



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: County Counsel  
Department No.: 013  
For Agenda Of: August 14, 2007  
Placement: Departmental  
Estimated Tme: One hour  
Continued Item: No  
If Yes, date from:  
Vote Required: No vote required

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**TO:** Board of Supervisors  
**FROM:** County Counsel Shane Stark, County Counsel (x2950)  
Contact Info: David Allen, Sr. Deputy County Counsel (x2950)  
**SUBJECT:** **Report on Housing Element Law and Consequences of Noncompliance**

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**County Counsel Concurrence**

Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:** That the Board of Supervisors set a hearing on August 21, 2007, to receive a report from County Counsel on the requirements of state housing element law and the potential consequences of noncompliance with the law.

**Summary Text:** On May 22, 2007, the Board of Supervisors requested County Counsel prepare a report describing the legal requirements for housing elements in detail and evaluating potential strategies for non-compliance with these requirements. The report, dated July 2, 2007, is attached.

In summary:

- The California Constitution requires the State Legislature to adopt laws of general application to promote the public policies of the State.
- The county is a subdivision of the State. It has broad discretion to adopt laws to promote the health, safety and welfare of the inhabitants of the jurisdiction. Local laws may not conflict with general law. In this case, general law includes the State Planning and Zoning Law and the specific requirements of the Housing Element Law.
- The California Legislature adopted the Housing Element Law to promote a statewide policy of providing housing opportunities for all Californians. The Housing Element Law is significantly more detailed and more directive than the general provisions of State planning law, applicable to other elements of a county's general plan. For the last few years, the Legislature has adopted several statutes to make the requirements on local government stricter, more detailed, harder to evade and easier to enforce.

## **Housing Element Law and Consequences of Noncompliance**

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- Courts require that cities and counties substantially comply with the requirements of the law. This means actual compliance with the substance of each specific Housing Element Law requirement. So long as counties have met the specific statutory requirements, courts will not second-guess the wisdom of local legislatures in adopting particular policies and implementing actions.
- To date, the State has not taken legal action to enforce Housing Element requirements on non-compliant or recalcitrant jurisdictions. The Attorney General has authority to file such a lawsuit. The Housing Element Law provides for private enforcement and judicial remedies for a breach of a jurisdiction's obligations. Housing advocates have sued numerous jurisdictions for non-compliance. The appendix to this memo lists jurisdictions that were sued and the consequences – orders to bring Housing Elements into compliance, injunctions prohibiting development approvals other than housing, and attorneys' fees awards.
- The county and each city within it are given a Regional Housing Needs Allocation (RHNA) by the local council of governments (Santa Barbara Association of Governments or SBCAG). SBCAG receives an overall county RHNA from the State Department of Housing and Community Development and determines the RHNA for each jurisdiction. State law provides a procedure for challenging a county's allocation and for challenging a RHNA for an individual city or county.
- The Housing Element Law has been interpreted and upheld by the courts. A challenge to the law, or its enforcement, will in all probability fail. The doctrine of equitable estoppel is rarely applied against a public agency, particularly where estoppel is sought against enforcement of a law enacted to further a public policy. A claim based on the State's creation and exacerbation of the housing problem through failure to enforce immigration laws appears to raise political, non-justiciable questions that courts will not review.
- Thus, the county's non-compliance with the requirements of law entails risks. If non-compliance is deliberate and publicly advertised, the risk of being sued and the risk that a court will impose draconian and costly remedies increase.
- We recommend retaining the county's planning discretion by continued compliance with the law, including full CEQA review of the County Housing Element, coupled with efforts to seek legislative changes to onerous provisions of the law.

**Fiscal Analysis:** N/A

**Special Instructions:** N/A

**Attachments:** Report: Housing Element Law: Mandates and Risks of Defiance, July 2, 2007.

**Authored by:** Office of County Counsel: Stephen Shane Stark, County Counsel, Michael C. Ghizzoni, Chief Deputy, David L. Allen, Senior Deputy