

Addendum to
The General Plan in California
by David Early
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Since the publication of *The General Plan in California* in late 2015, there have been several changes to California law in respect to General Plan preparation. This Addendum, prepared by author David Early, documents the following additions to the law:

- New General Plan Guidelines
- Senate Bill 379
- Senate Bill 1000
- Senate Bill 32
- 2017 Housing Bills

2017 General Plan Guidelines. The Office of Planning and Research (OPR) published its updated General Plan Guidelines in 2017.¹ The new General Plan Guidelines include OPR's recommendations for meeting all statutory General Plan requirements. Each statutory reference is hyperlinked to the full text of the Government Code for easy access. The General Plan Guidelines should be consulted in conjunction with *The General Plan in California* for a full picture of both legal requirements and best practices.

Senate Bill 379 (SB 379) of 2015, sponsored by Senator Hannah-Beth Jackson of Santa Barbara, adds requirements for the content of the Safety Element related to climate change and resiliency. These requirements include the following:

- A vulnerability assessment identifying climate change risks.
- Adaptation and resilience goals, policies, and objectives.
- Feasible implementation measures.
- Methods to avoid or minimize climate change impacts associated with new uses of land.
- Location of new essential public facilities outside of at-risk areas.
- Designation of adequate and feasible infrastructure located in an at-risk area.
- Guidelines for working with relevant local, regional, state, and federal agencies.
- Identification of natural infrastructure that may be used in adaptation projects.

These contents may be incorporated by reference if they are already included in a Hazard Mitigation Plan, Climate Action Plan, or similar document, or they may be created separately for inclusion in the Safety Element.

Each city and county must meet these requirements when it updates its Local Hazard Mitigation, or by January 1, 2022, whichever is sooner.

¹ http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf

Senate Bill 1000 (SB 1000) of 2016 requires that General Plans include an Environmental Justice Element. The Environmental Justice Element must identify disadvantaged communities within the area covered by the General Plan, which are to be identified using one of two methodologies:

1. The local agency preparing the General Plan may rely on the definition provided in Health and Safety Code Section 39711. On behalf of the California Environmental Protection Agency (CalEPA), the State's Office of Environmental Health Hazard Assessment (OEHHA) promulgates a map of disadvantaged communities in the state, known as CalEnviroScreen, which serves as an official reference for identifying disadvantaged communities under Section 39711. The current official version of this map is Version 3.0, which was published on January 9, 2017 and is available at <http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.
2. Alternatively, the local agency preparing the General Plan may identify disadvantaged communities in its jurisdiction on its own, following this definition:
 - Household incomes are at or below 80 percent of the statewide median income; AND
 - Local residents are disproportionately affected by environmental pollution and other hazards.

For most jurisdictions, it will probably be easier to use the mapping found in CalEnviroScreen prepared by the State. However, some jurisdictions may find that this mapping does not provide a suitable level of detail for local use, in which case they may want to do their own analysis to identify disadvantaged communities.

The Element must also contain objectives and policies to:

- Reduce the unique or compounded health risks in disadvantaged communities.
- Reduce pollution exposure.
- Improve air quality.
- Promote public facilities, food access, safe and sanitary homes, and physical activity.
- Promote civil engagement in the public decision-making process.
- Prioritize improvements and programs that address the needs of disadvantaged communities.

It is interesting to note that SB 1000 requires objectives and policies to promote "civil" engagement, which seems to suggest that engaged residents should be encouraged to be polite and courteous. It is possible that this reflects a typo in the legislation and that the word should have been "civic," which would mean simply that the Environmental Justice Element needs to promote public engagement in the planning process.

Advocates who supported adoption of SB 1000 see the Environmental Justice Element as a vehicle to promote participation by disadvantaged communities in the General Plan process. This means that local jurisdictions who want to follow the spirit of the law might provide significant opportunities for public participation as a part of the Environmental Justice Element preparation process.

Each city and county must meet these requirements whenever it updates any two or more General Plan Elements after January 1, 2018. The required contents can be included in other elements of the General Plan; they need not be included in a stand-alone Environmental Justice Element.

Senate Bill 32 (SB 32) of 2016, extends and enhances the climate planning requirements of Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006. While AB 32 sought to return to 1990 levels of greenhouse gas (GHG) emissions, SB 32 extends AB 32's mandate and seeks to reduce statewide GHG emissions to 40% of

1990 levels by 2030. Preliminary calculations suggest that this will require a reduction of roughly 52% from currently forecasted 2020 “business as usual” emissions.

The California Air Resources Board (CARB) previously developed regulations to implement AB 32, and is now looking at implementation of SB 32, which is likely to include continued enhancements to the State’s renewable energy portfolio, lower carbon fuels, more advanced cars and trucks, and greener buildings. Local land use and transportation solutions will also be important ingredients to help the State to meet the robust goals contained in SB 32. SB 32’s effect on General Plan preparation will become clearer as CARB develops its implementation regulations.

2017 Housing Bills. At the end of 2017, the California legislature passed a series of bills intended to enhance the State’s housing supply. Those with the most direct effect on General Plans are the following:

Senate Bill 35 (SB 35) streamlines the approval process for affordable housing projects that meet specific requirements in an urban area. If a jurisdiction has not met its Regional Housing Need Allocation (RHNA) housing targets at each income level or has failed to file its Annual Report on Housing Element compliance for two years, a developer seeking to build in that jurisdiction may submit an application for a multi-family affordable housing project that requires only ministerial approval, meaning that it cannot be subject to any type of Conditional Use Permit or CEQA. Such a project may also use reduced parking requirements; a maximum of 1 space per unit, or no parking at all if it is within one-half mile of public transit or an architecturally or significant historic district. In early 2018, the State Department of Housing and Community Development (HCD) issued a list of cities and counties in which SB 35 applies, which includes almost every jurisdiction in the State. To qualify for an SB 35 application, a project must meet several requirements listed in the law.

Assembly Bill 678 (AB 678) and Senate Bill 167 (SB 167) both strengthen the Housing Accountability Act (HAA) by increasing the documentation necessary and raising the standard of proof required for a local agency to justify disapproval of housing projects or approval at lower densities, by requiring a “preponderance of” instead of “substantial” evidence. The definition of “housing development projects” is expanded to include mixed-use projects where at least two-thirds of floor area are designated for residential use. They require courts to impose a fine of at least \$10,000 per dwelling unit on local agencies that fail to legally defend their rejection of affordable housing development projects or comply with required deadlines for making approval decisions. Agencies must demonstrate that the project would adversely impact the “public health and safety” if they reject a proposed housing project.

Assembly Bill 1515 (AB 1515) amends the Housing Accountability Act and requires courts to give less deference to evidence presented by local governments, and more consideration of alternative reasonable evidence, when a housing developer legally challenges a local jurisdiction’s decision to reject a proposed housing project based on inconsistency with local plans or policies. It states that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.

Assembly Bill 72 (AB 72) requires HCD to review any action or inaction of a locality to act at any time (instead of every eight years) that it determines is consistent with an adopted Housing Element, including failure to implement any programs in the element. If HCD finds that a jurisdiction’s action or failure to act does not comply with its Housing Element, HCD can effectively declare the housing

element noncompliant. If the jurisdiction fails to correct the violation within 30 days, HCD may report the violation to the Office of the Attorney General to enforce state housing law.

Assembly Bill 1397 (AB 1397) requires new, more careful analysis of sites proposed in a Housing Element to meet housing needs. It requires a jurisdiction to demonstrate that sites identified for housing development have a realistic potential for development during the eight-year planning period. Jurisdictions must analyze sites for access to infrastructure and appropriate size and must justify any inclusion of nonvacant sites. Vacant sites included in, but not developed during the last two Housing Elements and/or nonvacant sites included in, but not developed during the last Housing Element may only be included again if each site meets all new criteria and is included in the new Housing Element's program to rezone sites. AB 1397 also requires jurisdictions to rezone identified sites within three years of the beginning of new Housing Element cycle. Sites included in the rezoning program must allow residential use by right for housing developments for projects with at least 20 percent affordable units.

Senate Bill 166 (SB 166) requires a local government to accommodate its remaining unmet housing need for all income categories at all times throughout the Housing Element planning period. It amends existing No Net Loss Law to ensure that, in the event an identified opportunity site is developed at a lower density or higher income level than anticipated, the jurisdiction must take steps to ensure an adequate supply of remaining sites to meet the unmet need for housing at all income levels.

Assembly Bill 879 (AB 879) requires local governments to include additional data in annual Housing Element reports to better understand the root causes of the housing crisis. Housing Elements and annual reports must include the number of project applications received, approved, and disapproved each year; information about processing times; a list of sites rezoned to accommodate the jurisdiction's share of RNHA needs for each income level that could not be accommodated on sites identified in the housing element inventory; and a list of sites that were required to be rezoned under the No Net Loss Law.

Assembly Bill 1505 (AB 1505) restores the ability of local governments to require a percentage of units in rental housing projects to be deed restricted as affordable (and/or to require payment of an in-lieu fee), which has not been allowed since a 2009 California Court of Appeal decision (*Palmer/Sixth Street Properties L.P. v City of Los Angeles*).

Assembly Bill 352 (AB 352) allows micro apartments in targeted areas. It prohibits a jurisdiction that allows efficiency units from limiting the number of efficiency units that can be constructed in areas zoned for residential use and within one-half mile of public transit, and within one mile of a UC or CSU campus.

Assembly Bill 1598 (AB 1598) expands Assembly Bill 2 and creates a tool for localities to capture the growth in tax increment produced by new commercial development and invest it in the production of homes affordable to the local workforce, through the creation an "affordable housing authority." The authority can capture property tax increment or revenues from locally-collected sales and use taxes, and use these funds to finance housing projects. The authority can also issue bonds to build housing and then pay off the bonds with the revenues collected.