

# Navigating Housing Development in the New Era

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# Presentation Outline

- **Upcoming Housing Element Update (The 6<sup>th</sup> Cycle)**
  - Changes to RHNA Allocations
  - New Site Inventory Requirements
- **Maintaining Adequate Capacity for Housing**
  - Complying with the "No Net Loss" Requirement
- **Reduced Local Discretion for Project Approvals**
  - Complying with the Housing Accountability Act
  - State-Mandated Ministerial Housing Approvals

# 'Sixth Cycle' Housing Element Update: *A Perfect Storm*

- RHNA Allocation – Major Changes
- Harder to Identify Acceptable Sites
- “Affirmatively Further Fair Housing”
- Comply with “No Net Loss”
- Emboldened HCD



# What Is RHNA?

- **Regional Housing Needs Assessment (RHNA)**
  - The number of units needed to meet anticipated household growth, at various income levels
  - Each city and county receives a “RHNA allocation”

Lower Income (Very Low and Low)	Moderate Income	Above Moderate Income	TOTAL RHNA
400 units	200 units	400 units	1,000 units

# First Step: Total Regional RHNA

- **Likely Much Higher (“Gigantic Increase”)**
  - Overcrowding and Overpayment of Existing Households Added
  - Healthy Economy
- **HCD Has Final Approval**

# Next Step: RHNA Allocation to Each City

- **New Factors to Consider:**
  - GHG reductions
  - Low-wage jobs and affordable housing balance
  - “**Affirmatively further fair housing**”
- **Cannot Consider:** Existing Zoning, Growth Limits, Past Failure to Meet RHNA, Stable Population

# HCD Much More Involved at Every Step

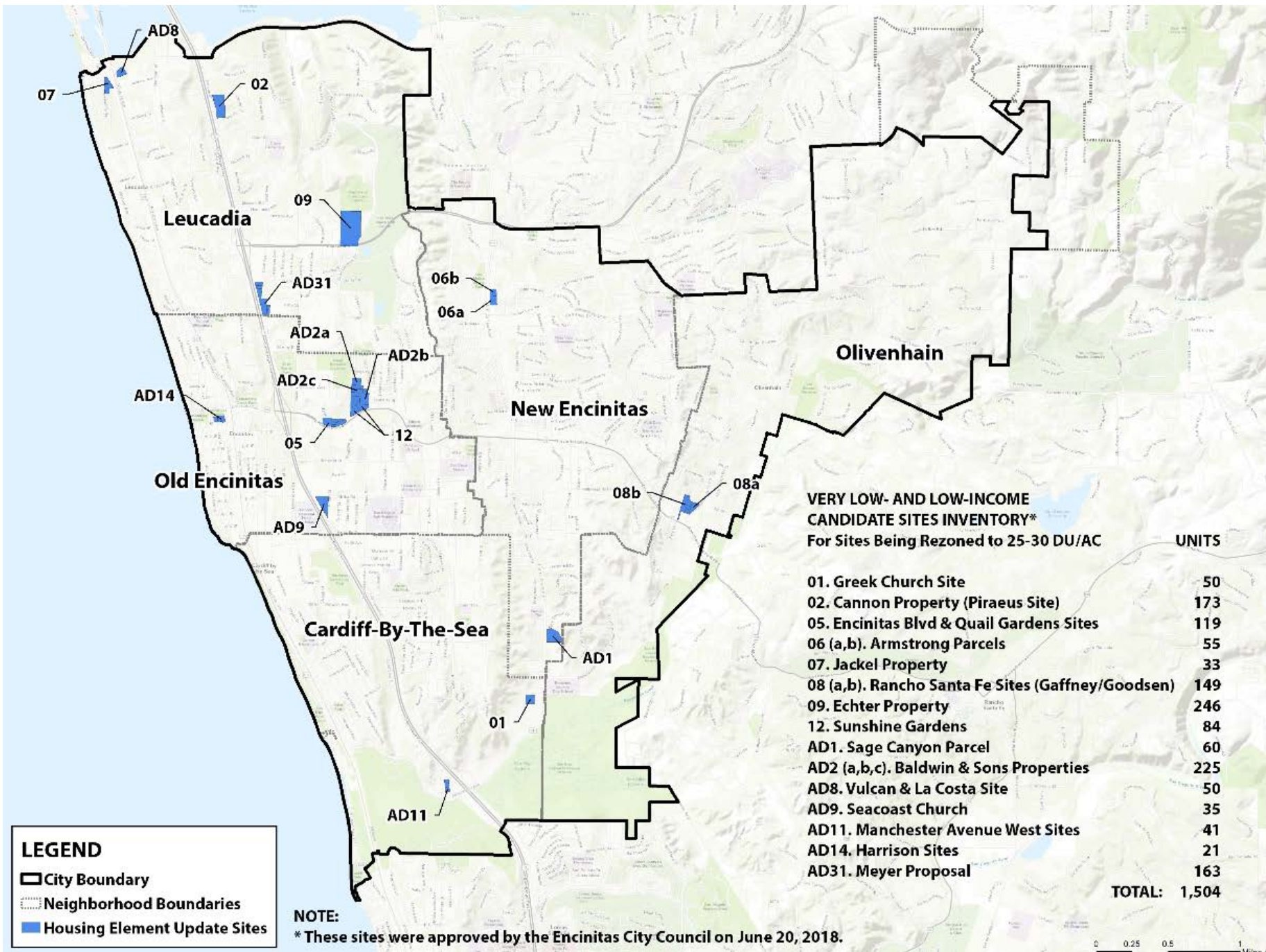
- RHNA Methodology Must Be Submitted to HCD
  - HCD may attend COG meetings
- HCD Can Appeal Individual Allocations
  - Any city/county can appeal any other city/county
    - **Critical for Cities to be Involved**

# The Site Inventory: Heart of the Housing Element

- Specific Sites for Each income Level
- Lower Income Sites at 10 – 30 du/A

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

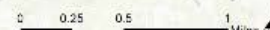




**LEGEND**

- City Boundary
- Neighborhood Boundaries
- Housing Element Update Sites

**NOTE:**  
\* These sites were approved by the Encinitas City Council on June 20, 2018.



# Much Harder to Find Acceptable Sites

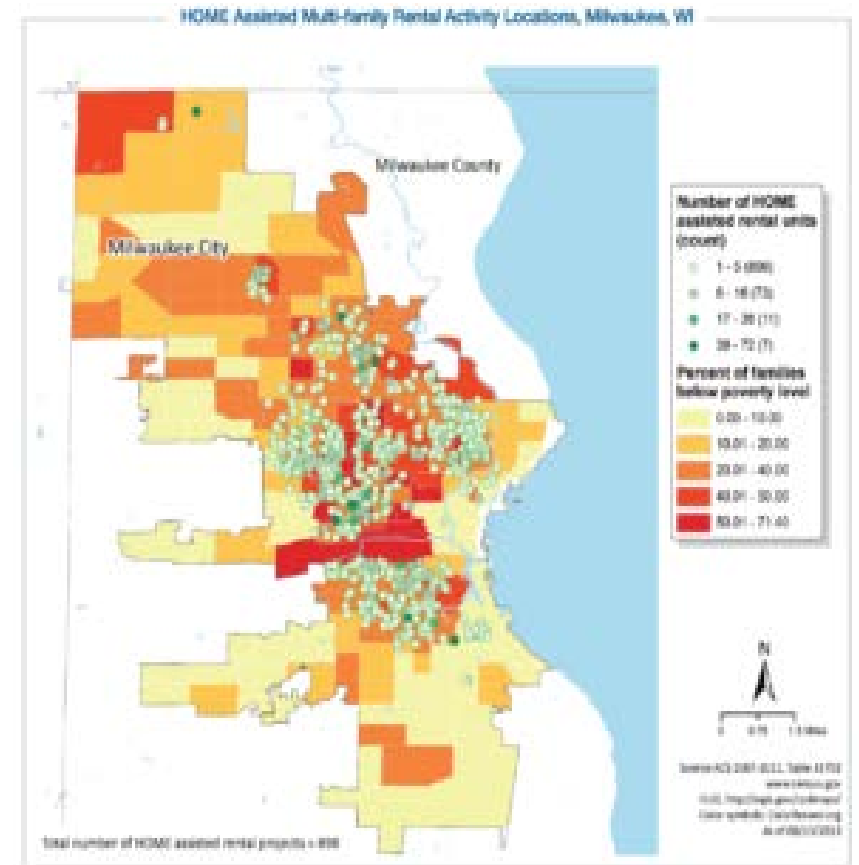
- **If More Than 50% Non-Vacant:**
  - Existing Use Presumed to Impede Development
- **Can't Use Sites Smaller than 0.5A or Larger than 10A Without Substantial Evidence**
- **Can't 'Reuse' Sites Unless Provide 'By Right' Zoning**
- **More Scrutiny by HCD**

# Strict Definition of “Vacant” v. “Non-Vacant”



# AND: Must "Affirmatively Further" Fair Housing

- "Encourage Affordable Housing in Areas of Opportunity"
- Decrease Segregation
- TCAC Maps
- High HCD Priority



# Increased HCD Scrutiny

- HCD Policy Staff Increased from 12 to 50
- Intends to Look Closely at Development Standards
- No 'Streamlining' for Housing Element Updates
- Receptive to Advocate and Developer Comments
- Must Get HCD Comments in Writing to Rely on Them

# Practice Tips: Housing Elements

- Ensure Compliance with Every Housing Element Requirement and Evidence in the Record
- Begin Early and Work Closely with Planning Staff to Determine Adequate Sites, Prepare the Site Inventory, and Complete CEQA
- Must Respond to HCD Comments
- Bolster the Record if Litigation Seems Likely

# Maintaining Adequate Capacity – “No Net Loss”

- Cities must maintain sites to meet unmet share of RHNA allocation (throughout the housing cycle)
  - Increased focus on adequate capacity for lower- and moderate-income households
    - Government Code § 65863

# No Net Loss – Triggers

- “Downzoning” – i.e., reducing allowed density – for any site in the Site Inventory
- Approving a specific project on a site included in the Site Inventory, either:
  - With fewer units than were indicated in the Site Inventory, or
  - With fewer units **at the income level** than were indicated in the Site Inventory, or
  - At a “lower residential density” (as defined by statute)



# No Net Loss – Obligation to Make Findings

- A city may downzone or approve development of a Site Inventory parcel at a “lower residential density” only if the city makes the following findings:
  - Reduction in density consistent with General Plan and Housing Element; and
  - Remaining sites in the Site Inventory are adequate to meet the City’s RHNA share at all income levels

# No Net Loss – Duty to "Up-Zone" Other Sites

- City must quantify the unmet RHNA need and remaining capacity of sites at each income level
  - If remaining sites are not adequate, City must identify "additional, adequate, and available sites" so there is no net loss in unit capacity

# No Net Loss – Timing “Up-Zoning” of Other Sites

- Triggered by Downzoning
  - Rezone simultaneously
- Triggered by Project Approval with Fewer Units
  - Rezone within 180 days of initial project approval
    - Including CEQA compliance

# Practice Tips: Complying with No Net Loss

- Sites must accommodate RHNA share at each income level
  - Begin with a surplus of capacity
- Continually calculate the “unmet share of RHNA”
  - Monitor sites listed in the Site Inventory
  - Monitor all housing units approved on sites that are not included in the Site Inventory – by income category
  - Monitor all sites that are not included in the Site Inventory that could be used as replacement sites

# The Housing Accountability Act (HAA)

“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval & construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects. This intent has not been fulfilled.”

# HAA Applicability

- Applies to ALL “housing development projects” and emergency shelters:
  - Residences only;
  - Transitional & supportive housing;
  - Mixed use projects with at least 2/3 the square footage designated for residential use.
- Affordable AND market-rate

# HAA Limitations on Local Review

- If housing development project complies with “objective” standards, the city can only reduce density or deny if it finds:
  - A specific adverse impact to public health & safety; AND
  - The impact can't be mitigated in any other way.
- Considered to comply if get density bonus OR if consistent with general plan

# HAA Requirements Re: Consistency

- Must inform applicant of any inconsistencies within 30 – 60 days after completeness;
  - Otherwise project is “deemed consistent”
- Also “deemed consistent” if there’s “substantial evidence that would allow a reasonable person to conclude” it is consistent



# HAA Remaining Authority

- **CEQA Still Applies**
  - *Schellinger Bros.*: must complete CEQA before can invoke HAA
- **Can Probably Still Apply Subjective Coastal Act Standards**
  - *Kalnel Gardens LLC v. City of LA*

# HAA: Practice Tips

- Integrate Consistency into the Completeness Determination
- Send Out the 30 – 60-Day Letters
- Add Conditions of Approval rather than Denials or Reductions in Density
- Convert Standards to 'Objective' Standards

# State-Mandated Ministerial Approvals

- State Trend toward Ministerial Approvals
- Compliance with Existing Objective Standards
- New Procedural / Staff Burdens

# Supportive Housing – AB 2162

- Streamlined Process for “Supportive Housing” Projects
  - In zones allowing multifamily or mixed uses
  - Must be treated as a “use by right”
    - City may **not** require discretionary review
    - CEQA does not apply to qualifying projects

# Supportive Housing – Applicability of Streamlining

- For cities with less than 200,000 people and that have a population of  $\leq 1,500$  persons experiencing homelessness:
  - Streamlined process only available to projects proposing  $\leq$  50 units

# Supportive Housing – Qualifying Projects

- Every unit must be dedicated for lower income households (making  $\leq 80\%$  area median income)
- At least 12 units (or 25 %) must be reserved for “supportive housing” residents
- Minimum square footage for on-site services
- Minimum bathroom / kitchen requirements

# Supportive Housing – Parking Requirements

- No minimum parking requirements for the supportive housing units if the project is located within ½ mile of a public transit stop
  - Probably okay to impose minimum parking standards on the remaining low-income units

# Supportive Housing – Timeline for Review

- Notify the developer of the application's completeness within 30 days of receipt
- Approve or deny the proposed supportive housing project:
  - Within 60 days after application is deemed complete (for projects of  $\leq 50$  units)
  - Within 120 days after application is deemed complete, (for projects of  $> 50$  units)



# Practice Tips: Streamlined Supportive Housing

- Stay informed of recent point-in-time counts
- Identify multifamily and mixed use sites, as well as applicable objective standards
- Review projects quickly (60 / 120-day timeline)
- Prepare covenant / agreement documents

# Objective Standards – The Future of Planning?

- **What are “objective” standards?**
  - “Standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal.”
    - Gov. Code § 65913.4

# Objective Standards – The Future of Planning?

## Objective

- Density requirements
- Height limitations
- Lot coverage
- Setbacks
- FAR requirements
- List of materials

## Subjective

- Reflect the look and feel of the community
- Site is not physically suitable for the proposed use
- Incorporate quality design
- Must be compatible with adjacent uses

# Challenges in Drafting Objective Standards

- Converting Standard Conditions of Approval?
- Converting CEQA Mitigation Measures?
- Retaining Flexibility in Zoning / Planning Scheme?

# Challenges in Drafting Objective Standards

- **Terminology**
  - Avoid “compatible,” “suitable,” and “adequate”
  - Avoid “should,” “recommended,” and “encouraged”
- **Objective Design Standards**
  - Establish Clear Prohibitions?
  - Provide an Array / List of Acceptable Options?

# Anticipated 2019 Housing / Planning Legislation

- More Streamlined Approval Processes for Transit-Oriented Developments and Multifamily Housing in “Jobs-Rich” Areas?
- Mandated Approvals for Duplexes/Fourplexes?
- Reduced Discretion for ADU Approvals?
- Freezing Fees and/or Development Standards?

# Summary of Practice Tips

- **Stay engaged in the RHNA allocation and Housing Element preparation process**
  - Focus on targeted density and a surplus of sites
- **Expect more Streamlined Approval Processes**
  - Help staff revise objective standards
- **Guide Staff & Decision-makers into this new era**
  - Anticipate frustration and practice patience

# Citizen Revolts?

- Voters Do Not Believe that More Housing Development is the Solution to the Housing Crisis
- Courts Will Protect Rights of Citizens to Exercise the Initiative and Referendum Power
  - Will intervene only when the conflict is irreconcilable
- Legislative Attempt to Curb Voter Approvals v. Potential Statewide Initiative



QUESTIONS?

THANK YOU!

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