

SENATE THIRD READING
SB 838 (Durazo)
As Amended September 5, 2025
Majority vote

SUMMARY

Revises the definition of housing development project under the Housing Accountability Act (HAA) to exclude any portion of any housing development project that includes a hotel, motel, bed and breakfast inn, or other transient lodging use.

Major Provisions

- 1) Amends the definition of a housing development project under the HAA to exclude projects where any portion is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging.
- 2) Provides, notwithstanding 1), that if a mixed-use project includes a hotel, motel, inn, or other transient lodging use, that the portion of the mixed-use project that does not include the hotel, motel, inn, or other transient lodging use *shall* be considered a housing development project under the HAA. Further provides that the local agency may separately approve the portion of the project that contains the hotel or motel use, but that portion of the project shall not be eligible for any benefits conferred on a housing development project under state law, including streamlining provisions.
- 3) Excludes from the definition of "other transient lodging" in 2): a residential hotel that serve as the primary residence of the guest, and a resident's use or marketing of a unit as short term lodging.
- 4) *Incorporates chaptering amendments.*

COMMENTS

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 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, and HAA violations may be referred to the Attorney General.

"Housing Development Project:" The HAA was significantly amended last year by AB 1893 (Wicks), Chapter 268, Statutes of 2024 which, among other provisions, eliminated some of the legal ambiguity surrounding the applicability of the builder's remedy, and reduced the affordability standards projects must meet in order to qualify as a builder's remedy project. The builder's remedy allows developers to move forward with qualifying housing projects even when those projects conflict with local zoning standards, so long as the jurisdiction is out of compliance with Housing Element Law. In the 6th Housing Element cycle, there was increased developer interest in, and controversy around, builder's remedy projects, despite the law existing on the books for decades.

AB 1893 also 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. Before AB 1893, a housing development project was defined as a development only containing residential units, or a mixed-use development where at least two-thirds of the square footage of the project is designated for residential use. AB 1893 expanded the scope of mixed-use developments eligible for HAA protection to include projects that are only 50% residential, provided that they contain at least 500 residential units and do not include any hotel or motel space, as defined. While conditions were placed on the expanded definition of housing development to exclude hotel and motel space from mixed-use projects that are only 50% residential, the Legislature did not contemplate narrowing the scope of existing projects eligible for protection under the HAA in AB 1893.

This bill revises the HAA definition of a housing development project to exclude any portion of the project that contains a hotel, motel, bed and breakfast, or other transient lodging use. For mixed-use projects, only the residential portion shall qualify for the protections under the HAA and any other benefits conferred by state laws, while the transient lodging portion would be ineligible for those benefits. In doing so, this bill seeks to maintain the protections available to residential housing development projects while leaving the full local approvals process, often involving a discretionary component, available to hotel, motel, and other transient lodging uses. While the bill preserves HAA protections for the residential portion of a mixed-use project, requiring separate approvals for the lodging portion could create uncertainty if the housing is approved but the hotel is denied, or if the hotel is processed on a much slower timeline than the housing. This split treatment may raise questions about how local agencies process and condition interconnected project components under this revised HAA definition.

Recent Hotel Controversies: Several housing development proposals with hotel components attracted attention in recent years, including:

- 1) *125-129 Linden Ave project.* In October 2022, the City of Beverly Hills received an application for a builder's remedy project containing 200 residential units. The project was later revised in April 2023 to instead include 165 residential units and a 73 room hotel. Beverly Hills denied the revised proposal in June of 2024, but HCD maintained that in doing so, Beverly Hills violated the HAA and mandated that the City process the application "without further delay.
- 2) *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 (DBL) to accommodate 139 hotel rooms as well. To fit

those hotel rooms allowed under local zoning, and the bonus units that the project is entitled to under DBL, the developer requested a waiver of the city's 30-foot height limit to construct a 240-foot tall structure.

- 3) *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.
- 4) *Mountain Winery Redevelopment project*. In 2024, Santa Clara County received an application for a builder's remedy project containing 237 residential units and 81 hotel rooms in a "Hillside" zoning district, which Santa Clara County designates as a zone "to preserve mountainous lands unplanned or unsuited for urban development."
- 5) *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.

Notably, four of the five examples above are builder's remedy projects, submitted before AB 1893 took effect, which likely would have precluded, or drastically changed the scope, of the proposals. One of the proposals, the Turquoise Street project, did not involve the builder's remedy, but was situated on a site where the City of San Diego allowed for hotel uses locally. There are two other bills this legislative session, AB 87 (Boerner), and SB 92 (Blakespear), that seek to address the DBL issue that led to the Turquoise Street proposal.

Nonetheless, this bill seeks to narrow the definition of a "housing development project" to prevent hotel, motel, or other transient lodging uses from benefitting from the projects available to housing development projects under the HAA and to ensure future state housing bills that use the HAA definition proactively contain these protections.

Broad Implications: 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, among others. 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. 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.

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."

Arguments in Support

UNITE HERE International Union, and UNITE HERE Local 11, the bill co-sponsors, write in support of a prior version of the bill: "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 section 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."

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 to a prior version of the bill: "We oppose this bill because it will limit the development options on the commercial use of all mixed-use projects...

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...

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."

FISCAL COMMENTS

None

VOTES**SENATE FLOOR: 23-11-6**

YES: Allen, Archuleta, Arreguín, Becker, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Laird, Limón, McGuire, McNERney, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Cabaldon, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ABS, ABST OR NV: Ashby, Blakespear, Grayson, Hurtado, Menjivar, Reyes

ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-2-2

YES: Haney, Ávila Farías, Caloza, Garcia, Kalra, Lee, Quirk-Silva, Wilson

NO: Ta, Tangipa

ABS, ABST OR NV: Patterson, Wicks

ASM LOCAL GOVERNMENT: 9-1-0

YES: Carrillo, Hoover, Pacheco, Ramos, Ransom, Blanca Rubio, Stefani, Ward, Wilson

NO: Ta

UPDATED

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