CFEE

CALIFORNIA FOUNDATION
ON THE ENVIRONMENT
AND THE ECONOMY

CFEE Conference on Housing
To Build or Not to Build... Does it Pencil Out?

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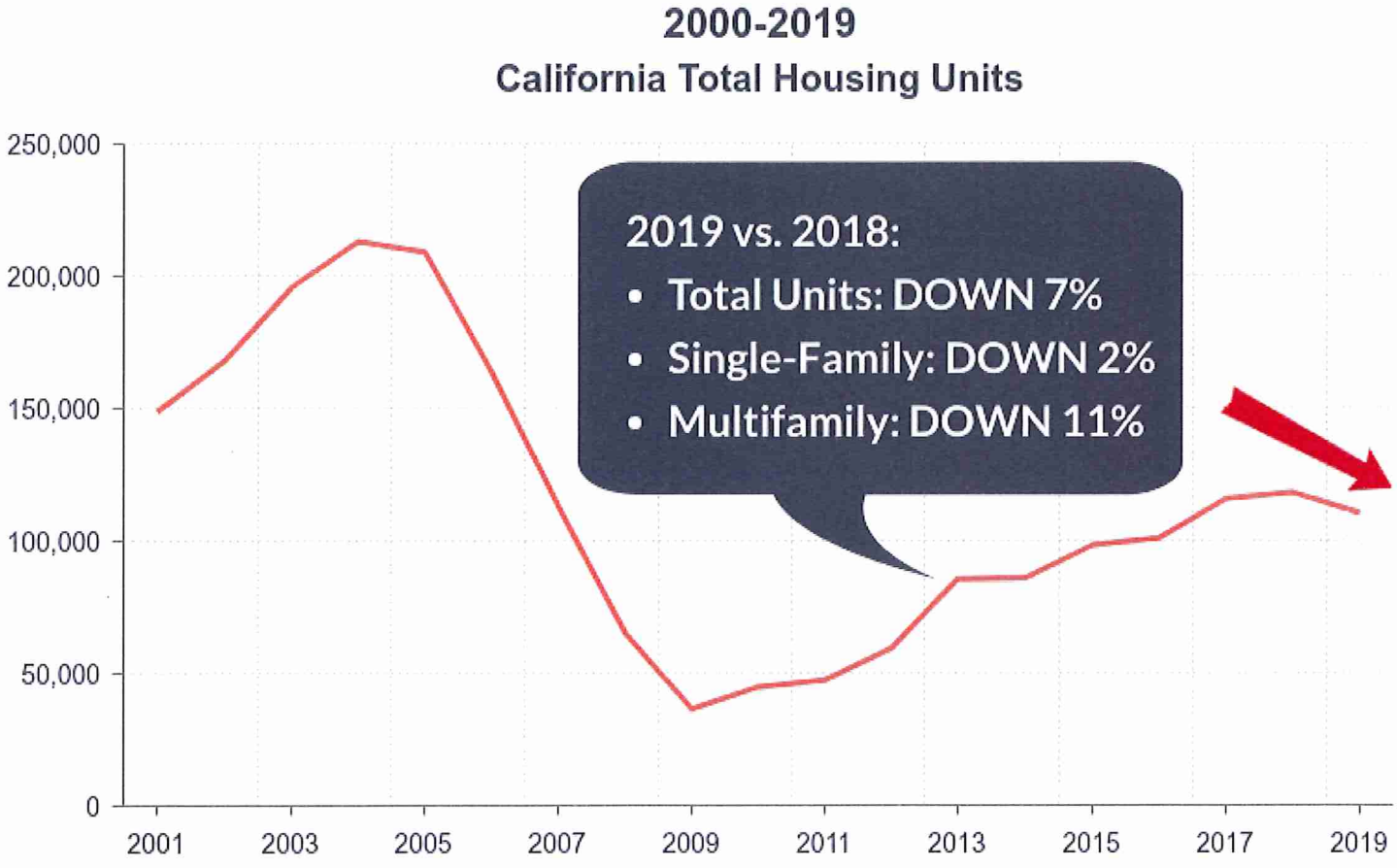
CIRB
CONSTRUCTION INDUSTRY RESEARCH BOARD

COMPLIMENTS OF CBIA

Data Provided by the CIRB Report

CBIA

CALIFORNIA HOUSING SHORTAGE IS OFFICIAL!



PERMIT STATISTICS TELL ALL

2019 vs. 2018

California issued 110,218 total housing units, a 7% annual decrease from 117,892 units in 2018.

History repeating?

2019 is the first year since 2009 that total housing units have decreased compared to the prior year.

CIRB REPORT
(Construction Industry Research Board)

1963

The Building Boom. California issued 322,018 total housing units, which is the highest annual amount permitted to date.

2009

The "Great Recession" hit California with only 36,421 total housing units issued—the lowest number in recorded history.

2019

The "Year of Housing"? Not so much. Total units are down 7% from 2018, marking the first annual decrease in 10 years!

WHAT WILL 2020 BRING?

2020 ?

California needs housing ASAP! It's time to build our way out of this shortage!

CIRB maintains a 99.4% annual data compliance rate of permits issued by California building departments. Reports include data for residential, commercial and energy efficiency permits.

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UNLOCKING HOUSING GRIDLOCK

Barriers on the Road to 3.5 Million New Homes by 2025

3.5 MILLION NEW HOMES BY 2025

COSTS OF BUILDING A CALIFORNIA HOME

Political gridlock

Energy efficiency mandates

Inclusionary zoning mandates

Impact fees on new housing

CEQA excesses, like VMT rules

Restrictive local zoning and long delays

Planning law (RHNA) not working

Low supply = higher prices

2019 = only 100,000 permits

Roadblocks Ahead

Californians Are Tired of Waiting

The high cost of housing is the **#1 reason** Californians move away

55% of Californians are considering leaving the state

43% of voters who rent cite housing cost as their top issue

California has U.S.'s top three metro areas with **longest commute times** (3+ hours)

The median home price is **double the national average**

17% of homeowners and **30%** of renters pay over half their household income for housing

Homeownership rates at the **lowest since the 1940s**

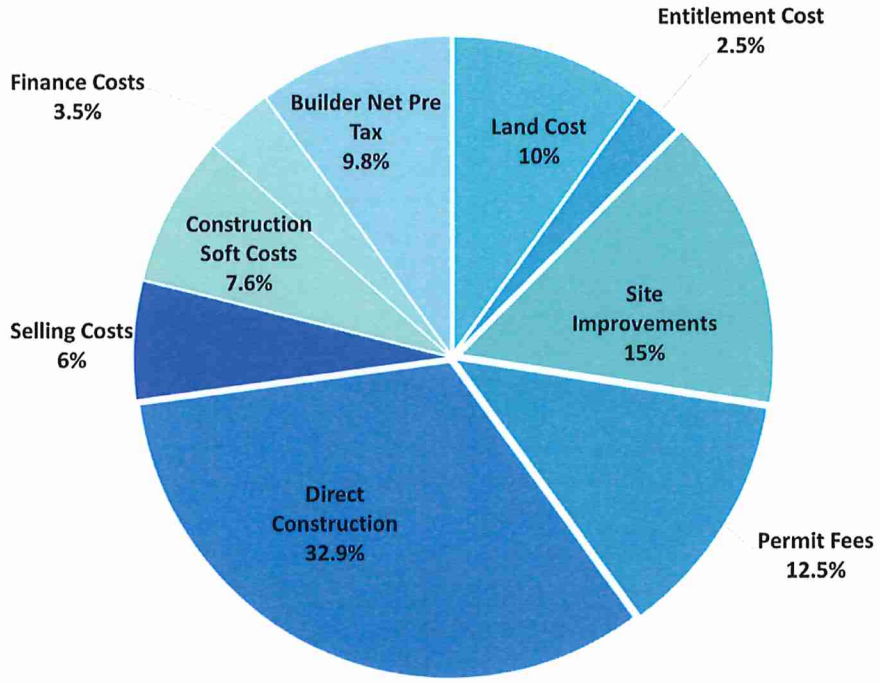
THE HIGH COST OF HOUSING IS MAKING CALIFORNIANS POOR.

FACTORS INFLUENCING HOMEBUILDING

- Acquisition/market analysis
- Financing/time of development
- CEQA (mitigation, litigation and the cost of money)
- Entitlements (local and jurisdictional)
- Development impact fees/school fees
- Inclusionary zoning
- Insurance
- Infrastructure (roads, utilities, schools, parks, public art, etc.)
- Unit construction (cost vs density)
- Materials (tariffs and other uncontrollable variable supply constraints)
- Labor (prevailing wage/project labor agreements)
- Closing cost/realtor/homeowners insurance/homeowner finance costs
- Liability/warranty/defect claims

REALITIES OF HOUSING DEVELOPMENT MATH FOR SALE MARKET RATE HOMES

Standard assumption; no demo, no environmental remediation, typical offsite improvements, standard wages, standard financing



Development: Infill Mixed Density Development
Example: Infill Project in Livermore
Mixed Density Infill Development - 475 Attached Townhomes

	Per Home	% of Rev
Revenue[1]	**800,000**	**100.0%**
Land Cost	80,000	10.0%
Entitlement Cost[2]	20,000	2.5%
Site Improvements[3]	120,000	15.0%
Permit Fees[4]	100,000	12.5%
Direct Construction[5]	263,000	32.9%
Construction Soft Costs[6]	61,000	7.6%
Selling Costs[7]	48,000	6.0%
Finance Costs[8]	28,000	3.5%
Total Costs	**720,000**	**90.0%**
Builder Net Pre Tax	**80,000**	**10.0%**
After Tax Net	**40,000**	**5.0%**

Footnotes:

1. Revenue: Base Price, Options, Lot and Elevation Premiums
2. Entitlement Costs: CEQA, Mapping Fees, Mitigation Fees
3. Site Improvement: CEQA, Grading, Wet Utilities, Dry Utilities, Paving, Parks, Common Area Landscape, Off Site Work
4. Permit Fees: Building Permits, Park Fees, Traffic Fees, Water/Sewer Fees, School Fees
5. Direct Construction: CEQA, Foundation, Frame, Insulation, Windows, Drywall, Electrical, Mechanical, Plumbing, Cabinets, Counters, Flooring, Siding, Painting, Flatwork, Fencing, Title 24, Options
6. Construction Soft Costs: Warranty, Site Plans, Architecture, Overhead, Legal, Bonds, Insurance, Property Tax, Utility Contracts, Field Reports (Soil, Enviro, Traffic), Field Overhead, Management Fee
7. Selling Costs: Internal Commissions, External Commissions, Closing Costs, Model Costs, Marketing
8. Finance Costs: Debt: CEQA Delay Impact, Interest, Loan Fee, Appraisal, Inspections; Equity: Required Rate of Return, Placement Fee

Alternate example of impacts; 20% inclusionary requirements, average cost for market rate housing unit

(-$100,000
20,000) (5%)

Result ☹ project doesn't pencil, and no housing gets built

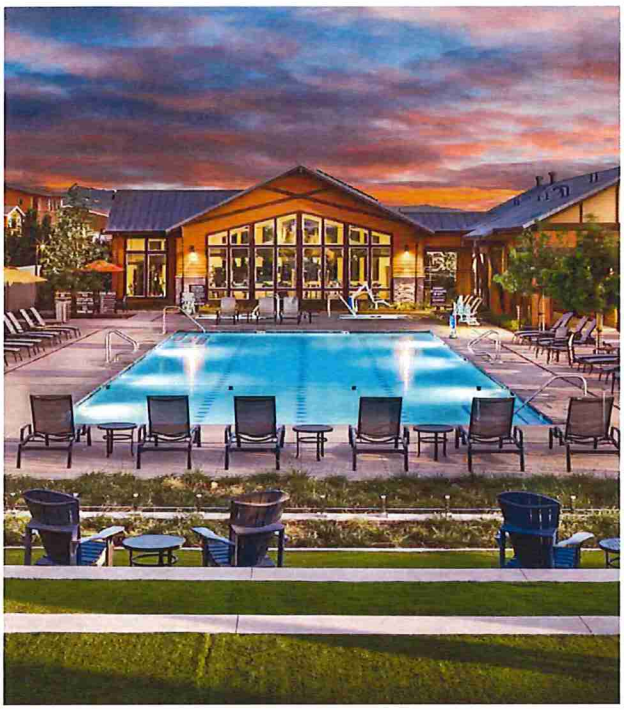
EXAMPLE: INFILL MIXED DENSITY

INFILL PROJECT | LIVERMORE, CA | PROJECT TYPE: INFILL MIXED DENSITY ATTACHED | 475 UNITS - 4 PRODUCT LINES

- Acquisition/market analysis
- Financing/time of development
- CEQA (mitigation, litigation and the cost of money)
- Entitlements (local and jurisdictional)
- Development impact fees/school fees
- Inclusionary zoning
- Insurance
- Infrastructure (roads, utilities, schools, parks, public art, etc.)
- Unit construction (cost vs density)
- Materials (tariffs and other uncontrollable variable supply constraints)
- Labor (prevailing wage/project labor agreements)
- Closing cost/realtor/homeowners insurance/homeowner finance costs
- Liability/warranty/defect claims

INFILL PROJECT | LIVERMORE, CA

PROJECT TYPE: Mixed Density Attached | 2-3 Story Towns
NUMBER OF UNITS: 475 Units in Four Product Offerings
SIZE OF HOMES: 1,254-2,256 sq.ft.



This small master planned community is in Livermore, California. The project consists of four distinct home designs of different densities that cover the 39 acre site. The community includes a large clubhouse entertaining facility with a full kitchen and dining area, a pool and spa with cabanas, a separate fitness building loaded with exercise equipment and TVs and an outdoor yoga lawn. Also spread throughout the community are other park areas with bocce ball courts, a community garden, a rose garden and public art, all along the trail system with fitness stations. Across the street is a large neighborhood park with soccer field, basketball courts, playground and dog park.

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Making California a Better Place for Homebuilding
Talking Points on Key Policy Issues for CFEE Presentation

First and Foremost: Do No Harm – Housing Killers vs Housing Creators

No more mandates
No more regulations (Waters of the State, Stormwater General Permit)
No more complexity
No more OPR mandates and complexity (Vehicle Miles Traveled)
No prevailing wage for residential construction and no inclusionary zoning
You cannot reduce the cost of homebuilding by adding more costs
Legislation in 2019, unless defeated/ amended would have added over $500,000+/home

Recognize that Delay Adds Cost and Risk to Homebuilding

CEQA process can delay all large projects at least a decade
CEQA is stopping or delaying many GHG friendly infill projects
Local government entitlement process adds delay and costs
Excessive and cumbersome water regulations add delay and cost
Species and other environmental review processes add delay and cost
CARB GHG efforts add delay and cost to the process

Local Development Fees Add Cost and Delay to Homebuilding

More than 500 fees in 560 jurisdictions (Cities/Counties/Towns) Fees have no real transparent and understandable nexus to actual cost
Fees punish new homebuyers with a disproportionate share of cost burden
School fees should be lower with school bond monies being available

Litigation Policy Adds Costs and Uncertainty

Nearly 100% of new homes built are subject to "defect" litigation
Very hard to build condominiums and entry level housing due to litigation
Defect claims are made when no defects are found

Hold Local Governments Accountable and Require Transparency

Incentivize local governments to build more homes and meet RHNA numbers
"Punish" and shame local governments who refuse to address housing needs
Support Redevelopment Agency 2.0 – we lost $5 Billion in new housing post-RDA

Collaborate Better With all Governments -- (Local, State and Federal)

Locals require one approach, State disagrees and rewrites the approach, Federal government disagrees and requires another approach – and then we start the process all over again – maddening

Conclusion

Governor Newsom's goal is 425,000 homes/year. We pulled 116,000 permits in 2018 and 110,000 in 2019. If we are going to meet the Governor's goal, we need to:

- Bring all parties in government together
- Hold each other accountable
- Directly engage when roadblocks persist

10 EASY LEGISLATIVE RECOMMENDATIONS TO HELP SPEED UP HOUSING DELIVERY IN CALIFORNIA

1. Enforce Issuance of Certificates of Occupancy as Required by the CBC

(Issue from: Manteca, Pleasant Hill)

Background:
Numerous jurisdictions are ill-educated about the issuance of Certificates of Occupancy. Once a building permit is issued, issuance of the Certificate of Occupancy is a ministerial act and, if the building inspector finds that all building codes have been met, the Certificate of Occupancy should be issued immediately.

Issue:
Some jurisdictions have no-growth staff members that will do everything possible to slow the issuance of Certificates of Occupancy. To that end, the staff members will use other project "requirements" (either found in a Subdivision Improvement Agreement or the project Conditions of Approval) as a basis to deny issuance of a Certificate of Occupancy. This is not legal, but there is no quick and easy way to force a jurisdiction to issue the Certificates of Occupancy.

Rule:
Section 111 of the California Building Code (CBC) defines when a Certificate of Occupancy (CO) is required and the circumstances for issuance. Section 111.2 of the CBC establishes that a jurisdiction's Building Official — and only the Building Official — is responsible for determining when and under what circumstances to issue a CO. In particular, "[a]fter the building official inspects the building or structure and finds no violations of [the California Building Code] or other laws that are enforced by the department of building safety, the building official **shall** issue a certificate of occupancy..." (Emphasis added.)

Analysis:
Although the law is clear, there is no penalty for a jurisdiction that fails to issue Certificates of Occupancy, and filing a claim is both expensive and time consuming. (It also angers a local jurisdiction, in which the builder must continue to build, and when we make these types of challenges we often find ourselves subject to retaliation, such as extra "surprise" inspections.) If builders had even some small bit of leverage over a jurisdiction, it would help to bring a jurisdiction to the table to discuss immediate issuance of COs. We have had to hire counsel and fight for more than 60 days in some jurisdictions to get COs issued, simply because we have had no time-sensitive remedy to force the jurisdiction to act, and there was no penalty for delay.

Potential Solution:
Add a provision to the CBC that gives builders a simple remedy. If a Building Official fails to issue a Certificate of Occupancy within 24 hours after finding that a home has been built in compliance with all building codes, after a brief notice and opportunity to cure period (of no more than 2 days), the builder may file suit against the jurisdiction. In any such suit, a builder shall recover $5,000 per home in attorneys' fees and costs because of the Building Official's failure to timely issue the Certificate of Occupancy.

Conclusion:
This is a low cost way to be sure that jurisdictions follow existing law in getting already-approved and fully-constructed units to market.

2. Enforce Partial Release of Subdivision Bonds as Required by the Map Act *(Issue from: Pleasanton, Dixon)*

Background:
A subdivision bond is a performance bond that guarantees to a local jurisdiction that a builder will make community improvements within a subdivision (such as streets, sidewalks, drainage facilities, etc.) throughout the course of project construction. This type of guarantee is designed to give local jurisdictions a source of funding to complete a project's community improvements in the event that a builder is not able to do so. It is often used to secure performance of a "Subdivision Improvement Agreement" – a document that sets forth the time and scope of the improvements that a builder must construct in addition to the homes within the project. A Subdivision Improvement Agreement typically contemplates building of the community improvements at the same time as the builder constructs the homes. This means that the bond secures the builder's promise to complete roads, sidewalks, parks, and other community improvements, but doesn't require that all of these improvements get built before the first building permit for a home is issued by the jurisdiction. It also allows for phased construction – for example, the community improvements and homes in Phase 1 of a project can be completed before the community improvements and homes in Phase 2 of a project commence. This makes a project financeable and this combination of agreements – the Subdivision Improvement Agreement secured by a subdivision bond – is often necessary in order to make a project "pencil."

Issue:
Jurisdictions like having bonds that greatly exceed the value of the work that remains to be completed, because jurisdictions like having additional security for community improvements. As a result, most jurisdictions do not want to invest the time necessary to engage in the Map Act process to reduce the bonds, and resist any effort to have a subdivision bond partially released. Builders want to have bonds partially released as soon as possible, because a partial release reduces the cost of the bond, and increases a builder's bonding capacity.

Rule:
The Subdivision Map Act allows a builder to ask for a one-time bond reduction, under Government Code section 66499.7. Section 66499.7 explicitly requires a jurisdiction to respond to a builder's request for a bond reduction within 45 days. The jurisdiction may respond by providing a punch list of work that remains to be completed; thereafter, pursuant to Section 66499.7(c), the builder must provide a cost estimate for the punch list work; upon receipt of that cost estimate, the jurisdiction has 45 days to review and comment on the cost estimate. Once the cost estimate is approved, "the local agency **shall release all performance security** except for security in an amount up to 200 percent of the cost estimate for the remaining work." (Cal. Gov. Code, §66499.7(d); emph. added.)

Analysis:
Jurisdictions seemingly have no vested interest in reducing a builder's bond because they do not see any benefit in having less security for completion of community improvements. But these bond reductions can help a builder by significantly reducing building costs, and by creating additional bonding capacity. Although the law is clear that a jurisdiction must engage in the process if requested to do so by a builder, short of filing a costly lawsuit that can take years to resolve, there is no penalty for a jurisdiction that fails to comply with the Subdivision Map Act. If builders had even some small bit of leverage over a jurisdiction, it would help to bring a jurisdiction to the table to discuss a partial release. We have had to wait more than 180 days to get a partial release in some jurisdictions, simply because we had no expedient remedy to force the jurisdiction to act, and there was no real penalty for delay.

Potential Solution:
Add a provision to the Government Code (Map Act) that gives builders a simple remedy. If a jurisdiction fails to comply with the statutory procedures of Government Code section 66499.7, after a brief notice and opportunity to cure period (of no more than 2 days), the builder may file suit and in any such suit a builder shall recover 20% of the amount of the bond that was subject to partial release.

Conclusion:
This is a low cost way to be sure that jurisdictions follow existing law in getting bonds timely released to reduce the cost of housing.

3. Authorize HCD Enforcement of Existing Housing Law (HCD Housing Board for Complaints)

(Issue from: Manteca, Sonoma)

Background:
When a local jurisdiction does not follow existing California law, there is no mechanism short of litigation for a builder or developer to force compliance.

Issue:
Some jurisdictions do not like the state's housing policies, including recent additions to the Housing Accountability Act. Some local jurisdictions are working to defeat existing statutory provisions designed to streamline processing. But there is no formalized state agency available to accept builder or developer complaints in the event that a jurisdiction is actively undermining its own adopted Housing Element policies or the state's housing laws.

Rule:
N/A

Analysis:
Builders and developers need a place to register complaints when a local jurisdiction fails to comply with their own Housing Element, or the state's housing laws.

Potential Solution:
Create a (small) division within HCD that can accept and investigate formal complaints from builders and developers related to a local jurisdiction's failure to comply with the law. Create guidelines for that division of HCD to report to the transportation committee, with a policy that will allow for the withholding of transportation funds in the event that the local jurisdiction does not comply with state law or its own Housing Element.

Conclusion:
With the potential for an investigation, and a loss of funding, we believe local jurisdictions will be more apt to follow existing state law.

4. Support the Use of CEQA Exemptions

(Issue from: Fairfield, Sonoma)

Background:
Jurisdictions are hesitant to use CEQA exemptions, with one jurisdiction recently going so far as to claim that the use of a CEQA exemption is a "gift" that it can choose to give to a developer.

Issue:
Jurisdictions do not like to employ CEQA exemptions (categorical or statutory) in the project approval process. Although these exemptions can take many months to justify (usually while working behind the scenes with staff to demonstrate applicability based upon a series of studies), they often reduce overall entitlement costs and offer greater litigation protection, and are favored by developers for those reasons. But with a reluctant Planning Commission or City Council, they are difficult to obtain even with clear statutory compliance.

Rule:
See, e.g., categorical exemptions (classes of projects that the Secretary of Resources has found do not have a significant effect on the environment). (Cal. Pub. Res. Code section 21084(a), Guidelines section 15300.)

Analysis:
The statutory analysis to determine whether an exemption applies can be a difficult task, and it is often performed by junior staff within the "lead agency" without the benefit of a City Attorney or other CEQA-trained staff. This can create confusion about statutory interpretation or applicability, often resulting in the lead agency refusing to use an exemption that a seasoned CEQA practitioner would apply without hesitation.

Potential Solution:
Create a (small) division within HCD, staffed with knowledgeable CEQA practitioners, that can answer questions and offer formal opinions to the "lead agency" to confirm if the project, as presented to HCD, qualifies for a CEQA exemption. Create a statute that allows the lead agency to rely upon this determination (provided all facts presented to HCD are accurate).

Conclusion:
By giving local jurisdictions a knowledgeable resource upon which they can reasonably rely in evaluating CEQA exemptions, we believe local jurisdictions will be more apt to follow state law.

5. Eliminate the Prevailing Wage Requirement on Wholly Affordable Projects by Non-Profits

(Issue from: Yellow Roof Foundation)

Background:
Affordable housing is hard to build in California given the high cost of land, materials, and labor. Some jurisdictions have long-held successor agency parcels that they would like to use to build affordable housing, but they do not have the funds necessary to construct the housing. This requires sale of the successor agency parcel. But if a jurisdiction sells off a successor agency piece of land in order to have a builder construct affordable housing, it must do so at "market rate" or the builder will be required to pay prevailing wage for all labor used to construct the affordable units.

Issue:
Building a wholly affordable project at prevailing wage is rarely, if ever, possible.

Rule:
The existing language in Government Code section 65913.4 requires payment of prevailing wage for all successor agency parcel projects, even if those projects are wholly affordable and use donated or reduced-cost labor from a non-profit in order to "pencil."

Analysis:
A simple amendment to Government Code section 65913.4 to limit its application to projects that include any market rate units would allow for jurisdictions to partner with non-profit organizations that often use deeply discounted or donated labor in order to build affordable housing projects.

Potential Solution:
Modify Government Code section 65913.4 to exclude wholly affordable projects built by a non-profit (as opposed to a "not for profit") that will not make any money from the build.

Conclusion:
This is a low cost way to make successor agency parcels available for wholly affordable housing, allowing for non-profits and other donors to give of their labor without penalty.

6. Update Existing Laws Governing Building Permit Fee Increases

(Issue from: Hollister)

Background:
A jurisdiction may update its building permit fees mid-project, forcing a builder to pay thousands of dollars more per home.

Issue:
Most fees charged by local jurisdictions in connection with new development (i.e., development impact fees) cannot be increased without a fee study as required by AB 1600. That AB 1600 process gives a developer time to review and comment on proposed increases to local jurisdiction fees, and to plan for the increase if the fee is reasonable. If the fee is implemented over objection by the developer, the developer may pay the fee "under protest" in order to challenge the impropriety of any increase. Fees paid "under protest" are recoverable in the event that the developer is able to win its challenge in court. Permit fees are not subject to these notice and challenge rules, and fees cannot be paid under protest.

Rule:
Government Code section 66022 governs judicial actions to attack, review, set aside, void or annul an ordinance, resolution, or motion adopting a new fee, and that section does not allow a party to "pay under protest" or otherwise recover the fees paid while the challenge is pending (pursuant to the procedures of Cal. Code Civ. Proc., section 860).

Analysis:
Because permit fees have been excluded from the AB 1600 requirements, and cannot be paid under protest, in the event that a local jurisdiction raises permit fees in the middle of an approved project, a builder is left with only two choices: (1) pay the fees, which cannot be recovered even if the increase was unlawful; or (2) stop the project in order to challenge the fee. If a builder pays the fee, and simultaneously challenges that fee in court, because the fee cannot be paid under protest, and given the length of time it takes to bring a case to resolution, there is likely no way for that builder to recover the permit fees paid even if they are later found by a court to be unreasonable. This disincentivizes a builder to spend the time and money to challenge the fee, because there is likely no recovery for the challenging party and the builder can expect retaliation from the local jurisdiction. There is no good explanation for why permit fees are not governed by the same statutory procedures that govern impact fees.

Potential Solution:
Make permit fees subject to the same AB 1600 process that governs local jurisdictions that wish to adjust impact fees, so that builders have notice, an opportunity to review, and the chance to budget for new fees (instead of receiving notice mid-project). This would also allow a builder to "pay under protest" but continue building homes if a local jurisdiction decided to unlawfully increase its fees.

Conclusion:
A simple change to this process will give builders the opportunity to plan for increased costs and, in the event of a dispute over a fee increase, it will allow those builder to continue building homes even while a legal challenge is pending.

7. Require All Local Jurisdictions to Update the General Plan and Mandate the Inclusion of a "Catch-all" Provision in Every Housing Element to Address Potential Inconsistencies

(Issue from: Sonoma, Martinez)

Background:
Many California jurisdictions have not updated their General Plan since the early 1970s. This creates significant trouble for developers because before 1973, the General Plan was a visionary document with no legal effect. After 1973, that visionary document became the jurisdiction's development plan. If a jurisdiction has not updated its General Plan in the intervening decades, those visionary policies are now treated as development law. Unfortunately, there are often instances where the (state-mandated) update to a jurisdiction's housing element ends up in actual or implied conflict with these visionary General Plan policies. Some of these General Plan policies are very general aspirational statements that can be construed to undermine housing entitlement applications.

Issue:
When a General Plan's aspirational statements about development directly conflict with a newer Housing Element, jurisdictions often struggle with implementation of both the General Plan policies and the more specific Housing Element plans. A jurisdiction's Planning Commission or City Council (or even a neighborhood group) opposed to growth can use these General Plan policies to undermine the housing application. If a jurisdiction is not required to update its General Plan to address these conflicts, the inconsistencies, ambiguities, and issues that result have a direct and negative impact on housing in that jurisdiction. In some instances, the challenge comes in the form of a claim that the project is not entitled to a CEQA categorical exemption, because the proposed development is not wholly consistent with the jurisdiction's General Plan. This can add months, if not years, to the entitlement process.

Rule:
Although there must be "horizontal" or internal consistency within a General Plan pursuant to Government Code section 65300.5, "inconsistencies" inevitably arise when a Housing Element is updated but the General Plan is not.

Analysis: There needs to be further amendment to the Government Code to eliminate the opportunity for "aspirational" General Plan statements (e.g., "the jurisdiction will work to build all of its affordable units as low income units") to undermine an application for development that is compliant with all objective standards but fails to meet an overarching "aspirational" statement in the General Plan. If a local jurisdiction was required to update its General Plan on a regular (e.g., 10 year) basis, at least once per decade the public would be assured that the governing documents were internally (i.e., horizontally) consistent.

Potential Solution:
Implement a requirement that a local jurisdiction update its General Plan and all components thereof at least once every 10 years. Require horizontal consistency, and check that the General Plan does not contain provisions that undermine the approved Housing Element as part of the certification process for that element of the Plan. Require all jurisdictions to include a statement in their Housing Element that clearly requires a jurisdiction to adhere to its more specific, approved Housing Element over any general or "aspirational" General Plan statements, foreclosing the possibility that an out-of-date General Plan can be used to undermine the state-approved Housing Element. Condition the receipt of transportation funding from the state upon an approved, updated General Plan.

Conclusion:
Everyone benefits when a local jurisdiction is required to ensure consistency in its General Plan -- the public understands that the jurisdiction's governing document is leading the decisions made by elected leaders, the elected leaders are routinely reminded that the governing document must provide horizontal consistency, and because the Housing Element must be consistent with the General Plan, RHNA numbers must be addressed at least once per decade, providing the state with a real measurement of progress towards housing goals for all. Eliminating any claim of "conflict" between a General Plan and the Housing Element should greatly reduce the time it takes developers to entitle projects, and this will eliminate development risk.

8. Update CEQA Standing Requirements to Match Statutory Intent

(Issue from: Fairfield, Antioch)

Background:
CEQA was designed as a notice statute, meaning it was intended to require government agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a project, and inform the public about any such environmental impacts. CEQA was intended to: (1) inform government decision-makers and the public about the potential environmental effects of proposed activities; (2) identify the ways that environmental damage can be avoided or significantly reduced; (3) prevent significant, avoidable environmental damage by requiring changes in projects, either by adoption of alternatives or imposition of mitigation measures; and (4) disclose to the public why a project was approved if there were significant environmental impacts. (*See* Cecily Talbert Barclay and Matthew S. Gray, *California Land Use and Planning Law* (Solano Press, 35th ed. 2016) at p. 141.) Over 80% of CEQA challenges are NOT brought in order to challenge the sufficiency of the notice provided by a developer, or the project's environmental impacts; instead, more than 80% of CEQA challenges are brought to delay the project because challengers know that by bringing a CEQA lawsuit they can create leverage to negotiate for project exactions or they can create a costly dispute that will "kill" any project.

Issue:
In almost every area of California law, it is a prerequisite to a lawsuit that the plaintiff filing the suit must have "standing" to bring the claim. In a typical writ case, including a CEQA case, this means that the person bringing the suit must have a "beneficial interest" in the requested relief. Unfortunately, with the "public interest exception" to this rule, CEQA's standing requirement has been gutted.

Rule:
A party bringing a CEQA suit must have a "beneficial interest" in the requested relief, unless that party is able to qualify for the "public interest exception."

Analysis:
The "public interest exception" to the standing rule has been interpreted so broadly that those with exclusively economic (and not environmental) interests are using CEQA to halt development projects.

Potential Solution:
A new statute is needed to limit the "public interest exception" to the "beneficial interest" standing requirement so that courts understand that this exception is limited to those with demonstrable interest in protecting the public interest, either based upon non-profit status and a history of public interest work, or some other evidence of non-economic interests in the environmental issues presented by a project.

Conclusion:
A simple statutory addition could limit the use of CEQA at a time when it is widely acknowledged as a tool of economic, and not environmental, benefit.

Attachments: See attached articles on CEQA standing for a more in-depth review of potential CEQA language changes.

9. Implement a Utilities Claims Handling Process to Support New Development or Allow Builders to Construct Improvements Subject to Utilities Inspection

(Issue from: Statewide)

Background:
Utilities are in trouble. The last few years have brought entity-crippling claims based upon fire destruction, exploding facilities, and falsified natural gas pipeline-safety records, among others. It is not surprising that routine services (including energizing a new development) have slowed. Unfortunately, in recent months, even if an application is submitted to energize a subdivision more than 18 months in advance of the new development requiring power, builders are inevitably completing homes that sit vacant -- sometimes for months – and those fully-constructed homes cannot be occupied because the utility will not schedule the work needed to energize the development.

Issue:
There is no expedient claims process through which a builder can get help in the event that a utility simply fails to perform the work that has been requested more than a year in advance, and that the builder has already contracted to pay for, and that is needed to energize a community. A utility's claims process can take more than 18 months.

Rule:
Insufficient rules governing delivery of service are the issue in this instance.

Analysis:
Builders need a place to register complaints when a utility simply fails to respond to consistent, timely, and necessary requests for power. (Ironically, builders are having trouble getting new communities energized in some of the regions that need housing most,. This means that people who lost their homes to the wildfires are now having trouble moving into a new home because utilities are not prioritizing new projects.)

Potential Solution:
Create a (small) division within (or supervised by) the PUC that can accept and investigate formal complaints from builders related to a utility's failure to energize communities within a reasonable timeframe, and create a penalty process in the event of failure to comply.

As an expedient alternative, allow builders to do the work that the utility lacks the capacity to complete. This work can be done at the builder's cost, using licensed contractors. The utility can inspect the work in the same way that local jurisdictions inspect similar utility improvements.

Conclusion:
With a claims process and oversight, we believe the utility may become more accountable to builders as they work to build housing. If this is not a realistic solution status, instruct the utility to set-up a process that allows a builder of new construction to do the work (through licensed contractors) and subject to the utility's inspections, thereby minimizing the delay in energizing a community.

10. Update the Elections Code to Avoid Undermining State Housing Policies

(Issue from: Martinez, Lafayette)

Background:
Even if a developer is successful in getting a project approved, if the City Council takes any "legislative" action as part of that approval process (i.e., a general plan amendment or rezone is required), the project is vulnerable to a referendum.

Issue:
If a jurisdiction has not updated its General Plan for decades (as is the case with many California jurisdictions), and land that is now primed for residential development (perhaps because of new surrounding uses or a new transportation hub), in order for development to occur the jurisdiction must either update its General Plan and Zoning Code or use one of its 4-per-year General Plan Amendments to approve the project. In either instance, that "legislative act" by the jurisdiction is subject to a referendum.

Rule:
Elections Code sections 9235 through 9247 set an incredibly low bar to qualify a referendum for a vote. If a project opponent (e.g., a no growth member of the public) presents a petition with signatures from 10 percent of the entire vote cast within the boundaries of the jurisdiction for all candidates for Governor at the last gubernatorial election (i.e., a very, very small fraction of eligible voters), a project is subject to a referendum vote. In that instance, a jurisdiction may rescind its prior approval or spend upwards of $100,000 to hold an election to determine if the voters wish to have the jurisdiction's prior approval repealed.

Analysis:
A mere 10% of the total number of voters in the last gubernatorial election (often only a few percent of the total voters in that jurisdiction) currently have the ability to effectively stop any project requiring a legislative approval. This referendum process is being used as a low cost tool to stop projects that the local jurisdiction has already vetted (sometimes for years!) through the public process. But these no-growth opponents only need to copy their petition and stand in front of a grocery store collecting signatures and, if they get enough over a six month period, they can stop an approved project in its tracks. This makes it near impossible to change land uses within a jurisdiction that has any no growth sentiment. And the local jurisdiction is stuck with either a rescission of its project approval, or an expensive election. This presents a Hobson's choice: If the local jurisdiction rescinds its approval of a project that meets RHNA objectives, or provides affordable housing, it will likely face a YIMBY challenge. If the local jurisdiction upholds its approval, it can expect to spend tens of thousands of dollars on an election, and more if the jurisdiction needs to educate its electorate about the project. While the United States was founded on principles to protect the minority, the extreme minority should not be able to hold up the will of the extensive majority.

Potential Solution:
A statutory change should be made to allow for a jurisdiction to comply with its RHNA allocations without fear of referendum. If the project approval is consistent with a jurisdiction's approved Housing Element, then there should be a provision in the Elections Code that exempts that legislative act from a referendum.

Conclusion:
By stripping Housing Element-complaint projects of the potential of a referendum, all members of the citizenry must debate the merits of the project in the public hearing process and rely upon the elected officials of the jurisdiction to make a decision in the best interest of the jurisdiction as a whole, taking into account (for example) RHNA obligations in addition to "no growth" and NIMBY viewpoints. But, upon making a decision, the elected officials (and a project applicant) need not face the additional challenge of overcoming an expensive election battle where many citizens will happily vote for "more open space" instead of taking responsibility for building those housing units that have been allocated to the jurisdiction.

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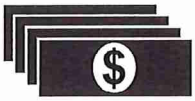
CERTIFICATES OF OCCUPANCY

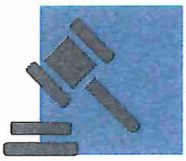
Enforce issuance of Certificates of Occupancy as required by the California Building Code: This is a low-cost way to be sure that jurisdictions follow existing law in getting already approved and fully constructed units to market.

SUBDIVISION BONDS



Enforce partial release of subdivision bonds as required by the Map Act: This is a low-cost way to be sure that jurisdictions follow existing law in getting bonds timely released to reduce the cost of housing.

ENFORCE EXISTING LAWS



Authorize California Department of Housing and Community Development (HCD) enforcement of existing Housing Law: With the potential for an investigation, and a loss of funding, we believe local jurisdictions will be more apt to follow existing state law.

DISCLOSURE

Require the disclosure of the identity of the plaintiff who is bringing a CEQA lawsuit.

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LOCAL IMPACT FEES

Cap or limit fees so that they are not disproportionate to the actual impact and cost of serving projects. Eliminate or decrease "discretionary" developer requirements.

REGIONAL HOUSING NEEDS ASSESSMENT (RHNA) REFORM

Incentivize local cities and counties to fulfill their responsibility by tying regional and state funding mechanisms to compliance with RHNA allocations. Tie RHNA housing targets to job growth projections and targets. Build where there's workforce. Base RHNA compliance on the number of housing units approved and actually built.

CEQA REFORM

We believe that a housing project should not be subject to multiple CEQA lawsuits: A project that has gone through the CEQA process and been subject to CEQA litigation must correct the deficiencies the court has determined were required to be corrected. Once that is complete, no more CEQA litigation should be allowed on the project.

CITY AND COUNTY REQUIREMENTS

Simplify and standardize building codes and design criteria for faster approvals and fewer costly, one-off product types and/or features. Require timely and substantive comments and decisions on plans and applications to minimize or eliminate delays. Eliminate downsizing of project approvals.

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CALIFORNIA FOUNDATION ON THE ENVIRONMENT AND THE ECONOMY

CFEE Conference on Housing

To Build or Not to Build... Does it Pencil Out?

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