

STATE OF CALIFORNIA
Department of Housing and
Community Development



Housing Element Questions and Answers
A Guide to the Preparation of Housing Elements

**Prepared by
Division of Housing Policy Development**

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This report can be downloaded on the State Department of Housing and Community Development's/ Division of Housing Policy Development website at <http://www.hcd.ca.gov/hpd/hrc/plan/he/ga1106.pdf>. Hard copies are available upon request. For any questions or clarifications, please contact Division of Housing Policy Development staff at (916) 445-4728.

State of California
Department of Housing and Community Development
DIVISION OF HOUSING POLICY DEVELOPMENT



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HOUSING ELEMENT QUESTIONS AND ANSWERS

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PUBLIC PARTICIPATION

Government Code Section 65583(c)(6)(B)

Question 1:

Why is public participation critical to updates?

Answer:

Housing issues affect the entire community -- residents and employers, the public and private sectors. The public participation requirement of housing element law presents an opportunity to engage constituents in a dialogue – defining problems and creating solutions.

Public participation involves soliciting input from all citizens. The inclusion of community stakeholders in the housing element public participation process helps ensure appropriate housing strategies are more efficiently and effectively evaluated, developed, and implemented. An inadequate public participation process may lead to community conflict or in worse case scenarios, anti-development initiatives, and NIMBYism.

Question 2:

Who should be included in the public participation process?

Answer:

Current and potential beneficiaries of housing programs and services and their advocates (lower-income representatives, tenants of affordable complexes – especially those at-risk of conversion, groups targeted for special housing needs consideration, community based organizations, health and human service providers, homeless shelter and service providers, etc.) are invaluable sources of housing element information and data. These groups and their representatives are a good source of information for the required needs analyses, especially when revisions to the element are made in between census updates. For example, senior citizen organizations can usually describe the availability of services for seniors. Legal Services organizations may be able to describe anecdotal information on the number of complaints about fair housing issues, substandard housing conditions, and other housing related problems.

Various community stakeholders including neighborhood leaders, local businesses, major employers, and environmentalists can be mobilized through the housing element participation process to collaborate on housing issues. Developing a variety of housing types for all income groups appropriate to each unique community is a major community-wide undertaking.

Answer 2 (continued):

Responsible public participation can serve to build consensus among constituents for the design and implementation of realistic housing programs. Committed public participants can support an adopted housing element and deflect opposition to future housing projects.

Development professionals including local builders, for- and non-profit developers, architects, trade labor unions, realtors, mortgage bankers and brokers, area lenders, and others can also be significant contributors to the development of an effective housing element. They can provide base-line data (e.g., land and construction costs, current for-sale housing prices and rents, area mortgage lending and availability), assist with developing a meaningful sites inventory, better examine land use control and permit procedures, and describe practical experience regarding development opportunities and barriers in the community.



Question 3:

What actions can a local government undertake to achieve effective public participation of all economic segments of the community?




Answer:

An effective public participation process should begin at the outset of the housing element update process. Members of the community should be involved in evaluating the accomplishments of the previous element, identifying current needs, resources and constraints, as well as assisting in the development of community goals, policies and actions. Communities should engage residents in the process prior to preparing the draft element.

In addition to holding required public hearings at the planning commission and city council or board of supervisor level, an adequate and effective citizen participation process must include additional steps to ensure the public participation of all economic segments of the community (including low- and moderate-income households). Many local governments have found the following actions useful in facilitating an effective participation process:

-  Establish an ongoing public participation process. This may involve establishing an ad-hoc, appointed, or volunteer task force and/or citizen advisory committee to oversee the status of housing plans and programs. Some jurisdictions conduct open annual housing study sessions and/or hold periodic neighborhood based meetings to increase participation. Alternatives to traditional public meetings/hearings include more “hands-on” approaches like sponsoring “open houses” and/or conducting tours of successful affordable housing projects.
-  Conduct special advertising and outreach campaigns to targeted church groups, low-income organizations, seniors, and community and service groups. Post notices regarding public meetings about the housing element at community centers, libraries, city hall, social service offices, on buses, and throughout the community in public places. Information can also be included in local utility bills or other publications.

Answer 3 (continued):

-  Based on the diversity of the community, consider distributing public participation and housing element information in languages other than English.
-  Updated housing information and data, as well as meeting and planning schedules, can also be posted on government websites. Interactive information technology can speed up input gathering and broaden the base of participation for citizens who have access to the Internet (computers are now available at most public libraries).
-  Sending copies of the draft housing element or a request for comment notice to local housing advocacy groups, nearby communities, housing developers, and other interested parties allows those groups with an invested interest and technical expertise to provide meaningful insights into the community's housing needs.

Local governments that prepare a Consolidated Plan in order to directly receive federal housing and community development funds are also required to conduct a thorough citizen participation process. Local redevelopment agencies are required to hold public hearings on implementation and affordable housing production plans (Health and Safety Code Section 33413(b)(4)).

Many communities combine housing element, redevelopment, and Consolidated Plan, including the Impediments to Fair Housing, and Public Housing Agency Plans' public participation processes. Since the requirements are similar and planning consistency facilitates implementation (and in many cases is required), the jurisdiction should consider coordinating the drafting, public participation process and implementation of these and other related plans. Coordination in the development of these plans helps local governments avoid duplication of effort and ensures consistency in planning.

Question 4:

How can the update process enhance regional planning efforts?

Answer:

The housing element process can be used to implement sound housing and community development planning. Creating sustainable and livable communities that enhance the quality of life is an important goal. The update process can serve as a vehicle for advocating "smart growth" housing strategies. Promoting more compact development, recycling, mixed-use and infill, pedestrian-friendly, and transit-oriented developments allow communities to take advantage of existing infrastructure, revitalize older neighborhoods and downtowns, improve air and water quality, conserve energy reduce traffic congestion, and curb urban sprawl. Incorporating these concepts into the housing element update helps ensure their effective implementation.

Answer 4 (continued):

The update process can also create a strong base of support for local officials when issues or controversies arise during housing element implementation. Community residents and stakeholders who have contributed to the element's development are more likely to attend public hearings and meetings and support local officials in their implementation efforts.

The housing element update process can function as an informational and public relations tool to better educate the community on who really needs affordable housing (e.g., service workers, teachers, fire fighters, first-time homebuyers, those at risk of homelessness, etc.) and how an adequate supply of safe and affordable housing and the development of a variety of housing types provides significant economic and social benefits to the entire community. Planning for an adequate supply of housing to keep pace with both population and job growth is integral to the overall economic vitality of a community and critical to the quality of life of all residents.

REVIEW & REVISE

Government Code Section 65588




Question 5:

Why is the periodic review important?

Answer:

The review and evaluation of the previous housing element is the critical first step in an effective housing element update process. A thorough review and revision of the previous element facilitates a more comprehensive update and ensures the element can be more effectively and efficiently implemented in the current planning period.

The “review and revise” evaluation is a three-step process:

-  **Section 65588(a)(2): “Effectiveness of the element”** - Review the results of the previous element’s goals, objectives, policies, and programs. The results should be quantified where possible (e.g., the number of units rehabilitated), but may be qualitative where necessary (e.g., mitigation of governmental constraints).
-  **Section 65588(a)(3): “Progress in implementation”** - Compare what was projected or planned in the previous element to what was actually achieved. Analyze the significant differences between them. Determine where the previous housing element met, exceeded, or fell short of what was anticipated.
-  **Section 65588(a)(1): “Appropriateness of goals, objectives and policies”** - Based on the above analysis, describe how the goals, objectives, policies and programs in the updated element are being changed or adjusted to incorporate what has been learned from the results of the previous element.






Many communities cross reference and use the annual progress report (Government Code Section 65400(b)(1)) as a useful source of information for review of the previous housing element. For further information regarding annual reports, see *Question 66*.

Question 6:

How often should it be revised or updated?

Answer:

The statute requires at least five-year updates in accordance with the statutory schedule. Periodic review of the housing element is also necessary in order to determine whether a revision is required prior to the five-year update cycle. If the locality determines that at least one or more of the following conditions exist, it may be appropriate to revise the housing element between statutory updates.

-  New policies, regulations, or requirements are proposed for adoption that may inhibit the communities' ability to comply with housing element law or effectively implement housing programs (e.g., growth control ordinances or measures).
-  The stated housing goals, objectives and policies are not effective in providing housing for the existing and projected needs of all economic segments of the community.
-  Housing units are not being produced in adequate numbers and at the necessary price levels to achieve the stated housing goals and quantified objectives.
-  A comprehensive general plan update is underway or other portions of the general plan have been amended, making it necessary to revise the housing element to achieve internal consistency pursuant to Government Code Section 65583(c)(6)(B).
-  Significant new development not contemplated at the time of the regular revision of the element has occurred or is planned.

HOUSING NEEDS ASSESSMENT

EXISTING HOUSING NEEDS




Government Code Section 65583(a)(1)-(2)

Question 7:


What constitutes an adequate analysis of existing housing needs?

Answer:

Existing housing needs include current basic information such as total households by household income, vacancies, and lower-income households overpaying for housing. A thorough community profile typically includes, the following quantification and qualitative data and descriptive household information:

-  Total Population and demographics (e.g., age, sex, race/ethnicity, etc.) - Many jurisdictions also discuss population changes overtime.
-  Total number of households in the community - The Department of Finance (DOF) prepares annual population estimates including population, households and dwelling units. The E-5 report is available yearly in May. Visit DOF's website at www.dof.ca.gov.
-  Tenure characteristics - The number of renter and owner households in the community.

In addition, the statute specifically requires the housing element to include an assessment of households overpaying:




-  Compare level of payment with ability to pay - In comparing level of payment with ability to pay, the number of lower-income households (those at or below 80 percent of the median income) who are overpaying for housing should be quantified by tenure (owner/renter).

Overpaying is defined in terms of a percentage of the gross household income a household spends for housing including utilities. Overpaying for housing is also known as the housing cost burden. Thirty percent of gross household income is the standard affordability level. Severe overpaying occurs when households pay 50 percent or more of their gross income for housing. The element should estimate the number of lower-income households paying more than 30 percent of their income for housing and the number of households who pay 50 percent or more of their gross income for housing.




Question 8:

What housing characteristics should be documented and analyzed?

Answer:

-  Total number of housing units - Where possible, the element should describe the distribution of units by type (single-family, multifamily, mobilehomes), as well as any changes in that distribution since the last housing element update.
-  The condition of the housing stock including an estimate of the total number of substandard units (e.g., those in need of rehabilitation [repair] and those in need of replacement [demolition]) - The number of units to be rehabilitated and/or replaced may be estimated from a recent (within the last five years) windshield survey or sampling, estimates from the local building department, knowledgeable builders/developers in the community, nonprofit housing developers or organizations and redevelopment agencies. Estimates can also be derived from census data such as percentage of units built before 1960, which can serve as an estimate of the maximum rehabilitation need.
-  The incidence of overcrowding – The Census defines an overcrowded unit as one occupied by 1.01 persons or more per room (excluding bathrooms and kitchens). Units with more than 1.5 persons per room are considered severely overcrowded. Localities are to estimate the number of households that live in overcrowded and severely overcrowded units. The incidence of overcrowding and large households frequently parallel.

Many communities also analyze other household and housing characteristics:

-  Median area sales prices and typical rents including area Fair Market Rents (FMRs);
-  Vacancy rates for homes and rentals; and
-  Fair housing/fair lending complaints filed with local, State and federal fair housing organizations and departments.

SPECIAL HOUSING NEEDS

Government Code Section 65583(a)(6)

Question 9:

How do special housing needs differ from other housing needs and why is an analysis of special housing needs important?

Answer:

Special needs are those associated with relatively unusual occupation or demographic groups which call for very specific program responses, such as preservation of residential hotels or the development of four bedroom apartments. The statute specifically requires analysis of the special housing needs of the elderly, the disabled, female headed households, large families, farmworkers and homeless persons and families.



A thorough analysis of the special needs groups helps a locality identify groups with the most serious housing needs in order to develop and prioritize responsive programs. A special needs assessment starts with general knowledge of the community's demographics. The housing element should analyze the needs of each group specifically mentioned in statute as well as any other group the locality deems appropriate. The analysis should include a discussion of the nature of the special housing need of each group as well as quantification of the need.

Question 10:


What information should be included in an analysis of special housing needs and where can a locality find information about it?

Answer:

A thorough analysis includes the following:

-  A quantification of the total number of persons, households (e.g., 600 elderly households) including tenure where possible.
-  A quantification and qualitative description of the need. For instance, in the example listed above, of the 600 elderly households, census data reveals that 400 are homeowners and 200 are renters and that 250 of all elderly households have incomes below the poverty level. A qualitative description of the need would include a description of the potential housing problems faced by the group and analysis of unmet needs. For example, the analysis of elderly need might show that an estimated 30 percent of elderly households below the poverty level live in substandard housing, indicating a housing rehabilitation need. Most local governments consult service providers regarding housing or service waiting lists, and data on income and housing costs to identify special housing needs.

Answer 10 (continued):






-  Identification of potential program or policy options and adequate resources to address the need.

Question 11:

What information should be included in the analysis of homeless need to facilitate the identification of adequate site for emergency shelters and transitional housing?

Answer:

A thorough analysis includes:

-  An estimate or count of the daily average number of persons lacking permanent shelter. Wherever possible, this figure should be divided into single males and females, and families (one or more adults with children). These subgroups require significantly different types of shelter.
-  As local data allows, also describe the mentally ill, developmentally disabled, substance abusers, survivors of domestic violence, and other categories of homeless considered significant by the jurisdiction.
-  An inventory of the resources available to this population including shelters and transitional housing. Describe the number, approximate location, and type of existing shelter beds, hotel/motel vouchers, and units of transitional housing available. Present shelter resources by type (e.g., family shelter beds, homeless adult female housing, transitional living units, etc.).
-  An identification and analysis of zones which allow emergency shelters and a description and analysis of development standards and permit processes associated with the development of emergency shelters. The analysis should also describe the capacity to accommodate development of emergency shelters.
-  An identification and analysis of zones with capacity to allow transitional housing and a description and analysis of development standards and permit processes associated with the development of transitional housing. It should be noted, while it may be appropriate to require a CUP for emergency shelters (provided that it does not act as a constraint), the approval process for transitional housing should not require a CUP but should reflect the type of housing (e.g., apartments, single-room occupancy) developed for this purpose. The analysis should also describe the capacity to accommodate development of transitional housing.

Question 12:

What information should be included in the analysis of farmworkers to facilitate the identification of adequate site for farmworker housing?

Answer:

The element should estimate the number of permanent and migrant farmworkers within the community. The analysis should describe the zones where housing for farmworkers is allowed, evaluate whether sufficient opportunities for housing for migrant and permanent farmworkers exists, and describe any conditions on development, development standards, and processing requirements.

The statute specifically encourages cities and counties to work cooperatively to identify and address farmworker housing needs.

AT-RISK ASSISTED HOUSING DEVELOPMENTS NEEDS ASSESSMENT

Government Code Section 65583(a)(8)(A-D)

Question 13:

What assisted housing must be inventoried?

Answer:

Assisted housing developments are multifamily rental housing complexes that receive government assistance under any of the following federal, State, and/or local programs (or any combination of rental assistance, mortgage insurance, interest reductions, and/or direct loan programs) which are eligible to change to market-rate housing due to termination (opt-out) of a rent subsidy contract (e.g., Housing Choice Vouchers (Section 8) mortgage prepayment (e.g., FHA), or other expiring use restrictions (e.g., State or local programs) within the 5-year planning period of the housing element and the subsequent 5-year period.

Federal programs listed in subdivision (a) of California Government Section 65863.10

- HUD Housing Choice Voucher Program (Section 8)
- U.S. Housing Act of 1937
- Lower-income Rental Assistance project-based programs:
 - (1) New construction, (2) Substantial or Moderate Rehabilitation, (3) Property Disposition, (4) Loan Management Set Aside (LMSA),
- Section 101 Rent Supplements – U.S. Housing Act of 1965
- HUD Section 221(d)(3) (BMIR Mortgage Insurance)

Answer 13 (continued):


- HUD Section 236 (Interest Reduction Payment Program)
- HUD Section 202 (Direct Loans for Elderly or Handicapped
- U.S. Housing Act of 1959 and HUD Section 811)
- HUD Section 213 (Cooperative Housing Insurance)
- IRS Section 42 (Tax Credit Projects)
- HUD Title II (ELIHPA)
- HUD Titles VI and V (LIHPRHA)

 **United States Department of Agriculture (USDA) 514, 515, 516 Rural Rental Housing Loans** – U.S. Housing Act of 1949

 **Federal Community Development Block Grant Programs**

 **State (e.g., HCD, CDLAC, CTCAC and CHFA) and local mortgage revenue bond programs**

 **Local Housing Trust funds**

 **Local redevelopment agency units assisted with Redevelopment Low- and Moderate-Income Fund**

 **Local in-lieu fees and inclusionary housing programs**

 **Local density bonus and directly assisted units**

Question 14:

What constitutes an adequate analysis of government assisted at-risk units?

Answer:

- A. Prepare an inventory of all units at-risk of conversion within the current planning period and subsequent 5-year period (e.g., 2005 – 2015).

If there are no units at-risk in the locality during the ten-year period, describe how the locality determined and verified no units are at-risk of conversion during the planning period and subsequent ten years. The locality should verify that there are no federal, State, or locally funded units at-risk for conversion.

Answer 14 (continued):

List each development by project name and address, type of governmental assistance received, earliest possible date of change from low-income use, and the total number of elderly and non-elderly units that could be lost from the locality's low-income housing stock. Where a property has more than one subsidy type, analyze each type separately.

Contact HCD's Division of Housing Policy Development to confirm federally-assisted units with expiring/terminating Housing Choice Voucher (Section 8) contracts or mortgage or mortgage insurance prepayments at (916) 445-4728 or access HCD's website at www.hcd.ca.gov/hpd/hrc/tech/presrv/. To determine the status of HCD's funded programs (Deferred Payment Rehabilitation Loan, California Natural Disaster Assistance, California Housing Rehabilitation Program Rental Component, Farmworker Housing Grant, and Special User Housing Rehabilitation Loan) projects with expiring affordability controls, contact HCD's Division of Financial Assistance at (916) 322-1560.

Contact the California Housing Finance Agency (CalHFA) to inquire about bond-financed projects with terminating use restrictions at <http://www.calhfa.ca.gov/>.

Contact USDA to confirm the status of Section 515 rural housing with expiring use restrictions at website <http://www.rurdev.usda.gov>.

The first projects developed using the State Low Income Tax Credits with expiring use restrictions within the ten-year timeframe should also be inventoried.

Contact the California Tax Credit Allocation Committee (TCAC) through the State Treasurer's Office at <http://www.treasurer.ca.gov/ctcac/> to confirm tax credit units at-risk.

Contact the California Debt Limit Allocation Committee (CDLAC) also through the State Treasurer's Office <http://www.treasurer.ca.gov/cdlac/> to confirm revenue bond-financed at-risk units.

B. Assess the Conversion Risk

Risk of conversion and displacement of low-income tenants varies significantly from project to project depending on market, ownership, and project-based factors (size of units, location, condition of property, etc.).

Assess overall potential conversion risk based on the total number and type of units at-risk, total number of potentially displaced households, conversion intent of the ownership, and the economic condition of the local housing market, especially in areas with high housing costs and/or low vacancy rates.

Answer 14 (continued):

Determine the condition of existing assisted housing developments to facilitate the replacement versus preservation cost analysis. Depending on the age and condition of the project, rehabilitation costs often have to be added to the acquisition costs in order to preserve the project.

C. Estimate and analyze the costs of replacement versus preservation for units at-risk in the current five-year planning period.

This analysis determines whether replacement (new construction), or preservation (acquisition and rehabilitation, and/or direct rental subsidy commitments) will be the most economical approach to preserving at-risk units. Current local market rents are the key to determining whether use restrictions and affordability controls can be feasibly extended under other Federal, State (tax credit, revenue bonds, HCD's multifamily program, etc.) or local preservation programs.

Estimate the costs of producing new rental housing (comparable in size and rent levels to existing at-risk units) to replace the units that could change from low-income use. Use current land costs and either current construction costs (square footage rates for multifamily development) or the actual cost of recently completed units.

Estimate the cost of preserving the identified assisted housing developments including acquisition and rehabilitation costs long-term affordability controls and project based rent subsidies.

A project-by-project cost estimate is not required (Section 65583(a)(8)(B)).

D. Identify entities qualified to preserve at-risk units.

Identify local public agencies, public or private nonprofit corporations, and for-profit organizations with the legal and managerial capacity to acquire and manage at-risk projects (Section 65583(a)(8)(C)). New purchasers must agree to long-term affordability controls.

Contact potential qualified entities to assess their interest in acquiring and managing at-risk properties. Contact HCD for a list of eligible entities interested in participating in the State's Opportunity to Purchase and Right of First Refusal Program pursuant to Government Code Section 65863.11 or to refer potential local qualified entities who wish to be placed on the list. A copy of the qualified entities list and the certification form are available on HCD's website.

Answer 14 (continued):

E. Identify financing and subsidy resources.

Identify and consider the use of all federal, State, and local financing and subsidy programs as preservation resources. At minimum, include federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency, and the administrative fees received by a housing authority operating within the community as well as other available local financing/subsidy programs. Also include HOME funds as a potential source of revenue.

Identify the amount of funds under each program, which have not been legally obligated for other purposes and could be available for use in preserving assisted housing development (Section 65583(a)(8)(D)).

Indicate which of all available federal, State, and local financing and subsidy programs, will be targeted for specific preservation program actions (e.g., replacement, preservation through acquisition, extended affordability controls, regulatory actions, direct rental subsidies, rehabilitation, tenant and sponsor technical assistance, etc.).

PROJECTED HOUSING NEEDS

Government Code Section 65583(a)(1)

Housing element law requires a quantification of each jurisdiction's existing and projected housing needs. This is accomplished, in part through the regional housing need allocation (RHNA) process pursuant to Government Code Section 65584. The city or county's share of the RHNA, as determined by their Council of Governments (COG), is the projected housing need for the planning period of the housing element. Each locality's RHNA is distributed among four income categories to address the required provision for planning for all income levels, consistent with the income definitions of State law. To accommodate the RHNA, the element must demonstrate site development capacity equivalent to, or exceeding, the projected housing need, to facilitate development of a variety of types of housing for all income levels.

It should be noted that the RHNA is an estimate of the minimum housing need projected for a city or county. The RHNA should not be considered or treated as a ceiling on the development of housing or as a basis for denying housing applications. To do so would be contrary to existing law and legislative intent.

Chapter 696, Statutes of 2004 (AB 2158) included changes to the RHNA process to describe clear State policy objectives to foster greater certainty for RHNA outcomes, facilitate better coordination between transportation and housing planning, and incorporate and balance broader public policy objectives. The RHNA process was revised to be more transparent, especially for local governments, by specifying a more inclusive process, revising allocation factors, and providing for input into the methodology. In addition, the process also includes specific requirements for public participation in the allocation process.

The RHNA process includes the following overarching objectives:

- 1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within region in an equitable manner, which results in each jurisdiction receiving an allocation of units for low- and very low-income households.
- 2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.
- 3) Promoting an improved intraregional relationship between jobs and housing.
- 4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census.

Question 15:

What should be included in the population and employment trend analysis?

Answer:

A complete description of the locality's most recent population estimate and general characteristics of the employment market is important in portraying the local housing market influences and the demand for housing. This information provides insight into the types of jobs and industries in the community and by inference the incomes associated with employment opportunities; proposed new economic development activities, and future housing needs generated by any new employment opportunities.





The RHNA usually incorporates both population and employment trends, but may not have taken into account recent local factors such as annexations, adoption of a redevelopment plan, or opening of a new business park. In these situations, the locality should analyze the impact of these recent trends on its total projected housing need to determine if, and how, the locality should plan for additional growth through changes to its housing objectives and/or programs.

Question 16:

What household income categories are included in a locality's RHNA?

Answer:

The four income category definitions used in the RHNA distribution are those defined in Title 25, Sections 6926, 6928, 6930, and 6932, of the California Code of Regulations. These income categories are based on definitions established by the U.S. Department of Housing and Urban Development (HUD) and State Health and Safety Code Sections 50079.5, 50105, and 50093.

-  **Very low-income** – within 50 percent of the area median family income with adjustments for usually high or low area income and household size.
-  **Low- or lower-income** – between the very low-income limit and 80 percent of the area median family income with adjustments for usually high or low area income or housing costs and for household size.
-  **Moderate-income** – between the lower-income limit and 120 percent of the area median family income with adjustments for usually high or low area income or housing costs and for household size.
-  **Above moderate-income** – exceeding the moderate-income limit adjusted for household size.

Answer 16 (continued):

These income groups are consistent with the definitions of low- and moderate-income households used in many federal and state programs, although definitions for some federal programs differ. More information on the current income limits is available on HCD's website at www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html.

Question 17:

How can the jurisdiction demonstrate current RHNA progress to determine remaining housing need?

Answer:

A jurisdiction may credit units constructed or under construction between the base year of the RHNA period and the beginning of the new planning period.

The jurisdiction must demonstrate the unit's affordability for lower- and moderate-income households based upon:

- Actual rents.
- Subsidies, financing, or other mechanisms that ensure affordability (e.g. MHP, LIHTC financed projects, inclusionary units, RDA requirements).
- Actual sales prices.

HOUSING RESOURCES

RESOURCES: SITES INVENTORY AND ANALYSIS

Government Code Section 65583(a)(3)

Question 18:

What is the purpose of the sites inventory and analysis?

Answer:

The purpose of the sites inventory is to identify specific sites suitable for residential development in order to compare the locality's new construction need by affordability category with its residential development (total supply) capacity. A thorough sites inventory will help the locality determine if additional governmental actions are needed to provide enough sites with appropriate zoning, development standards, and infrastructure capacity to accommodate its new construction need as required by Section 65583(c)(1).





Question 19:

What land is considered "suitable" for residential development?

Answer:

Land "suitable for residential development" has characteristics that make the sites appropriate and available for residential use in the planning period. Sites identified that require rezoning may be included as an adequate site as long as a program for accomplishing any needed rezoning is included in the element. These characteristics include physical features (flooding, seismic hazards, chemical contamination, other environmental constraints, and slope instability or erosion) and location (proximity to transit, job centers, and public and community services).

Land suitable for residential development includes all of the following:

-  Vacant residentially zoned sites.
-  Vacant non-residentially zoned sites that allow residential uses.
-  Underutilized residentially zoned sites which are capable of being developed at a higher density or with greater intensity.
-  Non-residential zoned sites that can be redeveloped for, and/or rezoned for, residential use (via program actions).

Answer 19 (continued):







Sites not currently planned and zoned for residential use may be included in the inventory if they are otherwise suitable for residential development and the element includes program actions to change the land-use within the current planning period.

Question 20:

What is the first step in identifying adequate sites?

Answer:

The element must first prepare a sites inventory and analysis that includes the following:

-  Parcel-specific listing of available sites, including parcel number or other “unique” reference such as an address. Sites identified in the inventory as being available for housing to accommodate the regional housing need for above moderate-income households, but located in areas not served by public sewer systems, need not be listed parcel by parcel.
-  A map showing the location of sites. In terms of scale, a jurisdiction’s general plan land-use map showing sites would be appropriate.
-  The general plan and zoning designations, along with the size of each parcel listed in the inventory. An indication of parcel size is important as it can be a key factor in determining development viability, capacity and affordability.
-  If a jurisdiction includes non-vacant sites in the inventory, the housing element must describe the existing uses for each identified site.
-  Environmental Constraints: The element should include a general description of any constraints to the development of residential projects. The element need only describe those environmental constraints where documentation of such conditions has been made available to the local government. This information does not have to be provided on a site specific basis. However, the analysis must clearly demonstrate the identified sites can accommodate projected residential capacities and future residential development (i.e., within the planning period).
-  Infrastructure: The element must include a general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities, and indicate whether the utilities are public or private. A site specific analysis is not required. The element must however, include sufficient detail to determine whether water delivery systems and sewer treatment capacity is or will be (i.e., within the planning period) available to the identified sites. If parcel specific detail is available, this information could be included in the element.

Question 21:

What analysis should be provided to make the determination that current sites are adequate?



Answer:

Before a locality can make the determination that the identified sites are adequate, they must first complete all appropriate analysis. The locality must demonstrate that the sites inventory has sufficient realistic capacity at appropriate densities and development standards to permit development of a range of housing types and prices to accommodate the community's share of the regional housing need by income level. This two-part analysis includes:

Capacity

Can the realistic development capacity of suitable sites, which is or will be served by facilities and infrastructure, accommodate the locality's total regional housing need by income group over the next five years?

To establish the number of housing units that can potentially be accommodated on each site, the analysis should include the following:

-  A description of how the capacity of the identified sites has been established. If a jurisdiction has adopted, through regulations or ordinance, minimum density requirements that explicitly prohibit development below the minimum density calculation of total housing unit capacity may be based on the established minimum density.
-  If minimum densities have not been adopted, the element must describe the methodology used to establish the number of units. In either case, the estimates of capacity must be adjusted based on the land-use controls and site improvement requirements imposed. For example, a jurisdiction must consider development trends and the cumulative impacts of the imposition of maximum lot coverage requirements, open space, parking, and FARs, when establishing its realistic unit capacity, rather than relying on a theoretical number based on maximum buildout.

Affordability

Are these available sites appropriately zoned (considering local development standards and land costs) for a variety of housing types (single-family, multifamily, mobilehomes, etc.) and at appropriate densities to facilitate the development of housing to meet the locality's regional housing need by income level, including the need for very low- and low-income households?

Answer 21 (continued):

To establish the number of units that can accommodate the local government's share of the regional housing need for lower-income households, the analysis must demonstrate the identified zone/densities encourage and facilitate the development of housing for lower income households. The element's analysis must consider, but need not be limited to:

- 1) market demand and trends,
- 2) financial feasibility, and
- 3) information based on residential project experience within a zone(s) where the densities facilitated the development of housing for lower-income households.

For example, information garnered from local developers, and recent residential project examples that provide housing for lower-income households may be helpful in establishing the appropriateness of the zone. Also, it is recognized that cities and counties rely on subsidies to increase the affordability of residential projects. As a result, identifying examples of low density subsidized projects, alone, is not appropriate to demonstrate the adequacy of a zone and/or density to accommodate the projected needs of lower-income households. It should also be noted that residential projections resulting from the implementation of a jurisdiction's inclusionary program are not a substitute for addressing the "adequate sites" requirement.

As an alternative to the above analyses, Chapter 724 established "default" density standards. Specifically, if a local government has adopted density standards consistent with the default density, HCD is obligated to accept sites with those density standards as appropriate for accommodating the jurisdictions share of regional housing need for lower-income households.

Further information on a jurisdiction specific default density listing is available on HCD's website at <http://www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf>.

Question 22:

How should the inventory analysis evaluate the capacity of very small parcels?

Answer:

Where the sites inventory includes very small sites, the element should evaluate the realistic potential capacity and feasibility for additional residential development.

The inventory analysis should evaluate whether sites as small as a quarter acre, zoned for multifamily, can encourage and facilitate development of housing affordable to lower-income households. For example, while it may, in fact, be possible to build housing on a very small parcel, the nature and conditions necessary to construct the units often preclude provision of affordable housing.

To demonstrate the development viability of small or substandard parcels, the element must describe the impact small site development may have on a developers ability to produce housing affordable to lower-income households, the jurisdiction's role or track record in facilitating small-lot development, and where necessary include program actions for lot consolidation and/or parcel assemblage.

Question 23:





What information should be included in the sites inventory for a community with very little vacant land?

Answer:

In communities with limited vacant land, the inventory should identify and analyze sites available for redevelopment/recycling to residential or a more intense use, infill, and/or non-residential sites that may be appropriate to redesignate for residential use. Examples of land with potential for recycling may include scattered sites suitable for assembly, publicly-owned surplus land, portions of blighted areas with abandoned or vacant buildings, areas with mixed-used potential, substandard or irregular lots which could be consolidated, and any other suitable underutilized land.

Answer 23 (continued):

If the inventory identifies non-vacant sites to address a portion of the regional housing need, the element must describe the additional realistic development potential within the planning period. The analysis must describe the methodology used to establish the development potential of non-vacant sites including:

-  The extent to which existing uses may constitute an impediment to additional residential development. For example, if the site is occupied by an existing operating use, such as school, a nursery, etc., or if the site is developed with low density housing, the element should describe the condition or age of existing development and describe the potential for such uses to be discontinued and replaced with housing, or provide a clear indication of whether housing could be added to the existing use (such as adding second story residential to ground floor retail). Also, the analysis should evaluate whether the reuse or redevelopment of such a site would require lot consolidation to allow additional residential capacity.
-  Describe any recent development trends. The element should describe the jurisdiction's recycling or redevelopment trends, as well as a description of its track record in encouraging and facilitating redevelopment, adaptive reuse or recycling. If the jurisdiction does not have any examples of recent recycling or redevelopment project, the locality should describe what efforts it currently is making or will make in the planning period to encourage and facilitate this type of development.
-  Market conditions. The analysis should describe if the market is ripe for redevelopment or reuse. For example, high land and construction costs in concert with limited supplies of available and developable land resources could promote the market conditions necessary to facilitate more compact and efficient residential development.
-  Describe existing or proposed incentives. The analysis should describe any existing or planned financial assistance or regulatory relief from development standards to encourage and facilitate additional or more intensive residential development on the identified underutilized sites especially in those localities that can not show recent development trends to demonstrate the feasibility of this land-use strategy.

Question 24:

What information should be included in the sites inventory for a community with very little vacant land?

Answer:

The element should include a general description of any constraints to the development of residential projects. The element need only describe those environmental constraints where documentation of such conditions has been made available to the local government. This information does not have to be provided on a site specific basis. However, the analysis must clearly demonstrate the identified sites can accommodate projected residential capacities and future residential development (i.e., within the planning period).

Examples of such environmental constraints may include hillside development, flood zones, wetlands, fault lines, contamination, and contracts such as Williamson Act land or easements.

Question 25:

What constitutes an “analysis of the relationship of public facilities and services to these sites”?

Answer:

The analysis is a means of determining the current or proposed timing of availability of essential public facilities and services (e.g., sewer and water system trunklines and treatment facilities, roads, and storm drainage facilities) for sites identified for residential development. The element must include a general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities, and indicate whether public or private. A site specific analysis is not required. The element must include sufficient detail to determine whether water delivery systems and sewer treatment capacity is or will be (i.e., within the planning period) available to the identified sites. However, if parcel specific detail is available, this information could be included in the element.

Any phasing plans of a relevant specific plan, development agreement or Capital Facilities Financing Plan should be described. Through a complete infrastructure capacity analysis, the locality will be able to identify where facilities and services are lacking in order to establish program actions (capital improvement plans, financing through general obligation or special district bonds, etc.), that will permit the development of sufficient units to meet the new construction objectives within the planning period.

Answer 25 (continued):

The analysis of infrastructure capacity also allows local governments to evaluate and plan strategies to use existing infrastructure more efficiently and effectively. Combining the analysis of adequate sites with infrastructure capacity encourages comprehensive planning to identify opportunities to encourage development where public facilities already exist or could be extended to reduce the need to expand infrastructure outside currently served areas. Adequate sites strategies that focus on infill and redevelopment promote the efficient use of existing infrastructure and minimize the premature conversion of non-urbanized land for development.

Question 26:

Does the land-use element of the general plan contain the necessary information to complete the sites inventory?

Answer:

The land-use element contains some, but not all, information necessary for the housing element sites inventory. The land-use element usually identifies the proposed general distribution and location of land-use over a ten- to twenty-year general plan time frame. Often times the land-use element contains parcels that are within the jurisdictions' planning area (sphere of influence) but will not be within the locality's boundaries during the planning period. The housing element sites inventory provides a current and comprehensive analysis of sites suitable for residential development over the housing element's shorter five-year time frame.

Question 27:

What constitutes an appropriate analysis of zoning for a variety of housing types?

Answer:

As part of the analysis of available sites, a jurisdiction must include an analysis of zoning that encourages and facilitates variety of housing types. Per Government Code Section 65583(c)(1) and 65583.2(c), these housing types include multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. At minimum, the analysis must:

- 1) Identify zoning where these types of housing are permitted.
- 2) Analyze how development standards facilitate the construction of a variety of housing types.
- 3) Determine whether the sites inventory has sufficient capacity to allow for these housing types.

Question 28:

What is required to identify adequate sites for emergency shelters?

Answer:

Every locality must identify adequate sites, including existing facilities that can be converted to accommodate the need for emergency shelters. The identified sites should be available for use as emergency shelters. Appropriate sites for emergency shelters have the following characteristics:

Zoning: Any zoning classification that allows the siting of a shelter, and does not impede the development of the sites, or the conversion or use of an existing structure may be appropriate. Any zoning application for emergency shelter should regulate the use, not the users.

Most communities include shelters as a permitted or conditional use in one or more zones. The General Plan designation and site zoning should accommodate the development of (or conversion of existing facilities to) emergency shelters without undue special regulatory approval. If the locality does require a conditional use permit, the element should describe how the use permit standard encourages and facilitates the development of emergency shelters.

Answer 28 (continued):

Location: The site should be located within the boundaries of the jurisdiction, close to public services and facilities, including transportation, and easily accessible from areas where homeless persons congregate.

Development standards: Parking requirements, fire regulations, and design standards should not impede the efficient use of the site as an emergency shelter.

Question 29:

What is required to identify adequate sites with zoning to encourage and facilitate transitional housing?

Answer:

Transitional housing is a type of supportive housing used to facilitate the movement of homeless individuals and families to permanent housing. A homeless person may live in a transitional apartment for up to two-years while receiving supportive services that enables more independent living.

Every locality must identify adequate sites, including existing facilities that can be converted to accommodate transitional shelters. The identified sites should be available for use as transitional housing. Appropriate transitional housing sites have the following characteristics:

Zoning: Transitional housing, which often operates like a traditional multifamily project but provide additional services, should be subject to the same permitting processes and zoning as other housing without undue special regulatory approval. Requiring a conditional use permit for transitional housing could be a development constraint.

Location: The site should be located within the boundaries of the jurisdiction, and close to public services and facilities, including transportation.

Development standards: Parking requirements, fire regulations, and design standards should not impede the efficient use of the site as transitional housing.

Question 30:

What is required to identify adequate sites for farmworker housing?

Answer:

Sites identified for farmworker housing should facilitate the provision of housing for agricultural workers while minimizing the development of prime agricultural land to urban uses. These sites should also have characteristics relating to location, zoning and development standards which would be appropriate for their use for housing for farmworkers. Where a need for farmworker housing has been identified, the program should identify zones where housing for permanent, and where appropriate, for migrant farmworkers is allowed. Where adequate farmworker sites have not been identified, the element must include a program that provides farmworker housing uses by right.

Cities and counties are encouraged to work cooperatively to identify their respective share of sites needed for farmworker housing and to locate those sites, to the extent feasible, within or adjacent to existing urbanized areas.

Health and Safety Code Section 17021.6 states “no conditional use permit, zoning variance, and or other zoning clearance shall be required of employee housing that serves 12 or fewer employees and it is not required of any other agricultural activity in the same zone.” The jurisdiction should ensure its permit processing procedures do not conflict and promote compliance with this Health and Safety Code.

CONSTRAINTS ON HOUSING

GOVERNMENTAL CONSTRAINTS

Government Code Section 65583(a)(4)

Question 31:

What is considered a governmental constraint?

Answer:

Although local ordinances and policies are enacted to protect the health and safety of citizens and further the general welfare, it is useful to periodically reexamine local ordinances/policies to determine whether, under current conditions, they are accomplishing their intended purpose or in practice constitute a barrier to the maintenance, improvement or development of housing for all income levels.

Such an examination may reveal that in practice the ordinance/policy may require criterion and/or restrictions that operate as a governmental constraint. The analysis may also show that certain policies have a disproportionate or negative impact on the development of particular housing types (e.g., multifamily) or on housing developed for low- or moderate-income households.

Ordinances, policies or practices which have the effect of excluding housing affordable to low- and moderate-income households may also violate State and federal anti-discrimination laws which prohibit land-use requirements that discriminate or have the effect of discriminating against affordable housing.


The analysis should describe past or current efforts to remove governmental constraints. Where the analysis identifies that constraints exist, the element should include program responses to mitigate the effects of the constraint.


Question 32:


What should be analyzed as potential governmental constraints?


Answer:


The element must analyze each of the following policies as described in the statute, and others as deemed appropriate by the locality. Each analysis should use specific objective data, quantified where possible. A determination should be made for each potential constraint as to whether it poses as an actual constraint. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing.

 **Land Use Controls:** Identify and analyze zoning, density, parking requirements, lot coverage, height limits, lot sizes, unit sizes, design criteria, floor area ratios, setbacks, moratoria and prohibitions against multifamily housing developments, growth controls, urban growth boundaries, and open space requirements, etc.

 **Codes and Enforcement:** Identify and analyze any local amendments to the State Housing Law or Uniform Building Code, and the degree or type of enforcement. A strict code enforcement program or a code amendment, which specifies expensive materials and/or methods, can pose a significant constraint to housing development or maintenance.


 **On- and off-site improvement requirements:** Identify and analyze street widths, curb, gutter, and sidewalk requirements, water and sewer connections, and circulation improvement requirements. Describe any generally applicable level of service standards or mitigation thresholds.

 **Fees and exactions:** Identify and analyze permit, development and impact fees (e.g., park, school, open space, parking district, etc.), in-lieu fees, land dedication requirements (e.g., streets, public utility and other right-of-ways, easements, parks, open space, etc.) and other exactions imposed on developers. Describe any contribution or payment required as an authorized precondition for receiving any type of development permit by type of development (i.e., multifamily and single-family). The document could also provide examples of total fees required by various housing types.

 **Processing and permit procedures:** The analysis should identify and analyze the types of permits, discretionary and standard approval procedures, and processing time required for recent residential projects, including all permits applicable to residential development. The element should also identify and evaluate any overlay zones (e.g., Community Plan Implementation Zones, Hillside Overlay Zones, Environmentally Sensitive Areas, etc.). The element should identify and analyze the permitted uses in each zone. For example, if the jurisdiction requires a conditional use permit for multifamily housing in a multifamily

Answer 32 (continued):

zone, the element should analyze this permit procedure as a constraint. Other applicable regulations such as landscaping, design review policies, planned districts, etc. should also be included. For this analysis, localities should describe and evaluate the permit and approvals process for a typical single-family subdivision and a typical multifamily project.

 **Housing for persons with disabilities:** Analyze potential and actual constraints upon the development, maintenance and improvement of housing for persons with disabilities and demonstrate local efforts to remove any such constraints. The analysis should include but is not limited to information on the following:

- a) Reasonable Accommodation Procedures: Identify whether the locality has an established reasonable accommodation procedure and describe the how that procedure operates with respect to zoning, permit processing, or building codes, accommodating procedures for the approval of licensed residential care facilities, Fair Housing Amendment Act (FHAA) physical accessibility efforts, and an evaluation of the zoning code for FHAA compliance.
- b) Zoning and Land-Use: A review of all of zoning, laws, policies and practices for compliance with fair housing laws; broaden the definition of family, identify zones allowing licensed residential care facilities including those zones where facilities for seven or more persons are permitted, review siting or separation requirements for licensed residential care facilities, and residential parking requirements for persons with disabilities.
- c) Permits and Processing: Issues to evaluate include the process for requesting retrofit for accessibility, ensuring compliance with all State laws regulating permit requirement of licensed residential care facilities with fewer than six persons in single-family zones, and identification of any conditions or use restrictions for licensed residential care facilities with greater than 6 persons or group homes that will be providing services on-site.
- d) Building Codes: e.g. The year of the Uniform Building Code adoption and any amendments that might diminish the ability to accommodate persons with disabilities, identification of adopted universal design elements in the building code, the provision of reasonable accommodation for persons with disabilities in the enforcement of building codes and the issuance of building permits.

As a note Heath and Safety Code Sections 1267.8, 1566.3, 1568.08 require local governments to treat licensed group homes and residential care facilities with six or fewer residents no differently than other by-right single-family housing uses. “Six or fewer persons” does not include the operator, the operator’s family or persons employed as staff. Local agencies must allow these licensed residential care facilities in any area zoned for residential use, and they may not require licensed residential care facilities for six or less to obtain conditional use permits or variances that are not required of other family dwellings.

Answer 32 (continued):

Licensed residential care facilities may not be included in the local zoning code's definition of boarding house, rooming house, guest home or similar label which implies that the licensed residential care facility is any different than a family dwelling.

For a tool to assist in this analysis, please refer to the SB 520 memo found on HCD's website at www.hcd.ca.gov/hpd/hrc/plan/he/sb520_hpd.pdf.

Question 33:

How should an adopted growth control measure be evaluated as a governmental constraint?

Answer:









Ordinances, policies, procedures, or measures imposed by the local government that specifically limit the amount or timing of residential development should be analyzed as potential governmental constraints and mitigated, where necessary. The analysis will vary depending on the nature of the measure. In general, the measure and its implementation procedures should specifically be described and analyzed for their impact on the cost and supply of housing.

For ordinances which control the number and timing of permits, the element should describe any permit allocation process, allocation timing, specific limits on the number of permits issued per project type, any affordable housing incentives in the allocation process, the method of determining the number of permits to be issued annually and the basis for this determination.

The analysis must also identify and analyze process impacts such as application procedures and requirements (e.g., design review, limits of number of permits or size of project, length of approval, discretionary approval, and how the ordinance operates with rest of the entitlement process, carryovers, and financing of the project).

The analysis should demonstrate how the policy or ordinance accommodates the locality's current RHNA for all income groups. If it does not, the element must include a program to mitigate the impacts of the ordinance and allow accommodation of the total housing need.

Examples of types of policies or requirements that should be analyzed include:

-  Systematic (area-wide) residential down-zoning;
-  Urban limit line, growth boundaries, or perimeter greenbelt;
-  Annexation restrictions;
-  Building permit or other residential development caps;
-  Voter approval for up-zoning, rezoning or general plan changes;
-  Legislative super-majority for up-zoning, rezoning or general plan changes;
-  Systematic changes to local height and FAR regulations; and
-  Adequate public facilities ordinances.

Answer 33 (continued):

The analysis should not only demonstrate that the jurisdiction can accommodate the RHNA at minimum, but must also analyze the impact of the process and procedure on the cost and affordability of housing. Even if the growth control ordinance allows the community to meet its entire RHNA, the ordinance may still be a constraint that requires mitigation because of increased processing costs or timing delays. As previously noted, the RHNA should not be considered or treated as a ceiling on the development of housing or as a basis for denying housing applications. To do so would be contrary to existing law and legislative intent.

NONGOVERNMENTAL CONSTRAINTS

Government Code Section 65583(a)(5)

Question 34:

If governmental constraints are factors that localities can control to influence, then by implementation localities have no control over nongovernmental constraints. Why should they be analyzed?

Answer:




Although nongovernmental constraints are primarily market-driven and generally outside direct government control, localities can significantly influence and offset the negative impact of nongovernmental constraints through responsive programs and policies. Analyzing specific housing cost components including the cost of land, construction costs, and the availability of financing assists the locality in developing and implementing housing and land-use programs that respond to existing local or regional conditions. While the price of new housing depends on some factors beyond a locality's control, local governments can create essential site preconditions (favorable zoning and development standards, fast track permit processing, etc.) that encourage and facilitate development of a variety of housing types and prices.

Community opposition to the development of affordable housing is another type of nongovernmental constraint that could be analyzed and addressed.

Question 35:

What factors should be analyzed as nongovernmental constraints?

Answer:

-  **Land Prices** - In looking at the price of land, estimate the average per unit cost of land, or the range of costs for developable parcels, in both single-family and multifamily zones.
-  **Construction Costs** - The analysis of construction costs, for typical single-family and multifamily projects, should focus on the total cost to the developer, exclusive of profit, but including land, fees, material, labor, and financing.
-  **Financing Availability** - An analysis of financing should consider whether financing is generally available in the community. This analysis could indicate whether mortgage deficient areas or underserved groups exist in the community. The financing analysis may also identify the availability of financing from private foundations (including bank foundations) corporate sponsors, community foundations, community banks, insurance companies, pension funds, and/or local housing trust funds. The analysis should consider whether the availability of financing is limited by discriminatory area lending patterns or practices.

Under the Home Mortgage Disclosure Act (HMDA) lending institutions are required to publicly disclose the race, income and gender of home mortgage borrowers and the census tract in which the loans are made. Contact the National Community Reinvestment Coalition (www.ncrc.org) for more information on fair lending.

Jurisdictions that prepare an Analysis of Impediments to Fair Housing Choice (AI), for the Consolidated Plan may be able to use policy information from that Plan that make housing less available to the groups covered by the fair housing laws.

A lack of, or limited access to, take out (new construction), rehabilitation, and/or permanent (mortgage) financing could be addressed through responsive housing finance programs such as mortgage revenue bonding, a mortgage credit certificate program, use of tax credits, first time homebuyer and downpayment assistance programs, and/or targeted low-interest CDBG or HOME rehabilitation loans.

Some jurisdictions track and report housing costs and financing components periodically throughout the housing element planning period. For example, permit applicants can provide intended sales prices or rents, prices and rents of new units can be surveyed as they come into the market, and/or the rents of units developed with public assistance and subject to affordability controls can be recorded.

HOUSING PROGRAMS

Government Code Section 65583(c)







Question 36:

What should an effective housing program include?


Answer:

Effective programs reflect the results of the local housing needs analyses, identification of available resources including land and financing, and the mitigation of identified governmental and nongovernmental constraints. Programs are the specific action steps the locality will take to implement its policies and achieve goals and objectives. The statute requires that programs include a specific time frame for implementation and identify the agencies or officials responsible for implementation.

Effective program descriptions include the following:

-  Immediate, short- and long-term action steps.
-  Proposed measurable outcomes (e.g., the number of units created, completion of a study, development of a homeless shelter, initiation of rezoning program, preservation of at-risk units, annexation of land within the sphere of influence, etc.).
-  Definite time frames for implementation (e.g., by June 2002, ongoing, annually during the planning period, upon adoption of a general plan amendment, etc.).
-  Identify the agencies and officials responsible for implementation (e.g., the planning department, redevelopment agency, county community development department, city building official, housing manager, public housing authority, etc.).
-  Demonstrate the local government's firm commitment to implement (e.g., the city and/or county will rezone "x" number of acres of nonresidential land to residential for development of "x" number of mixed-use units).
-  Identify specific funding sources, where appropriate (e.g. dollar amounts of annual funding entitlements or allocations – CDBG, HOME, ESG, HOPWA, Continuum of Care, redevelopment agency's low- and moderate-income housing funds, bond proceeds, tax credit allocations, and other federal, State and local resources).

Answer 36 (continued):

 A monitoring and evaluation component, where appropriate with steps to take action to revise the program should the monitoring demonstrate shortfalls (e.g., the city/or county will monitor the development of multifamily sites to ensure sufficient land capacity to meet the remaining regional share of need for lower income households).

Examples of effective program descriptions include:

“The Community Development Department will apply for \$500,000 in Small Cities Community Development Block Grant funds for the City’s Rehabilitation Program for the 2002-2003 program year (i.e., by January, 2001) and annually thereafter. The goal is to rehabilitate up to twenty lower income owner-occupied units a year.”

“The Planning Department will revise the zoning ordinance to allow zero-lot-line and cluster developments by June 2003. This program is intended to facilitate the development of single-family housing units affordable to moderate-income households.

Question 37:

What information about a redevelopment agency’s Low and Moderate Income Housing Fund (LMIHF) should be included?

Answer:

The housing element should estimate the amount of funds expected to accrue to the LMIHF over the planning period of the element and describe the planned uses for those funds. For each program in the housing element that lists the Redevelopment Agency as the responsible agency for implementation, the amount of redevelopment funds allocated or planned to be allocated to that program should be included.

Each redevelopment agency (Health and Safety Code Section 33334.4) is required to “expend, over the duration of the redevelopment plan, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low and very low income in at least the same proportion as the total number of housing units needed for those income groups.”

Question 38:

How do redevelopment implementation and housing productions plans relate?

Answer:

Many communities include redevelopment reports and plans within the housing element. Incorporating a redevelopment agency affordable housing production plan in the housing element will help promote consistency between the housing element and redevelopment plan and ensure resources can be effectively targeted to priority local housing needs. A redevelopment agency's affordable housing production plan may be developed separately from the housing element, but it is required to be consistent with the housing element.

Answer 38 (continued):

Redevelopment agencies are required to produce five-year implementation plans (Health and Safety Code Section 33490) and affordable housing production plans for each project area (Health and Safety Code Section 33413(b)(4)). Production plans include project sites, inside and outside of redevelopment agency project areas, where the agency intends to expend LMIHF monies to facilitate the development of affordable housing.

Question 39:

What other financial resources should be included?

Answer:

The amount of all federal, State, and local financing and subsidy programs expected to be available or programs the locality may consider applying for during the planning period should be described. Such programs include the Community Development Block Grant Funds, HOME, HOPWA, Continuum of Care, tax credit allocations, mortgage revenue, mortgage credit certificates or other bond proceeds, and any other source of funding (e.g., Rural Housing Services, HCD programs, CalHFA programs, housing trust funds, private foundations, etc.).

IDENTIFICATION OF ADEQUATE SITES

Government Code Section 65583(c)(1)

Question 40:






When must a housing element include an adequate sites program?

Answer:

The sites inventory should demonstrate adequate site capacity to accommodate the regional housing need for all income groups. Where the analysis of a local government's sites inventory does not demonstrate the supply of suitable, available, and appropriately zoned sites are sufficient to accommodate the regional housing need by income level, the element must include a program to identify sites that can be developed with housing within the planning period. In addition, sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. These sites must be appropriately zoned, early enough in the planning period, to provide realistic and viable development opportunities.

A jurisdictions "adequate sites" program must accommodate 100 percent of the shortfall of sites necessary to accommodate the remaining housing need for housing for very low- and low-income households during the planning period.

This program must:

-  Ensure the sites are zoned to allow owner-occupied and rental multifamily residential uses "by-right".
-  Permit the development of at least 16 units per site.
-  Ensure sites within suburban and metropolitan jurisdictions (as defined by Government Code Section 65583.2(c)(3)(B)(iii) and (iv)) allow at least **20 dwelling units per acre**.
-  Ensure sites within incorporated cities within nonmetropolitan counties and nonmetropolitan counties that have micropolitan areas (as defined by Government Code Section 65583.2(d)) allow **densities of at least 16 dwelling units per acre**.
-  At least 50 percent of the low- and very low-income regional housing need be accommodated on sites designated for **exclusively** residential uses, at appropriate densities.




Further information on jurisdictions located within the above mentioned metropolitan and non-metropolitan areas is available on HCD's website at:
<http://www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf>.

Question 41:

How is “use of right” defined?

Answer:

For the purposes of housing element law and in accordance with Chapter 724, by-right shall mean the local government’s review shall not require:

-  A conditional use permit,
-  A planned unit development permit, or
-  Other discretionary local government review or approval that would constitute a “project” for the purposes of Division 13 (commencing with Section 21100) of the Public Resources Code.





This provision does not preclude local planning agencies from imposing design review standards. However, the review and approval process must remain ministerial and the design review must not constitute a “project” as defined in the Section 21100 of the Public Resources Code. For example, a hearing officer (e.g., Zoning Administrator) or other hearing body (e.g., Planning Commission) can review the design merits of a project and call for a project proponent to make design-related modifications, but cannot deliberate the project’s merits or exercise judgment to reject or deny the “residential use” itself.

Question 42:

















What strategies can be used to increase total residential development capacity?

Answer:

The following approaches have been used by localities to increase their total residential development capacity:

-  Up zone existing residential areas at appropriate densities to facilitate development of housing.
-  Prezone and annex land suitable for residential use.
-  Establish Minimum Densities – Designate minimum densities of development to assure that existing available land is not underutilized.
-  Institute Flexible Zoning – Allow various residential uses within existing zones without requiring rezoning or conditional approvals.

Answer 42 (continued):

-  Allow and Encourage Mixed-Use Zoning – Permit housing in certain non-residential zones either as part of a mixed-use project or as a stand alone residential use.
-  Rezone underutilized land from nonresidential to residential to expand the supply of available residential land.
-  Zone for, promote and encourage infill, compact, transit-oriented, walkable, bikeable and pedestrian- friendly developments to reduce premature development of non-residential land.
-  Encourage development that takes advantage of existing infrastructure with surplus capacity (e.g., recycling, compact, infill, mixed-use, manufactured housing, second units).
-  Redevelop and/or recycle underutilized existing land to more intensive uses.
-  Convert obsolete older public/institutional/commercial/ industrial buildings to residential use through adaptive reuse and/or historic preservation.
-  Over zone – Create a surplus of land for residential development during the current planning period of at least 20 percent more than the locality's share of the regional housing need. Over zoning compensates for urban land left vacant due to ownership and development constraints, and creates a real surplus. A sufficient supply of land beyond the time frame of the element helps prevent land shortages from bidding up land costs.
-  Allow and promote small and irregular size lot development.
-  Consolidate lots - combine small residential lots into a larger lot to accommodate higher density development.
-  Phase Additional Capital Improvements - Coincide capital improvements with the demand for new construction.
-  Access alternative capital improvement funding mechanisms Such as Mello-Roos community facilities bonds, the Infrastructure Bank, special assessment districts, development agreements, general or special obligation bonds, and/or the use of State and federal funds (e.g., transportation funds) to expand infrastructure capacity.
-  Increase height limitations – Allow three stories in multifamily zones at minimum.
-  Use innovative siting techniques – Approve Subdivision Maps that can accommodate zero-lot-lines and half-plex developments.
-  Promote clustering of new housing to help reduce new infrastructure and housing development costs.
-  Increase Floor Area Ratios – Allow for larger buildings on smaller lots and/or more units per lot by reducing the FAR (total lot area divided by the total building area).
-  Establish No Net Loss Policy – Rezone equal amounts of land to replace any residential land used for other than its intended residential use.










Question 43:

How can a locality make sufficient sites available to accommodate its share of the RHNA for all income levels, particularly lower- and moderate-income households?

Answer:

While the sites inventory may identify sufficient sites in the aggregate to accommodate the locality's total share of the regional housing need, it may not identify sufficient sites with appropriate zoning to accommodate the very low-, low- or moderate-income household need. In these circumstances, the element must identify sites to address the need for lower- and moderate-income households.

Localities have developed various land-use controls and development incentives to encourage a variety of housing types for all income levels, including:

-  Zone a high proportion of sites for higher density and more intensive residential use.
-  Encourage and facilitate second-unit development in single-family residential areas. Policies to encourage second units include reducing development standards, offering development incentives, and complying with Chapter 1062, Statutes of 2002. For more information on the second-unit legislation, see memo on HCD's website at www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf.
-  Zone sites for mobilehomes and mobilehome park use.
-  Establish a rental-only zone that provides for rental apartment development in areas designated for higher density residential use.
-  Promote multifamily rental housing above ground floor commercial uses (mixed residential-nonresidential land-use). Permit apartment uses in office/commercial areas where office space revenue can offset rental costs and act as an internal project subsidy.
-  Compile and maintain an inventory of public surplus lands and land owned by other entities, such as school districts, public utilities, etc., to identify sites suitable for development of low- and moderate-income housing. Facilitate the acquisition of surplus public lands and other identified land for affordable housing development.
-  Zone for housing types typically occupied by renter households (e.g., second units, apartment complexes, and mixed-use projects). Ensure zoning also provides opportunities for single room occupancy (SRO) units and housing with supportive services.
-  Offer development incentives (e.g., land write-downs, fee waivers, and below market-rate financing) negotiated through developer agreements to increase multifamily densities in selected areas.
-  Reduce multifamily development standards (e.g., number of required covered parking spaces, setback and building height requirements, etc.).

Question 44:

What are “appropriate zoning and development standards”?

Answer:

Appropriate zoning and development standards facilitate the location, siting, capacity, and price of residential development to meet identified housing needs, particularly new construction for lower-income households. These include establishing minimum densities, minimum floor areas, maximum lot coverage, allowing minimum building, rear and side yard setbacks, reduced parking and amenities requirements, and other controls such as streamlined architectural and design review standards.

State zoning law (Government Code Section 65913.1) requires localities to zone sufficient vacant land for residential use with appropriate standards to meet the housing needs as identified in the general plan. Appropriate standards are requirements that “contribute significantly to the economic feasibility of producing housing at the lowest possible cost.”

In regulating subdivisions, Government Code Section 65913.2 provides that a local government may not impose design criteria for the purpose of rendering an affordable housing development infeasible. A community may not impose standards and criteria for public improvements (e.g., streets, sewers, schools, or parks) that exceed those imposed on other developments in similar zones. Additionally, the effect of a community’s ordinances and actions on accommodating the housing needs of the region must be considered.

Question 45:

Must a locality provide adequate sites through appropriate zoning at the beginning of the planning period?

Answer:

No. However, a locality's ability to accommodate all units needed during the planning period is best served by designating appropriate zoning as early as possible. The most direct procedure is for the locality to undertake rezoning when the housing element is adopted. Although the program does not have to ensure the provision of sites at the beginning of the planning period, it must make provision for sites that will be available soon enough to reasonably permit development during the planning period. For example, rezoning actions should be completed within the first year to two years. Subsequent zoning allows the locality to meet the site-specific rezoning provision (e.g., public notification and hearing) according to a prescribed timetable.

Question 46:

What happens if a locality fails to implement a rezoning program from a prior planning period?

Answer:

In accordance with Chapter 614, Statutes of 2005 (AB 1233), if in the prior planning period a locality failed to identify or make available adequate sites to accommodate their RHNA, the locality must, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate that portion of the RHNA from the prior planning period. This requirement is in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need for the new planning period.

Question 47:

What programs must accompany non-vacant sites or underutilized sites identified to accommodate a locality's regional share?

Answer:

Identification of underutilized land and opportunities for mixed uses should be accompanied by programs that encourage their development and/or reuse. Such programs could include actions to initiate any necessary rezoning, establish appropriate regulatory and/or financial incentives, relax development standards (design criteria, parking, building height, setback requirements, etc.), support more compact and higher density residential developments, and facilitate the new construction of multifamily rental and owner-occupied units. Such developments are often located in urban cores areas, Redevelopment Project Areas, adjacent to existing neighborhoods, close to transit centers and established businesses and services.

Question 48:

Must a locality maintain its sites inventory throughout the planning period?

Answer:

Yes. Government Code Section 65863 prohibits a local government from reducing the residential density of parcels or sites included in its inventory unless it:

- 1) makes written findings stating that such a reduction is consistent with its housing element and will not prevent it from accommodating its RHNA or,
- 2) identifies replacement sites equal to or exceeding the density of the original site.



The purpose of this section is to ensure local governments maintain the inventory of sites identified in the housing element throughout the planning period commensurate with the remaining regional housing need.

Question 49:

When may sites located on a military base undergoing closure or conversion serve as an adequate site?

Answer:

The following two conditions must be met in order to qualify sites on a converting or closing military base as adequate sites:





-  Housing units at the site will be available for occupancy by eligible households within the planning period of the element.
-  Sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses do not qualify as an adequate site.

Question 50:

Does the statute provide flexibility to accommodate a jurisdiction's regional share allocation by other means?

Answer:





Pursuant to Government Code Section 65583.1(c)(1), local governments may meet up to 25 percent of their adequate sites requirement by substituting existing units which are not now available and affordable to very low- and low-income households, are condemned or uninhabitable, or will be lost from the affordable housing stock because of expiring affordability restrictions during the planning period. All such units must have long-term affordability restrictions and covenants. To use this provision of the law, the housing element must include a program to:

-  Identify the specific source and amount of funds to be used to provide committed assistance.
-  Dedicate the funds needed for this purpose.
-  Describe the number of units to be provided for low- and very low-income households.
-  Demonstrate that the amount of funds dedicated is sufficient to provide the units at affordable costs.

Answer 50 (continued):

Only units to be substantially rehabilitated; converted from non-affordable to affordable by acquisition of the units or the purchase of affordability covenants; or preserved at affordable housing costs by the acquisition of the units or purchase of affordability covenants are eligible.

A. Substantially Rehabilitated: Units to be substantially rehabilitated must result in a net increase in the stock of housing affordable to low- and very low-income households and include the following provisions:

-  Units must be at imminent risk of loss to the housing stock.
-  Local governments must commit to providing displaced tenants not otherwise eligible for relocation assistance under State relocation law, with assistance consistent with that required under Health and Safety Code Section 17975, including a minimum of four months rent and moving expenses and comparable replacement housing.
-  Relocation assistance must be provided to any occupants temporarily or permanently displaced and the local government must require that any displaced occupant will have the right to reoccupy the rehabilitated units.
-  Rehabilitated units have long-term affordability requirements not less than 20 years or any other term required by federal or State funding law or regulation.




B. Converted: Multifamily units in a rental complex of 4 or more units converted from non-affordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions. These units are not to be acquired by eminent domain and must provide a net increase in the stock of housing affordable to low- and very low-income households.

Converted units must be made available at affordable housing costs, not occupied by low- or very low-income households, and in decent, safe and sanitary condition when occupied. Long-term affordability covenants (not less than 55 years) apply to these units. Relocation assistance must be provided to any occupants temporarily or permanently displaced and the local government must require that any displaced occupant will have the right to reoccupy the rehabilitated units.

C. Preserved: Units are to be preserved at affordable housing costs to lower-income households by acquisition of the unit or the purchase of affordability covenants for the units. Preserved units must have long-term affordability covenants and restrictions (at least 40 years), have received governmental assistance under specified programs, be expected to convert to non low-income uses, and be in decent, safe and sanitary condition. When units are identified for preservation, they must be available at affordable costs to persons and families of low- or very low-income.

Answer 50 (continued):

Other Requirements to Meet the Alternative Site Requirement:

-  Jurisdictions are required to document the status of their committed assistance program during the housing element planning period in the annual report to the governing body. The report should identify the units for which committed assistance has been provided and indicate how each unit complies with the statutory requirements. If the jurisdiction has not entered into an enforceable agreement of committed assistance for all the units initially identified, the local government must adopt an amendment to its housing element identifying additional adequate sites sufficient to accommodate the number of units for which committed assistance was not provided. Jurisdictions which do not amend their element to include adequate sites, or which do not complete rehabilitation, acquisition, purchase of affordability covenants, or the preservation of identified units within two years after the committed assistance was provided are prohibited from identifying substitute units in the next regular housing element update, above the number of units actually provided or preserved with committed assistance.
-  Only those local governments (during the current or immediately prior planning period) that have met some of their share of the regional need for housing affordable to low- and very low-income households may use the alternative sites provision of housing element law. Documentation of having met this need includes issuance of a building permit, payment of all development and permit fees, and/or that the unit is eligible to be lawfully occupied.
-  “Committed assistance” means a local government has entered into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make identified units affordable and that the units will be made available for occupancy within two years of the execution of the agreement. “Net increase” means only those units that were not provided committed assistance in the immediately prior planning period.

DEVELOPMENT OF HOUSING FOR LOW- AND MODERATE-INCOME HOUSEHOLDS

Government Code Section 65583(c)(2)

Question 51:

What is the local government's role in assisting in the development of adequate housing for low- and moderate-income households?

Answer:

Having assessed and identified the housing needs of low- and moderate-income households, localities can employ a significant number of diverse strategies to assist in developing adequate housing to meeting those needs. A combination of public and private resources is necessary to build affordable housing.








Localities can offer direct support for the development of affordable housing through various financing mechanisms including the issuance of municipal and mortgage revenue bonds and use of redevelopment powers. Direct assistance can also be provided through the utilization of appropriate federal and State financing and subsidy programs to create rental and ownership opportunities. Localities can create first time homebuyer, equity sharing, or self-help housing programs to provide affordable homeownership opportunities. Local governments can also assist developers in making applications for other public or private housing funds or low-income housing tax credits.

Working with local nonprofit housing developers, advocacy groups and tenants may make assisting in the development of affordable housing easier and more effective. Many jurisdictions support existing nonprofit housing developers or help establish new joint ventures and local housing sponsors. Local governments can establish a local housing authority or work with an established nonprofit development corporation or Community Based Housing Development Organization (CHDO) to develop, operate, and manage low- and moderate-income housing projects. Contacts for housing advocacy and technical assistance organizations are available through links on HCD's website.

Local governments can indirectly facilitate the development of more affordable housing through effective administration of land-use controls and by providing appropriate regulatory concessions and incentives.

Answer 51 (continued):

The following are examples of programs that have been successfully implemented by localities to comply with State law and address their housing needs:

-  Adopt a density bonus ordinance in compliance with Government Code Section 65915 and develop an outreach program to ensure its successful implementation.
-  Expand on the minimum requirements of State density bonus law by offering additional density bonuses and/or bonuses for housing meeting the special needs of the community (e.g., housing for large families).
-  Use land banking to make surplus lands available as sites for affordable housing.
-  Provide fast track or one-stop permit processing for low-income housing projects.
-  Reduce, waive or subsidize development and impact fees for affordable housing projects.
-  Reduce or waive certain development standards to promote affordable housing development. For example, reduce parking standards or covered parking requirements for senior or certain projects designed for lower-income households.
-  Allow the purchase of air rights to increase building heights and/or intensify residential uses.

REMOVE OR MITIGATE GOVERNMENTAL CONSTRAINTS

Government Code Section 65583(c)(3)

Question 52:

When must a housing element include programs to address or remove governmental constraints?

Answer:

For each policy, requirement, or procedure identified as a governmental constraint, the element must include an appropriate program action to address and/or remove the constraint.











Question 53:

What are examples of programs localities have used to reduce or eliminate barriers to the maintenance, improvement, and development of housing?






Answer:

The following are strategies communities have found appropriate to remove regulatory barriers:

Land Use Controls












-  Modify and/or reduce growth controls to ensure accommodation of projected housing needs.
-  Reduce procedural requirements for growth control ordinances.
-  Exempt affordable housing projects from growth control ordinances.
-  Allow zero-lot line and cluster developments.
-  Relax development standards, for example:
 - Front yard set backs of 20 feet or less
 - Minimum lot sizes of 6,000 square feet or less
 - Lot width of 60 feet or less
-  Reduce parking requirements for projects serving low-income households, seniors, and for transit-oriented development.
-  Provide flexible standards for second units to encourage their development.
-  Increase height limits.
-  Establish minimum densities.
-  Eliminate amenity based “mid-point” density policies.

Codes and Enforcement Procedures



-  Allow use of alternative building design and construction materials and methods.
-  Issue building permits before subdivision approval so the developer can begin construction upon permit approval.
-  Coordinate inspection/enforcement activities for existing housing with information, technical assistance, and the availability of rehabilitation program grants/loans.
-  Allow rehabilitation using materials and methods as of date of original construction, unless a health or safety hazard would result (Health & Safety Code Section 17922(c)).
-  Use State Housing Law (SHL) codes without additional local requirements. State law prohibits modification of SHL standards, except where local variations are necessary for reasons of climate, geology, or topography (Health and Safety Code Section 17958.5).

Answer 53 (continued):








On/Off Site Improvement Requirements

-  Reduce street widths (e.g., 36 feet or less) and right of ways (e.g., 56 feet or less).
-  Reduce the number and size of sidewalks (e.g., on one side of street only).
-  Use roll curbs instead of formed curbs and gutters.
-  Increase spacing between manholes.
-  Allow multiple service laterals.
-  Allow common trenching for utilities.
-  Allow fire hydrant intervals of 500 feet or more.
-  Where appropriate, reduce the size of water and sewer mains.
-  Design residential streets to accommodate average traffic estimates.
-  Use utility or sidewalk easements instead of right-of-ways.
-  Place water supply systems and sanitary sewers in easements instead of right-of-ways.



Fees and Exactions

-  Reduce or waive fees, exactions, and/or development standards for particular types of development (e.g., rental or assisted housing, second units, mixed-use and infill projects, housing affordable to low- and moderate-income households).
-  Allow payment of fees upon certificate or occupancy, rather than prior to building permit issuance to reduce developer construction financing costs and overall development costs.




Processing and Permit Procedures

-  Expedite permit processing (allow one-stop, consolidated, and concurrent permit processing).
-  Hold pre-application development conferences.
-  Prepare and present explanatory materials on the application and review processes to streamline permit processing.
-  Utilize development agreements as authorized by Government Code Section 65864.
-  Establish ministerial procedures for multifamily projects when land is zoned multifamily.
-  Streamline design review process and prepare clear, objective guidelines.
-  Increase use of ministerial processing.

Housing for Persons with Disabilities

-  Develop formal procedures for reasonable accommodation for housing for persons with disabilities in accordance with fair housing and disability laws and amend the locality's Municipal Code to provide for clear rules, policies, and procedures, for reasonable accommodation in order to promote equal access to housing. Policies and procedures should be ministerial and include but not limited to identifying who may request a reasonable accommodation (i.e., persons with disabilities, family-members, landlords, etc.), timeframes for decision making, and provision for relief from the various land-use, zoning, or building regulations that may constrain the housing for persons of disabilities.
-  Regularly monitor the implementation of the jurisdiction's ordinances, codes, policies, and procedures to ensure that they comply with the "reasonable accommodation" for disabled provisions and all fair housing laws.

Answer 53 (continued):

-  Reduce parking requirements for projects serving seniors and persons with disabilities households.
-  Increase use of ministerial processing of State licensed group homes, regardless of the number of occupants in residential zones.
-  Update the jurisdiction's definition of "family" and "single-family residence" to comply with all federal and state fair housing laws. The definition should not distinguish between related and unrelated persons and should not impose numerical limitations on the number of persons that may constitute a family.

CONSERVE AND IMPROVE EXISTING AFFORDABLE HOUSING STOCK

Government Code Section 65583(c)(4)






Question 54:

***What strategies conserve (maintain affordability) and
improve (structurally rehabilitate) the condition of the
affordable housing stock?***

Answer:








The existing affordable housing stock is a valuable resource that should be conserved and, as necessary, improved. Strategies used to conserve and improve the condition of the affordable housing stock include:

Conservation

-  Require one-to-one replacement of any housing units demolished due to public or private action.
-  Enact ordinances governing demolition of housing units and conversions of housing units to other uses (e.g., office or commercial). For example, Section 17980(b)(3) of the Health and Safety Code requires enforcement agencies to consider needs expressed in the housing element when deciding whether to require vacation or repair of property.
-  Provide stable zoning to preserve affordable housing. For example, change the underlying zoning for a mobilehome park from commercial to mobilehome park.
-  Enact occupancy ordinances requiring presale code inspections and compliance before title to a property is transferred to new owners.
-  Maintain long-term affordability restrictions on assisted rental units.

Answer 54 (continued):

Improvement

-  Conduct annual housing condition surveys to determine the extent of rehabilitation need and to prioritize rehabilitation program actions.
-  Enforce building and housing codes through an ongoing compliance program, financed in part with proceeds from denial of state tax benefits to owners of substandard rental housing.
-  Establish a self-help paint-up/fix-up neighborhood improvement program.
-  Designate lower-income neighborhoods for concentrated housing rehabilitation assistance through subsidized grants and/or deferred low interest loans.
-  Designate lower-income neighborhoods for public facility/infrastructure improvements through general fund capital improvement plans, special assessments districts, Mello-Roos community facilities districts, etc.
-  Access State and federal grant/loan owner and rental rehabilitation programs including HCD Rental Housing Programs, Community Development Block Grant, HOME, etc.
-  Rehabilitate residential hotels and motels (SROs) for very low- and low-income households including the homeless and those at-risk of homelessness.

PRESERVE AT-RISK ASSISTED PROJECTS




Government Code Section 65583(c)(6)(a)

Question 55:







What steps can be taken to preserve units at-risk of conversion?

Answer:

The nature of conversion risk varies significantly among projects depending on the type of subsidy and related affordability controls. Individual program responses should be tailored to the results of the analyses and specific local situations. The following strategies are not exhaustive:

-  Establish an early warning system and monitor at-risk units based on at-risk units in the ten year inventory and analyses (conversion risk, costs, and resources) for possible conversions within the current and next planning period.
-  Gauge owner's intent to prepay a federally assisted mortgage.
-  Gauge owners interest in renewal and/or opting-out of project-based Housing Choice Vouchers. Determine whether profit-motivated owners intend to renew project based voucher contracts. Five to twenty year HUD contracts are available subject to annual appropriations.










Answer 55 (continued):

-  Identify qualified entities interested in participating in the Offer of Opportunity to Purchase and Right of First Refusal program (Government Code Section 65863.11).
-  Respond to any Federal and/or State notices including Notice of Intent to Pre-Pay (Government Code Section 65863.10), owner Plans of Action, or Opt-Out Notices filed on local projects. Local governments (affected public agencies) receive these Notices and should respond by contacting property owners.
-  Facilitate refinancing or purchase by a qualified entity through the opportunity to submit a bonafide Offer to Purchase and Right of First Refusal process.
-  Allocate potential sources of funds for mortgage refinancing, acquisition and rehabilitation including gap funding for nonprofit housing developers as intermediaries and for rental subsidy assistance (California Housing Finance Agency, State HCD, predevelopment funds, tax-exempt bonds, tax credits, Redevelopment Low and Moderate Income Fund, CDBG, HOME, etc.).
-  Provide tenant relocation assistance and/or direct rental subsidies. In the event of owner mortgage prepayment or project based Housing Choice Voucher (Section 8) opt-out, the enhanced voucher may not be sufficient to assure affordability or the new owner may refuse to accept housing choice vouchers. In such cases, local relocation assistance and additional rental subsidies may be necessary. Work with the local Public Housing Authority to determine the availability of tenant-based Housing Choice Vouchers for tenants who choose to move from at-risk units or who are displaced by conversion. Some jurisdictions have used redevelopment housing funds for replacement of Housing Choice Voucher rental subsidies.
-  Provide ongoing preservation technical assistance and education to affected tenants and the community at-large, on the need to preserve the existing affordable housing stock.

Question 56:

What other kinds of local program actions help prevent the loss of at-risk government assisted projects?

Answer:

-  Require replacement of low-income units converted to market-rate on a one-to-one basis.
-  Provide local direct rental subsidies to affected tenants who wish to remain in converted units or where Housing Choice Vouchers and certificates are not available.
-  Link local housing sponsors with converting projects requiring new ownership, financing and/or subsidies, and management.
-  Provide prospective new owners with predevelopment, acquisition, rehabilitation, and/or gap grants and loans in exchange for long-term use and rent restrictions.
-  Provide rehabilitation grants/loans with extended use restrictions for older units (e.g. locally funded with mortgage revenue bond proceeds, CDBG, or HOME).
-  Act as an “intermediary” to temporarily preserve converted units until local housing sponsors can secure financing to repurchase and rehabilitate.
-  Offer local incentives (lower interest rate loans and more favorable loan terms and conditions) to owners wishing to refinance and prepay their existing mortgage in exchange for continued affordability restrictions.
-  Reduce, waive or subsidize local development fees associated with preservation or replacement of at-risk units.
-  Incorporate preservation incentives/conversion disincentives into an adopted Preservation Ordinance.

EQUAL HOUSING OPPORTUNITIES

Government Code Section 65583(c)(5)

Question 57:

What can local governments do to promote equal housing opportunity?

Answer:

Since State and federal laws uniformly outlaw most kinds of housing discrimination, local government's role is to identify program strategies that support and implement these laws. Such strategies may include consultation with fair housing and counseling organizations in the community to document the incidence of housing discrimination and the availability of services to address the problem. If fair housing services are not available or are inadequate, the locality can request technical assistance from HUD (<http://www.hud.gov/offices/fheo>) the Housing Unit of the State Department of Fair Employment and Housing (<http://www.dfeh.ca.gov>), and/or local, regional, private Fair Housing organizations to help develop specific local government actions to promote fair housing opportunity. Fair Housing laws make it illegal to discriminate against any person because of race, color, religion, sex, disability, familial status, national origin, ancestry, marital status, sexual orientation, source of income and age in the rental or sale, financing, advertising, appraisal, provision of real estate brokerage services, etc., and land-use practices.

In the housing element, a local equal housing opportunity program should provide a means for the resolution of local housing discrimination complaints and should be promoted throughout the community. The local program may involve the dissemination of information on fair housing laws, and provide for referrals to appropriate investigative or enforcement agencies. Where appropriate, communities should distribute fair housing information in languages other than English. Sites for display of fair housing information include buses, in public libraries, community and senior centers, local social service offices, and other public locations including Civic Centers or County administrative offices.





In larger and/or urban jurisdictions, more direct program actions would be appropriate such as a commitment to use CDBG funds to support fair housing information and referral and counseling services. The locality may wish to contract with or create a fair housing council to investigate and resolve discrimination complaints, and advocate specific equal housing opportunity actions before community and business organizations.

A Consolidated Plan requires annual certifications that the jurisdiction will affirmatively further fair housing, conduct an analysis to identify impediments to fair housing choice, and take actions to overcome the effects of any impediments identified.

Answer 57 (continued):

Many jurisdictions cross-reference and/or incorporate fair housing information and data from the consolidated plan into their housing element (see Appendix for additional resources).

The following are examples of successful policies, plans, and practices to identify barriers and promote fair housing:

-  Use CDBG funds to fund fair housing enforcement, education, and technical assistance activities.
-  Ensure that all new, multifamily construction meets the accessibility requirements of the federal and State fair housing acts through local permitting and approval processes.
-  Use banks that conduct an effective Community Reinvestment program.
-  Revise zoning and land-use policies that have an unintended negative impact on the ability of families with children, low-income families, and renters with disabilities from having a choice of housing options.

All units of government are required to comply with the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in employment, public and commercial facilities, delivery of services, zoning and land-use.

ENERGY CONSERVATION OPPORTUNITIES

Government Code Section 65583(a)(7)


Question 58:

What constitutes an adequate analysis of energy conservation opportunities?













Answer:

The purpose of this analysis is to ensure the locality has considered how energy conservation can be achieved in residential development and how energy conservation requirements may contribute to reducing overall development costs and therefore, the supply and affordability of units.

The following are examples of policies, plans, and development standards that have been successful in reducing local energy costs or consumption:

-  Promote higher density and compact developments.

Answer 58 (continued):


-  Adopt an Energy Conservation Ordinance to establish programs that encourage conservation of nonrenewable energy resources.
-  Enforce State Energy Efficiency Standards for Residential and nonresidential Buildings (Government Code Title 24, Part 6).
-  Provide incentives to encourage green (energy-efficient and environmentally-sensitive) building techniques and materials in new and resale homes and apartments.
-  Support the elimination of contamination in older buildings (lead based paint, asbestos, etc.) during rehabilitation and code inspections.
-  Promote energy audits and resident participation in utility rebate programs through private and public utility companies.
-  Encourage low-income homeowners or renters to apply for free energy audits and home weatherization through the federal DOE's Weatherization Assistance Program in partnership with State and local programs (usually conducted by community action agencies or other nonprofit organizations). Weatherization and insulation services reduce the heating and cooling costs for low-income families.
-  Use emerging technologies to reduce high demands for electricity and natural gas including use of passive solar devices and where feasible other renewable energy technologies (e.g., biomass, wind and geothermal).
-  Develop energy conserving standards for street widths and landscaping of streets and parking lots to reduce heat loss and/or provide shade.
-  Require energy efficient retrofits prior to resale of homes.
-  Encourage the use of location-efficient mortgage funds available from Fannie Mae.
-  Promote the construction of tighter building envelopes with maximum height and sky exposure planes and minimum setbacks.
-  Promote the use of passive solar devices as an alternative to the use of electricity or natural gas and where feasible other renewable energy technologies (e.g. biomass, wind and geothermal).


Answer 58 (continued):

The California Department of Community Services and Development (www.csd.ca.gov), in partnership with the network of local community services agencies that assist low-income households, administers the Low Income Home Energy Assistance Program (LIHEAP) that provides financial assistance to low-income persons to offset the costs of heating and/or cooling dwellings and the Energy Low-Income Weatherization Assistance Program (DOE-LIWAP) that provides installation and weatherization measures that increase the energy efficiency of dwellings occupied by low-income persons.

Additional information is available from the federal Environmental Protection Agency (EPA), Department of Energy (DOE), and HUD's Partnership for Advancing Technology in Housing (PATH); California Environmental Protection Agency (Cal-EPA) and the California Energy Commission.


 The EPA website is <http://www.epa.gov/region9/>.


 The DOE website is <http://www.doe.gov>.


 The PATH website is <http://www.pathnet.org/>

PATH promotes the creation and use of technology to improve the quality, durability, environmental performance, energy efficiency, and affordability of American homes. Led by HUD, this public/private initiative combines resources from both the Government and the housing industry to speed innovation throughout the homebuilding industry.

 Cal-EPA's website is <http://calepa.ca.gov> and the State Energy Commission's websites include: <http://www.energy.ca.gov>, and <http://www.consumerenergycenter.org/index.html>

 For information on Green Building techniques refer to: Global Green <http://www.globalgreen.org/>.

 The Alameda County Waste Management Authority Green Building Program <http://www.stopwaste.org>.

 California Integrated Waste Management Board Green Building Program <http://www.ciwmb.ca.gov/GreenBuilding/>.

QUANTIFIED OBJECTIVES

Government Code Section 65583(b)

Question 59:

What is meant by maximum objectives for units to be constructed rehabilitated, and conserved by income group?

Answer:

“Maximum” objectives refer to the local governments forecast of most foreseeable units likely to be constructed, rehabilitated, or conserved during the planning period. The term “maximum” does not represent a ceiling on development, but is a target goal for the jurisdiction to achieve based on need, resources, and constraints.

The construction objective refers to the number of new units that potentially may be constructed over the planning period of the element given the locality’s land resources, constraints which cannot be mitigated or removed, and proposed programs.

The rehabilitation objective is the number of existing units expected to be rehabilitated during the planning period of the element.

The conservation objective refers to the preservation of the existing affordable housing stock throughout the planning period. To determine the number of units to be conserved, a locality could, for example, quantify the number of existing housing units that will be preserved through the provision of more stable zoning for mobilehome parks or other affordable housing types. A housing element could also provide objectives for local participation in the Housing Choice tenant-based certificate/voucher program (Section 8), which preserves the affordability of rental units.

A subset of the conservation objective is the number of federally, state, and locally assisted “at-risk” units to be preserved.

Each quantified objective should be described by income level as illustrated in the following table:

Income Category	New Construction	Rehabilitation	Conservation/ Preservation
Very Low-Income			
Low-Income			
Moderate-Income			
Above Moderate			

Question 60:

How should a locality establish its quantified objectives?

Answer:

The setting of quantified objectives follows a locality's work in identifying its housing needs, surveying its land and financial resources, analyzing constraints, and developing appropriate programmatic and policy responses which reflect a community's unique needs and circumstances. This information is used to establish reasonable estimates of the maximum number of units, by income level, these programs and policies can accomplish.

Ideally, objectives will be equal to identified needs. However, when a locality has determined total housing needs exceed available resources, the quantified objectives may be less than the total identified need. Under these circumstances, the element should describe the analysis used to establish the maximum objectives.

Some localities also establish quantified objectives by tenure and/or by type of household to be benefited.

Question 61:

Given limited resources, how can a locality establish maximum objectives?

Answer:

For some communities, total housing needs may exceed the locality's ability to meet those needs with existing resources. In such cases, communities target limited resources to areas of the greatest local need.

Emphasizing a particular objective however may result in reducing another. For example, in urban areas with a shortage of land, programs to maximize housing preservation may be the priority, even though this may limit opportunities for the development of new housing.

In growing communities, the development of housing affordable for future residents may be a greater need than housing rehabilitation. Such a community may use Community Development Block Grant or HOME funds for land write-downs to facilitate new construction rather than for rehabilitation loans.

OTHER REQUIREMENTS

MAINTAIN CONSISTENCY WITH GENERAL PLAN

Government Code Section 65583(c)

Question 62:

How should consistency among elements of the general plan be achieved and maintained?

Answer:

The housing element affects a locality's policies for growth and residential land uses. Among other things, the housing element establishes the locality's housing goals, policies and objectives, identifies sites for new construction, and addresses governmental constraints. The goals, policies, and objectives of an updated housing element may conflict with those of the land-use, circulation, open space elements, zoning, and/or redevelopment, capital improvement plans, especially if these plans or elements have not been updated recently.

The general plan is required to be "internally consistent". Conflicts between general plan elements should be acknowledged and resolved. A general plan must be amended to eliminate conflicts between elements. When conflicts exist, the housing element must describe how consistency will be achieved and how the goals of the housing element will be addressed. California law also requires consistency between a general plan and implementation measures such as the zoning ordinance except for charter cities.

Many communities attempt to address and resolve conflicts by amending the zoning ordinance and all relevant elements of the general plan concurrent with amendment of the housing element. For example, if densities of particular sites must be increased to identify adequate sites, the attendant amendments to the general plan and the zoning ordinance could be proposed and adopted at the same public hearing as the housing element.

At the time of any amendment to the housing element or other general plan elements, the jurisdiction should review the entire general plan, especially land-use provisions, to ensure internal consistency is maintained.

Answer 62 (continued):

Jurisdictions must ensure programs and policies in the housing element do not conflict with those in the other elements; in particular the land-use, circulation or conservation element. For example, the housing element should not propose potential build out capacities that would be unachievable due to policies in the circulation element that propose to maintain specific levels of service (LOS) standards for existing and proposed roadways and intersections. Also, realistic development capacity could be impacted by the conservation element policies that require new residential projects to provide large open space corridor or buffer areas.

A broader discussion of general plan consistency requirements is found in the Governor's Office of Planning and Research *General Plan Guidelines*.

ANNUAL REPORT

Government Code Section 65400(b)(1)

Question 63:

How does the annual reporting requirement relate to the housing element?

Answer:

The annual report to the legislative body provides information on the status of general plan and implementation efforts, including progress in meeting the share of the regional housing need and efforts to remove governmental constraints to the maintenance, improvement, and development of housing. Annual reports of local governments to their legislative bodies documents progress in meeting identified housing goals and objectives, facilitates housing element revisions and updates, assists in local reviews of the previous housing elements, and can serve as a tool to encourage effective public participation. Annual reports are to be submitted to the Governor's Office of Planning and Research and HCD by April 1 each year.

Annual reports can also serve as an effective tool in monitoring progress in implementing programs and policies. Should the annual reports document significant delays or constraints to program implementation, the local government could modify program actions to improve implementation.





REQUIREMENTS FOR COASTAL ZONE JURISDICTIONS

Government Code Section 65588(d)(1-4)

Question 64:

What do the requirements for coastal zones include?

Answer:

-  The number of new housing units approved for construction within the coastal zone (after January 1982).
-  The number of housing units for persons and families of low- and moderate-income (Health and Safety Code Section 50093) required to be provided in new housing developments either within the coastal zone or within three miles of it.
-  The number of existing residential dwelling units occupied by low- and moderate-income households required either within the coastal zone or within three miles of the coastal zone that have been authorized to be demolished or converted (after January 1982).
-  The number of residential dwelling units for low- and moderate-income persons and families that have been required for replacement (of those units being demolished or converted) in the coastal zone or within three miles of the coastal zone. Designate the location of replacement units in the housing element review for coastal zones.

This data on new construction, demolished/converted, and replacement housing units for low- and moderate-income households helps the locality determine whether the affordable housing stock in the coastal zone is being protected and provided as required by Section 65590. It is also appropriate for the housing element to include incentives and regulatory concessions in order to increase the feasibility of providing low- and moderate-income housing within the coastal zones.

NOTIFICATION TO RETAIL WATER AND SEWER PROVIDERS

Government Code Section 65589.7

Question 65:

What is a local government's obligation regarding notification to water and sewer providers?

Answer:

Per Chapter 727, Statutes of 2005 (SB 1087), upon completion of an amended or adopted housing element, a local government is responsible for immediately distributing a copy of the element to area water and sewer providers. The purpose of this section of law is to ensure that public and/or private water and wastewater providers provide a priority to proposed housing development projects for lower-income households in their current and future resource or service allocations.

Local public and/or private water and sewer providers must adopt written policies and procedures that grant a priority for service hook-ups to developments that help meet the community's share of the regional need for lower-income housing. In addition, the law prohibits water and sewer providers from denying, conditioning the approval, or reducing the amount of service for an application for development that includes housing affordable to lower-income households, unless specific written findings are made.

Urban water Management Plans must include projected water use for single and multifamily housing needed for lower-income households. This law is useful in areas with limited available sewer or water hook-ups.

To facilitate and expedite the notification process, localities should communicate the affordable housing needs identified in their housing elements directly to applicable districts. For example, when distributing the housing element to special districts, local governments should include a cover letter citing Government Code Section 65589.7, describing the regional housing needs, and identifying the sites in the inventory that are appropriate for the development of housing for lower-income households and therefore require priority. Moreover, local governments should consult with water and sewer providers during the development and update of the housing element which facilitates effective coordination between local planning and water and sewer service functions to ensure adequate water and sewer capacity if available to accommodate housing needs.

"Water services at retail" means supplying water directly to the end user or consumer of that water, and does not include sale by a water supplier to another water supplier for resale.