

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**OFFICE OF THE DIRECTOR**

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www.hcd.ca.gov**ADDENDUM TO INITIAL STATEMENT OF REASONS
FOR ADOPTION OF TITLE 25, CALIFORNIA CODE OF REGULATIONS
SECTIONS 6600-6608
THE PROHOUSING DESIGNATION PROGRAM**

On February 4, 2022 the California Department of Housing and Community Development (“Department”) published its proposed regulations to establish the Prohousing Designation Program (“Program”) by adopting the following sections to title 25, division 1, chapter 6, subchapter 6.6 of the California Code of Regulations: sections 6600, 6601, 6602, 6603, 6604, 6605, 6606, 6607, and 6608. The Department also published an Initial Statement of Reasons (“ISOR”) for the proposed regulations and other documents in the rulemaking file, which is available for review on the Department’s website at <https://hcd.ca.gov/community-development/prohousing/>.

The Department accepted public comments on these proposed regulations until March 23, 2022. Having reviewed and considered all the comments received during this public comment period, the Department has modified the proposed regulations and has prepared this Addendum to the ISOR (“Addendum”). The modifications to the proposed regulations, Addendum, and other related documents are available for review on the Department’s website at <https://hcd.ca.gov/community-development/prohousing/>.

This Addendum explains the modifications and why they are necessary.

NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS

The following statements of reasons for the substantive modifications the Department has incorporated into the proposed regulations are intended to supplement the ISOR. The Addendum only explains the reasons for the proposed modifications and does not supplant the ISOR with respect to provisions that the Department did not modify.

Section 6601. Definitions.

Subdivision (a)(3). It is necessary to add the reference to Government Code section 65583(c)(1) because it includes a clarification that Jurisdictions duty to Affirmatively Further Fair Housing in the Housing Element Law includes identifying sites “as needed to affirmatively further fair housing” (Id.)

Subdivision (a)(9)(A). It is necessary to reference additional sections of the Coastal Act commencing with Division 20 of the Public Resources Code to maintain consistency with the Coastal Act and to encompass additional planning requirements of the Act.

Subdivision (a)(9)(A)(i). It is necessary to modify the definition of “Wetlands” and add references to relevant statutes and regulations to maintain consistency with the Coastal Act, which includes its own definition of Wetlands within the coastal zone covered by the Coastal Act.

Subdivision (a)(9)(A)(ii). To maintain consistency with the Coastal Act, it is necessary to add a reference to Public Resources Code section 30107.5 because it includes important clarifications of the definition of environmentally sensitive habitat areas within the coastal zone.

Subdivision (a)(9)(A)(iii). To maintain consistency with the Coastal Act and to encompass additional planning requirements of the Act, it is necessary to add to this definition “areas of current or projected future high geologic, flood, and fire hazard, such as areas vulnerable to sea level rise impacts”.

Subdivision (a)(9)(A)(iv). To maintain consistency with the Coastal Act and to encompass additional planning requirements of the Act, it is necessary to add to this definition “recreation, or other visitor-serving uses, including coastal access parking”.

Subdivision (a)(9)(C): To maintain consistency with how the state defines Wetlands, it is necessary to clarify that the definition of Wetlands in this paragraph applies outside the coastal zone because the definition of Wetlands in subdivision (a)(9)(A)(i) in this section only applies to Wetlands within the coastal zone. Therefore, separate definitions of Wetlands are necessary for areas within and outside the coastal zone.

Subdivision (a)(10). It is necessary to replace “Government Code section 50106” with “Health and Safety Code section 50106” because the relevant definition of Extremely Low-Income Households is included in this section of the Health and Safety Code, not in the Government Code.

Subdivision (a)(11). Because Government Code sections 8899.50 and 65583 impose mandatory duties on Jurisdictions to affirmatively further fair housing, it is necessary to modify paragraph 3 of the Formal Resolution for the Prohousing Program to clarify that Jurisdictions must acknowledge and confirm their actual compliance with this duty, not merely a commitment to affirmatively further fair housing. It is also necessary to add the reference to Government Code section 65583 because it includes important clarifications for a Jurisdiction’s specific duties under Housing Element Law’s requirements for Affirmatively Furthering Fair Housing. It is also necessary to modify paragraph 3 of the Formal Resolution for the Prohousing Designation Program to clarify that Jurisdictions must acknowledge and confirm that their General Plan is in alignment with an adopted Sustainable Communities Plan because (1) Government Code section 65080 imposes mandatory duties on metropolitan planning organizations to align local and regional planning priorities to reduce greenhouse gas emissions through the adoption of a Sustainable Communities Strategy, and (2) the implementation of a Sustainable Communities Strategy is a requirement of funding for Affordable Housing and Sustainable Communities (AHSC) grants, and this grant program is among those that the Legislature specified may provide preferences for Jurisdictions that receive Prohousing Designations. (Gov. Code section 65589.9, subdivision (b).) Lastly, it is also

necessary to modify paragraph 3 of the Formal Resolution for the Prohousing Designation Program to add an additional requirement that Jurisdictions acknowledge and confirm that they are currently in compliance, and will continue to comply with, the constitutional rights of unhoused individuals camping on public property (see, e.g., *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022); *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018)) and that they have enacted best practices in their Jurisdictions that are consistent with the United States Interagency Council on Homelessness' "7 Principles for Addressing Encampments" (June 17, 2022 update), which is hereby incorporated by reference and available at: [https://www.usich.gov/resources/uploads/asset_library/Principles for Addresssing Encampments 1.pdf](https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addresssing_Encampments_1.pdf)). This is necessary to clarify that maintaining practices for these encampments that are consistent with the constitutional rights of unhoused individuals and with federal guidelines for addressing encampments is a requirement for obtaining a Prohousing Designation.

Subdivision (a)(21), formerly (a)(20). It is necessary to replace "Government Code section 50079.5" with "Health and Safety Code section 50079.5" because the relevant definition of Lower-Income Households is included in this section of the Health and Safety Code, not in the Government Code.

Subdivision (a)(23), formerly (a)(22). It is necessary to replace "Government Code section 50093" with "Health and Safety Code section 50093" because the relevant definition of Moderate-Income Households is included in this section of the Health and Safety Code, not in the Government Code.

Section 6604. Applicant Threshold Criteria.

Subdivision (b)(3). It is necessary to add the language regarding Coastal Commission certification of any required rezoning of a Jurisdiction in the coastal zone to clarify that Coastal Commission certification, where appropriate, is included as part of this threshold requirement because some Jurisdictions must obtain this certification for their rezonings. (See, e.g., Pub. Resources Code, § 30513.) It is also necessary to add the reference to Government Code section 65584.09(a) in this subdivision because this provision includes an important, relevant statutory deadline for the rezoning or zoning that Jurisdictions must complete or agree to complete to be eligible for a Prohousing Designation.

Subdivision (b)(4). It is necessary to add the language about compliance with provisions relating to timeliness of the California Environmental Quality Act (CEQA) processing and references to the relevant statutes because failure to comply with these deadlines can significantly impede the production of housing, and therefore compliance with these CEQA deadlines warrants being included as a threshold requirement for a Prohousing Designation application. It is also necessary to add language about compliance with the provisions of Government Code section 65585, subdivision (j), because it includes many of the statutes that the Department enforces that were separately listed in the earlier version of subdivision (b)(4). Referring to section 65585, subdivision (j) provides a more concise accounting of many of the laws that local Jurisdictions must maintain compliance with in order to obtain and maintain a Prohousing Designation.

Subdivision (b)(5). It is necessary to add the language that requires Jurisdictions to self-certify that their policies for the treatment of homeless encampments on public property comply with and will continue to comply with the constitutional rights of unhoused individuals camping on public property and that it has enacted best practices in its Jurisdiction that are consistent with the United States Interagency Council on Homelessness' "7 Principles for Addressing Encampments" (June 17, 2022 update). This is necessary to clarify that maintaining practices for these encampments that are consistent with the constitutional rights of unhoused individuals and with federal guidelines for addressing encampments is a requirement for obtaining a Prohousing Designation. The one-page summary is necessary for the Department to efficiently obtain information to confirm that Jurisdiction's practices are consistent with federal guidelines.

Subdivision (d)(1). It is necessary to add the language about zoning that results in industrial and other environmental pollution land uses being in proximity to housing developments to the list of prohibited criteria that allows the Department to reject a Prohousing Designation because these actions can violate Jurisdictions' duties under Affirmatively Furthering Fair Housing laws (e.g., Gov. Code, §§ 8899.50, 65583 subds. (c)(1), (5), and (10) and the Anti-Discrimination in Land Use Law (Gov. Code, § 65008). It is also necessary to clarify that this subdivision does not prevent Jurisdictions from enacting policies that are designed to preserve or facilitate the production of housing for Lower-Income Households, and to give examples of this housing, so that Jurisdictions understand that they will not be ineligible for a Prohousing Designation because of policies that meet these purposes but might have some of the effects described in this subdivision's first sentence. It is also necessary to add the language about not rejecting a Jurisdiction's application based on actions taken to inhibit or constrain housing production due to climate change or hazard mitigation planning to clarify that there may be certain circumstances in which a Jurisdiction's climate and hazard mitigation planning efforts may be necessary to preserve life and property and thus should not be construed or penalized as actions that constrain housing production under this section. It is also necessary to add language confirming that Jurisdictions must still meet their obligations under the No Net Loss Law, Government Code section 65863.

Subdivision (d)(2). It is necessary to add the language about compliance with provisions relating to timeliness of CEQA processing and references to the relevant statutes because failure to comply with these deadlines can significantly impede the production of housing, and therefore compliance with these CEQA deadlines warrants being included as a threshold requirement for a Prohousing Designation application. It is also necessary to add language about compliance with the provisions of Government Code section 65585, subdivision (j), because it includes many of the statutes that the Department enforces that were separately listed in the earlier version of subdivision (b)(4). Referring to section 65585, subdivision (j) provides a more concise accounting of many of the laws that local Jurisdictions must maintain compliance within order to obtain and maintain a Prohousing Designation.

Section 6605. Requirements for Prohousing Policies.

Subdivision (a)(1)(B). It is necessary to add language to this subdivision to allow applicants to substitute alternative proposed Prohousing Policies because this gives

applicants more flexibility in being able to receive points under this category in the event that their original policy or policies cannot be completed within the specified timeframe for reasons such as timing, staffing, or budgeting constraints on the part of the Jurisdiction. To facilitate this flexibility and avoid confusion, it is also necessary to add that alternative policies need not have the same point values as ones they replace.

Subdivision (a)(2). It is necessary to modify language to this subdivision to clarify that applicants only receive points for this policy if it creates benefits across the Jurisdiction, rather than just a specific geography or smaller subset of the Jurisdiction. Policies that only affect a smaller geographic unit within a Jurisdiction are less likely to have sufficient effects on the Acceleration of Housing Production and have more potential for discriminatory effects.

Subdivision (a)(3). Because Government Code sections 8899.50 and 65583 impose mandatory duties on Jurisdictions to Affirmatively Further Fair Housing in all their local land use policies and practices, it is necessary to add this subdivision to clarify that Jurisdictions must acknowledge and confirm that their Prohousing Policies, individually and collectively, are consistent with these duties and that Jurisdictions have complied with requirements for obtaining community input. (See, e.g., Gov. Code, § 65583 (c)(9)-(10).)

Subdivision (b). It is necessary to modify language in this subdivision to clarify that preventing, not merely minimizing, displacement is a Prohousing Policy priority.

Subdivision (e). It is necessary to add this subdivision because to clarify that a Prohousing Policy cannot be overridden, undermined, or contradicted by a Jurisdiction's other policies, because otherwise Prohousing Policies will not be effective.

Section 6606. Designation Criteria.

Subdivision (b)(1)(A). It is necessary to add the last sentence to this subdivision to clarify that complying with the requirement to identify the additional sites in the Housing Element is a necessary condition for being awarded points under this subdivision because this allows the Department to confirm that Jurisdictions have actually exceeded the RHNA minimums.

Subdivision (b)(1)(B). Because SB 9 (Chapter 162, Statutes of 2021, Gov. Code, §§ 65852.21, 66511.7) was enacted after the emergency regulations were established, and essentially mandates the requirements set forth by this Prohousing Policy, it is necessary to modify language in this subdivision to clarify that applicants must now exceed state law in order to obtain points under this category. It is not sufficient for Jurisdictions to merely comply with this law to obtain points toward a Prohousing Designation.

Subdivision (b)(1)(C). It is necessary to add the last sentence to this subdivision to clarify that complying with the requirement to identify the additional sites in the Housing element is a necessary condition for being awarded points under this subdivision because this allows the Department to confirm that Jurisdictions have actually exceeded the RHNA minimums.

Subdivision (b)(1)(D). It is necessary to add language related to density bonus requirements to clarify that this subdivision does not require an increase of affordability requirements in addition to additional density allowances for projects. This clarification is necessary because additional affordability requirements beyond what is required by state law can actually hinder housing development.

Subdivision (b)(1)(E). Because SB 9 (Chapter 162, Statutes of 2021, Gov. Code, §§ 65852.21, 66511.7) was enacted after the emergency regulations were established, and essentially mandates the requirements set forth by this Prohousing Policy, it is necessary to modify language in this subdivision to clarify that applicants must now exceed state law in order to obtain points under this category. It is not sufficient for Jurisdictions to merely comply with this law to obtain points toward a Prohousing Designation.

Subdivision (b)(1)(F). It is necessary to modify this subdivision to clarify that eliminating, not merely reducing, these parking requirements is necessary because merely reducing them does not sufficiently Accelerate Housing Production.

Subdivision (b)(1)(G). It is necessary to add language requiring Jurisdictions to certify they considered potential environmental justice issues in the process of zoning for affordable housing types because this action is part of a Jurisdiction's duties to Affirmatively Further Fair Housing. It is also necessary to add the language referencing "other land use designation methods" because not all land uses are defined through zoning ordinances.

Subdivision (b)(1)(H). It is necessary to add the language referencing "other land use designation methods" because not all land uses are defined through zoning ordinances.

Subdivision (b)(1)(I). It is necessary to add the language referencing "other land use designation methods" because not all land uses are defined through zoning ordinances.

Subdivision (b)(1)(K). It is necessary to add a new subdivision related to an affordable housing program because this is part of complying with Affirmatively Furthering Fair Housing duties and for meeting the definition of "Acceleration of Housing Production," which includes policies that create more affordable housing. The Department determined that these programs have positive impacts on accelerating housing production, but less than an intermediate one, and therefore merited giving them one point instead of two or three. It is necessary to confirm that these inclusionary housing programs are consistent with AB 1505 (Chapter 376, Statutes of 2017, Gov. Code, 65085.01) because that law specifies important requirements for these programs.

Subdivision (b)(2)(A). It is necessary to add language to this subdivision related to the ministerial approval of mixed-use projects to clarify that this is another important example of a housing type for which ministerial approval can accelerate the production of housing.

Subdivision (b)(2)(B). It is necessary to add language to this subdivision to clarify that streamlining these analyses and plans must contribute to the Acceleration of Housing Production to be significant enough to warrant the award of points.

Subdivision (b)(3)(D). It is necessary to add language to this subdivision to clarify that promoting innovative housing types that reduce development costs must contribute to the Acceleration of Housing Production to be significant enough to warrant the award of points.

Subdivision (b)(3)(E). It is necessary to add the word “accessible” to this subdivision because promoting accessibility of sidewalks is a policy consistent with a Jurisdiction’s duty to Affirmatively Further Fair Housing.

Subdivision (b)(4)(A). It is necessary to add this subdivision to allocate two points to applicants demonstrating they have allocated funds for the production of affordable housing through proceeds generated from approved ballot measures because ballot measures are another method by which funds can be directed towards the production of affordable housing. The Department determined that funds from approved ballot measures generally have an intermediate impact on the acceleration of affordable housing, which merits awarding two points for these policies.

Subdivision (b)(4)(B), formerly (A). It is necessary to add language related to housing trust funds to clarify that in order to receive points for this Prohousing Policy, Jurisdictions must not only establish funds for affordable housing, but also contribute to them on a consistent basis and with significant dollar amounts. The Department determined that annual contributions suffice because this allows many Jurisdictions to allocate contributions when preparing annual budgets while still having the contributions be allocated frequently enough to accelerate the production of affordable housing. Additionally, because different Jurisdictions have different budget resources and affordable housing issues, the Department determined that to meet the Legislature’s goal of designing a Prohousing Designation Program flexible enough to meet different Jurisdictions needs and circumstances, Jurisdictions should be allowed to demonstrate in their applications that their contributions are having a significant enough impact on the acceleration of the production of affordable housing to merit two points.

Subdivision (b)(4)(C), formerly (B). It is necessary to add language to this subdivision related to the term “regular” used in reference to housing funds to clarify that “regular” is measured by the annual number of units preserved from the identified funding source. The Department determined that annual contributions suffice because this allows many Jurisdictions to allocate contributions when preparing annual budgets while still having the contributions be allocated frequently enough to accelerate the production of affordable housing.

Subdivision (b)(4)(G), formerly (F). It is necessary to add language to this subdivision to clarify the prioritization of local general funds for housing affordable to Lower-Income Households must have a measurable impact on accelerating the production of such housing. Since different Jurisdictions have different budget resources and affordable housing issues, the Department determined that to meet the Legislature’s goal of designing a Prohousing Designation Program flexible enough to meet different

Jurisdictions needs and circumstances, Jurisdictions should be allowed to demonstrate in their applications that their prioritization of local general funds is having a significant enough impact on the acceleration of the production of affordable housing to merit two points.

Subdivision (b)(4)(H), formerly (G). It is necessary to add language to this subdivision to clarify that the prioritization of residual development funds for affordable housing must have a measurable impact on the acceleration of the production of such housing. Additionally, because different Jurisdictions have different budget resources and affordable housing issues, the Department determined that to meet the Legislature's goal of designing a Prohousing Designation Program flexible enough to meet different Jurisdictions needs and circumstances, Jurisdictions should be allowed to demonstrate in their applications that their use of residual redevelopment funds is having a significant enough impact on the acceleration of the production of affordable housing to merit two points.

Subdivision (c)(8). It is necessary to revise this subdivision to clarify that this enhancement factor requires Jurisdictions to exceed what the Housing Element Law already requires them to do in Government Code section 65583. In this way, local Jurisdictions are encouraged to think creatively about policies and activities that Affirmatively Further Fair Housing other than those specified in the Housing Element Law.

Section 6607. Monitoring and Revocation of Prohousing Designations

Subdivision (a)(1)(A). It is necessary to amend the language in this section to further clarify that here, the term "enact" encompasses failure to obtain certification by the Coastal Commission, when required, of a proposed Prohousing Policy. (See, e.g., Pub. Resources Code, § 30513.)

Section 6608. Expiration of Prohousing Designations

Subdivision (b). It is necessary to modify the timeframe to reapply for a new Prohousing Designation from three (3) to six (6) months in this subdivision to give applicants sufficient time and flexibility to submit applications to the Department to renew their Prohousing Designations.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS [Government Code Section 11346.2, Subdivision (b)(3)]

In amending the proposed regulations, the Department relied on an additional technical document:

- United States Interagency Council on Homelessness' "7 Principles for Addressing Encampments," (June 17, 2022 update)

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Sacramento, California