

Report on ABAG to MCCMC

October 2018

MARIN PLAN BAY AREA (PBA) PUBLIC WORKSHOP: The Marin ABAG delegates/alternates meeting on October 29, 2018 will discuss the: 1) proposed CASA (The Committee to House the Bay Area) Compact; 2) draft agenda for PBA 2050 Public Workshop in Jan/Feb 2019; and, 3) draft Concept Paper on Regional Growth Strategies for Plan Bay Area 2050.

EXECUTIVE DIRECTOR SEARCH:

The MTC’s Executive Director Job Announcement went public during the week of October 10th on CPS HR’s website (<https://secure.cpsr.us/escandidate/JobDetail?ID=398>). The announcement is also posted under MTC’s employment opportunities and a separate page was created on MTC’s website dedicated to our Executive Director Recruitment Process (<https://mtc.ca.gov/about-mtc/careers/executive-director-recruitment>). Pam Derby, Lead Senior Executive Recruiter from CPS HR (hired by MTC to conduct the recruitment process), and her team are conducting one-on-one interviews with MTC Commissioners, ABAG Executive Board Members, MTC leadership, CSR Leadership, Transportation and Community Partners, Community Advocates, the public and our employees. Pam Derby will also be meeting with groups of stakeholders, and conducting an online survey to obtain input in developing the ideal candidate profile and to assist us in understanding key issues and challenges that will face a new Executive Director.

On October 10, 2018, I attended the MTC Policy Advisory Committee meeting which had an extensive discussion on the process and professional and personal characteristics/attributes on the ideal candidate profile for MTC’s next Executive Director. At this meeting, MTC Chair Mackenzie identified the following MTC Commissioners appointed to an Executive Director Selection Committee (EDSC): Chair Mackenzie, Vice Chair Haggerty, Council Member and ABAG representative to MTC Julie Pierce, Commissioners Bruins, Josefowitz, Spering and Worth. MTC Chair Mackenzie along with Courtney Ruby, MTC Director, Administration & Facilities; and Pam Derby, senior executive recruiter with CPS HR (hired by MTC to conduct the recruitment) requested the MTC Policy Advisory Committee’s “input regarding the profession and personal characteristics/attributes deemed the most critical”. They also discussed a draft ‘Community Engagement Survey’ that would be used to seek public input. The MTC Policy Advisory Council requested this item be agendaized at their November 14, 2018 meeting. I plan on attending that meeting.

The adjacent table identifies the process and schedule. Tentatively, during the week of **12/10/2018**, the final candidates will be interviewed by ABAG’s Ad-Hoc Review Committee. Per the MOU, they will make their recommendations to MTC EDSC by **12/19/2018** who will make their final packet recommendation of candidates to be interviewed by the full MTC Commission at a special meeting on **1/9/2019**. After the MTC Commission interview the finalists, a recommendation will be made at the regular MTC Commission meeting on January 23rd.

Task Name	Month 1				Month 2				Month 3				Month 4			
Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Initial Meeting / Candidate Profile	➤															
Draft Brochure			➤													
Brochure Approved / Printed & Place Ads				➤												
Aggressive Recruiting							➤									
Final Filing Date							➤									
Preliminary Screening											➤					
Present Leading Candidates												➤				
Interviews															➤	
Reference / Background Checks																➤
Appointment																➤
Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

The recruitment is following the procedures in the approved MOU between MTC and ABAG. However, it is still unclear whether the ABAG Executive Board will be able to have a discussion about the recommendations and what role our membership will have in this recruitment process.

CASA – The Committee to House the Bay Area:

Currently, the CASA technical & steering committees are finalizing the proposed Compact which is anticipated to be signed by all parties including the MTC and ABAG Executive Board. As previously mentioned, Steve Heminger, Executive Director of MTC and ABAG has indicated that the CASA compact will be brought to the ABAG Executive Board for information on November 15, 2018 and to the MTC Commission on November 28-29, 2018 with the intent of asking the MTC Commission in December 2018 and the ABAG Executive Board on January 17, 2019 to authorize the MTC Chair and ABAG Executive Board President, respectively for approval to sign the CASA Compact.

Before these meetings, I, along with Supervisors Rodoni and Connolly would like to get feedback on this important issue since this Compact could have significant impacts on local government. This is an agenda item on the Marin ABAG delegates/alternates October 29th meeting. Please be sure that your city/town is represented. The Compact may include a recommendation to **Create a Regional Housing Enterprise & Trust Fund**. The term sheet states:

Agenda Item III Attachment 1

Term Sheet: Regional Housing Enterprise

Brief Description: This proposal encompasses a variety of actions that would be assigned to a new regional housing enterprise, including the following:

- Raise and distribute revenue to support the protection and preservation of affordable housing for very low, low and moderate income households; advance increased production of missing middle housing; and, implement policies that will protect vulnerable residents from displacement.
- Create new finance tools and develop partnerships with philanthropic organizations to leverage existing tools related to Production, Preservation and Protection.
- Collect and analyze data – track deed restricted units, maintain a regional housing pipeline database, monitor state/regional housing requirement progress.
- Manage a regional housing trust fund and program funds.
- Coordinate land acquisition and potentially hold and dispose of land.
- Provide technical assistance, staffing support and financial resources to cities and counties, including smaller and more financially-constrained communities.
- Monitor and coordinate MTC’s conditioning of regional transportation and infrastructure dollars on attainment of housing production goals and adoption of tenant protection policies.
- Monitor housing production related to ABAG’s Regional Housing Needs Allocation (RHNA) process.
- Implement regional objectives outlined in the CASA Compact.
- Legislative advocacy

Desired Effect:

- Create a new entity to be staffed by MTC/ABAG with capacity to accelerate housing production and fill gaps in the region’s housing production system in a manner that recognizes the Bay Area’s diverse jurisdictions and market conditions.
- Develop funding/financing tools, land assembly and housing development staffing expertise necessary to significantly improve regional housing affordability and double the production of affordable housing within 5-10 years.
- Advance a comprehensive real estate strategy and create viable housing opportunities for very low, low and moderate income households by working across sectors to activate surplus public and private lands.
- Provide an open and transparent process for policymakers and stakeholders to engage in program development, funding delivery/coordination, and, technical assistance programming for local communities with the end goal of producing/preserving more housing and protecting residents from displacement.
- Establish a robust real-time development tracking system that includes new development, public lands, vacant and under-utilized parcels, unsubsidized affordable housing units where residents are at risk of displacement, and, a regional pipeline of projects.
- Apply MTC’s financial authority and acumen and ABAG’s capacity for local government engagement to create and apply new finance and policy tools well beyond the region’s current capacities.

Scale/Structure: The Regional Housing Enterprise would be structured to implement the CASA Compact advancing Protection, Production and Preservation.

Models: Twin Cities Region- Metropolitan Council, State of Massachusetts - MassDevelopment Agency, New York City Housing Development Corporation

The Regional Housing Enterprise would implement a 'Plan of action' including seeking State legislation on some and/or all of the following elements:

- a) Just Cause Eviction; b) Anti-Gouging Cap; c) Right to Legal Counsel; d) Amend Housing Element/RHNA for Preservation, Missing Middle, Site Feasibility; e) No Net Loss; f) Promote Public Land for Affordable Housing; Redevelopment; g) Regional Inclusionary Zoning; h) Remove Barriers to ADUs; i) Align and Improve Density Bonus and Inclusionary Zoning; j) Amend Permit Streamlining, Mitigation Fee Act, and CEQA to Create Fair Process; k) Cap Impact Fees; l) Improve State Streamlining; m) Minimum Zoning Near Transit; n) Establishing a minimum building height of 3 stories for housing in the Bay Area and higher height limits near transit; o) Modify Defect Liability for Condominiums; and, p) New Revenue to Cities that Build Housing.

NOTE: Attachment 1 includes a draft of the term sheets for those actions moving forward.

The Regional Housing Enterprise would also pursue funding sources to finance the action plans. As part of this discussion, they have been looking at potential new sources of revenue which were explained in detail in my September 2018 ABAG report to MCCMC. MTC staff evaluated the entire list of proposed funding sources to determine their performance based on their criteria identified below. These are very conceptual and a beginning of many discussions in the near future. Following is the result of their evaluation:

CASA Funding/Financing Compact: Criteria Evaluation										
	Tax/Fee Rate	Revenue Yield (millions)	No Overlap w/ Local Taxes	Positive Policy / Behavior Impact	Revenue Stability	Rate Yield	Admin Ease	Progressivity	Polling Results	Overall
Property Owners										
Inflation-Indexed Windfall Tax	3.35 percent	\$100								
Parcel Tax	\$48 per year	\$100								
Real Estate Transfer Tax	\$1.35 per \$1,000	\$100								
Vacant Homes Tax	1 percent	\$100								
Short-Term Rental Tax	25 percent	\$100								
Developers										
Commercial Linkage Fee (Variable)	\$2-\$8 per sq. ft.	\$100								
Commercial Linkage Fee (Flat)	\$5 per sq. ft.	\$100								
Employers										
Head Fee (Variable)	\$8-\$64 per job	\$100								
Head Fee (Flat)	\$30 per job	\$100								
Gross Receipts Tax	1/12-cent	\$100								
Commuter VMT Fee	1 cent per mile	\$100								
Local Governments										
Revenue Sharing Contribution	17.5 percent	\$100								
Redevelopment Revenue Set-Aside	27.5 percent	\$100								
Public Land Set-Aside	20 acres	\$100								
Taxpayers										
Sales Tax	1/16-cent	\$100								
General Obligation Bonds	5-yr. term	\$100								
Legend										
Strong performance on criteria										
Medium performance on criteria										
Low performance on criteria										

UPCOMING MEETINGS¹

- **October 24, 2018 --** MTC Commission, 9:30 am
CASA Steering Committee meeting, 12:00 to 2:00 pm
- **November 9, 2018 --** Joint ABAG Administrative and MTC Planning Committee meeting, 10:00 to 12:00 pm
- **November 14, 2018 --** MTC Regional Policy Advisory Council, 1:30 pm
- **November 15, 2018 --** ABAG Executive Board; Legislation and Finance Committee meetings
- **November 28-29, 2018 --** MTC Commission Meeting (location TBD)

If you have questions or comments, please contact Pat Eklund, Council Member, City of Novato (415-883-9116 and/or pateklund@comcast.net).

¹ All meetings are held at 375 Beale Street in San Francisco, unless noted otherwise.

CASA Compact

First Round - Draft Term Sheets

October 16, 2018

Please note this is not a full draft Compact.

Compact Element #2: Emergency Rent Cap

Brief Summary: Establishes reasonable annual increases in rent.

Desired Effect: High impact. An emergency rent cap would prevent extreme rent increases in rent on a year-to-year basis, thereby decreasing the number of households who are at risk of displacement and homelessness, decreasing the number of households who are rent burdened, and promoting tenant and community stability. Extreme rent increases can pose a particular burden for tenants who are low and fixed income. Can be extended

Scale: State legislation applied to 9 Bay Area Counties

Models: Existing State Anti-Gouging Law in States of Emergency (cite)

References: Action Plans Referenced: 1.1, 1.2, 1.3

Negotiation Points: Annual rent increase limits, vacancy decontrol, define property types excluded; limits on # of years increases can be banked and % of increases banked; enforcement mechanisms; duration: permanent program or tied to emergency declaration w/ sunset provisions

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Annual Rent Increase Limits	No landlord shall increase rent by more than the allowable increase, as defined below, in any year of tenancy (yearly increase).	<p><u>Percentage Increases:</u> Option 1: all units have rent increase caps, e.g. 5%+CPI</p> <p>Option 2: a different cap depending on age of unit, e.g. units 15+ years have CPI cap and newer units have 5%+CPI</p> <p><u>Term</u> Is there a sunset period?</p>	This applies whether or not Prop 10 passes. Costa Hawkins is irrelevant to state legislation and does not limit coverage in this instance
Vacancy Provision		Vacancy de/control Cap applies to renter not unit -	
Coverage		<i>In addition to exemption of nonprofit/government owned housing,</i>	Costa Hawkins is irrelevant to state legislation and does not

		<i>dormitories, ADUs, are there other exceptions?</i>	limit coverage in this instance
Banking and Capital Improvements		Banking cap, cap on annual increases Formula for pass thrus and returns LL can bank 5 years of unused maximum Only increase rents 2x annual maximum eg. CPI+5x2	Some protections need to be in place so that landlords cannot “bank” an unreasonable amount of rent increases and then issue an exorbitant aggregated rent increase all at once.
Preemption of Local Ordinances	This law does not preempt more restrictive local ordinances.		
State of Emergency		What conditions need to exist for this to apply? Who declares the state of emergency? Determine if state of emergency garner any other tools to expedite housing (permitting, etc)	

Compact Element #3: Right to Legal Counsel for Eviction Proceedings

Brief Summary: All tenants facing eviction would have the right to legal counsel, leveling the playing field and protecting tenants from illegal evictions.

Desired Effect: Access to a lawyer can be the difference between losing a home and keeping it. Ensuring that all tenants facing eviction have the right to legal counsel would create a fairer justice system; prevent evictions and homelessness; improve health, stability and opportunity for thousands of residents, including children; and preserve existing affordable housing. With proper implementation, research suggests that the right to legal assistance for eviction proceedings can reduce evictions by 77% to upwards of 94% (according to a pilot program in California) and lead to a net savings for local jurisdictions. (e.g. in New York City cost savings are estimated at \$2 for every \$1 spent on legal assistance)

Scale: State legislation supported by regional funding

Models: SF Prop F passed in June, New York City

References: Action Plan 3.1

Negotiation Points: Funding source, identifying providers/administration; fees: means testing or sliding scale

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Coverage	<p>All tenants who are faced with legal proceedings to evict them from their residence have the right to legal counsel except when eviction proceedings are brought by a landlord or master tenant who resides in the same dwelling unit or property with tenant. The region or city shall have no obligation to provide legal services where a state or federal program already provides full scope legal representation to a tenant facing eviction proceedings.</p> <p>Landlord obligation limited to providing an addendum notice of this rights in lease and eviction notice. Landlord has no payment or any other obligations. Tenant failure to exercise right to counsel will not impede eviction proceedings for landlord.</p>	<p>What is forum for resolution?. Create separate renters court, regional or local?</p> <p>Means tested? At what range?</p>	<p>The term “legal representation” shall mean full scope representation provided to an individual by a designated organization or attorney which includes, but is not limited to, filing responsive pleadings, appearing on behalf of the tenant in court proceedings, and providing legal advice.</p>

<p>*Funding (alternative pathway to achieve right)</p>	<p>Generate approximately \$50 million per year to fund regional right to legal counsel.</p>	<p>What happens in eviction where there is no \$ for attorney?</p> <p>Possible sources include a regional transient occupancy tax, a tax on short-term rentals and vacant units, and a regional mega-measure, among others.</p>	<p>Tenants Together’s recent report, <i>California Evictions Are Fast and Frequent</i> found the following 3-year averages for unlawful detainer filings by county: (1) Alameda - 5,467; (2) Contra Costa - 3,928; (3) Marin - 432; (4) Napa - 277; (5) San Francisco - 3,275; (6) San Mateo - 1,516; (7) Santa Clara - 3,515; (8) Solano - 2,321; and (9) Sonoma - 1,195, for a total of 21,926 unlawful detainer filings per year. It should be noted that this number does not include the number of eviction notices prior to the filing of unlawful detainer eviction lawsuits. Therefore, if the region were to provide a right to legal counsel, the number of cases could be much higher; however, as a counterpoint, a right to legal counsel would likely deter landlords from serving tenants with illegal eviction notices.</p>
<p>Providers</p>		<p>Option 1: Each city shall establish, run, and fully fund a program to provide legal representation for all tenants within the city who are faced with legal proceedings to evict them from their residence.</p> <p>Option 2: Each jurisdiction identifies local service providers to provide legal representation. Bay Area Metro distributes funds to local service providers from a regional pool. Bay Area Metro and local jurisdictions fund and conduct education efforts to notify residents of this right.</p> <p>Option 3: Bay Area Metro identifies and funds local service providers to provide legal representation. Bay Area Metro funds and conducts education efforts to notify residents of this right.</p>	<p>NYC’s has a coordinator who designates existing organizations that have “the capacity to provide legal services”</p> <p>Annual or bi-annual review of the program</p>

Compact Element #4: Amendments to State Housing Law/RHNA

Brief Summary: Amend State Housing Law and RHNA to improve 3P policies and performance

Desired Effect: Require local agencies to analyze the totality of their actions on housing production and preservation, report this to the State, and use this information to evaluate their zoning and programming to improve housing outcomes. Require especially attention to creating 3P policies locally. Require study of how to add zoning for missing middle along with locally established cost reductions such that homes identified in new RHNA reporting category from 120 to 150% AMI that do not require subsidy to be achieved.

Scale: Statewide legislation. Amend the Housing Element certification process to provide for desired impacts outlined above.

Models: Forthcoming if available/applicable.

References: SB 828 Weiner (land use: housing element/RHNA). This compact element to be revised as needed based on SB 828, which was just signed by the Governor.
Action Plan 8.1, 12.4

Negotiation Points: Missing middle definition; impacts on affordable housing

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Housing Element Reporting Requirement	<p>Add:</p> <ul style="list-style-type: none"> • Site feasibility analysis • Requirement that local agencies have programs in place and are monitored for effectiveness of 3P's: Tenant Protections (including Just Cause), Preservation, and Production including adding missing middle zoning (36', high lot coverage low parking , duplex-8 plex) , easing ADUs and tiny homes. • Reducing locally imposed added costs in excess of State Building Code (fees, process, inclusionary, green building, tax districts, elevated standards other impositions in excess of State Building Code standards to create safe shelter) to a level where new housing be financially feasible and being built in the locality for incomes from 100-150% of median without subsidy. 	<p>New reporting requirements on:</p> <ul style="list-style-type: none"> • ADUs and tiny homes • Reducing locally imposed added costs in excess of State Building Code (fees, process, inclusionary, green building, tax districts, elevated standards other impositions in excess of State Building Code standards to create safe shelter) to a level where new housing is financially feasible and being built for incomes from 100-150% of median without subsidy 	

<p>Housing Element Reporting Requirement</p>	<ul style="list-style-type: none"> Allow Jurisdictions To Count Market-Rate Units that They Convert to Deed-Restricted Affordable Units as Meeting up to 25% of Their Low- and Very-Low-Income RHNA Obligation: As an incentive to encourage jurisdictions to preserve affordable housing, amend Housing Element law (e.g., in Government Code §§ 65583.1 and 65400) to allow jurisdictions that (a) acquire existing market-rate units, (b) rehabilitate those units (if needed), and (c) rent-restricts those units as rental housing affordable to low- and very-low-income households for 55 years, to count those units towards up to 25 percent of their low- and very-low-income RHNA obligation at the end of the RHNA cycle (i.e., in the jurisdiction’s reporting requirements). 		
<p>RHNA</p>	<p>Require RHNA compliance to include backlog and zoning in excess of RHNA and to add “missing middle” income range without cash subsidy from 120-150% AMI</p>		

Compact Element #5: No Net Loss of Deed Units with Right of First Refusal

Brief Description:

No Net Loss Policy: This policy could be a standalone policy whenever demolition is occurring, or it could be an overlay/subset of other policies recommended on this list that encourage rezoning/upzoning and or intensification of existing uses that currently include housing (example: Redevelopment 2.0, Upzoning on Transit, SB35)

Desired Effect:

The goal of the policy is to preserve opportunities for low income households to return to their communities and prevent the loss of low and middle income housing opportunities in a redevelopment project or area.

Scale: State Legislation Applied to 9 Bay Area Counties

Models:

Public Housing Redevelopment, Former Redevelopment Requirements, City of Portland No Net Loss Policy, City of Arlington, VA Conservation Districts

References:

Action Plan 8.2

<http://www.lesardevelopment.com/2018/03/no-net-loss-action-sb-166/>

<http://www.mapc.org/wp-content/uploads/2017/11/One-for-One-Affordable-Housing-Replacement-Ordinances.pdf>

<https://www.frbsf.org/community-development/publications/community-investments/2014/march/research-briefs-money-mismanagement-correlated-homelessness-municipal-policies-preserve-affordable-housing/>

<https://housing.arlingtonva.us/affordable-housing/housing-conservation-district/>

<https://ahcd.assembly.ca.gov/sites/ahcd.assembly.ca.gov/files/hearings/RoleofLocalRedevelopmentAgenciesinAffordableHousingFeb15.pdf>

Negotiation Points

Does this apply everywhere or only in cases where upzoning or intensification is envisioned; Mechanism for requiring, Relocation assistance; location and amount of replacement housing; right to return; how to pay - funding sources and/or developer incentives; 1:1 replacement definitions and requirements including whether it applies beyond just deed restricted units; balancing size of requirement vis-à-vis having sufficient \$\$ sources and offsets to over the cost

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
<ul style="list-style-type: none"> • When “No Net Loss” Required • Relocation assistance 	<p>Required in renewed redevelopment areas</p> <p>Required in SB 827 and similar zoning</p>	<p>Will this policy include relocation assistance?</p> <p>Required in SB 35?</p>	

<ul style="list-style-type: none">• Right to Return?	This would require new developments to offer displaced residents a right to return to the newly redeveloped projects.		
<ul style="list-style-type: none">• How to pay for this?		Should costs be paid for with public dollars or offset by increase in density, tax abatement, or reduction in other impositions? Does it only apply in cases of density bonus and/or upzoning?	

Compact Element #7: Strengthen Utilization of Public Land for Housing Production

Brief Summary: Promote increased utilization of public land for affordable housing through enhancements to a variety of legislation, regulatory tools and regional coordination and planning actions including strengthening the surplus land act, amending housing element law or amending the regulatory certification process, and embedding coordinating, technical support and monitoring functions in a regional housing entity. Goals are to achieve:

- Barrier reduction to developing on public land by ensuring that land is adequately zoned
- Create mechanism for coordination/monitoring of regional public land supply
- Provide technical support and draft legislation that encourages public land to be re-used for housing.

Desired Effect: Encourage the reuse of public land for the creation of mixed-income or affordable housing development.

Scale: State legislation applied to 9 Bay Area Counties; may impacts housing element law; to be addressed in coordination with other CASA policies.

Models: Puget Sound region of WA including Seattle; <https://www.psrc.org/public-land-affordable-housing>;
<https://seattle.curbed.com/2017/9/29/16387686/surplus-public-land-affordable-housing>
 Enterprise report: <https://www.enterprisecommunity.org/download?fid=3257&nid=3739>

References: Action Plans 16.1; 16.2

Negotiation Points: Intent: is it to “encourage” or to “create stricter requirements for affordability”
Incentive structure options, revenue source to cover localities cost to implement; levels of affordability; pricing and conveyance of land ranging from donated in full to conveying at below-market value

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
	<p>See (Current bill)</p> <p>Also support changing State Housing Element Law to:</p> <p>A) Require and resource jurisdictions to prepare a full inventory of publicly-owned sites within their boundaries, including current uses, and report this to their Councils of Governments (COGs).</p> <p>B) Allow residential uses on developable public land, regardless of zoning, by establishing a presumption in Housing Element Law that homes may be built on public land meeting certain criteria (eg not parkland). If a jurisdiction prohibits housing on a</p>		

	<p>site, require them to submit a rationale for its exemption, based on strict State-sanctioned standards.</p> <p>Regulatory changes:</p> <p>A) Make public land more competitive for affordable housing funds to incentivize rezoning: Modifications to LIHTC, AHSC, other program requirements. Build in incentives to programs that encourage housing development on public lands.</p> <p>B) Review State's spatial guidelines for public facilities (ie schools) to evaluate potential for changes that could open up land for housing without compromising the quality of on-site public services (e.g. New York allows for vertical mixed use with ground floor public uses)</p>		
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Compact Element #10: Remove Regulatory Barriers to ADUs and Tiny Homes

Brief Summary: Amend existing state ADU law to remove regulatory barriers to building including ministerial approval for ADUs and Junior ADUs in residential zones, allowance for multiple ADUs in multi-family homes, and creation of a small homes building code (AB 2890 Ting).

Desired Effect: Extremely High Impact; Short Term. Assuming 20% of 1.5 Million single family homes in Bay Area = 300,000 new homes distributed into existing neighborhoods. In PDAs alone would be 50,000 new homes. Distribute green, more affordable homes quickly and uniformly in region. State must reduce zoning barriers to: (1) Create significant, rapid increase in less costly homes including stabilizing vulnerable households including seniors, disabled, and lower income homeowners in all existing neighborhoods (Missing middle housing, Preservation); (2) Reduce GHG by improving utilization of buildings/land build more small, infill, low GHG/sustainable homes (3) ease codes for ADUs and Tiny Homes . Help expand and stabilize labor force and construction.

Scale: State legislation applied to 9 Bay Area Counties

Models: Arlington VA, Portland OR, Seattle WA, Vancouver BC, State of Oregon Tiny Homes Code, (Leslye’s work)

References: Action Plans 10.3, 10.4
UCB Chapple 2015; UCB Turner Center 2017; Legislative history SB 1069, AB 2890

Negotiation Points:

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Ministerial Approval	Allow ministerial approval regardless of zoning standards for: <ul style="list-style-type: none"> ● Both an ADU and a Junior ADU (JADU), not required to be smaller than 800 sqft in any zone that allows residential uses; in existing or proposed structures including in rear yard cottage not to exceed 800 sqft , 16’ tall , with 4’ in side or rear yard setbacks ● Existing unused spaces in multi-family structures or yards may be converted to multiple ADUs. ● ADUs receiving ministerial permits cannot be rented for less than 30 days; subject to local non-zoning housing standards not addressed in this law ● Encourage non-safety code forgiveness 		

Owner Occupancy	If Owner Occupancy locally required, reasonable annual monitoring based on published documents		
Impact Fees	Cap impact fees on net new living area over 500 sqft per accessory unit A		
Small and Tiny Homes Building Code	Create small homes building code to reduce non-safety code requirements that disproportionately make small homes and tiny homes infeasible including energy standards, appliance and room sizes, and similar.		

Compact Element #11: Align Density Bonus/Inclusionary Laws to Improve Even, Fair Application for ALL Housing Production

Brief Summary: More on-site affordable housing constructed through creating clear uniform standards for building under the State Density bonus, inclusionary zoning, and housing mitigation impact fees laws.

Desired Effect: High Impact; Short Term for mixed income projects that that otherwise prevented from advancing due to oversized and conflicting affordability and housing fee requirements. Not possible to document the number of units “not proposed”. Will increase (1) housing production overall and (2) production of affordable units or fees require significant increase in housing production that cannot widely occur without this law change.

Scale: State legislation applied to 9 Bay Area Counties

Models: Other regions of US with Inclusionary Zoning programs add incentives not additional costs to deliver more affordable homes (Washington, New York)

References: LUNA case
Action Plan 10.3

Negotiation Points:

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Density Bonus Clarifications & Administration	<ul style="list-style-type: none"> ● Re-write density bonus law to add clarity, clear implementation guidelines to be developed by HCD including implementing forms, agreements, etc. ● Confirm and codify Density Bonus ruling in <i>Latinos Unidos del Valle de Napa y Solano v. County of Napa</i> ("LUNA") as applied to DB units, inclusionary units, and mitigation, SB 35 ie \$ for \$ credit (each is credited all requirements, no double or triple payments) ● HCD monitor DB and IZ units 	Need draft of proposed clarifications	

<p>Density Bonus Requirements</p>	<ul style="list-style-type: none"> • Relate Density Bonus Affordability to Palmer Fix (Inclusionary) and disallow separate housing impact fees except as an alternative compliance mechanism • Density bonus affordable housing units can be delivered at a range of income levels up to 120% AMI, as long as overall average target income level for affordable housing units is at 80% AMI level; for example 1/3 at 50%, 1/3 at 80% and 1/3 at 110%. • Subject to Housing Accountability Act protections 	<ul style="list-style-type: none"> • Clarify that mitigation fees for housing may not be charged to Density Bonus or deed restricted units • Discuss rates and affordability levels • Add new density bonus category to significantly increase missing middle housing (Example: 40% increase in density for 30% of units affordable between 80% and 150% AMI) • Add a prohibition on downzoning to avoid compliance with density bonus 	
<p>Taxes on Affordable Units</p>	<p>Property taxes on deed restricted (DB or IZ) affordable units shall be set at the affordable rent/sales price that is set by the affordability restrictions not by the market value of the unit.</p>	<p>Confirm whether today this is possible with a non-profit partner</p>	
<p>Equity Sharing</p>	<p>Ownership BMRs should be permanently affordable with limited equity share</p>	<p>Discuss how to set these rules Discuss with Habitat for Humanity how to have workable equity sharing rules that allow owners to receive equity appreciation</p>	

Compact Element #12: Streamline Housing Approvals Through Fair, Predictable, Faster Process

Brief Summary: Amend State Housing and Permitting Laws (Permit Streamlining Act, Housing Accountability Act, CEQA) to disallow backsliding to avoid compliance with State law, and to restore transparency, certainty, fairness, deadlines, predictability to housing approval process Case-by-case public disputes and opposition to many if not most housing projects, even when these are consistent with local plans and rules,. Good government must be transparent, fair, predictable, and even-handed across the region, with clear rules that apply to everyone equally.

Desired Effect: High Impact; Short Term for proposed housing or housing stuck in approval pipeline that that otherwise prevented from advancing due. Not possible to document the number of units “not proposed” or “slowed down until became infeasible”. Required precursor to increasing housing production of market rate, affordable, homeless, and all forms of housing.

Scale: State legislation applied to 9 Bay Area Counties

Models: Forthcoming if available/applicable.

References:

Action Plans Referenced: 12.1

https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf

Negotiation Points: Terms and requirements for a local waiver; monitoring and enforcement to ensure not suppressing production; exploration of “deemed approved” language.

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Local Jurisdictional Requirements	<ul style="list-style-type: none"> ● Disallow height and density reductions, limits, and moratoria in already residentially zoned areas to avoid compliance with State housing law especially the HAA. ● Where the general plan or its housing element and zoning already allow housing, HAA shall apply to provide protections to projects consistent with these plan standards despite any locally required rezonings. ● Local agency and special district rules, fees, codes, and standards must be made available in writing to an applicant on a written form available at the local agency with clear mechanisms for determining rules, fees, inclusionary standards, community benefits and historic 	<ul style="list-style-type: none"> ● Should this apply only to projects of 20 units or less (e.g. “small” projects)? ● No net loss provisions on streamlined projects ● Additional community engagement and delayed implementation in sensitive communities 	

<p>Local Jurisdictional Requirements</p>	<p>status determinations or they cannot be requested by the local agency nor agreed to by the developer.</p> <ul style="list-style-type: none"> ● Historic status must be determined at completeness based on published reports. ● Allow no more than 3 de novo public hearings on a housing project (with possibility of appeals). ● Report to Bay Area Metro and HCD the length of time from new or renovated housing project application to project approval for all housing projects and remodels, as well as the number of de novo hearings and appeals on each. ● Use it or lose it provision such that streamlined permits expire if not used in a timely way (eg 24 months) 		
<p>Fees</p>	<ul style="list-style-type: none"> ● For projects consistent with the general plan, any relevant specific plans, and consistent with residential use zoning, LOCK FEES AND RULES AND COMMUNITY BENEFITS AT APPLICATION COMPLETENESS (excepting rule changes for life safety conditions). Lock fees and rules for 100% affordable projects as of the date of application. ● These local rules/fees cannot be modified after Application Completeness. Completeness shall be defined as making all the required plan changes in the first zoning completeness letter. 		
<p>Parallel Amendments</p>	<ul style="list-style-type: none"> ● Amend Permit Streamlining Act to require approval of all residential projects less than 20 units or 20,000 square feet in size in 6 months. ● Make parallel amendments to create CEQA statutory exemptions for housing in urbanized areas that has 20 or fewer units. ● Close loopholes in Housing Accountability Act on definitions of objective standards 		

Compact Element #14: Improve Effectiveness and Fairness of State Housing Streamlining (SB 35)

Brief Summary: SB 35 was intended to streamline housing for projects with fully skilled and trained labor and on-site affordable amendments are needed to improve effectiveness so more projects to make use of this section to increase housing production. Amendments proposed:

- Allow reasonable local review including design review
- Allow smaller projects to access expedited review without added labor or affordability standards
- For larger projects add tax 15-year abatement (modeled on New York) and other offsets to pay for labor and affordable requirements

Desired Effect: Projects that have labor standards should get the benefit of additional tools (benefits/offsets) to pay for living wage jobs. Pre-cursor to achieving expanded housing production with labor standards and on-site affordable throughout the region. Essential to easing construction labor shortage increasing number and predictability of high quality desirable construction jobs.

Scale: State legislation applied to 9 Bay Area Counties

Models: New York

References: SB 35

Action Plans Referenced: 12.2, 12.3, 17.1, 17.2

Negotiation Points: Deferrals for provisions for communities of concern regarding affordability levels, economic offsets and tools; confirm 15 year time period for real estate tax abatement; define: small project, affordability levels, limits/requirements on use of real estate abatement

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Clarifications to Existing Law	<ul style="list-style-type: none"> • SB 35 projects are exempt from CEQA • Housing developments of less than 20 units or 20,000 square feet, are eligible for SB 35 expedited approvals without added affordability, wage, apprentice, or labor standards to reduce local planning workload on small but often controversial projects. • SB 35 projects subject to limited local discretionary review as follows: <ol style="list-style-type: none"> a. 6 months and 1 de novo hearing for projects of 20 units or less 		

	<p>b. 12 months and 3 de novo hearings for projects larger than 20 units</p> <ul style="list-style-type: none"> • Subject to Housing Accountability Act protections. • Deferral option in Sensitive Communities: Local agency may elect in sensitive community designated areas to retain affordability levels for SB 35 projects at current law levels until community planning complete at which point affordability levels may change. 		
<p>Developer Incentives</p>	<ul style="list-style-type: none"> • Cap impact fees on SB 35 projects to \$30 per square feet for over 500 square feet of net new living area • Add 15-year tax relief modeled on NY program to SB 35 projects “reverse redevelopment” • Make SB 35 projects eligible for an automatic 35% Density Bonus 	<p>Economic offsets and tools; confirm 15-year time period for real estate tax abatement, limits/requirements on use of real estate abatement</p>	
<p>Changes to Existing Law</p>	<ul style="list-style-type: none"> • Existing law limits time of SB 35 project approvals. Allow SB 35 projects to provide less than 50% affordable in jurisdictions that have “met” market rate RHNA goals for housing developments <u>outside</u> Sensitive Communities 	<p>Proposal: Limit affordability to 15% regional cap, but do not allow waivers</p> <p>In which jurisdictions should the affordability levels be applied? Add affordability category to significantly increase missing middle housing (Example: 30% of units affordable between 80% and 150% AMI)</p> <p>Ensure that total combined proposed changes expand use of this tool significantly to expand production widely</p>	

Compact Element #15: Minimum Zoning on Transit for Housing

Brief Summary: Increase number of market rate and affordable homes near transit on low density residential, commercial, and public sites with limited parking in a manner that fits in with existing neighborhoods and expands at a minimum missing middle housing (housing built to height of 36', 75% lot coverage, no parking, no density restrictions), to significantly increase overall housing production in areas targeted by Plan Bay Area and Sustainable Communities.

Desired Effect: High Impact, Medium to Long term but essential to achieve compliance with PBA and SCS. Required precursor to increasing housing production of market rate, affordable, homeless, and all forms of housing.

Scale: State legislation applied to 9 Bay Area Counties

Models: Portland OR, Seattle WA pre-zoning infill neighborhoods

References: Action Plans Referenced: 8.2, 10.3, 10.5, 10.6
SB 827

Negotiation Points: Temporary delay provisions for communities of concern for 3-5 years; height for added density above missing middle to 75/80', define qualifying transit (bus, rail, ferry, major transit stop?); Refer to last draft of last printed version of SB 827 for all items except those specified here.

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Density Requirements	<p>Modify concepts from last printed version SB 827 only as specified below:</p> <ul style="list-style-type: none"> • Increase housing densities and allow housing overlay ½ miles “on Transit” (confirm definition) to permit housing uses on commercial and institutional land below a low allowed FAR (1.5) to a missing middle building form or “Minimum Building Density” of 36', lot coverage 75%, 0 parking • Increase densities and create housing overlay on Transit to at least densities above. • In areas closer to major transit corridors (rail corridors, ferry stations, major transit corridors) increase densities to minimum 50' (up to 75' with density bonus excepting that “Sensitive Communities” can delay this 	<p>Height for added density above missing middle</p> <p>Define qualifying transit (rail, ferry, bus, major transit stops?);</p> <p>Determine definition of “transit corridors”</p> <p>Determine reduced affordability levels outside “sensitive communities”</p> <p>Determine period of “deferred compliance” and expected planning densities on transit for completed plans.</p>	

	<p>increased Transit Density for projects providing less than 50% affordable housing for up to 4 years at 120% of AMI or less but only if no plan adopted last 5 years ie no downzoning</p> <ul style="list-style-type: none"> ● Sites occupied by a Mobile Home Park, Public Housing, or Single Room Occupancy built prior to Effective Date shall not be eligible for Transit Density. ● Subject to Additional Terms from SB 827 (e.g. no net loss, etc.). ● No local action required under CEQA for this to take effect ● Subject to Housing Accountability Act protections. 	<p>Map of sensitive communities (see geography proposal)</p> <p>Add new density bonus category to significantly increase missing middle housing (Example: 40% increase in density for 30% of units affordable between 120 and 150% AMI)</p> <p>Discuss how to ensure that exclusive communities not located on transit are also doing more to add density and a range of housing options</p>	
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Compact Element #16: Amend Product Defect Liability Standards

Brief Summary: Adjust liability standards to make more homes insurable. Home ownership cannot be achieved in infill buildings without modifying existing liability laws that prevent reasonable attached home ownership products because they are uninsurable. See AB 2353 (Frazier)

Desired Effect: Medium to Long term but essential to achieve compliance with PBA and SCS. In regions such as Cascadia which has more reasonable liability laws for ownership, up to 50% of attached housing new construction is in ownership forms. If the Bay Area could increase production by being able to offer homes for sale in addition to for rent, could increase overall housing production significantly. Also may be only way to create new home ownership opportunities in existing developed communities including in small missing middle type projects that could create more ownership opportunities at a range of incomes.

Scale: Liability standards and insurance markets in most US States and Canada

Models: Liability standards and insurance markets in most US States and Canada

References: Action Plans Referenced: 11.3
Legislative History

Negotiation Points:

Bucket / Category of Detail	Summary	Areas for Further Negotiation	Additional Commentary
Amendments	<p>Require licensed inspectors for plaintiffs and builders in construction defect cases to reduce the likelihood and size of class action like suits which prove to be timely and expensive</p> <p>By minimizing costs related to construction defect suits, this will encourage increased production of homes, especially condominiums.</p>		<p>Confirm that this is sufficient to restore insurance availability to designers, contractors, and developers of for sale product.</p>