Joint Informational Hearing
Senate Housing Committee
Assembly Housing and Community Development Committee
February 28, 2023, 1:30 PM – 1021 O Street, Room 1200

Housing Production: Recent Legislative Actions and Outcomes

BACKGROUND PAPER

GOAL OF THE HEARING:

This hearing is a joint hearing of the Senate Housing Committee and the Assembly Housing and Community Development Committee. The goal of this hearing is to understand the recent actions undertaken by the state legislature to increase housing production in California, to ascertain their effectiveness, and to discuss further measures that will be necessary to address the housing crisis.

POLICY QUESTIONS:

1) Why has insufficient housing been built in California?

2) What are the implications of our housing deficit?

3) What recent legislative actions have been taken to increase housing production in California?

4) What has been the outcome of these actions?

5) What more is necessary to do?

WHY HAS INSUFFICIENT HOUSING BEEN BUILT IN CALIFORNIA?

California has an existing housing deficit of over a million units of housing.[1] To address this gap, the state Department of Housing and Community Development (HCD) estimates that California must plan for the development of more than 2.5 million homes over the next eight years, and no less than one million of those homes must meet the needs of lower-income households (more than 640,000 very low-income and 385,000 low-income units are needed).[2]

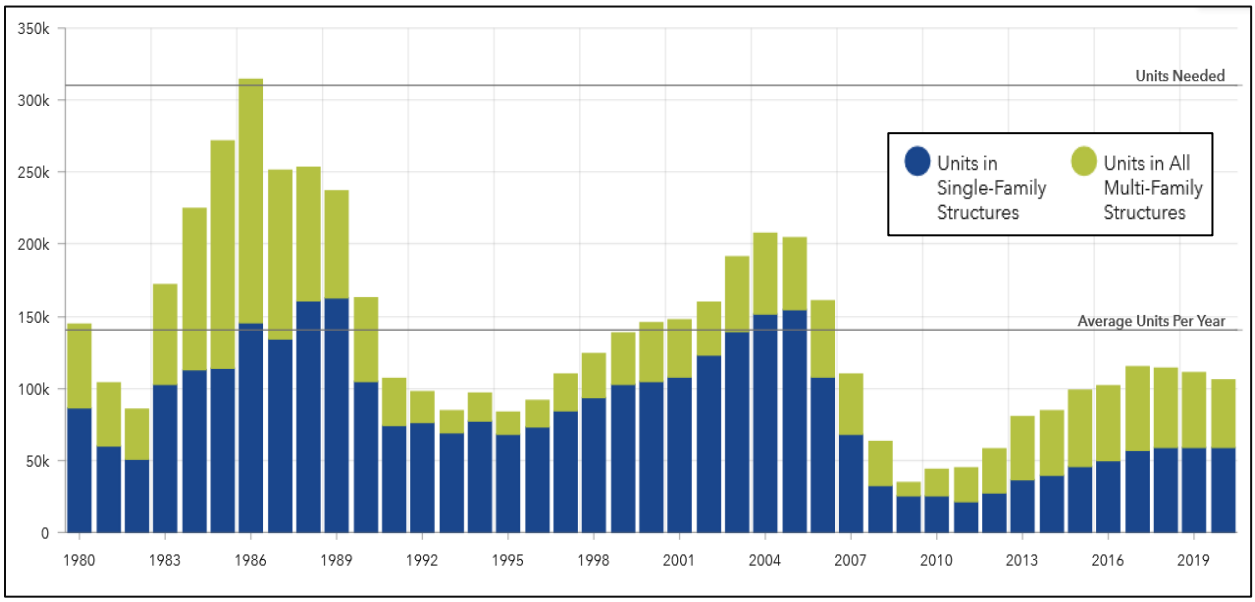
Over the last half century, there simply has not been enough housing created in California. A combination of local permitting and zoning barriers, opposition to neighborhood change, segregation and exclusion, mounting construction costs, and a shortage of labor contribute to the insufficient number of housing units to meet Californians' needs. Additionally, there have not been sufficient federal resources to build housing across the continuum in our state. Figure 1 shows the gap between

[1] Estimates range from a high of 3.5 million units, per the McKinsey Global Institute (https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap) to a low of 1.5 million units, per the Embarcadero Institute (https://embarcaderoinstitute.com/portfolio-items/3-5-million-california-housing-shortage-number-is-wrong-fueling-poor-policy).

[2] California Department of Housing and Community Development. *2022 Statewide Housing Plan*. Accessible here: https://statewide-housing-plan-cahcd.hub.arcgis.com/

issued residential building permits (*i.e.,* a proxy for newly constructed units) and units needed to meet statewide housing goals.

Figure 1. New Residential Housing Permits in California by Year and Structure Type, 1980 - 2020[3]
New construction of housing, both single family homes and apartments, continues to lag behind historical averages, and lags further behind the number of new units needed to meet housing demand.



There are several contributing factors to the undersupply of housing units constructed to meet Californians' needs, including, but not limited to:

- **High Demand:** *California has been an attractive to new residents for decades, doubling in population over the last 40 years from 20 million to 40 million. Given the average household size of approximately three people, the 20 million new residents created a demand for over 6 million units of housing. By contrast, many parts of the Northeast and Midwest lost population or stayed the same, creating no demand for new housing. California's growth has been driven by a number of factors. Some new residents were attracted by the physical amenities, such as the weather and natural beauty. Some new residents were drawn by social amenities, such as our cultural diversity and relative tolerance. Many new residents were lured by our economic opportunity: eight million jobs added between 1980 and 2020, three million of those being added between 2010 and 2020.*

- **Limited Ability to Development Outward:** *Upon the end of World War II and the widespread adoption of the private automobile, the preponderance of new housing across the nation has been single-family housing. These housing units are land intensive, and over the course of decades, new single-family housing developments consumed a substantial portion of the readily developable land near coastal job centers. Unlike some high-growth Sunbelt states, California's ample topography is a substantially limiting factor in where development can occur – particularly in an era of climate change and commensurate increases in wildfire and flood risk. As such, California is no longer able to satisfy its growth demand through single-family development that is reasonably proximal to the state's major job centers.*

[3] California Department of Housing and Community Development. *2022 Statewide Housing Plan*. Accessible here: https://statewide-housing-plan-cahcd.hub.arcgis.com/

- **Limited Ability to Develop Inward:** *Historically, California's local governments (cities and counties) have been in charge of determining how their land may be used. Through use of zoning, these local governments determine where housing is allowed to be built, where housing is permitted, and how dense it can be. Many local governments have used this authority to greatly restrict how much housing can be built. Such actions have been justified for fiscal reasons – due to limitations on taxation (e.g., per 1978's Prop. 13), local governments prefer to attract and develop commercial uses over residential ones, and can even see new housing as a net fiscal negative due to required provision of services. Such actions have also reflected the political realities of local government, where existing property owners and other vested interests leverage their clout to push for NIMBY ("Not in My Back Yard") policies. In many instances, such policies are tinged with racist and classist overtones, given that lower-income Californians are typically unable to afford single-family homes in existing communities, and that communities of color are disproportionately lower income.*

- **An Entitlement Process Designed to get to "No":** *In addition to establishing zoning controls, local governments also control the process by which housing developments receive permissions, or "entitlements," to build new housing. This entitlement process is typically lengthy, expensive, opaque, and subjective – even for projects that meet all of the local government's objective development standards. Often the process is purposefully designed this way, in an effort to stymie new housing development for the reasons listed above. The challenges in this process also may emanate from the inherently bureaucratic government. In addition to the locally-generated process, new development also must comply with the California Environmental Quality Act (CEQA). The inherent presumption to CEQA is that new development is harmful to the environment. Additionally, CEQA presumes a counterfactual that the opposite of a development in the chosen location is no development at all, instead of presuming a counterfactual that the demand for development would be satisfied in a different location. Finally, there is a very low bar (financially and legally) to contesting a project's CEQA analysis – and thus allowing for the substantial delay of a project. These factors put infill-oriented housing at a distinct disadvantage – not only does CEQA ignore the inherent benefits of building in infill locations rather than meeting demand in a more remote location, but a proposed infill development has many more potential interest groups to oppose it than a more remote, sprawl-oriented development.*

- **Insufficient Funding for Affordable Housing:** *Throughout the state, growing numbers of lower income households (those earning less than 80% of their area's median income) cannot afford the median asking rent. According to the state's Statewide Housing Plan, to meet the needs of the state's lower income households, 140,000 affordable units must be developed annually over the next eight years.[4] The market will provide some of these units through accessory dwelling units (ADUs) and local requirements to provide affordable units as part of larger market-rate projects. However, the majority of these units will need public subsidization to be affordable. It is estimated that the state would need to spend almost $18 billion annually to meet this demand for affordable housing.[5] Yet between 2010 and 2021, the state funded a small fraction of that amount – enough to produce less than 10,000 affordable units per year.[6]*

[4] California Department of Housing and Community Development. *2022 Statewide Housing Plan*. Accessible here: https://statewide-housing-plan-cahcd.hub.arcgis.com/

[5] Housing California and the California Housing Partnership. *Roadmap Home 2030*. Accessible Here: Roadmap-Home-Report-1.pdf (roadmaphome2030.org)

[6] California Housing Partnership's Housing Needs Dashboard. Accessible here: https://chpc.net/housingneeds/

- **Limited Resources:** *There are many factors that go into the cost of housing, including purchasing the land, designing the project, navigating the entitlement process, and paying public taxes and fees. But the preponderance of costs come from the construction of the project itself, including the materials and labor. A substantial challenge that has occurred since the onset of the COVID-19 pandemic is extreme fluctuations in material costs (e.g., the price of lumber more than tripled in 2020). Another substantial challenge during mid-2022 was inflation—dampening demand and driving up the cost of capital necessary to finance new development. Another critical factor is the availability of construction labor. A useful rule of thumb is that here is a 1:1 between residential construction workers and the number of housing units that can be built. As recently as 2006, when over 200,000 units were built in California, there were approximately 200,000 residential construction workers in the state. With the bursting of the housing bubble and the onset of the Great Recession, that number had decreased to 100,000 by 2018. Despite the massive economic growth that occurred in the subsequent decade, the construction labor force never rebounded – and neither did production. This is for a number of reasons, including that the work is typically poorly paid and thus make it difficult to attract new workers to the profession, high housing prices make it difficult to lure out-of-state construction workers, and changes to national immigration policy have decreased the number of undocumented workers that historically have made up a high percentage of the residential construction workforce.*

WHAT ARE THE IMPLICATIONS OF OUR HOUSING DEFICIT?

The lack of housing in California has created a systemic and persistent housing crisis, where homeownership is out of reach to all but the most affluent, lower income households struggle to pay the rent, and homelessness is rampant.

Homeownership

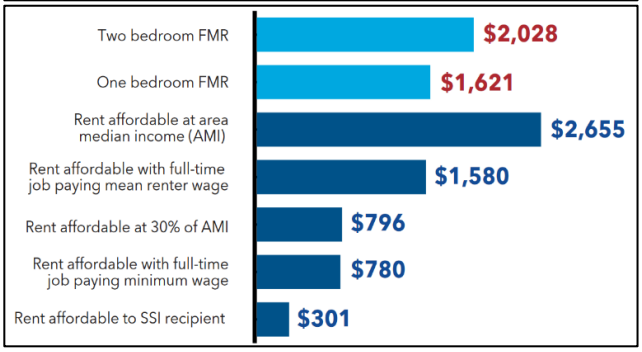
California has the largest concentration of severely unaffordable housing markets in the nation[7] and the statewide average home value reached a new record in June 2022 at $793,300[8]. Recent increases in interest rates have made it much more expensive to finance a home, meaning that despite home prices decreasing, the percentage of California households that can afford to buy a home is down. Currently 18% of households in California can purchase a home, down from 25% the year prior, and far less than half of the national figure of 38%.[9]

[7] Frontier Centre for Public Policy. *Demographia International Housing Affordability - 2022 Edition*. Accessible here: https://urbanreforminstitute.org/wp-content/uploads/2022/03/Demographia-International-Housing-Affordability-2022-Edition.pdf

[8] Zillow. *California Home Values*. Accessible here: https://www.zillow.com/home-values/9/ca/

[9] Historical Housing Affordability Index. Accessible here: https://car.sharefile.com/share/view/s8dec4827d6914e9d9fac221b1e263b41

STATE FACTS	
Minimum Wage	$15.00
Average Renter Wage	$30.39
2-Bedroom Housing Wage	$39.01
Number of Renter Households	5,861,796
Percent Renters	45%

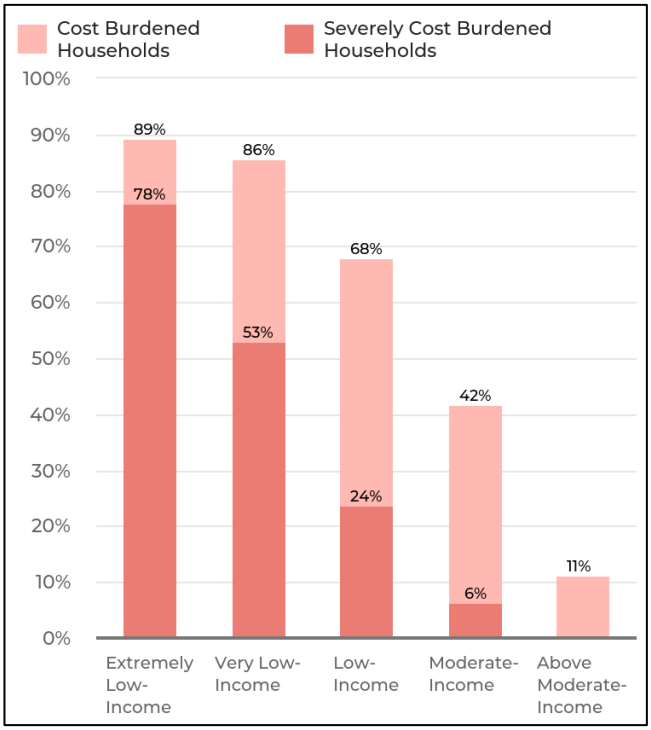


Rental Housing

As a result of the severe housing shortage, millions of Californians, who are disproportionately lower-income and people of color, must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation—one in three households in the state don't earn enough money to meet their basic needs**.**

Figure 2. Wage Needed to Afford Housing in California, 2022[10]

The statewide Fair Market Rent (FMR) for a two-bedroom apartment is $2,028. To afford this level of rent and utilities—without paying more than 30% of income on housing—a household must earn $6,761 monthly or $81,133 annually. Assuming a 40-hour work week, 52 weeks per year, and this level of income translates into an hourly Housing Wage of $39.01 per hour.



Homelessness

A lack of affordable housing is the biggest contributor to homelessness.[11] As housing costs continue to rise, rent becomes less affordable for lower-income households, who are forced to live beyond their means (paying more than 30% of income on housing costs) or are pushed out of their homes, leading to rapid increases in homelessness[12]. Variation in rates of homelessness cannot be explained by variation in rates of individual factors such as poverty or mental illness, however, cities with higher rents and lower rental vacancy rates (*i.e.,* tighter housing markets) are directly linked to higher per capita rates of homelessness[13].

Figure 3. Cost Burdened Renter Households in California by Income, 2019[14]

Over three quarters (78%) of extremely low-income households in California are paying more than half of their income on housing costs compared to just 6% of moderate-income households.

[10] National Low Income Housing Coalition's 2022 Out of Reach Report. Accessible here: https://nlihc.org/oor/state/ca

[11] Thomas H. Byrne, Benjamin F. Henwood, and Anthony W. Orlando, "A Rising Tide Drowns Unstable Boats: How Inequality Creates Homelessness," *The ANNALS of the American Academy of Political and Social Science* 693, no. 1 (2021): 28-45. Accessible here: https://doi.org/10.1177/0002716220981864/

[12] Chris Glynn, Thomas H. Byrne, and Dennis P. Culhane. "Inflection points in community-level homeless rates." The Annals of Applied Statistics, 15(2) 1037-1053 June 2021. Accessible here: https://doi.org/10.1214/20-AOAS1414

[13] Sightline Institute (2022). *Homelessness is a Housing Problem.* https://www.sightline.org/2022/03/16/homelessness-is-a-housing-problem/

[14] California Housing Partnership's Housing Needs Dashboard. Accessible here: https://chpc.net/housingneeds/

RECENT STATE ACTION TO SPUR AFFORDABLE HOUSING DEVELOPMENT

Over the past seven years, the legislature has taken numerous actions to spur housing development. Cumulatively, these changes have:

- Increased the amount of land on which housing can be built within existing cities both by directly making it legal and by requiring local governments to increase development capacity via the Regional Housing Needs Allocation (RHNA) process.
- Expedited and simplified the approval process at the pre-entitlement, entitlement, and post-entitlement phases, including creating multiple pathways for by right approvals for ADUs, deed-restricted affordable housing, and market-rate housing.
- Substantially increases the funding development of affordable housing and simplified the process for applying for funding.
- Created and funded enforcement capacity of state housing laws at HCD.
- Establishes incentives to increase pay for construction workers, thereby creating a pathway to rebuild the construction workforce.

These changes have started to bear fruit. For example, ADU construction has exponentially grown from a handful each year statewide to over 10,000. In the past two years, affordable housing development has approached 20,000 units per year, doubling previous totals. And the adoption of local Housing Elements around the state has required cities to rethink how much housing they permit, where it is allowed, and the process to get it entitled. Nevertheless, there is certainly much more to be done before housing production reaches the levels necessary to ameliorate our housing crisis.

The remainder of this document takes a closer look at the actions taken by the Legislature in recent years to increase housing production in California:

I. HOUSING STREAMLINING

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built throughout a jurisdiction. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, and/or county board of supervisors.

Most housing projects that require discretionary review and approval are subject to review under CEQA, while projects permitted ministerially generally are not. Development opponents can appeal many individual decisions related to the CEQA review to the planning commission and to the city council or board of supervisors. Finally, litigation over approvals is also common. The building industry points to environmental reviews and other permitting hurdles as a hindrance to housing development. They argue that the high cost of building and delays in the approval process reduce builders' incentives to develop housing.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially (*i.e.,* "by right") require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review.

In addition to bypassing the CEQA process and the potential for litigation, housing streamlining provides more certainty as to what is required for permitting approval, and generally also requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources.

Housing Streamlining Bills[15]:

- *ADUs/JADUs (GOV Sections 65852.2 & 65852.22).* Requires a permit application for an ADU or a junior accessory dwelling unit (JADU) to be considered and approved ministerially without discretionary review or a hearing.

- SB 2 *(Cedillo, Chapter 633, Statues of 2007).* Requires cities and counties to accommodate their need for emergency shelters on sites where the use is allowed without a conditional use permit, and requires cities and counties to treat transitional and supportive housing projects as a residential use of property.

- AB 73 (*Chiu, Chapter 371, Statutes of 2017*). Allows a city or county to create a housing sustainability district in which housing is by right if it is consistent with the district's ordinance.

- AB 1397 *(Low, Chapter 375, Statutes of 2017).* Requires a locality to allow housing by right, in which at least 20% of the units are affordable to lower-income households, on any site that is non-vacant and identified in a prior housing element or any site that is vacant and has been included in two or more consecutive housing elements.

[15] This list focuses on housing streamlining measures and is not an exhaustive list of CEQA exemptions available to specified housing developments (*i.e.* as the CEQA exemption for Homekey projects or infill developments.)

- SB 35 *(Wiener, Chapter 366, Statutes of 2017).* Establishes a ministerial approval process for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs if the projects meet specific affordability and labor criteria.

- SB 540 (*Roth, Chapter 369, Statutes of 2017*). Authorizes a city or county to establish a Workforce Housing Opportunity Zone (WHOZ) by preparing an environmental impact report (EIR) to identify and mitigate impacts from establishing a WHOZ and adopting a specific plan. A local government must approve a housing development within the WHOZ that meets specified criteria, and no project-level EIR or a negative environmental declaration would be required on a development within a WHOZ that meets specified criteria.

- AB 2162 *(Chiu, Chapter 753, Statutes 2018).* Provides that supportive housing shall be a use by right in all zones where multifamily and mixed uses are allowed. *SB 744 (Caballero, Chapter 346, Statutes of 2019)* made changes to AB 2162 and created a CEQA exemption for developments that qualify for No Place Like Home funding.

- AB 101 *(Committee on Budget, Chapter 159, Statutes of 2019).* Until January 1, 2027, requires low barrier navigation center developments to be a use by right, as defined, in areas zoned for mixed uses and nonresidential zones permitting multifamily uses if the development meets certain requirements.

- AB 430 *(Gallagher, Chapter 745, Statutes of 2019).* Creates a streamlined ministerial approval process for specified housing developments in the Cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows, and Yuba City.

- AB 1783 *(Rivas, Chapter 866, Statutes of 2019).* Creates a new streamlined, ministerial approval process for agricultural employee housing that is not dormitory style housing, on land zoned for agricultural uses.

- AB 83 (*Committee on Budget, Chapter 15, Statutes of 2020*). Provides a CEQA exemption for Project RoomKey projects if certain requirements are satisfied.

- SB 9 (*Atkins, Chapter 162, Statutes of 2021*). Requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex) or the subdivision of a parcel zoned for residential use into two parcels (lot split), or both. This bill was included in the Senate's 2021 Housing Production Package.

- AB 2011 *(Wicks, Chapter 647, Statutes of 2022).* Requires specified housing development projects to be a use by right on specified sites zoned for retail, office, or parking.

- SB 6 (*Caballero, Chapter 659, Statues of 2022*). Enacts, until January 1, 2033, the Middle Class Housing Act of 2022, which establishes housing as an allowable use on any parcel zoned for office or retail uses. Allows parcels subject to the bill to be eligible for SB 35's (Wiener, 2017) streamlined ministerial approval process if it meets specified requirements.

II. HOUSING ELEMENT AND RHNA LAW: RECENT REFORMS

Every city and county must adopt a housing element to help plan how to address its share of the regional need for housing. Each city and county must revise its housing element every eight years (every five years for some rural areas). The housing element includes a program that sets forth a schedule of actions during the planning period to provide for the housing needs of all economic segments of the community. These actions include identifying an inventory of adequate sites on which to provide housing; developing a plan to meet the needs of extremely low-, very low-, low-, and moderate-income households; removing constraints to housing for special needs populations; preserving existing affordable housing stock; promoting and affirmatively furthering fair housing opportunities; and preserving assisted housing developments for low-income households.

Each locality's fair share of housing is determined through the RHNA process, which is composed of three main stages. First, the Department of Finance and HCD develop a regional housing needs estimate for each region, which are allocated to councils of government (COGs) throughout the state. Each COG allocates housing within its region based on these estimates (where a COG does not exist, HCD make the determinations). Each city and county then incorporates its allocation into its housing element.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will not be built. Adequate zoning, removal of regulatory barriers, protection of existing stock, and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing with input from the community. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

Until very recently, communities without an approved housing element have faced limited ramifications. In 2017, the Legislature passed a comprehensive package of housing bills that included a number of bills aimed at strengthening housing element law. The following bills from 2017 onwards specifically aimed to increase housing element compliance.

- *AB 72 (Santiago, Chapter 370, Statutes of 2017*). Authorizes HCD to find a locality's housing element out of substantial compliance if it finds the locality has acted, or failed to act, in compliance with its housing element and HCD had previously found it in substantial compliance. AB 72 also authorizes HCD to refer violations of housing element law to the state Attorney General. The primary mechanism to enforce state housing law is through the judicial system. It takes significant resources and time to pursue judicial remedies; moreover, developers are hesitant to antagonize localities where they intend to have future development. AB 72 instead places this judicial enforcement burden on the state.

- *AB 1397 (Low, Chapter 375, Statutes of 2017).* Restricts the types of sites a local government may identify as suitable for residential development. AB 1397 addresses concerns that the law allowed local governments to designate very small sites that could not realistically be developed for their intended use, or to designate non-vacant sites with an ongoing commercial or residential use, even though the current use is expected to continue indefinitely. Under AB 1397, identified sites must have a sufficient available water, sewer, and dry utilities supply and must be available and accessible

to support housing development or be included in an existing general plan program or other mandatory program or plan.

- *SB 166 (Skinner, Chapter 367, Statutes of 2017).* Modified the No Net Loss Zoning Law to require local governments to maintain adequate housing sites at all times throughout the planning period for all levels of income. This is intended to help ensure that a locality continues to maintain an ongoing supply of available land to accommodate the remaining unmet housing need throughout the eight-year period of the housing element, rather than simply identifying the inventory once every eight years.

- *AB 686* (*Santiago, Chapter 958, Statues of 2018*). Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing.

The Legislature built upon the 2017 reforms with two bills, SB 828 (Wiener, Chapter 974, Statutes of 2018) and AB 1771 (Bloom, Chapter 989, Statutes of 2018). These bills made a number of changes aimed at increasing the transparency and accountability of the RHNA process:

- *Revising the COG methodology*. Revises the data COGs must provide to HCD (which helps HCD compile the regional estimates), including additional information on overcrowding, vacancy rates, and cost burdened households in the COG as compared to a healthy housing market. Sets the vacancy rate for a healthy housing market at 5%, meaning that housing production should increase to a point that vacancy rates fall within that range; this in turn could help stabilize or drive down prices in high-cost areas.

- *Starting fresh.* Prohibits a COG from using prior underproduction of housing, or stable population numbers, as justification for a determination or reduction in the city's or county's RHNA share.

- *Revising HCD methodology*. Authorizes HCD's RHNA methodology to include existing households in the region's projected household numbers. This provision aims to ensure that existing unmet need is not overlooked.

- *Strengthening enforcement of RHNA statutory objectives*. Requires the COG methodology to further the statutory RHNA objectives[16], rather than to just be consistent with them. Requires HCD to determine whether the methodology furthers the statutory objectives, but allows a COG to keep its methodology, provided it makes written justification, in the face of an HCD finding to the contrary.

- *Increasing transparency for RHNA allocations*. Requires a COG to publish on its website an explanation of how its RHNA methodology furthers the statutory objectives. Also requires a COG to post its draft RHNA allocation methodology on its website and to submit it to HCD for review and to post draft allocations on its website. Requires a locality, if it disagrees with its RHNA allocation, to submit a request for revision that includes a statement as to why the proposed allocation is not appropriate and why a revision is necessary to further the statutory objectives.

[16] Statute outlines the following objectives for RHNA plans: increasing the housing supply and the mix of housing types, tenure, and affordability; promoting infill development and socioeconomic equity, protection of environmental and agricultural resources, encouraging efficient development patterns, and achievement of the state's greenhouse gas reduction targets; promoting an improved intraregional relationship between jobs and housing; allocating a lower proportion of housing to an income category when a jurisdiction already has a disproportionately high share of households in that income category; and affirmatively furthering fair housing.

- *Eliminating "swaps."* Deletes the authority of two localities to agree to an alternative distribution of appealed housing allocations between the affected local governments. This provision aims to address the practice of certain jurisdictions offloading most or all of their RHNA allocations onto politically weaker jurisdictions.

Additional Housing Element and RHNA reform bills:

- AB 725 (*Wicks, Chapter 192, Statutes of 2020*). Requires certain local governments to zone some moderate- and above moderate-income housing as multifamily housing on or after January 1, 2022.

- AB 215 (*Chiu, Chapter 342, Statues of 2021*). Increases the enforcement authority of HCD in relation to violations of state housing law, including provisions to revise the time periods for submission of housing elements and revisions to HCD, expansion of the list of housing law violations for which HCD may notify the Attorney General, and clarifying the statute of limitations as it applies to HCD's enforcement authority.

- AB 1398 *(Bloom, Chapter 358, Statutes of 2021).* Requires cities and counties that fail to adopt a legally compliant housing element within 120 days of the statutory deadline, to complete a rezone program within one year instead of the current three-year requirement.

- AB 2339 (*Bloom, Chapter 654, Statues of 2022*). Makes changes to housing element law with regards to where homeless shelters may be zoned, as specified.

- AB 2653 *(Santiago, Chapter 657, Statutes of 2022).* Authorizes HCD to reject the housing element portion of a planning agency's APR, as specified. This bill also authorizes HCD to report violations of the provisions of this bill to the Attorney General.

III. STATE OVERSIGHT AND INCREASED ACCOUNTABILITY

The 2019-20 budget agreement provides additional accountability measures through AB 101 (Committee on Budget, Chapter 159, Statutes of 2019), which builds on AB 72 of 2017 (see above). AB 101 provides that, following an opportunity for a local government to discuss housing element violations with HCD, the Attorney General may seek certain remedies if a court finds that a local government is not substantially compliant with housing element law. Upon such a finding, the court may issue an order directing the locality to bring its housing element into compliance. If the locality fails to comply within a specified period, the court must impose fines starting at $10,000 per month, up to $600,000 per month, as specified. As a last resort, an agent of the court may be appointed to bring the housing element into substantial compliance.

AB 101 also provides incentives to encourage housing production. It requires HCD to identify a set of "pro-housing" policies, and to designate jurisdictions that have adopted these policies as "pro-housing." It also provides that these "pro-housing" local governments shall be awarded additional points for three competitive grant programs: the Affordable Housing and Sustainable Communities Program, the Transformative Climate Communities Program, and the Infill Infrastructure Grants Program.

As part of the 2021-2022 state budget, HCD received additional staff to grow its accountability efforts and formed the Housing Accountability Unit (HAU). While education and technical assistance is always the first step in HCD's accountability efforts, the HAU holds jurisdictions accountable for meeting their housing element commitments and complying with state housing laws. Violations of these state laws may lead to consequences including revocation of housing element certification and/or referral to the California Office of the Attorney General. Bills such as AB 215 (*Chiu, Chapter 342, Statues of 2021*) have added to the enforcement authority of HCD in relation to violations of state housing law.

Housing Accountability Act Background

In 1982, in response to the housing crisis, which was viewed as threatening the economic, environmental, and social quality of life in California, the legislature enacted the Housing Accountability Act (HAA) commonly referred to as the Anti-NIMBY Law. The purpose of the legislation is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action, and without complying with the HAA.

The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA's requirement to make findings applies by its terms to any housing development project. The HAA does not relieve a city from complying with provisions of congestion management program, the California Coastal Act, CEQA, or any local requirements.

Specifically, the HAA prohibits a local agency from disapproving a housing development project, including farmworker housing, for very low-, low-, or moderate-income households, or condition approval in a manner that renders the housing development project infeasible, unless the locality has made specified written findings based upon a preponderance of the evidence[17]. Recent legislation have resulted in increased fines and penalties for violations of the HAA.

[17] The preponderance of the evidence standard is higher than the substantial evidence standard, and the evidence provided has to convince the decision maker that it is "more likely than not." It is the standard employed in most civil legal cases and is sometimes expressed in statistical terms as 50% plus one.

HAA Bills:

- AB 2584 (*Daly, Chapter 420, Statutes of 2016*). Authorizes a "housing organization," as defined, to have standing to file an HAA lawsuit.

- AB 678 (*Bocanegra, Chapter 373, Statues of 2017*) & SB 167 *(Skinner, Chapter 368, Statutes of 2017).* Makes several changes to the Housing Accountability Act (HAA), including increasing the burden of proof on localities when denying a housing project and imposing fines on those localities that violate the HAA.

- AB 1515 *(Daly, Chapter 378, Statutes of 2017).* States that a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

- AB 3194 *(Daly, Chapter 243, Statutes of 2018).* This bill makes a number of clarifying changes to the Housing Accountability Act (HAA).

IV. DENSITY BONUS LAW

Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. Density bonus law allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of density bonus law is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits: a density bonus; incentives or concessions; waiver of any development standards that prevent the developer from utilizing the density bonus or incentives; and reduced parking standards.

To qualify for the benefits under density bonus law, a proposed housing development must meet one of the following criteria:

a) Include at least 5% of the units affordable to very low-income households;
b) Include at least 10% of the units affordable to low-income households;
c) Include at least 10% of the units in a for-sale common interest development (CID) affordable to moderate-income households;
d) Be a senior housing development;
e) Include 10% of the total units for transitional foster youth, disabled veterans, or homeless persons. Added by *AB 2442 (Holden, Chapter 756, Statutes of 2016)*
f) Include 20% of the total units for lower-income students in a student housing development. Added by *SB 1227 (Skinner, Chapter 937, Statutes of 2018)*
g) 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households. Added by *AB 1763 (Chiu, Chapter 666, Statutes of 2019)*

Density Bonus Bills:

- AB 744 *(Daly, Chapter 699, Statutes of 2015).* Requires a local government, upon the request of a developer that receives a density bonus, to reduce the minimum parking requirements for a housing development, if it meets specified criteria.

- AB 1934 *(Santiago, Chapter 747, Statutes of 2016).* Creates a development bonus for commercial developers that partner with an affordable housing developer to construct a joint project or two separate projects encompassing affordable housing.

- SB 1227 *(Skinner, Chapter 937, Statutes of 2018).* This bill requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least 20% of the total units for lower-income students in a student housing development, as specified.

- AB 1763 *(Chiu, Chapter 666, Statutes of 2019).* Revises Density Bonus Law to require a city or county to award a developer additional density, concessions and incentives, and height increases, if 100% of the units in the proposed development are restricted to lower-income households.

- AB 2345 *(Gonzalez, Chapter 197, Statutes of 2020).* Incentivizes more very low- and low-income rental units, as well as more moderate-income for sale units in CIDs, by extending the density formula to a maximum density of 50%, reducing the percentage of lower-income affordability required for certain concessions and incentives, and reducing some parking ratios. Density bonus law allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning in exchange for affordable units.

- AB 571 *(Mayes, Chapter 346, Statutes of 2021).* Prohibits local governments from imposing affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a housing development's affordable units in a density bonus project.

- SB 290 *(Skinner, Chapter 340, Statutes of 2021).* Makes various changes to Density Bonus Law (DBL), including providing additional benefits to housing developments that include low-income rental and for-sale housing units, and moderate-income for-sale housing units. This bill was included in the Senate's 2021 Housing Production Package.

- AB 682 *(Bloom, Chapter 634, Statutes of 2022).* Grants a density bonus for shared housing developments, as specified.

- AB 2334 *(Wicks, Chapter 653, Statutes of 2022).* Allows a housing development project to receive added height and unlimited density if the project is located in an urbanized very low vehicle travel area in specified counties, and at least 80% of the units are restricted to lower-income households with no more than 20% for moderate-income households.

V. ENTITLEMENT REFORMS AND PUBLIC LAND FOR AFFORDABLE HOUSING

Local approval processes, depending on their complexity and length can add significantly to the length of time it takes to approve a housing development. In some cases, this timeline can make or break a housing development. The 1977 Permit Streamlining Act (PSA) requires public agencies to act fairly and promptly on applications for development proposals, including housing developments. Public agencies must develop lists of the information that applicants must provide in order for a development application, including an application for housing, to be complete and explain the criteria they will use to review permit applications. The PSA establishes timelines for agencies to determine whether a permit for an entitlement is complete and timelines for approving or denying a development proposal that is deemed complete.

Once a development proposal is approved by the local agency, the developer is still required to submit a range of nondiscretionary permits to the local agency for approval in order to actually complete the work to construct the building. These approval processes outside of the PSA can and have created confusion for developers, and in some cases, abused to limit housing development. Some jurisdictions have taken bolder action to prohibit housing altogether.

Surplus Land Act Background

Under the state Surplus Land Act, if publicly owned land is no longer needed or is not being held for exchange, a local agency must follow certain procedures prior to disposal of this "surplus" land. Prior to disposing of surplus land, local agencies must make a written offer to sell or lease surplus land for the purpose of developing low- or moderate-income housing (*i.e.,* affordable housing gets right of first refusal on surplus land) to "housing sponsors" upon written request, as well as any local public entity within the jurisdiction where the surplus land is located. In 2019, the Legislature substantially revised the Act to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the Act's requirements.

Entitlement Reforms and Surplus Land Act Bills:

- AB 1486 *(Ting, Chapter 664, Statutes of 2019).* Imposes additional requirements on the process that public agencies must use when disposing of surplus property. Expands the scope of local agencies subject to the Surplus Land Act, revises the definitions of "surplus land" and "exempt surplus land," revises the noticing requirements relative to local agencies, housing sponsors and HCD, and adds penalties for local agencies that sell land in violation of the Act.

- AB 1255 *(Robert Rivas, Chapter 661, Statutes of 2019).* Requires cities and counties to inventory and report surplus and excess local public land to include in a statewide inventory.

- SB 330 *(Skinner, Chapter 654, Statutes of 2019).* Establishes the Housing Crisis Act of 2019, which, until January 1, 2025: 1) prohibits specified cities and counties enacting specific development policies, standards, or conditions that limit housing, such as downzoning and housing moratoria, as specified; and 2) makes changes to local approval processes to provide transparency to and speed up the process of housing development approvals. SB 8 *(Skinner, Chapter 161, Statutes of 2021)* extended these provisions to January 1, 2030.

- SB 8 *(Skinner, Chapter 161, Statutes of 2021).* Extends the sunset on the Housing Crisis Act of 2019 (HCA) by five years, to January 1, 2030, and makes other related changes. This bill was included in the Senate's 2021 Housing Production Package.

- SB 791 *(Cortese, Chapter 366, Statutes of 2021).* Creates the Surplus Land Unit within HCD to facilitate the development and construction of housing on local surplus property. This bill was included in the Senate's 2021 Housing Production Package.

- AB 2097 *(Friedman, Chapter 459, Statutes of 2022).* Prohibits public agencies from imposing or enforcing parking minimums on developments within one-half mile of a major transit stop, as specified.

- AB 2234 *(Robert Rivas, Chapter 651, Statutes of 2022).* Establishes time limits for approval and requires online permitting of post-entitlement permits.

VI. Accessory Dwelling Units (ADUs)

ADUs, also known as mother-in-law units or granny flats, are additional living spaces that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to, or detached from, the primary residence. Local ADU ordinances must meet specified parameters outlined in state law. Local governments may also adopt ordinances for JADUs. A JADU is a unit of up to 500 square feet within a single-family home with an entrance into the JADU from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink and a stove, but is not required to have a bathroom. ADUs and JADUs are permitted in any zone that allows single-family or multifamily housing.

According to a 2011 UC Berkeley study, Yes in My Backyard: Mobilizing the Market for Secondary Units, second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. The study found that despite state law requirements for each city in the state to have a ministerial (non-discretionary) process for approving second units, local regulations often impeded development. To address these concerns, several bills, particularly SB 1069 (Wieckowski, Chapter 720, Statutes of 2016), SB 13 (Wieckowski, Chapter 653, Statutes of 2019), and AB 68 (Ting, Chapter 655, Statutes of 2019) have relaxed multiple requirements for the construction and permitting of ADUs and JADUs.

ADU Bills:

- AB 2299 *(Bloom, Chapter 735, Statutes of 2016).* Requires, rather than permits, a local government to adopt an ordinance for the creation of ADUs in single-family and multifamily residential zones.

- AB 2406 (*Thurmond, Chapter 755, Statutes of 2016*). Allows a local agency to create an ordinance for JADUs in single-family residential zones.

- SB 1069 *(Wieckowski, Chapter 710, Statutes of 2016).* Requires an ordinance for the creation of ADUs to include specified provisions regarding areas where ADUs may be located, standards, and lot density. Additionally, revises requirements for the approval or disapproval of an ADU application when a local agency has not adopted an ordinance.

- AB 494 (*Bloom, Chapter 602, Statutes of 2017*). Makes several clarifying changes to ADU law.

- SB 1226 (*Bates, Chapter 1010, Statutes of 2018*). This bill requires HCD to propose the adoption of a building standard to authorize a local enforcement official to determine the date of construction of a residential unit, apply the building standards in effect of that date of construction, and issue a retroactive building permit when a record of the issuance of a building permit for the construction of an existing residential unit does not exist. Intended to facilitate permitting of ADUs.

- AB 68 (*Ting, Chapter 655, Statutes of 2019*). Makes a number of changes to existing law governing ADUs, including, among other things: requiring ministerial approval of multiple ADUs or JADUs on a lot, or both, as specified; requiring a 30-day minimum on ADU rentals; revising allowable setback requirements; and reducing the approval period for ADUs from 120 days to 60 days.

- AB 587 (*Friedman, Chapter 657, Statutes of 2019*). Allows for an ADU to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

- AB 670 (*Friedman, Chapter 178, Statutes of 2019*). Prohibits CIDs from banning construction of an ADU or JADU but allows homeowners associations (HOA) to impose reasonable restrictions on construction of ADUs or JADUs, as specified.

- AB 671 (*Friedman, Chapter 658, Statutes of 2019*). Requires local governments' housing elements to include plans to encourage affordable ADU rentals and requires HCD to develop a list of state grants and financial incentives for affordable ADUs, as specified.

- AB 881 (*Bloom, Chapter 659, Statutes of 2019*). Makes a number of changes to existing law governing ADUs, including, among other things: prohibiting local governments from imposing parking standards within ½ mile walking distance of a transit stop, as specified, and prohibiting owner occupancy requirements on the ADU or the primary dwelling.

- SB 13 (*Wieckowski, Chapter 653, Statutes of 2019*). Makes a number of changes to law governing ADUs, including, among other things: limiting impact fees for ADUs, as specified; providing a five-year amnesty period for owners to correct building code violations on existing ADUs; reducing the approval period for ADUs from 120 days to 60 days; requiring local governments to allow ADUs of at least 850 square feet (1,000 square feet if more than one bedroom); and prohibiting owner occupancy requirements on either the ADU or the primary dwelling.

- AB 345 (*Quirk-Silva, Chapter 343, Statutes of 2021*). Requires, rather than authorizes, cities and counties to allow a qualified nonprofit corporation to sell an ADU separately from the primary dwelling unit on the property, and revises the conditions for a tenancy in common agreement entered into pursuant to such a sale. (This bill was a clean-up measure to AB 587, Friedman, Chapter 657, Statutes of 2019.)

- AB 2221 (*Quirk-Silva, Chapter 650, Statutes of 2022*). Clarifies and expands requirements for approval of ADUs and JADUs, including adding front setbacks to the list of local development standards that local governments cannot impose and clarifies a permitting agency includes utilities and special districts.

- SB 897 (*Wieckowski, Chapter 664, Statutes of 2022*). Increases the allowable ADU height limit that a local agency may impose depending on specified property features (*i.e.*, access to high quality transit, attached to primary dwelling, or on a multifamily property) and establishes streamlining measures for the development of ADUs (*e.g.*, standards must be objective, permitting agencies must act by approval or denial, etc.).

VII. FACILITATING MORE MISSING MIDDLE HOUSING OPTIONS

In California, most of the land suitable for housing has already been developed. The remaining developable areas are typically far from job centers, in high-risk wildfire areas, and/or land that is environmentally sensitive or important for agriculture. Therefore, addressing the housing crisis in an environmentally responsible way will require an increase in density in already developed areas. Increasing density can occur in multiple ways. In recent decades, this has often meant high-density housing near major transit stops. However, such housing is both expensive to build, and limited in geographic scope. Recently, there has been a national trend to allow for more "gentle density," by encouraging the expansion of "missing middle" housing—a term used to describe buildings that range in size and density from ADUs to small-scale apartment buildings of ten to twenty units. In recent years, the Legislature has taken a more active role in facilitating such gentle density.

There are several reasons to expand the supply of missing middle housing. The first is to loosen the "stranglehold" of single-family zoning and the ways in which zoning has been used for exclusionary purposes. Second, the creation of missing middle housing can have a positive impact on the availability of more affordable "starter homes" that allow new buyers to enter otherwise competitive housing markets. Finally, creating more missing middle housing in existing neighborhoods also generates environmental benefits. The U.S. Environmental Protection Agency (EPA) found that residents in multifamily and single-family attached homes in higher-density neighborhoods use about 40% less electricity and 50% less water than residents in low-density areas. The construction of new homes in existing neighborhoods can also result in residents living in places that are more walkable and result in lower vehicle miles traveled (VMT). The increase in density encourages transit agencies to provide more frequent service and contributes to more residents using public transportation and relying less on private vehicle usage, which accounts for 38 percent of California's greenhouse gas emissions.

Missing Middle Housing Bills:

- SB 9 (*Atkins, Chapter 162, Statutes of 2021*). Requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex) or the subdivision of a parcel zoned for residential use into two parcels (lot split), or both. This bill was included in the Senate's 2021 Housing Production Package.

- SB 10 *(Wiener, Chapter 163, Statutes of 2021).* Authorizes a city or county to pass an ordinance to zone any parcel for up to 10 units of residential density, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area or an urban infill site, as specified. This bill was included in the Senate's 2021 Housing Production Package.

- SB 478 *(Wiener, Chapter 363, Statutes of 2021).* Prohibits a local government from imposing certain floor area ratio (FAR) standards on housing projects of three to ten units. This bill was included in the Senate's 2021 Housing Production Package.

VIII. REDUCING BARRIERS TO HOUSING ACCESS

As noted previously, the legislatures has taken deliberate action to explicitly address, combat, and relieve disparities resulting from past patterns of segregation to foster more inclusive communities. This effort encompasses initiatives requiring every public agency to commit to affirmatively furthering fair housing (AFFH) policies, expanding affordable housing funding eligibility to Tribes, and ensuring all Californians have equal access to housing opportunities. Taken together, these programs represent a coordinated effort to address housing inequity.

Reducing Barriers to Housing Access Bills:

- AB 571 (*Eduardo Garcia, Chapter 372, Statutes of 2017*). Makes changes to the farmworker housing tax credit set-aside within the Low Income Housing Tax Credit (LIHTC) program. This bill also makes changes to the Office of Migrant Services under HCD.

- AB 1521 (*Bloom, Chapter 377, Statutes of 2017*). Strengthens the law regarding the preservation of assisted housing developments by requiring an owner of an assisted housing development to accept a bona fide offer to purchase from a qualified purchaser, if specified requirements are met, and by giving HCD additional enforcement authority.

- AB 686 (*Santiago, Chapter 958, Statues of 2018*). Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing.

- AB 1010 (*Eduardo Garcia, Chapter 660, Statutes of 2019*). Makes the governing body of Indian reservations and Rancherias eligible to receive funding from various state affordable housing programs.

- AB 491 (*Ward, Chapter 345, Statutes of 2021*). Requires that low-income occupants of a mixed income development have the same access to common entrances and to common areas and amenities as the occupants of market rate housing units.

- AB 721 (*Bloom, Chapter 349, Statutes of 2021*). Provides that covenants, restrictions, or private limits on the density of a property shall not be enforceable against a property owner who is developing a 100% affordable project, as specified. Similar to racial covenants, which are no longer valid, restrictive density covenants restrict the number or size of residences that may be built on a property, or restrict the number of persons who may reside on a property.

- SCA 2 (*Allen, Chapter 182, Statutes of 2022*). Repeals Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded affordable housing project.