

Assembly Bill No. 1893

Passed the Assembly August 31, 2024

Chief Clerk of the Assembly

Passed the Senate August 31, 2024

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2024, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 65589.5 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1893, Wicks. Housing Accountability Act: housing disapprovals: required local findings.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law, commonly referred to as the Housing Element Law, prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development to review and determine whether the housing element substantially complies with the Housing Element Law, as specified.

Existing law, the Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes written findings as to one of certain sets of conditions, as specified. Among these conditions, the act allows a local agency to disapprove a housing development project that is inconsistent with the jurisdiction's zoning ordinances and general plan land use designation as it existed on the date the application was deemed complete, if the jurisdiction has adopted a revised housing element that is in substantial compliance with the Housing Element Law, as specified.

This bill would make various changes to that condition. The bill would specify that a local agency may disapprove or condition approval of a housing development project or emergency shelter, as described above, if the local agency makes written findings that on the date the application for the housing development project or emergency shelter was deemed complete the jurisdiction did not have an adopted revised housing element that was in substantial

compliance with the Housing Element Law and the housing development project is not a builder's remedy project, as defined.

Existing law defines various terms for purposes of the Housing Accountability Act. Among these terms, the act defines "housing development project" to mean a use consisting of residential units only, mixed-use developments consisting of residential and nonresidential uses with at least $\frac{2}{3}$ of the square footage designated for residential use, or transitional or supportive housing. The act also defines the term "disapprove the housing development project" to include, among other things, any instance in which a local agency votes on a proposed housing development project application and the application is disapproved. The act also defines the term "housing for very low, low-, or moderate-income households," as provided.

This bill would revise the definition of "housing development project" to (1) expand the scope of mixed-use developments that qualify under that definition and (2) include farmworker housing, as defined, within that definition. The bill would also revise the definition of "disapprove the housing development project" to (1) include any instance in which a local agency takes final administrative action on the application and the application is disapproved and (2) additionally provide that a local agency disapproves the project if it undertakes specified acts, including failing to cease a course of conduct undertaken for an improper purpose that effectively disapproves the proposed housing development without taking final administrative action if certain conditions are met, and failing to comply with specified law. The bill would also recast the definition of the term "housing for very low, low-, or moderate-income households" to mean housing for lower income households, mixed-income households, or moderate-income households. The bill would add various definitions, including "housing for lower income households," "housing for mixed-income households," and "housing for moderate-income households."

Existing law authorizes a development proponent to submit an application for a development subject to a streamlined, ministerial approval process if the development complies with certain objective planning standards, including, among others, that the development is compliant with the maximum density allowed within that land use designation. Existing law, the Affordable Housing and High

Road Jobs Act of 2022, until January 1, 2033, authorizes a development proponent to submit an application for a mixed-income housing development that meets specified objective standards and affordability and site criteria, including satisfying specified density thresholds. The act makes a development that meets those objective standards and affordability and site criteria a use by right and subject to a streamlined, ministerial review process.

This bill would prescribe requirements that apply to a housing development project that is a builder's remedy project, including that a builder's remedy project is deemed to be in compliance with specified residential density standards and specified objective zoning standards, objective subdivision standards, and objective design review standards necessary for the streamlined, ministerial approval processes described above. By imposing additional duties on local agencies with respect to the review and approval of builder's remedy projects, the bill would impose a state-mandated local program.

The Housing Accountability Act authorizes certain persons to bring an action to enforce the act's provisions and requires a court to order certain relief if the court makes certain findings.

This bill would require court to order the relief referenced above if the court finds that the local agency violated the builder's remedy project provisions described above.

This bill would incorporate additional changes to Section 65589.5 of the Government Code proposed by AB 1413 to be operative only if this bill and AB 1413 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California has an ongoing statewide housing shortage crisis. The legislative findings, declarations, and intent set forth in Section 65580, Section 65581, and subdivision (a) of Section 65589.5 of the Government Code are reiterated and incorporated here by reference.

(b) In addition, according to the latest update to the Statewide Housing Plan, updated every four years as required by law under Section 50423 of the Health and Safety Code, recent data confirms a need to plan for a minimum of 2,500,000 homes statewide over the next eight-year cycle, including at least 643,352 homes for very low income households, 384,910 homes for low-income households, 420,814 homes for moderate-income households, and 1,051,177 homes for above moderate-income households (Department of Housing and Community Development, A Home for Every Californian: 2022 Statewide Housing Plan (March 2022) available at <https://statewide-housing-plan-cahcd.hub.arcgis.com>).

(c) The state’s statutory housing objectives are not attainable absent the timely cooperation of all local governments, including charter cities, to update and faithfully implement their housing elements without delay. Indeed, the Legislature has long recognized the role local governments have to use the powers vested in them to meet the housing needs of all economic segments of the community.

(d) Relatedly, one of the most efficient and effective means of assuring cooperation from local governments in achieving the statewide goal of planning and permitting enough housing so that supply can meet demand is an effective self-executing remedy that housing developers can avail themselves of when local housing elements are not timely updated and implemented.

(e) To achieve the state’s statutory housing objective, the Legislature has amended the Housing Element Law, as set forth in Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, to reflect the complexities of existing land use practices and economic realities, and to prompt local governments to timely adopt and implement their updated housing elements.

(f) While the Legislature has, in recent years, modernized and updated many provisions in the Housing Element Law, provisions setting forth remedial measures that do not require judicial intervention have largely been left untouched.

(g) Although the Legislature recognizes and continues to believe that each locality is best capable of determining how it should meet and address its share of regional housing needs, current land use permitting practices continue to hinder the state’s statutory housing objectives in increasing housing supply to meet demand.

(h) Harmonizing the interests of all state and local agencies to eliminate counterproductive actions—such as by prohibiting overly burdensome land use controls, while providing clear guidance at the state level as to the implementation of self-executing remedies—is essential to attaining the state’s statutory housing objectives.

(i) Self-executing remedies, such as the existing “builder’s remedy” provision set forth in the Housing Accountability Act, can be more effectively deployed by the private sector to develop more housing projects of all levels of affordability, and would encourage local agencies to adopt and implement housing elements in a timely fashion, if the Legislature provides clearer guidance to obviate the need for judicial intervention, and would lower barriers to economic feasibility. To that end, the amendments set forth in this act with respect to “builder’s remedy” projects are intended to provide greater clarity of existing law, and should not be interpreted as constraints on or impediments to processing current “builder’s remedy” project applications deemed complete.

(j) Absent statewide measures to promote the immediate production of new homes, the imbalance between supply and demand in housing will likely continue in the foreseeable future. Left unabated, the unmet demand will lead to even higher housing costs. According to the Legislative Analyst’s Office report, California’s High Housing Costs: Causes and Consequences (2015), California needs to produce around 210,000 market rate units annually “to seriously mitigate its problems with housing affordability.” Moreover, considerable evidence shows that: new market-rate housing improves overall housing affordability at the statewide, regional, local, and neighborhood levels; when new market-rate production is significantly constrained relative to existing and future demand, existing housing units come under gentrification pressure; and robust market-rate housing production does not, absent demolishing existing affordable housing units, cause displacement of low-income households (Legislative Analyst’s Office, Perspectives on Helping Low-Income

Californians Afford Housing (2016) and Chapple, Hwang, Jeon, Zhang, Greenberg, and Shrimali, Housing Market Interventions and Residential Mobility in the San Francisco Bay Area, Federal Reserve Bank of San Francisco Community Development Working Paper 2022-1 (2022); doi: 10.24148/cdwp2022-01). Other recent studies confirm that building new market-rate housing has a positive impact on increasing more housing opportunities for lower income households (Mast, “JUE Insight: The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market” (2023) 133 Journal of Urban Economics; doi.org/10.1016/j.jue.2021.103383).

(k) The provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, the entirety of the Housing Accountability Act, including the amendments set forth below to Section 65589.5 of the Government Code, continues to apply to all cities and counties, including charter cities.

SEC. 2. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state’s housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction

in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall home ownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in home ownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school;

and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

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

(L) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in

implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) For a housing development project for very low, low-, or moderate-income households, or an emergency shelter, a local agency shall not disapprove the housing development project or emergency shelter, or condition approval in a manner that renders the housing development project or emergency shelter infeasible, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public

health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

(A) Inconsistency with the zoning ordinance or general plan land use designation.

(B) The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction had adopted a revised housing element that was in substantial compliance with this article, and the housing development project or emergency shelter was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan.

(A) This paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed on a site, including a candidate site for rezoning, that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element if the housing development project is consistent with the density specified in the housing element, even though the housing development project was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete.

(B) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient

capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(6) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction did not have an adopted revised housing element that was in substantial compliance with this article and the housing development project is not a builder's remedy project.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Except as provided in paragraphs (6) and (8) of this subdivision, and subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Nothing in this section shall limit a project's eligibility for a density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915.

(2) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(5) For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(6) Notwithstanding paragraphs (1) to (5), inclusive, all of the following apply to a housing development project that is a builder's remedy project:

(A) A local agency may only require the project to comply with the objective, quantifiable, written development standards, conditions, and policies that would have applied to the project had it been proposed on a site with a general plan designation and zoning classification that allow the density and unit type proposed by the applicant. If the local agency has no general plan designation or zoning classification that would have allowed the density and unit type proposed by the applicant, the development proponent may identify any objective, quantifiable, written development

standards, conditions, and policies associated with a different general plan designation or zoning classification within that jurisdiction, that facilitate the project's density and unit type, and those shall apply.

(B) (i) Except as authorized by paragraphs (1) to (4), inclusive, of subdivision (d), a local agency shall not apply any individual or combination of objective, quantifiable, written development standards, conditions, and policies to the project that do any of the following:

(I) Render the project infeasible.

(II) Preclude a project that meets the requirements allowed to be imposed by subparagraph (A), as modified by any density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915, from being constructed as proposed by the applicant.

(ii) The local agency shall bear the burden of proof of complying with clause (i).

(C) (i) A project applicant that qualifies for a density bonus pursuant to Section 65915 shall receive two incentives or concessions in addition to those granted pursuant to paragraph (2) of subdivision (d) of Section 65915.

(ii) For a project seeking density bonuses, incentives, concessions, or any other benefits pursuant to Section 65915, and notwithstanding paragraph (6) of subdivision (o) of Section 65915, for purposes of this paragraph, maximum allowable residential density or base density means the density permitted for a builder's remedy project pursuant to subparagraph (C) of paragraph (11) of subdivision (h).

(iii) A local agency shall grant any density bonus pursuant to Section 65915 based on the number of units proposed and allowable pursuant to subparagraph (C) of paragraph (11) of subdivision (h).

(iv) A project that dedicates units to extremely low-income households pursuant to subclause (I) of clause (i) of subparagraph (C) of paragraph (3) of subdivision (h) shall be eligible for the same density bonus, incentives or concessions, and waivers or reductions of development standards as provided to a housing development project that dedicates three percentage points more units to very low income households pursuant to paragraph (2) of subdivision (f) of Section 65915.

(v) All units dedicated to extremely low-income, very low income, low-income, and moderate-income households pursuant to paragraph (11) of subdivision (h) shall be counted as affordable units in determining whether the applicant qualifies for a density bonus pursuant to Section 65915.

(D) (i) The project shall not be required to apply for, or receive approval of, a general plan amendment, specific plan amendment, rezoning, or other legislative approval.

(ii) The project shall not be required to apply for, or receive, any approval or permit not generally required of a project of the same type and density proposed by the applicant.

(iii) Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose.

(E) A local agency shall not adopt or impose any requirement, process, practice, or procedure or undertake any course of conduct, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is a builder's remedy project.

(F) (i) A builder's remedy project shall be deemed to be in compliance with the residential density standards for the purposes of complying with subdivision (b) of Section 65912.123.

(ii) A builder's remedy project shall be deemed to be in compliance with the objective zoning standards, objective subdivision standards, and objective design review standards for the purposes of complying with paragraph (5) of subdivision (a) of Section 65913.4.

(G) (i) (I) If the local agency had a local affordable housing requirement, as defined in Section 65912.101, that on January 1, 2024, required a greater percentage of affordable units than required under subparagraph (A) of paragraph (11) of subdivision (h), or required an affordability level deeper than what is required under subparagraph (A) of paragraph (11) of subdivision (h), then, except as provided in subclauses (II) and (III), the local agency may require a housing development for mixed-income households to comply with an otherwise lawfully applicable local affordability percentage or affordability level. The local agency shall not require

housing for mixed-income households to comply with any other aspect of the local affordable housing requirement.

(II) Notwithstanding subclause (I), the local affordable housing requirements shall not be applied to require housing for mixed-income households to dedicate more than 20 percent of the units to affordable units of any kind.

(III) Housing for mixed-income households that is required to dedicate 20 percent of the units to affordable units shall not be required to dedicate any of the affordable units at an income level deeper than lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(IV) A local agency may only require housing for mixed-income households to comply with the local percentage requirement or affordability level described in subclause (I) if it first makes written findings, supported by a preponderance of evidence, that compliance with the local percentage requirement or the affordability level, or both, would not render the housing development project infeasible. If a reasonable person could find compliance with either requirement, either alone or in combination, would render the project infeasible, the project shall not be required to comply with that requirement.

(i) Affordable units in the development project shall have a comparable bedroom and bathroom count as the market rate units.

(iii) Each affordable unit dedicated pursuant to this subparagraph shall count toward satisfying a local affordable housing requirement. Each affordable unit dedicated pursuant to a local affordable housing requirement that meets the criteria established in this subparagraph shall count towards satisfying the requirements of this subparagraph. This is declaratory of existing law.

(7) (A) For a housing development project application that is deemed complete before January 1, 2025, the development proponent for the project may choose to be subject to the provisions of this section that were in place on the date the preliminary application was submitted, or, if the project meets the definition of a builder's remedy project, it may choose to be subject to any or all of the provisions of this section applicable as of January 1, 2025.

(B) Notwithstanding subdivision (c) of Section 65941.1, for a housing development project deemed complete before January 1, 2025, the development proponent may choose to revise their

application so that the project is a builder's remedy project, without being required to resubmit a preliminary application, even if the revision results in the number of residential units or square footage of construction changing by 20 percent or more.

(8) A housing development project proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, that is consistent with the density specified in the most recently updated and adopted housing element, and that is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete, shall be subject to the provisions of subparagraphs (A), (B), and (D) of paragraph (6) and paragraph (9).

(9) For purposes of this subdivision, "objective, quantifiable, written development standards, conditions, and policies" means criteria that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal, including, but not limited to, any standard, ordinance, or policy described in paragraph (4) of subdivision (o). Nothing herein shall affect the obligation of the housing development project to comply with the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code. In the event that applicable objective, quantifiable, written development standards, conditions, and policies are mutually inconsistent, a development shall be deemed consistent with the criteria that permits the density and unit type closest to that of the proposed project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses that meet any of the following conditions:

(i) At least two-thirds of the new or converted square footage is designated for residential use.

(ii) At least 50 percent of the new or converted square footage is designated for residential use and the project meets both of the following:

(I) The project includes at least 500 net new residential units.

(II) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

(iii) At least 50 percent of the net new or converted square footage is designated for residential use and the project meets all of the following:

(I) The project includes at least 500 net new residential units.

(II) The project involves the demolition or conversion of at least 100,000 square feet of nonresidential use.

(III) The project demolishes at least 50 percent of the existing nonresidential uses on the site.

(IV) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

(C) Transitional housing or supportive housing.

(D) Farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(3) (A) “Housing for very low, low-, or moderate-income households” means housing for lower income households, mixed-income households, or moderate-income households.

(B) “Housing for lower income households” means a housing development project in which 100 percent of the units, excluding managers’ units, are dedicated to lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation

Committee. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(C) (i) “Housing for mixed-income households” means any of the following:

(I) A housing development project in which at least 7 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, are dedicated to extremely low income households, as defined in Section 50106 of the Health and Safety Code.

(II) A housing development project in which at least 10 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, are dedicated to very low income households, as defined in Section 50105 of the Health and Safety Code.

(III) A housing development project in which at least 13 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, are dedicated to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(IV) A housing development project in which there are 10 or fewer total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, that is on a site that is smaller than one acre, and that is proposed for development at a minimum density of 10 units per acre.

(ii) All units dedicated to extremely low income, very low income, and low-income households pursuant to clause (i) shall meet both of the following:

(I) The units shall have an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The development proponent shall agree to, and the local agency shall ensure, the continued affordability of all affordable rental units included pursuant to this section for 55 years and all affordable ownership units included pursuant to this section for a period of 45 years.

(D) “Housing for moderate-income households” means a housing development project in which 100 percent of the units are sold or rented to moderate-income households, as defined in Section 50093 of the Health and Safety Code, at an affordable

housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code.

(5) Notwithstanding any other law, until January 1, 2030, “deemed complete” means that the applicant has submitted a preliminary application pursuant to Section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to Section 65943. The local agency shall bear the burden of proof in establishing that the application is not complete.

(6) “Disapprove the housing development project” includes any instance in which a local agency does any of the following:

(A) Votes or takes final administrative action on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(C) Fails to meet the time limits specified in Section 65913.3.

(D) Fails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action if all of the following conditions are met:

(i) The project applicant provides written notice detailing the challenged conduct and why it constitutes disapproval to the local agency established under Section 65100.

(ii) Within five working days of receiving the applicant’s written notice described in clause (i), the local agency shall post the notice on the local agency’s internet website, provide a copy of the notice to any person who has made a written request for notices pursuant

to subdivision (f) of Section 21167 of the Public Resources Code, and file the notice with the county clerk of each county in which the project will be located. The county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of Section 21152 of the Public Resources Code.

(iii) The local agency shall consider all objections, comments, evidence, and concerns about the project or the applicant's written notice and shall not make a determination until at least 60 days after the applicant has given written notice to the local agency pursuant to clause (i).

(iv) Within 90 days of receipt of the applicant's written notice described in clause (i), the local agency shall issue a written statement that it will immediately cease the challenged conduct or issue written findings that comply with both of the following requirements:

(I) The findings articulate an objective basis for why the challenged course of conduct is necessary.

(II) The findings provide clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing.

(v) (I) If a local agency continues the challenged course of conduct described in the applicant's written notice and fails to issue the written findings described in clause (iv), the local agency shall bear the burden of establishing that its course of conduct does not constitute a disapproval of the housing development project under this subparagraph in an action taken by the applicant.

(II) If an applicant challenges a local agency's course of conduct as a disapproval under this subparagraph, the local agency's written findings described in clause (iv) shall be incorporated into the administrative record and be deemed to be the final administrative action for purposes of adjudicating whether the local agency's course of conduct constitutes a disapproval of the housing development project under this subparagraph.

(vi) A local agency's action in furtherance of complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), including, but not limited to, imposing mitigating measures, shall not constitute project disapproval under this subparagraph.

(E) Fails to comply with Section 65905.5. For purposes of this subparagraph, a builder's remedy project shall be deemed to comply with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.

(F) (i) Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of Section 65943 and includes in the determination an item that is not required on the local agency's submittal requirement checklist. The local agency shall bear the burden of proof that the required item is listed on the submittal requirement checklist.

(ii) In a subsequent review of an application pursuant to Section 65943, requests the applicant provide new information that was not identified in the initial determination and upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of Section 65943. The local agency shall bear the burden of proof that the required item was identified in the initial determination.

(iii) Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of Section 65943, a reasonable person would conclude that the applicant has submitted all of the items required on the local agency's submittal requirement checklist, and the local agency upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of Section 65943.

(iv) If a local agency determines that an application is incomplete under Section 65943 after two resubmittals of the application by the applicant, the local agency shall bear the burden of establishing that the determination is not an effective disapproval of a housing development project under this section.

(G) Violates subparagraph (D) or (E) of paragraph (6) of subdivision (f).

(H) Makes a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1.

(I) (i) Fails to make a determination of whether the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources

Code), or commits an abuse of discretion, as defined in this subparagraph, if all of the following conditions are satisfied:

(I) There is substantial evidence in the record before the local agency that the housing development project is not located in either of the following:

(ia) On a site specified in subparagraphs (A) to (C), inclusive, or subparagraphs (E) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(ib) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(II) The housing development project is located on a legal parcel or parcels within an urbanized area and meets one or more of the following criteria:

(ia) The housing development project is located within one-half mile walking distance to either a high-quality transit corridor or a major transit stop.

(ib) The housing development project is located in a very low vehicle travel area.

(ic) The housing development project is proximal to six or more amenities pursuant to subclause (IV) of clause (ii) as of the date of submission of the application for the project.

(id) Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site. For purposes of this clause, parcels that are only separated by a street or highway shall be considered to be adjoined.

(III) The density of the housing development project meets or exceeds 15 dwelling units per acre.

(IV) Both of the following criteria are met:

(ia) There is substantial evidence in the record before the local agency that the housing development project is eligible for an exemption sought by the applicant.

(ib) If the exemption sought by the applicant is subject to an exception under the Guidelines for Implementation of the California Environmental Quality Act (Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California

Code of Regulations), there is substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of those guidelines.

(V) (ia) The applicant has given timely written notice to the local agency of the action or inaction that the applicant believes constitutes a failure to make a determination or an abuse of discretion, as defined in this subparagraph, and the local agency did not make a lawful determination within 90 days of the applicant's written notice. The applicant's written notice shall contain all of the following:

(Ia) The information specified in paragraphs (1), (2), (5), and (6) of subdivision (a) of Section 15062 of Title 14 of the California Code of Regulations.

(Ib) A citation to the section of Title 14 of the California Code of Regulations or the statute under which the applicant asserts that the project is exempt.

(Ic) A brief statement of reasons supporting the assertion that the project is exempt.

(Id) A copy of the excerpts from the record constituting substantial evidence that the criteria of subclauses (I) to (IV), inclusive, are satisfied.

(ib) Within five working days of receiving the applicant's written notice required by sub-subclause (ia), the local agency shall file the notice with the county clerk of each county in which the project will be located. The county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of Section 21152 of the Public Resources Code. Compliance with this sub-subclause is not a condition that must be satisfied in order to find that the local agency has disapproved the housing development project under this subparagraph.

(ic) The local agency may, by providing a written response to the applicant within 90 additional days of the applicant's written notice, extend the time period to make a lawful determination by no more than 90 days if the extension is necessary to determine if there is substantial evidence in the record that the housing development project is eligible for the exemption sought by the applicant.

(id) If the local agency has given the applicant written notice of the local agency's determination that the project is not exempt,

the applicant's notice shall be deemed timely if and only if it is delivered to the local agency within 35 days of the date that the local agency gave the applicant notice of the local agency's determination.

(ie) If the local agency has not given the applicant the written notice described in sub-subclause (id), the applicant's notice shall be deemed timely if given after 60 days from the date on which the project application has been received and accepted as complete by the lead agency, or 60 days from the date on which the project application has been determined or deemed to be complete within the meaning of Section 65943, whichever is earlier.

(ii) For purposes of this subparagraph, the following definitions apply:

(I) "Abuse of discretion" means that the conditions set forth in subclauses (I) to (IV), inclusive, of clause (i) are satisfied, but the local agency does not determine that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). This subclause sets forth the exclusive definition of "abuse of discretion" for purposes of this subparagraph.

(II) "High-quality transit corridor" has the same meaning defined in subdivision (b) of Section 21155 of the Public Resources Code.

(III) "Major transit stop" has the same meaning as defined in Section 21064.3 of the Public Resources Code.

(IV) "Proximal" to an amenity means either of the following:

(ia) Within one-half mile of either of the following amenities:

(Ia) A bus station.

(Ib) A ferry terminal.

(ib) Within one mile, or for a parcel in a rural area, as defined in Section 50199.21 of the Health and Safety Code, within two miles, of any of the following amenities:

(Ia) A supermarket or grocery store.

(Ib) A public park.

(Ic) A community center.

(Id) A pharmacy or drugstore.

(Ie) A medical clinic or hospital.

(If) A public library.

(Ig) A school that maintains a kindergarten or any of grades 1 to 12, inclusive.

(V) “Urbanized area” has the same meaning as defined in Section 21071 of the Public Resources Code.

(VI) (ia) “Very low vehicle travel area” means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.

(ib) For purposes of sub-subclause (ia), “area” may include a travel analysis zone, hexagon, or grid.

(ic) For the purposes of determining “regional vehicle miles traveled per capita” pursuant to sub-subclause (ia), a “region” is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

(iii) This subparagraph shall not be construed to require a local agency to determine that a project is exempt if, on the record before the local agency, the project is not eligible for exemption.

(iv) This subparagraph shall become inoperative on January 1, 2031.

(J) Fails to adopt a negative declaration or addendum for the project, to certify an environmental impact report for the project, or to approve another comparable environmental document, such as a sustainable communities environmental assessment pursuant to Section 21155.2 of the Public Resources Code, as required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if all of the following conditions are satisfied:

(i) There is substantial evidence in the record before the local agency that the site of the housing development project is not located on either of the following:

(I) On a site specified in subparagraphs (A) to (C), inclusive, or subparagraphs (E) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(II) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry

and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(ii) The housing development project is located on a legal parcel or parcels within an urbanized area and meets one or more of the following criteria:

(I) The housing development project is located within one-half mile walking distance to either a high-quality transit corridor or a major transit stop.

(II) The housing development project is located in a very low vehicle travel area.

(III) The housing development project is proximal to six or more amenities pursuant to subclause (IV) of clause (vii) as of the date of submission of the application for the project.

(IV) Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site. For purposes of this clause, parcels that are only separated by a street or highway shall be considered to be adjoined.

(iii) The density of the housing development project meets or exceeds 15 dwelling units per acre.

(iv) There has been prepared a negative declaration, addendum, environmental impact report, or comparable environmental review document that, if duly adopted, approved, or certified by the local agency, would satisfy the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) with respect to the project.

(v) The local agency or a body or official to which the agency has delegated authority to adopt, approve, or certify the negative declaration addendum, environmental impact report, or comparable environmental review document has held a meeting at which adoption, approval, or certification of the environmental review document was on the agenda and the environmental review document could have been adopted, approved, or certified, as applicable, but the agency did either of the following:

(I) Committed an abuse of discretion, as defined in this subparagraph.

(II) Failed to decide whether to require further study or to adopt, approve, or certify the environmental document.

(vi) (I) The applicant has given timely written notice to the local agency of the action or inaction that the applicant believes

constitutes a failure to decide or an abuse of discretion, and the local agency did not make a lawful determination about whether to adopt, approve, or certify the environmental review document within 90 days of the applicant's written notice. The applicant's written notice shall include a copy of those excerpts from the record that constitute substantial evidence that the criteria of clauses (i) to (iv), inclusive, are satisfied.

(II) If the local agency has voted to require further study, rather than adopting, approving, or certifying the negative declaration, addendum, environmental impact report, or comparable environmental review document in the form it was presented for the agency's consideration, the applicant's notice shall be deemed timely if and only if it is delivered to the local agency within 35 days of the date that the local agency gave written notice of its decision to the applicant.

(III) If the local agency has not voted to require further study, rather than adopting, approving, or certifying the negative declaration, addendum, environmental impact report, or comparable environmental review document in the form it was presented for the agency's consideration, the applicant's notice shall be deemed timely if given after the time period specified in Section 21151.5 of the Public Resources Code or another applicable provision of that code for completing the addendum, negative declaration, environmental impact report, or other comparable environmental review document, as applicable, has passed. If the Public Resources Code does not specifically describe the deadline to complete the applicable environmental document, a 180-day deadline is the applicable time period.

(vii) For purposes of this subparagraph, the following definitions apply:

(I) (ia) "Abuse of discretion" means either of the following:

(Ia) If the local agency fails to adopt a negative declaration, "abuse of discretion" means that the agency, in bad faith or without substantial evidence in the record to support a fair argument that further environmental study is necessary to identify or analyze potentially significant impacts on the physical environment, decided to require further environmental study rather than adopting the negative declaration.

(Ib) If the local agency fails to adopt an addendum for the project, certify an environmental impact report for the project, or

approve another comparable environmental document, “abuse of discretion” means that the agency, in bad faith or without substantial evidence in the record that further environmental study is legally required to identify or analyze potentially significant impacts on the physical environment, decided to require further environmental study rather than adopting, approving, or certifying the environmental review document.

(ib) This subclause sets forth the exclusive definition of “abuse of discretion” for purposes of this subparagraph.

(II) “High-quality transit corridor” has the same meaning defined in subdivision (b) of Section 21155 of the Public Resources Code.

(III) “Major transit stop” has the same meaning as defined in Section 21064.3 of the Public Resources Code.

(IV) “Proximal” to an amenity means either of the following:

(ia) Within one-half mile of either of the following amenities:

(Ia) A bus station.

(Ib) A ferry terminal.

(ib) Within one mile, or for a parcel in a rural area, as defined in Section 50199.21 of the Health and Safety Code, within two miles, of any of the following amenities:

(Ia) A supermarket or grocery store.

(Ib) A public park.

(Ic) A community center.

(Id) A pharmacy or drugstore.

(Ie) A medical clinic or hospital.

(If) A public library.

(Ig) A school that maintains a kindergarten or any of grades 1 to 12, inclusive.

(V) “Urbanized area” has the same meaning as defined in Section 21071 of the Public Resources Code.

(VI) (ia) “Very low vehicle travel area” means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.

(ib) For purposes of sub-subclause (ia), “area” may include a travel analysis zone, hexagon, or grid.

(ic) For the purposes of determining “regional vehicle miles traveled per capita” pursuant to sub-subclause (ia), a “region” is the entirety of incorporated and unincorporated areas governed by

a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

(viii) This subparagraph shall become inoperative on January 1, 2031.

(7) (A) For purposes of this section, “lawful determination” means any final decision about whether to approve or disapprove a statutory or categorical exemption or a negative declaration, addendum, environmental impact report, or comparable environmental review document under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that is not an abuse of discretion, as defined in clause (ii) of subparagraph (I) of paragraph (6) or clause (vii) of subparagraph (J) of paragraph (6).

(B) This paragraph shall become inoperative on January 1, 2031.

(8) “Lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(9) Until January 1, 2030, “objective” means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

(10) Notwithstanding any other law, until January 1, 2030, “determined to be complete” means that the applicant has submitted a complete application pursuant to Section 65943.

(11) “Builder’s remedy project” means a project that meets all of the following criteria:

(A) The project is a housing development project that provides housing for very low, low-, or moderate-income households.

(B) On or after the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction did not have a housing element that was in substantial compliance with this article.

(C) The project has a density such that the number of units, as calculated before the application of a density bonus pursuant to Section 65915, complies with all of the following conditions:

(i) The density does not exceed the greatest of the following densities:

(I) Fifty percent greater than the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(II) Three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater.

(III) The density that is consistent with the density specified in the housing element.

(ii) Notwithstanding clause (i), the greatest allowable density shall be 35 units per acre more than the amount allowable pursuant to clause (i), if any portion of the site is located within any of the following:

(I) One-half mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(II) A very low vehicle travel area, as defined in subdivision (h).

(III) A high or highest resource census tract, as identified by the latest edition of the “CTCAC/HCD Opportunity Map” published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development.

(D) (i) On sites that have a minimum density requirement and are located within one-half mile of a commuter rail station or a heavy rail station, the density of the project shall not be less than the minimum density required on the site.

(I) For purposes of this subparagraph, “commuter rail” means a railway that is not a light rail, streetcar, trolley, or tramway and that is for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburb with service operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas, or between urbanized areas and outlying areas, using either locomotive-hauled or self-propelled railroad passenger cars, with multitrip tickets and specific station-to-station fares.

(II) For purposes of this subparagraph, “heavy rail” means an electric railway with the capacity for a heavy volume of traffic using high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, and high platform loading.

(ii) On all other sites with a minimum density requirement, the density of the project shall not be less than the local agency's minimum density or one-half of the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2, whichever is lower.

(E) The project site does not abut a site where more than one-third of the square footage on the site has been used, within the past three years, by a heavy industrial use, or a Title V industrial use, as those terms are defined in Section 65913.16.

(12) "Condition approval" includes imposing on the housing development project, or attempting to subject it to, development standards, conditions, or policies.

(13) "Unit type" means the form of ownership and the kind of residential unit, including, but not limited to, single-family detached, single-family attached, for-sale, rental, multifamily, townhouse, condominium, apartment, manufactured homes and mobilehomes, factory-built housing, and residential hotel.

(14) "Proposed by the applicant" means the plans and designs as submitted by the applicant, including, but not limited to, density, unit size, unit type, site plan, building massing, floor area ratio, amenity areas, open space, parking, and ancillary commercial uses.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the housing development project's application is complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d), and that the findings are supported by a preponderance of the evidence in the record, and with the requirements of subdivision (o).

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect

at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(k) (1) (A) (i) The applicant, a person who would be eligible to apply for residency in the housing development project or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii):

(I) The local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section.

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section.

(III) (ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy,

or standard not adopted and in effect when a preliminary application was submitted.

(ib) This subclause shall become inoperative on January 1, 2030.

(IV) The local agency violated a provision of this section applicable to a builder's remedy project.

(ii) If the court finds that one of the conditions in clause (i) is met, the court shall issue an order or judgment compelling compliance with this section within a time period not to exceed 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, provided, however, that the court shall not award attorney's fees in either of the following instances:

(I) The court finds, under extraordinary circumstances, that awarding fees would not further the purposes of this section.

(II) (ia) In a case concerning a disapproval within the meaning of subparagraph (I) or (J) of paragraph (6) of subdivision (h), the court finds that the local agency acted in good faith and had reasonable cause to disapprove the housing development project due to the existence of a controlling question of law about the application of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or implementing guidelines as to which there was a substantial ground for difference of opinion at the time of the disapproval.

(ib) This subclause shall become inoperative on January 1, 2031.

(B) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within the time period prescribed by the court, the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building

Homes and Jobs Trust Fund. The fine shall be in a minimum amount of ten thousand dollars (\$10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Trust Fund for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(D) Nothing in this section shall limit the court's inherent authority to make any other orders to compel the immediate enforcement of any writ brought under this section, including the imposition of fees and other sanctions set forth under Section 1097 of the Code of Civil Procedure.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily

engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it violated this section and (2) failed to carry out the court's order or judgment within the time period prescribed by the court, the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. If a court has previously found that the local agency violated this section within the same planning period, the court shall multiply the fines by an additional factor for each previous violation. For purposes of this section, "bad faith" includes, but is not limited to, an action or inaction that is frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit.

(m) (1) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional

20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(2) (A) A disapproval within the meaning of subparagraph (I) of paragraph (6) of subdivision (h) shall be final for purposes of this subdivision, if the local agency did not make a lawful determination within the time period set forth in subclause (V) of clause (i) of that subparagraph after the applicant's timely written notice.

(B) This paragraph shall become inoperative on January 1, 2031.

(3) (A) A disapproval within the meaning of subparagraph (J) of paragraph (6) of subdivision (h) shall be final for purposes of this subdivision, if the local agency did not make a lawful determination within 90 days of the applicant's timely written notice.

(B) This paragraph shall become inoperative on January 1, 2031.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) (1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.

(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant to Section 65941.1 in the following circumstances:

(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(D) The housing development project has not commenced construction within two and one-half years, or three and one-half years for an affordable housing project, following the date that the project received final approval. For purposes of this subparagraph:

(i) “Affordable housing project” means a housing development that satisfies both of the following requirements:

(I) Units within the development are subject to a recorded affordability restriction for at least 55 years for rental housing and 45 years for owner-occupied housing, or the first purchaser of each unit participates in an equity sharing agreement as described in subparagraph (C) of paragraph (2) of subdivision (c) of Section 65915.

(II) All of the units within the development, excluding managers’ units, are dedicated to lower income households, as defined by Section 50079.5 of the Health and Safety Code.

(ii) “Final approval” means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:

(I) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for

challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.

(II) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

(E) The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, including any other locally authorized program that offers additional density or other development bonuses when affordable housing is provided. For purposes of this subdivision, “square footage of construction” means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

(4) For purposes of this subdivision, “ordinances, policies, and standards” includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy

has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

(8) (A) This subdivision shall apply to a housing development project that submits a preliminary application pursuant to Section 65941.1 before January 1, 2030.

(B) This subdivision shall become inoperative on January 1, 2034.

(p) (1) Upon any motion for an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, in a case challenging a local agency's approval of a housing development project, a court, in weighing whether a significant benefit has been conferred on the general public or a large class of persons and whether the necessity of private enforcement makes the award appropriate, shall give due weight to the degree to which the local agency's approval furthers policies of this section, including, but not limited to, subdivisions (a), (b), and (c), the suitability of the site for a housing development, and the reasonableness of the decision of the local agency. It is the intent of the Legislature that attorney's fees and costs shall rarely, if ever, be awarded if a local agency, acting in good faith, approved a housing development project that satisfies conditions established in subclauses (I), (II), and (III) of clause (i) of subparagraph (I) of paragraph (6) of subdivision (h) or clauses (i), (ii), and (iii) of subparagraph (J) of paragraph (6) of subdivision (h).

(2) This subdivision shall become inoperative on January 1, 2031.

(q) This section shall be known, and may be cited, as the Housing Accountability Act.

(r) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2.5. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must

provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California’s overall home ownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in home ownership rates as well as in the supply of housing per capita. Only one-half of California’s households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state’s cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California’s cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California’s housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

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

(L) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(4) It is the intent of the Legislature that the amendments removing provisions from subparagraphs (D) and (E) of paragraph (6) of subdivision (h) and adding those provisions to Sections 65589.5.1 and 65589.5.2 by Assembly Bill 1413 (2023), insofar as they are substantially the same as existing law, shall be considered restatements and continuations of existing law, and not new enactments.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) For a housing development project for very low, low-, or moderate-income households, or an emergency shelter, a local agency shall not disapprove the housing development project or emergency shelter, or condition approval in a manner that renders the housing development project or emergency shelter infeasible, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need

allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

(A) Inconsistency with the zoning ordinance or general plan land use designation.

(B) The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction had adopted a revised housing element that was in substantial compliance with this article, and the housing development project or emergency shelter was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan.

(A) This paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed on a site, including a candidate site for rezoning, that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element if the housing development project is consistent with the density specified in the housing element, even though the housing development project was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete.

(B) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(6) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction did not have an adopted revised housing element that was in

substantial compliance with this article and the housing development project is not a builder's remedy project.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Except as provided in paragraphs (6) and (8) of this subdivision, and subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Nothing in this section shall limit a project's eligibility for a density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915.

(2) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential

to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(5) For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(6) Notwithstanding paragraphs (1) to (5), inclusive, all of the following apply to a housing development project that is a builder's remedy project:

(A) A local agency may only require the project to comply with the objective, quantifiable, written development standards, conditions, and policies that would have applied to the project had it been proposed on a site with a general plan designation and zoning classification that allow the density and unit type proposed by the applicant. If the local agency has no general plan designation or zoning classification that would have allowed the density and unit type proposed by the applicant, the development proponent may identify any objective, quantifiable, written development standards, conditions, and policies associated with a different general plan designation or zoning classification within that jurisdiction, that facilitate the project's density and unit type, and those shall apply.

(B) (i) Except as authorized by paragraphs (1) to (4), inclusive, of subdivision (d), a local agency shall not apply any individual or combination of objective, quantifiable, written development standards, conditions, and policies to the project that do any of the following:

(I) Render the project infeasible.

(II) Preclude a project that meets the requirements allowed to be imposed by subparagraph (A), as modified by any density bonus, incentive, or concession, or waiver or reduction of development

standards and parking ratios, pursuant to Section 65915, from being constructed as proposed by the applicant.

(ii) The local agency shall bear the burden of proof of complying with clause (i).

(C) (i) A project applicant that qualifies for a density bonus pursuant to Section 65915 shall receive two incentives or concessions in addition to those granted pursuant to paragraph (2) of subdivision (d) of Section 65915.

(ii) For a project seeking density bonuses, incentives, concessions, or any other benefits pursuant to Section 65915, and notwithstanding paragraph (6) of subdivision (o) of Section 65915, for purposes of this paragraph, maximum allowable residential density or base density means the density permitted for a builder's remedy project pursuant to subparagraph (C) of paragraph (11) of subdivision (h).

(iii) A local agency shall grant any density bonus pursuant to Section 65915 based on the number of units proposed and allowable pursuant to subparagraph (C) of paragraph (11) of subdivision (h).

(iv) A project that dedicates units to extremely low-income households pursuant to subclause (I) of clause (i) of subparagraph (C) of paragraph (3) of subdivision (h) shall be eligible for the same density bonus, incentives or concessions, and waivers or reductions of development standards as provided to a housing development project that dedicates three percentage points more units to very low income households pursuant to paragraph (2) of subdivision (f) of Section 65915.

(v) All units dedicated to extremely low-income, very low income, low-income, and moderate-income households pursuant to paragraph (11) of subdivision (h) shall be counted as affordable units in determining whether the applicant qualifies for a density bonus pursuant to Section 65915.

(D) (i) The project shall not be required to apply for, or receive approval of, a general plan amendment, specific plan amendment, rezoning, or other legislative approval.

(ii) The project shall not be required to apply for, or receive, any approval or permit not generally required of a project of the same type and density proposed by the applicant.

(iii) Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable

plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose.

(E) A local agency shall not adopt or impose any requirement, process, practice, or procedure or undertake any course of conduct, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is a builder's remedy project.

(F) (i) A builder's remedy project shall be deemed to be in compliance with the residential density standards for the purposes of complying with subdivision (b) of Section 65912.123.

(ii) A builder's remedy project shall be deemed to be in compliance with the objective zoning standards, objective subdivision standards, and objective design review standards for the purposes of complying with paragraph (5) of subdivision (a) of Section 65913.4.

(G) (i) (I) If the local agency had a local affordable housing requirement, as defined in Section 65912.101, that on January 1, 2024, required a greater percentage of affordable units than required under subparagraph (A) of paragraph (11) of subdivision (h), or required an affordability level deeper than what is required under subparagraph (A) of paragraph (11) of subdivision (h), then, except as provided in subclauses (II) and (III), the local agency may require a housing development for mixed-income households to comply with an otherwise lawfully applicable local affordability percentage or affordability level. The local agency shall not require housing for mixed-income households to comply with any other aspect of the local affordable housing requirement.

(II) Notwithstanding subclause (I), the local affordable housing requirements shall not be applied to require housing for mixed-income households to dedicate more than 20 percent of the units to affordable units of any kind.

(III) Housing for mixed-income households that is required to dedicate 20 percent of the units to affordable units shall not be required to dedicate any of the affordable units at an income level deeper than lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(IV) A local agency may only require housing for mixed-income households to comply with the local percentage requirement or

affordability level described in subclause (I) if it first makes written findings, supported by a preponderance of evidence, that compliance with the local percentage requirement or the affordability level, or both, would not render the housing development project infeasible. If a reasonable person could find compliance with either requirement, either alone or in combination, would render the project infeasible, the project shall not be required to comply with that requirement.

(ii) Affordable units in the development project shall have a comparable bedroom and bathroom count as the market rate units.

(iii) Each affordable unit dedicated pursuant to this subparagraph shall count toward satisfying a local affordable housing requirement. Each affordable unit dedicated pursuant to a local affordable housing requirement that meets the criteria established in this subparagraph shall count towards satisfying the requirements of this subparagraph. This is declaratory of existing law.

(7) (A) For a housing development project application that is deemed complete before January 1, 2025, the development proponent for the project may choose to be subject to the provisions of this section that were in place on the date the preliminary application was submitted, or, if the project meets the definition of a builder's remedy project, it may choose to be subject to any or all of the provisions of this section applicable as of January 1, 2025.

(B) Notwithstanding subdivision (c) of Section 65941.1, for a housing development project deemed complete before January 1, 2025, the development proponent may choose to revise their application so that the project is a builder's remedy project, without being required to resubmit a preliminary application, even if the revision results in the number of residential units or square footage of construction changing by 20 percent or more.

(8) A housing development project proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, that is consistent with the density specified in the most recently updated and adopted housing element, and that is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete, shall be subject to the provisions of subparagraphs (A), (B), and (D) of paragraph (6) and paragraph (9).

(9) For purposes of this subdivision, “objective, quantifiable, written development standards, conditions, and policies” means criteria that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal, including, but not limited to, any standard, ordinance, or policy described in paragraph (4) of subdivision (o). Nothing herein shall affect the obligation of the housing development project to comply with the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code. In the event that applicable objective, quantifiable, written development standards, conditions, and policies are mutually inconsistent, a development shall be deemed consistent with the criteria that permits the density and unit type closest to that of the proposed project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses that meet any of the following conditions:

(i) At least two-thirds of the new or converted square footage is designated for residential use.

(ii) At least 50 percent of the new or converted square footage is designated for residential use and the project meets both of the following:

(I) The project includes at least 500 net new residential units.

(II) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a

portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

(iii) At least 50 percent of the net new or converted square footage is designated for residential use and the project meets all of the following:

(I) The project includes at least 500 net new residential units.

(II) The project involves the demolition or conversion of at least 100,000 square feet of nonresidential use.

(III) The project demolishes at least 50 percent of the existing nonresidential uses on the site.

(IV) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

(C) Transitional housing or supportive housing.

(D) Farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(3) (A) “Housing for very low, low-, or moderate-income households” means housing for lower income households, mixed-income households, or moderate-income households.

(B) “Housing for lower income households” means a housing development project in which 100 percent of the units, excluding managers’ units, are dedicated to lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(C) (i) “Housing for mixed-income households” means any of the following:

(I) A housing development project in which at least 7 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, are dedicated to extremely low income households, as defined in Section 50106 of the Health and Safety Code.

(II) A housing development project in which at least 10 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, are dedicated to very low

income households, as defined in Section 50105 of the Health and Safety Code.

(III) A housing development project in which at least 13 percent of the total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, are dedicated to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(IV) A housing development project in which there are 10 or fewer total units, as defined in subparagraph (A) of paragraph (8) of subdivision (o) of Section 65915, that is on a site that is smaller than one acre, and that is proposed for development at a minimum density of 10 units per acre.

(ii) All units dedicated to extremely low income, very low income, and low-income households pursuant to clause (i) shall meet both of the following:

(I) The units shall have an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The development proponent shall agree to, and the local agency shall ensure, the continued affordability of all affordable rental units included pursuant to this section for 55 years and all affordable ownership units included pursuant to this section for a period of 45 years.

(D) “Housing for moderate-income households” means a housing development project in which 100 percent of the units are sold or rented to moderate-income households, as defined in Section 50093 of the Health and Safety Code, at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code.

(5) Notwithstanding any other law, until January 1, 2030, “deemed complete” means that the applicant has submitted a preliminary application pursuant to Section 65941.1 or, if the applicant has not submitted a preliminary application, has

submitted a complete application pursuant to Section 65943. The local agency shall bear the burden of proof in establishing that the application is not complete.

(6) “Disapprove the housing development project” includes any instance in which a local agency does any of the following:

(A) Votes or takes final administrative action on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(C) Fails to meet the time limits specified in Section 65913.3.

(D) Fails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action if all of the following conditions are met:

(i) The project applicant provides written notice detailing the challenged conduct and why it constitutes disapproval to the local agency established under Section 65100.

(ii) Within five working days of receiving the applicant’s written notice described in clause (i), the local agency shall post the notice on the local agency’s internet website, provide a copy of the notice to any person who has made a written request for notices pursuant to subdivision (f) of Section 21167 of the Public Resources Code, and file the notice with the county clerk of each county in which the project will be located. The county clerk shall post the notice and make it available for public inspection in the manner set forth in subdivision (c) of Section 21152 of the Public Resources Code.

(iii) The local agency shall consider all objections, comments, evidence, and concerns about the project or the applicant’s written notice and shall not make a determination until at least 60 days after the applicant has given written notice to the local agency pursuant to clause (i).

(iv) Within 90 days of receipt of the applicant’s written notice described in clause (i), the local agency shall issue a written statement that it will immediately cease the challenged conduct or

issue written findings that comply with both of the following requirements:

(I) The findings articulate an objective basis for why the challenged course of conduct is necessary.

(II) The findings provide clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing.

(v) (I) If a local agency continues the challenged course of conduct described in the applicant's written notice and fails to issue the written findings described in clause (iv), the local agency shall bear the burden of establishing that its course of conduct does not constitute a disapproval of the housing development project under this subparagraph in an action taken by the applicant.

(II) If an applicant challenges a local agency's course of conduct as a disapproval under this subparagraph, the local agency's written findings described in clause (iv) shall be incorporated into the administrative record and be deemed to be the final administrative action for purposes of adjudicating whether the local agency's course of conduct constitutes a disapproval of the housing development project under this subparagraph.

(vi) A local agency's action in furtherance of complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), including, but not limited to, imposing mitigating measures, shall not constitute project disapproval under this subparagraph.

(E) Fails to comply with Section 65905.5. For purposes of this subparagraph, a builder's remedy project shall be deemed to comply with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.

(F) (i) Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of Section 65943 and includes in the determination an item that is not required on the local agency's submittal requirement checklist. The local agency shall bear the burden of proof that the required item is listed on the submittal requirement checklist.

(ii) In a subsequent review of an application pursuant to Section 65943, requests the applicant provide new information that was not identified in the initial determination and upholds this determination in the final written determination on an appeal filed

pursuant to subdivision (c) of Section 65943. The local agency shall bear the burden of proof that the required item was identified in the initial determination.

(iii) Determines that an application for a housing development project is incomplete pursuant to subdivision (a) or (b) of Section 65943, a reasonable person would conclude that the applicant has submitted all of the items required on the local agency's submittal requirement checklist, and the local agency upholds this determination in the final written determination on an appeal filed pursuant to subdivision (c) of Section 65943.

(iv) If a local agency determines that an application is incomplete under Section 65943 after two resubmittals of the application by the applicant, the local agency shall bear the burden of establishing that the determination is not an effective disapproval of a housing development project under this section.

(G) Violates subparagraph (D) or (E) of paragraph (6) of subdivision (f).

(H) Makes a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1.

(I) (i) Fails to make a determination of whether the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or commits an abuse of discretion, as defined in subdivision (b) of Section 65589.5.1 if all of the conditions in Section 65589.5.1 are satisfied.

(ii) This subparagraph shall become inoperative on January 1, 2031.

(J) (i) Fails to adopt a negative declaration or addendum for the project, to certify an environmental impact report for the project, or to approve another comparable environmental document, such as a sustainable communities environmental assessment pursuant to Section 21155.2 of the Public Resources Code, as required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if all of the conditions in Section 65589.5.2 are satisfied.

(ii) This subparagraph shall become inoperative on January 1, 2031.

(7) (A) For purposes of this section and Sections 65589.5.1 and 65589.5.2, “lawful determination” means any final decision about whether to approve or disapprove a statutory or categorical exemption or a negative declaration, addendum, environmental impact report, or comparable environmental review document under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that is not an abuse of discretion, as defined in subdivision (b) of Section 65589.5.1 or subdivision (b) of Section 65589.5.2.

(B) This paragraph shall become inoperative on January 1, 2031.

(8) “Lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(9) Until January 1, 2030, “objective” means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

(10) Notwithstanding any other law, until January 1, 2030, “determined to be complete” means that the applicant has submitted a complete application pursuant to Section 65943.

(11) “Builder’s remedy project” means a project that meets all of the following criteria:

(A) The project is a housing development project that provides housing for very low, low-, or moderate-income households.

(B) On or after the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction did not have a housing element that was in substantial compliance with this article.

(C) The project has a density such that the number of units, as calculated before the application of a density bonus pursuant to Section 65915, complies with all of the following conditions:

(i) The density does not exceed the greatest of the following densities:

(I) Fifty percent greater than the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(II) Three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater.

(III) The density that is consistent with the density specified in the housing element.

(ii) Notwithstanding clause (i), the greatest allowable density shall be 35 units per acre more than the amount allowable pursuant to clause (i), if any portion of the site is located within any of the following:

(I) One-half mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(II) A very low vehicle travel area, as defined in subdivision (h).

(III) A high or highest resource census tract, as identified by the latest edition of the “CTCAC/HCD Opportunity Map” published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development.

(D) (i) On sites that have a minimum density requirement and are located within one-half mile of a commuter rail station or a heavy rail station, the density of the project shall not be less than the minimum density required on the site.

(I) For purposes of this subparagraph, “commuter rail” means a railway that is not a light rail, streetcar, trolley, or tramway and that is for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburb with service operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas, or between urbanized areas and outlying areas, using either locomotive-hauled or self-propelled railroad passenger cars, with multitrip tickets and specific station-to-station fares.

(II) For purposes of this subparagraph, “heavy rail” means an electric railway with the capacity for a heavy volume of traffic using high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, and high platform loading.

(ii) On all other sites with a minimum density requirement, the density of the project shall not be less than the local agency’s minimum density or one-half of the minimum density deemed appropriate to accommodate housing for that jurisdiction as

specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2, whichever is lower.

(E) The project site does not abut a site where more than one-third of the square footage on the site has been used, within the past three years, by a heavy industrial use, or a Title V industrial use, as those terms are defined in Section 65913.16.

(12) “Condition approval” includes imposing on the housing development project, or attempting to subject it to, development standards, conditions, or policies.

(13) “Unit type” means the form of ownership and the kind of residential unit, including, but not limited to, single-family detached, single-family attached, for-sale, rental, multifamily, townhouse, condominium, apartment, manufactured homes and mobilehomes, factory-built housing, and residential hotel.

(14) “Proposed by the applicant” means the plans and designs as submitted by the applicant, including, but not limited to, density, unit size, unit type, site plan, building massing, floor area ratio, amenity areas, open space, parking, and ancillary commercial uses.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the housing development project’s application is complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d), and that the findings are supported by a preponderance of the evidence in the record, and with the requirements of subdivision (o).

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development

project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an

applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(k) (1) (A) (i) The applicant, a person who would be eligible to apply for residency in the housing development project or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii):

(I) The local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section.

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section.

(III) (ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.

(ib) This subclause shall become inoperative on January 1, 2030.

(IV) The local agency violated a provision of this section applicable to a builder's remedy project.

(ii) If the court finds that one of the conditions in clause (i) is met, the court shall issue an order or judgment compelling compliance with this section within a time period not to exceed 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, provided, however, that the court shall not award attorney's fees in either of the following instances:

(I) The court finds, under extraordinary circumstances, that awarding fees would not further the purposes of this section.

(II) (ia) In a case concerning a disapproval within the meaning of subparagraph (I) or (J) of paragraph (6) of subdivision (h), the court finds that the local agency acted in good faith and had reasonable cause to disapprove the housing development project due to the existence of a controlling question of law about the application of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or implementing guidelines as to which there was a substantial ground for difference of opinion at the time of the disapproval.

(ib) This subclause shall become inoperative on January 1, 2031.

(B) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within the time period prescribed by the court, the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Trust Fund. The fine shall be in a minimum amount of ten thousand dollars (\$10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of the fine to impose, the court shall consider the local

agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Trust Fund for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(D) Nothing in this section shall limit the court's inherent authority to make any other orders to compel the immediate enforcement of any writ brought under this section, including the imposition of fees and other sanctions set forth under Section 1097 of the Code of Civil Procedure.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A

housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it violated this section and (2) failed to carry out the court's order or judgment within the time period prescribed by the court, the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. If a court has previously found that the local agency violated this section within the same planning period, the court shall multiply the fines by an additional factor for each previous violation. For purposes of this section, "bad faith" includes, but is not limited to, an action or inaction that is frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit.

(m) (1) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount

to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(2) (A) A disapproval within the meaning of subparagraph (I) of paragraph (6) of subdivision (h) shall be final for purposes of this subdivision, if the local agency did not make a lawful determination within the time period set forth in paragraph (5) of subdivision (a) of Section 65589.5.1 after the applicant's timely written notice.

(B) This paragraph shall become inoperative on January 1, 2031.

(3) (A) A disapproval within the meaning of subparagraph (J) of paragraph (6) of subdivision (h) shall be final for purposes of this subdivision, if the local agency did not make a lawful determination within 90 days of the applicant's timely written notice.

(B) This paragraph shall become inoperative on January 1, 2031.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) (1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.

(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant to Section 65941.1 in the following circumstances:

(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(D) The housing development project has not commenced construction within two and one-half years, or three and one-half years for an affordable housing project, following the date that the project received final approval. For purposes of this subparagraph:

(i) “Affordable housing project” means a housing development that satisfies both of the following requirements:

(I) Units within the development are subject to a recorded affordability restriction for at least 55 years for rental housing and 45 years for owner-occupied housing, or the first purchaser of each unit participates in an equity sharing agreement as described in subparagraph (C) of paragraph (2) of subdivision (c) of Section 65915.

(II) All of the units within the development, excluding managers’ units, are dedicated to lower income households, as defined by Section 50079.5 of the Health and Safety Code.

(ii) “Final approval” means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:

(I) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.

(II) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

(E) The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, including any other locally authorized program that offers additional density or other development bonuses when affordable housing is provided. For purposes of this subdivision, “square footage of construction” means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

(4) For purposes of this subdivision, “ordinances, policies, and standards” includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent

stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

(8) (A) This subdivision shall apply to a housing development project that submits a preliminary application pursuant to Section 65941.1 before January 1, 2030.

(B) This subdivision shall become inoperative on January 1, 2034.

(p) (1) Upon any motion for an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, in a case challenging a local agency's approval of a housing development project, a court, in weighing whether a significant benefit has been conferred on the general public or a large class of persons and whether the necessity of private enforcement makes the award appropriate, shall give due weight to the degree to which the local agency's approval furthers policies of this section, including, but not limited to, subdivisions (a), (b), and (c), the suitability of the site for a housing development, and the reasonableness of the decision of the local agency. It is the intent of the Legislature that attorney's fees and costs shall rarely, if ever, be awarded if a local agency, acting in good faith, approved a housing development project that satisfies conditions established in paragraph (1), (2), or (3) of subdivision (a) of Section 65589.5.1 or paragraph (1), (2), or (3) of subdivision (a) of Section 65589.5.2.

(2) This subdivision shall become inoperative on January 1, 2031.

(q) This section shall be known, and may be cited, as the Housing Accountability Act.

(r) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 65589.5 of the Government Code proposed by both this bill and Assembly Bill 1413. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 65589.5 of the Government Code, and (3) this bill is enacted after Assembly Bill 1413, in which case Section 2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Approved _____, 2024

Governor