Date of Hearing: July 16, 2025

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
SB 838 (Durazo) – As Amended May 1, 2025

SENATE VOTE: 23-11

SUBJECT: Housing Accountability Act: housing development projects

SUMMARY: Revises the definition of housing development project in the Housing Accountability Act (HAA) to exclude mixed-use residential projects that include any hotel or motel space in the commercial portion of a project. Specifically, **this bill:**

1) Revises the HAA definition of housing development projects that are two-thirds residential and one-third commercial to exclude projects that include any hotel, motel, bed and breakfast, inn, or other transient lodging uses in the commercial portion of the project.

2) Specifies that "other transient lodging" does not include a residential hotel, as specified, and a resident's use or marketing of a unit as short-term lodging, as specified, in a manner consistent with local law.

3) Makes the bill's provisions retroactive and applicable to project applications that were not deemed complete, as specified, by January 1, 2025, even if the project submitted a preliminary application before January 1, 2025.

EXISTING LAW:

1) Provides, pursuant to the HAA, that a local government may only disapprove a housing development project under specified circumstances. Specifically, among other provisions, the HAA:

    a) Prohibits a local agency, from disapproving a housing development project containing units affordable to very low-, low- or moderate-income households (herein after "housing development projects that contain affordable units"), or conditioning the approval in a manner that renders the housing development project infeasible, unless it makes one of the following findings, based upon substantial evidence in the record:

        i) The jurisdiction has adopted a housing element in substantial compliance with the law, and the jurisdiction has met its share of the regional housing need for that income category.

        ii) The project will have a specific, adverse impact on public health or safety, and there is no feasible method to mitigate or avoid the impact without rendering the housing development unaffordable to very low-, low- or moderate-income households.

        iii) The denial or imposition of conditions is required to comply with state or federal law.

        iv) The project is located on agricultural or resource preservation land that does not have adequate water or wastewater facilities.

v) 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, as specified.

vi) The jurisdiction does not have an adopted revised housing element that was in substantial compliance with the law, and the housing development project is not a "builder's remedy project." [Government Code (GOV) §65589.5]

b) Defines a "builder's remedy project" as a housing development project that meets all of the following criteria:

i) The project will provide housing for very low-, low- or moderate-income households.

ii) The project application was submitted in a jurisdiction that did not have a housing element in substantial compliance with the law.

iii) The project meets specified density thresholds.

iv) The project 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 for heavy industrial uses, as specified. (GOV §65589.5)

c) Defines a "housing development project" as follows:

i) A project that only includes residential units.

ii) A mixed use project that meets any of the following conditions:

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

(2) At least 50% of the new or converted square footage is designated for residential use if the project meets both of the following:

(a) The project includes at least 500 units.

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

(3) At least 50% of the new or converted square footage is designated for residential use if the project meets all of the following:

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

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

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

(d) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, as specified. (GOV §65589.5)

d) Defines "disapprove the housing development project" as any instance in which a local agency does any of the following:

i) Votes 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 project.

ii) Fails to comply with specified times for approving or disapproving development projects.

iii) 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, as specified.

iv) Fails to comply with requirements in the Housing Crisis Act that prohibit holding more than five public hearings on an application that is deemed complete, as specified.

v) Determines that an application is incomplete and request items that an applicant submit items that were not originally required to complete the application, as specified.

vi) Seeks to impose conditions on a builder's remedy project that are prohibited, as specified.

vii) Unlawfully determines that a projects' vesting under a preliminary application submitted to the jurisdiction has expired.

viii) Fails to make a determination of whether a project is exempt from the California Environmental Quality Act, or commits an abuse of discretion, as specified. (GOV §65589.5)

FISCAL EFFECT: None.

COMMENTS:

1) **Bill Summary.** This bill revises the HAA definition of housing development projects that are two-thirds residential and one-third commercial to exclude projects that include any hotel, motel, or other transient lodging space in the commercial portion of the project. The bill states that "other transient lodging" does not include a resident's use or marketing of a unit as short-term lodging in a manner consistent with local law, after the issuance of a certificate of occupancy. Additionally, this bill retroactively applies its changes to project applications that were not deemed complete, as specified, by January 1, 2025.

   This bill is co-sponsored by UNITE HERE International Union and UNITE HERE Local 11.

2) **Author's Statement.** According to the author, "The Legislature has made significant strides in easing housing development restrictions by providing incentives and streamlining benefits to projects that meet key housing requirements. The HAA, California's flagship housing production law, was designed to accelerate the creation of permanent homes to solve the state's housing crisis. Unfortunately, some developers are taking advantage of the HAA to gain incentives and fast-track approval for hotels and resorts. This undermines the law's core goal—building homes—and erodes public trust in California's housing policies. These hotel developments are diverting critical resources that are desperately needed for housing in California. The HAA was created to accelerate housing development, not commercial hotel projects. This abuse is occurring across the state, including in Sonoma County, Santa Clara County, Santa Monica, and Pacific Beach. Further, while important to the tourism economy, hotels place a unique, ongoing and significant demand on public resources such as water, energy, public safety services, transportation, and parking. Because of these impacts, hotels are better suited to local review. SB 838 restores the HAA's original purpose, reinforces the state's commitment to building housing, and ensures that California's housing laws deliver for the communities they were designed to serve."

3) **Planning for Housing.** The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

   Cities and counties use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific consideration. Zoning ordinances and other development decisions must be consistent with the city or county's general plan.

4) **HAA Background.** In 1982, in response to the housing crisis, which was viewed as threatening the economic, environmental, and social quality of life in California, the Legislature enacted the HAA. The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential development proposals, including mixed-use projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or from requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the locality's share of the regional housing needs assessment.

   If a locality denies approval or imposes conditions 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 or imposition of conditions is subject to a court challenge, the burden is on the local government to show that its decision is consistent with specified written findings. The Department of Housing and Community Development (HCD) has

enforcement authority over the HAA, violations of which may result in referral to the Attorney General.

5) **Disapprovals or Conditions Under the HAA.** The HAA limits the ability of local governments to disapprove or condition projects in a manner that renders them economically infeasible. Specifically, the HAA requires local agencies to make written finding based on a preponderance of evidence that a housing development project would have adverse impacts on the public health or safety before disapproving the project or approving the project at a lower density.

   The HAA defines "disapprove" to mean any of the following actions by a local government:

   a) Votes 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 the Permit Streamlining Act, which requires local agencies to act promptly and fairly on development projects, including housing.

   c) 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, as specified.

   d) Fails to comply with requirements that prohibit holding more than five public hearings on an application that is deemed complete, as specified.

   e) Fails to meet the time limits specified in state law governing approval of building permits and other permits needed for construction after a land use entitlement has been approved.

   f) Determines that an application is incomplete and request items that an applicant submit items that were not originally required to complete the application, as specified.

   g) Seeks to impose conditions on a builder's remedy project that are prohibited, as specified.

   h) Unlawfully determines that a projects' vesting under a preliminary application submitted to the jurisdiction has expired.

   i) Fails to make certain findings or exemptions related to the California Environmental Quality Act (CEQA) or commits an abuse of discretion, as defined by AB 1633 (Ting, 2023).

   The Legislature significantly amended the HAA last year by enacting AB 1893 (Wicks), Chapter 268, Statutes of 2024, which, among other provisions, added several new definitions of disapproval included in the list above and revised the definition of "housing development project" in the HAA to allow additional categories of mixed-use developments to qualify as "housing development projects" eligible for HAA protections.

   AB 1893 (Wicks) codified the "builder's remedy," as a part of the HAA. The builder's remedy prohibits a city or county from denying a housing development project that contains

specified percentages of affordable housing, or contains 10 or fewer residential units regardless of affordability—even if they are inconsistent with local planning requirements. The builder's remedy applies in cities and counties that did not have a housing element that the HCD has approved as compliant with state law when the developer submitted the project application. AB 1893 (Wicks) provides that such a city or county also generally cannot prevent a project—as modified by waivers, incentives, and concessions under density bonus law—from being constructed as proposed by the applicant. This means that builder's remedy projects can contain types of uses that the local government never contemplated.

6) **Ripple Effects.** The definition of "housing development project" in the HAA is cross-referenced in a series of statutes that: require local agencies to streamline the approval of affordable housing projects, establish enforcement authority for the Attorney General; establish permitting criteria applicable to local agencies; and limit the ability of local agencies to impose conditions on projects. The table below is a partial list of statutes in the Government Code implicated by the change in this bill. This bill will narrow the scope and effect of these statutes by excluding any mixed-use developments containing a hotel, motel, or similar use from their provisions.

Streamlining Bills	
65912.100-65912.140	Creates a streamlined ministerial approval process for an affordable housing development project located in an area zoned for office, retail or parking. (AB 2011 (Wicks) The Affordable Housing and High Roads Jobs Act of 2022).
65913.16	Makes an affordable housing development project a use by right on land owned by an institution of higher education or a religious institution, as specified. (SB 4 (Weiner) The Affordable Housing on Faith and Higher Education Lands Act).
65913.4	Creates a streamlined ministerial approval process for infill affordable housing development projects, as specified (SB 35 and SB 423 (Weiner) infill housing developments).
65913.12	Makes "extremely affordable" housing development projects that reuse commercial buildings an allowable use for the purposes of the local zoning code. (AB 1490 (Lee) affordable housing development projects: adaptive reuse).
Enforcement and Anti-Discrimination	
65008	Specifies that the disapproval of housing development projects contemplated in the HAA prohibits local agencies from discriminating against a residential development on the basis of its financing, or the income level of the expected occupants.
65009.1	Establishes legal remedies that can be used by the Attorney General to enforce the adoption of housing element revisions, or any state law that requires a local government to ministerially approve a housing

	development project.
65589.5.1 – 65589.5.2	Specifies that not taking action under CEQA, as specified, constitutes disapproving of a housing development project.
Permit Timelines & Criteria	
65905.5	Part of the Housing Crisis Act that prohibits local agencies from subjecting housing development projects to more than five hearings.
65913.3	Establishes time limits for local agencies to process post-entitlement phase permits for housing development projects.
65940 -65943	Requires public agencies to compile a list that specifies in detail the items an applicant must submit for an application to be deemed complete, and establishes timelines for a public agency to deem an application complete.
Limitations on Development Standards	
65913.11	Establishes minimum Floor-to-Area Ration (FAR) standards local agencies can impose on specific housing development projects.
65863.2	Limits the ability of local agencies to impose minimum parking standards on housing development projects and other development projects.
69513.6	Limits the ability of local agencies to impose parking standards on an affordable housing development project built on property owned by a religious institution.

This would also impact any bills in the current legislative session, or in future legislation, that cross-reference the HAA definition of a housing development project.

7) **Proposed Housing Projects with Hotel Components.** Several housing projects with hotel components have attracted attention in recent years, including:

   a) **970 Turquoise Street project**. In August 2024, the City of San Diego received an application for a project located at 970 Turquoise Street that is a mixed-use project containing 74 residential units, 10 of which have affordability restrictions. The developer of the project proposes to use density bonus law to accommodate 139 hotel rooms as well. To fit those hotel rooms and the bonus units that the project is entitled to under density bonus law, the developer requested a waiver of the city's 30 foot height limit to construct a 240-foot tall structure.

   b) **Sonoma Developmental Center project**. In August 2023, one day before the County of Sonoma adopted a compliant housing element, the County received an application for a builder's remedy project (under the law prior to the passage of AB 1893) containing 930

residential units and 150 hotel rooms at the site of the former Sonoma Development Center.

c) **1420 20th Street project.** In December 2022, the City of Santa Monica received an application for a builder's remedy project containing 50 residential units, including 10 affordable units, ground floor commercial, and 40 hotel rooms in the city's R2 zone, which prohibits hotels.

8) **Policy Considerations.** SB 838 applies retroactively and applies its change to projects that have submitted project applications, but have not been deemed complete, as of January 1, 2025, even if the applicant filed a preliminary application before that date. Under the HAA, developers may submit a preliminary application to secure vested rights to the zoning, design, and development standards in effect at that time, provided that a complete application follows within 180 days.

Among other concerns, opponents of this bill state that the retroactive application of the bill "undermine[s] mixed-use projects that are already in flux." It is plausible that changing the application of laws when a project has started the application process and begun the process to plan for and secure financing would significantly impact the feasibility of the project as a whole. Proponents of the bill argue that only a handful of projects would be impacted by the retroactive application of this bill. However, it is unclear how many units, specifically affordable units, would be delayed or stopped by the retroactive application of this bill.

The Committee may wish to consider if it is prudent to apply the policy this bill propose prospectively instead of retroactively.

9) **Committee Amendments.** The Committee may wish to consider removing the retroactive clause of this bill, as follows:

~~*(ib) This subclause shall be retroactive and apply to an application or a revised application for a project that the local agency has not deemed complete pursuant to subdivision (c) of Section 65941.1 or Section 65943 as of January 1, 2025, including projects that a preliminary application has been submitted for before January 1, 2025*~~.

10) **Related Legislation.** AB 87 (Boerner, 2025) would similarly prevent DBL incentives or concessions from being granted to hotel, motel, or similar uses. This bill is in the Senate Local Government Committee.

SB 92 (Blakespear, 2025) would prevent the use of DBL to add, enlarge, or expand hotel, motel, and similar uses in mixed-use developments, among other measures**.** This bill is pending in this committee.

11) **Arguments in Support.** UNITE HERE International Union, and UNITE HERE Local 11, the bill co-sponsors, write in support: "California desperately needs more housing. Over the past few years, the Legislature has taken decisive action to ease restrictions on the development of residential units. Unfortunately, some hotel developers have taken advantage of loopholes created by these changes to develop luxury hotels. These projects are inconsistent with the purpose of housing streamlining laws— which were always intended to create more permanent housing—not hotels.

"SB 838 would close this loophole by amending §65589.5(h)(2) to specify that a project that intends to make use of housing streamlining laws may not include hotel uses. There is no evidence that hotels, as a rule, are needed to make housing projects financially feasible. On the other hand, allowing hotel rooms to be part of the "commercial" percentage of a mixed-use housing project just encourages developers to reduce the number of housing units in a project to replace them with hotel rooms. We believe hotels are added to housing projects opportunistically because the loophole allows it."

12) **Arguments in Opposition.** The California Association of Realtors, California Building Industry Association (CBIA), NAIOP Commercial Real Estate Development Association of California, San Francisco Planning and Urban Research Association (SPUR), and Lexor Builders write in opposition: "We oppose this bill because it will limit the development options on the commercial use of all mixed-use projects. The bill is also applicable retroactively, which jeopardizes many projects in the pipeline.

"Our concerns with SB 838 rest in the fact that this policy could limit the financing tools available to make mixed-use development projects feasible. We oppose any policy that may limit viable options on the non-residential use of any mixed-use project, which could negatively impact the supply of housing and inhibit the development of mixed-use projects. One additional provision that causes concern is that it has a retroactive application to SB 330 projects in the pipeline, which would undermine mixed-use projects that are already in flux. This policy would have a variety of unintended consequences that could roll back the progress we have made with passing and implementing housing streamlining laws over the years to support the production of mixed-use development."

13) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Labor Unions, AFL-CIO
City of Beverly Hills
Unite Here International Union, AFL-CIO
Unite Here Local 11

Opposition

Building Owners and Managers Association of California
California Association of Realtors
California Building Industry Association (CBIA)
California Business Properties Association
Lexor Builders
NAIOP of California
Spur

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