SHUTE, MIHALY & WEINBERGER LLP

SUMMARY OF KEY HOUSING BILLS

2020 LEGISLATIVE SESSION

Density Bonus Law Changes (AB 2345)

AB 2345, effective January 1, 2021, makes several changes to the State Density Bonus Law. In general, this law provides incentives to private residential developers to include affordable units in their projects. AB 2345 enhanced several existing incentives and made it easier for developers to obtain them.

First, AB 2345 reduced the percentage of units that must be devoted to low income units for the developer to receive two or three concessions. Previously, projects needed to devote 20% of the base units to low income households to receive two concessions, and 30% to receive three concessions. Under the amended law, projects need to devote only 17% of the base units to low income households to receive two concessions, and only 24% to receive three concessions.

Second, AB 2345 increases the maximum density bonus available from 35% to 50%. A "density bonus" is an increase in density (e.g., number of units per acre) over what is otherwise allowed in a city or county's code. Under this change, if a project provides 15% very low income units, 24% low income units, or 44% moderate income units in a common interest development, the project may receive a density bonus of up to 50% above the otherwise maximum allowable density.

Third, AB 2345 further relaxes parking standards applicable to density bonus projects. If a project provides at least 20% low income or 11% very low income housing and is within half a mile of a major transit stop, a city may not require the developer to provide more than 0.5 parking spaces per unit. Further, a city may not impose any parking requirement if the project is only rental units dedicated to low income households if within half a mile of major transit stop or if it is a senior housing development with paratransit or half a mile from access to fixed bus route.

Finally, if a city already has an ordinance or housing program that allows for density bonuses greater than what are provided in the pre-AB 2345 version of state density bonus law (i.e., the version in effect in 2020), that city is exempt from complying with the incentive and concession calculation amendments, and the amendments made to the density tables.

SB 35 Changes (AB 831 & AB 168)

These two bills make several changes to the streamlined ministerial approval process outlined in Government Code section 65913.4, commonly known as SB 35. SB 35 allows eligible housing development applications to qualify for ministerial, streamlined approval. Eligible projects must devote a certain percentage of their units to low-income housing, with the percentage required dependent on a city's progress toward its regional housing needs allocation ("RHNA"). If a project qualifies, a city must process the application on a strict timeline without any CEQA review and may only apply objective standards to the project. The changes became effective immediately upon adoption in September 2020.

First, a new subdivision in the law requires applicants to submit a notice of intent[1] to apply for an SB35 project. The notice triggers a scoping consultation with any California Native tribe that is traditionally and culturally affiliated with the geographic area. The new law lays out specific timelines and standards for the scoping consultation regarding who participates and how confidentiality is maintained. A project will not be eligible for streamlining under SB 35 if:

- There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.
- There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment.
- The parties to a scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

If a project is ineligible for streamlining, the city must provide the applicant with information on the City's other development application processes available (i.e., a conditional use permit or other discretionary permit). A project may be eligible for streamlining, and the applicant may submit its SB 35 application, if there is no tribal cultural resource present or if the parties to the scoping consultation reach an enforceable agreement described in the second bullet point above and that agreement is included in the requirements and conditions for the proposed development.

Another new subdivision in the law codifies how a development proponent can request a modification to a project, and allows a city 60 or 90 days, depending on the size of the project, to approve or deny the request. It also lists when a local government may

[1] This notice takes the form of an SB 330 preliminary application detailed a Government Code section 65941.1.

apply new objective standards to a modification and when a local government may only apply the standards in effect at the time the original application was submitted.

Finally, the changes address public improvements necessary to implement SB 35 projects when that public improvement is on land owned by the local government. Specifically, if the public improvement is subject to approval by the local government, the local government cannot "exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development."

Housing Entitlement Extension Bill (AB 1561)

AB 1561 does three things: extends time for Native American Tribes to request consultation on housing developments under the AB 52 provisions; modifies Housing Element Law requirements for analyzing governmental constraints; and extends housing entitlements.

First, AB 1561 amends Government Code section 65583 to extend by 30 days the time for Native American Tribes to request consultation for housing development projects where the application was deemed complete between March 4, 2020 and December 31, 2021. Native American Tribes now have 60 days to request consultation.

Second, beginning on January 1, 2024 and contingent on appropriation by the Legislature, the Department of Housing and Community Development may include analysis of constraints upon the maintenance, improvement, or development of housing for persons with a characteristic identified in the Unruh Civil Rights Act. These protected characteristics include: sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.

Finally, AB 1561 extends housing development project entitlements. A housing development project includes tentative maps, residential development, and mixed use development with two-thirds square footage for residential use. Housing entitlements that were issued before March 4, 2020 (and were in effect on that date) and will expire before December 31, 2021 are extended by 18 months, notwithstanding any local regulation to the contrary. "Housing entitlement" is defined broadly in the law and includes nearly all discretionary or ministerial approvals or permits needed for a housing development project. However, the extension does not apply to a development agreement, a tentative map that has already been extended by 18 months or more after March 4, 2020, an SB 330 preliminary application, or an SB 35 application or subsequent SB 35 permit. Cities may still grant an extra extension but are not required to do so. And if the local agency extends, on or after March 4, 2020, but before January 1, 2021, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and according to the same conditions provided in AB 1561, that housing

entitlement is not extended for an additional 18 months by operation of the state's extension.

Housing Element Requirements for Moderate-Income Housing (AB 725)

AB 725 amends Government Code section 65583.2 which deals with a city's identification of housing sites suitable for residential development sufficient to provide the jurisdiction's RHNA. The modifications become effective January 1, 2022 and do not apply to housing element revisions due on or before January 1, 2021. Specifically, "metropolitan jurisdictions" must identify at least 25% of moderate-income housing under RHNA on sites with zoning that allows at least 4 units but not more than 100 units per acre and at least 25% of above-moderate income housing on sites with zoning that allows at least 4 units per acre. These rules do not justify denying a project on other sites, or imposing price controls. ADUs are not included for purposes of the density calculation.

Housing in Religious Institution Parking Lots (AB 1851)

At its most basic level, AB 1851 reduces parking requirements to make it easier to develop housing projects in religious institution parking lots. It adds a section 65913.6 to the Government Code to lay out the requirements. A qualifying housing project must be located on a religious institution's parking lot, and must qualify for a density bonus (so it should have at least some affordable or senior housing). The new law generally prohibits local agencies from denying a housing development project in the parking lot of a religious institution on the basis that the project will reduce the number of available parking spaces, provided that the total reduction does not exceed 50 percent. Additionally, it requires local governments to count remaining church parking spaces toward housing project parking. Regardless of these new rules, a city may still require a housing project to have at least one space per unit except if the parcel is within half a mile of a high quality transit corridor or major transit stop, or there is a car share vehicle located within one block of the parcel.

COVID-19 Tenant Relief Act of 2020 (CTRA) (AB 3088)

CTRA, effective September 1, 2020, prohibits a landlord from evicting a resident for non-payment of rent or other charges due between March 1, 2020 and August 31, 2020 if the resident provides the landlord with a declaration stating their finances have been negatively affected by the COVID-19 pandemic. It also prohibits a landlord from evicting a resident for non-payment of rent or other charges due between September 1, 2020 and January 31, 2021 if the resident does both of the following: (1) provides the landlord with a declaration stating their finances have been negatively affected by the COVID-19 pandemic; and, (2) by January 31, 2021, pays 25 percent of the rental

payments due between September 1, 2020 and January 31, 2021. It also enacts certain process related protections.

Recognizing that many local jurisdictions adopted their own eviction moratoria, CTRA allows local eviction moratoria that are set to expire before January 31, 2021 to remain in place until the end of their term but does not allow them to be extended or renewed with an effective date prior to February 1, 2021. If a local eviction moratorium provides for repayment of back due rent to begin after March 1, 2021, or ties repayment to the end of the state of emergency or local emergency, that repayment period is required to start on or before March 1, 2021 and end by March 31, 2022, and repayment periods that are set to begin prior to March 1, 2021 cannot be extended.

Foreclosure Sales (SB 1079)

Prior to SB 1079, an auction of property at a foreclosure sale set the final price of the property and provided marketable title to the buyer of the property or the lender if the property reverted back at time of sale. SB 1079 creates a right of first refusal for 45 days after a foreclosure sale, where certain eligible bidders can purchase the property from the winner of the foreclosure auction by offering to purchase for any amount greater than the final price at auction. Eligible bidders include local governments. The bill also prohibits sellers from bundling homes together and selling them to a single buyer. The provisions apply to all residential properties with one to four housing units beginning on January 1, 2021 and will sunset in five years.

SB 1079 would also provide local governments with the authority to fine corporations or other owners that leave these auctioned homes blighted, rather than maintaining, refurbishing, renting, or selling them. Cities can levy fines of up to $2,000 per day on blighted properties (and up to $5,000/day after the first 30 days). Local governments can impose fines directly pursuant to this section but must give notice to the owner and allow the owner at least 14 business days to start to remedy the violation, and then at least an additional 16 business days to complete the remedy. These periods can be reduced if there is a threat to public health or safety.

Accessory Dwelling Units (AB 3182)

AB 3182 amends the ADU law, Government Code section 65852.2, to add "deemed approved" language: if the local agency has not acted on a complete application for an ADU or Junior ADU within 60 days, the application will be deemed approved. Also, starting in 2025, local governments may impose owner occupancy requirements for either primary or accessory dwelling units.

Teacher Housing (AB 3308)

Current law allows a school district to establish and maintain programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing and requires a program established by the act to be restricted to teachers and school district employees. The new law, effective January 1, 2021, specifies that the state policy created by the act includes permitting school districts to restrict occupancy on land owned by school districts to teachers and school district employees, including permitting school districts and developers in receipt of tax credits designated for affordable rental housing to retain the right to prioritize and restrict occupancy on land owned by school districts to teachers and school district employees. It also specifies that a school district may allow local public employees or other members of the public to occupy housing created through the act, and would provide that the school district retains the right to prioritize school district employees over local public employees or other members of the public to occupy housing.

Omnibus Bill (SB 1030)

SB 1030 provides minor technical fixes to existing housing legislation and takes effect immediately. For example, the bill would revise the definition of "deemed complete" under the Housing Accountability Act to include the submission of a completed application if the applicant has not submitted a preliminary application.