b)-At least 75% of the site’s perimeter adjoins parcels that are developed with urban uses.
 - Government Code Section 65913.4 (7)(A)-The development is not located on a site where **any** of the following apply:
 - Can’t demolish (i) Housing subject to a covenant, ordinance or law that restricts rents to affordable levels, **and** (ii) any housing subject to rent control, **and** (iii) Any tenant housing occupied within the past 10 years.

AFFORDABLE HOUSING ON FAITH AND HIGHER EDUCATION LANDS ACT OF 2023-SB-4

Exclusions to SB-4

- The housing units **may not be within 1,200 feet** of a site that is either of the following:
 - A site that is **currently** heavy industrial
 - A site where the **most recent permitted use** was heavy industrial
 - A site that the most recent permitted use was a **Title V industrial use**
 - For sites where multiple family housing is **not an existing permitted use**, the housing development site are not located **within 3,200 feet of a site that actively extracts or refines oil or natural gas**

Valuation Impacts

- Highest and Best Use- legally permissible *according to whom?*

DRAMATIC INDUSTRIAL CHANGE: AB 98

- Rushed through the legislative process (a last minute “gut and amend” bill) so it has numerous uncertainties and unclear provisions.
- Applies to all *new* developments or 20% or more expansions of logistics uses.
- Two exemptions (key dates):
 - Where the local entitlement process was commenced before Sept. 30, 2024.
 - Projects that have received an approval from a local government before Jan. 1, 2025.
 - **Valuation implications:** These dates have *huge* valuation significance.
- These exemptions are not perpetual. If no “development activity” occurs within 5 years of approval of all entitlements, these exemptions expire.

DRAMATIC INDUSTRIAL CHANGE: AB 98

- “Logistics Use” Defined
 1. “A building in which cargo, goods, or products are moved or stored for later distribution to business or retail customers, or both”
 2. “Does not predominantly serve retail customers for onsite purchases”
 3. “Heavy-duty trucks are primarily involved in the movement of the cargo, goods, or products”
- Limited Exclusions.

DRAMATIC INDUSTRIAL CHANGE: AB 98

- If a logistics use development cannot meet the specified development standards, the municipality is prohibited from approving the project.
- Which Standards Apply?
 - Loading bay within 900 feet of sensitive receptor?
 - Demo residential units?
 - Project is 250,000 SF or larger?
 - Zone change required?

DRAMATIC INDUSTRIAL CHANGE: AB 98

- General Standards apply to all non-exempt projects starting on Jan. 1, 2025. Must submit:
 - Truck routing plan
 - Truck route signage
 - Anti-idling signage
 - Entry gate setbacks
 - Location restrictions

DRAMATIC INDUSTRIAL CHANGE: AB 98

- There are additional requirements if the new or expanded logistics use is within 900 feet of a sensitive receptor.
- What are “sensitive receptors”?
 - Residences
 - Preschool through high school
 - Daycares
 - Publicly owned parks, playgrounds, and recreational areas/facilities primarily used by children
 - Nursing homes/related facilities
 - Hospitals

DRAMATIC INDUSTRIAL CHANGE: AB 98

- Projects less than 250,000 SF with a loading bay within 900 feet of a sensitive receptor
 - All general development standards
 - Loading bay orientation
 - Separate heavy truck entrance
 - Truck circulation
 - Minimum 50-foot-wide screening
 - Energy efficiency requirements
 - TRU plugin ready (cold storage uses)
 - Additional requirements if need a zone change

DRAMATIC INDUSTRIAL CHANGE: AB 98

- Projects more than 250,000 SF with a loading bay within 900 feet of a sensitive receptor
 - All general development standards *and* all sub-250,000 SF standards
 - Minimum 300-foot buffering
 - Microgrid
 - Smart metering
 - Increased EV parking
 - Zero-emission forklifts and small off-road engines
 - Skylights/LED
 - More stringent solar requirements
 - Additional requirements if need a zone change

DRAMATIC INDUSTRIAL CHANGE: AB 98

- Housing replacement requirements.
- Will housing be demolished?
- Requirements:
 - Two-to-one replacement
 - Deed restricted for low or moderate income
 - Built within jurisdiction
 - 12-months rent to displaced tenants
- Certain exemptions.

DRAMATIC INDUSTRIAL CHANGE: AB 98

- Some long-term use implications:
 - Locks in heavy industrial uses
 - Locks in legacy industrial sites
 - Locks in outdoor storage sites
 - Locks in residential in industrial zoning

- Some valuation implications:
 - Date of value
 - Likelihood of a zone change
 - Highest and best use and comparable data selection

HOW TO KEEP TRACK OF NEW LEGISLATION

- California Planning & Development Report (<https://www.cp-dr.com>)
- California-specific news sites (e.g., CalMatters.org)
- Bill Tracker by California Council of Governments (<https://calcog.org/bill-tracker/>)
 - Can sort by type of bill (e.g., housing)
- Subscribe to legal alerts and newsletters by Allen Matkins (<https://connect.allenmatkins.com/contact-preferences>)
 - Can subscribe to different real estate types (e.g., office, residential, industrial)

QUESTIONS?

