

ASSEMBLY BILL

No. 73

**Introduced by Assembly Members Chiu and Caballero
(Coauthors: Assembly Members Mullin, Santiago, and Ting)**

December 16, 2016

An act to amend Section 65582.1 of, and to add Chapter 11 (commencing with Section 66200) to Division 1 of Title 7 of, the Government Code, and to add Chapter 4.3 (commencing with Section 21155.10) to Division 13 of the Public Resources Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 73, as introduced, Chiu. Planning and zoning: housing sustainability districts.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing.

This bill would authorize a city, county, or city and county, including a charter city, charter county, or charter city and county, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The bill would authorize the city, county, or city and county to apply to the Office of Planning and Research for approval for a zoning incentive payment and require the city, county, or city and county to provide specified information about the proposed housing sustainability district ordinance. The bill would require the office to approve a zoning incentive payment if the

ordinance meets the above-described requirements. The bill would also require the Department of Housing and Community Development, each October 1 following the approval of the housing sustainability district, to issue a certificate of compliance if the city, county, or city and county meets specified criteria pertaining to the continued compliance with these provisions or to deny certification, as provided. The bill would provide that a city, county, or city and county with a housing sustainability district would be entitled to a zoning incentive payment, subject to appropriation of funds for that purpose, and require that $\frac{1}{2}$ the amount be provided upon zone approval by the office and $\frac{1}{2}$ the amount upon verification by the department of the issuance of permits for the projected units of residential construction within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. The bill, if no construction has started in a housing sustainability district within 3 years of the date that the first $\frac{1}{2}$ of the incentive payment has been made, would require the city, county, or city and county to return the full amount of zoning incentive payments it has received to the department.

The bill would authorize a city, county, or city and county to incorporate provisions in its housing sustainability district ordinance prescribing the contents of an application for a permit for residential development, to adopt design review standards, and to charge a project application fee to defray the costs of preparation, adoption, and administration of the housing sustainability district plan, as provided. The bill would also require that prevailing wages be paid, and a skilled workforce employed, in connection with all projects within the housing sustainability district, as provided. The bill would establish procedures for review of an application by an approving authority, including requiring the approving authority to conduct a public hearing on an application and issue a written decision within 120 days of receipt of the application. The bill, if a proposed development within a housing sustainability district includes any parcels being used for affordable housing, would require that the approving authority condition approval of the application on the applicant's agreement to replace those affordable housing units. The bill would also prescribe procedures for review of a decision of the approving authority to deny or approve with conditions an application for a permit in the superior court.

The bill would require the department to publish a report containing specified information about the housing sustainability district program

on its Internet Web site no later than November 1, 2018, and each November 1 thereafter.

(2) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would require a lead agency, when designating housing sustainability districts, to prepare an EIR for the designation, as specified. The bill would require the Judicial Council, by July 1, 2018, to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the EIR or the approval of the designation that require the actions or proceedings, including any potential appeals, be resolved, to the extent feasible, within 270 days of the certification of the record of the administrative proceedings. The bill would require the lead agency to prepare and certify the record of the administrative proceedings, as specified. The bill would exempt from CEQA housing projects undertaken in the housing sustainability districts that meet specified requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65582.1 of the Government Code is
- 2 amended to read:
- 3 65582.1. The Legislature finds and declares that it has provided
- 4 reforms and incentives to facilitate and expedite the construction
- 5 of affordable housing. Those reforms and incentives can be found
- 6 in the following provisions:
- 7 (a) Housing element law (Article 10.6 (commencing with
- 8 Section 65580) of Chapter 3).

- 1 (b) Extension of statute of limitations in actions challenging the
- 2 housing element and brought in support of affordable housing
- 3 (subdivision (d) of Section 65009).
- 4 (c) Restrictions on disapproval of housing developments
- 5 (Section 65589.5).
- 6 (d) Priority for affordable housing in the allocation of water and
- 7 sewer hookups (Section 65589.7).
- 8 (e) Least cost zoning law (Section 65913.1).
- 9 (f) Density bonus law (Section 65915).
- 10 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
- 11 (h) By-right housing, in which certain multifamily housing are
- 12 designated a permitted use (Section 65589.4).
- 13 (i) No-net-loss-in zoning density law limiting downzonings and
- 14 density reductions (Section 65863).
- 15 (j) Requiring persons who sue to halt affordable housing to pay
- 16 attorney fees (Section 65914) or post a bond (Section 529.2 of the
- 17 Code of Civil Procedure).
- 18 (k) Reduced time for action on affordable housing applications
- 19 under the approval of development permits process (Article 5
- 20 (commencing with Section 65950) of Chapter 4.5).
- 21 (l) Limiting moratoriums on multifamily housing (Section
- 22 65858).
- 23 (m) Prohibiting discrimination against affordable housing
- 24 (Section 65008).
- 25 (n) California Fair Employment and Housing Act (Part 2.8
- 26 (commencing with Section 12900) of Division 3).
- 27 (o) Community redevelopment law (Part 1 (commencing with
- 28 Section 33000) of Division 24 of the Health and Safety Code, and
- 29 in particular Sections 33334.2 and 33413).
- 30 (p) *Housing sustainability districts (Chapter 11 (commencing*
- 31 *with Section 66200)).*

32 SEC. 2. Chapter 11 (commencing with Section 66200) is added
 33 to Division 1 of Title 7 of the Government Code, to read:

34

35 CHAPTER 11. HOUSING SUSTAINABILITY DISTRICTS

36

37 66200. For the purposes of this chapter, the following
 38 definitions shall apply:

- 39 (a) “Approving authority” means an agency of a city, county,
- 40 or city and county that is established in the city’s, county’s, or city

1 and county’s housing sustainability district ordinance and
2 designated to review permit applications for development within
3 the housing sustainability district in accordance with Section
4 66205.

5 (b) “City, county, or city and county” includes a charter city,
6 charter county, or charter city and county.

7 (c) “Department” means the Department of Housing and
8 Community Development.

9 (d) “Developable area” means the area within a housing
10 sustainability district that can be feasibly developed into residential
11 or mixed used development, including land area occupied by or
12 associated with underutilized residential, commercial, or industrial
13 buildings or uses that have the potential to be converted for
14 residential or mixed use, in accordance with the rules and
15 regulations of the office, except for the following:

16 (1) Land that is already substantially developed, including
17 existing parks and open space.

18 (2) Areas exceeding one-half acre that are unsuitable for
19 development due to topographical features or environmental
20 preservation.

21 (e) “Eligible location” means any of the following:

22 (1) An area located within one-half mile of public transit.

23 (2) An area of concentrated development.

24 (3) An area that, by virtue of existing infrastructure,
25 transportation access, existing underutilized facilities, or location,
26 is highly suitable for a residential or mixed use housing
27 sustainability district.

28 (f) “Mixed use” means that up to 50 percent of the square
29 footage of a proposed development is designated for nonresidential
30 use.

31 (g) “Office” means the Office of Planning and Research.

32 (h) “Project” means a proposed residential or mixed use
33 development within a housing sustainability district.

34 (i) “Housing sustainability district” means an area within a city,
35 county, or city and county designated pursuant to this chapter that
36 is superimposed over an area within the jurisdiction of the city,
37 county, or city and county in which a developer may elect to
38 develop a project in accordance with either the housing
39 sustainability district ordinance or the city’s, county’s, or city and
40 county’s otherwise applicable general plan and zoning ordinances.

1 (j) “Housing sustainability district ordinance” means the
2 ordinance adopted by a city, county, or city and county pursuant
3 to Section 66201 establishing a housing sustainability district.

4 66201. (a) A city, county, or city and county, upon receipt of
5 preliminary approval by the office pursuant to Section 66202, may
6 establish by ordinance a housing sustainability district in
7 accordance with this chapter. The city, county, or city and county
8 shall adopt the ordinance in accordance with the requirements of
9 Chapter 4 (commencing with Section 65800).

10 (b) An area proposed to be designated a housing sustainability
11 district pursuant to this chapter shall satisfy all of the following
12 requirements:

13 (1) The area is an eligible location, including any adjacent area
14 served by existing infrastructure and utilities.

15 (2) The area is zoned to permit residential use through the
16 ministerial issuance of a permit. Other uses may be permitted by
17 conditional use or other discretionary permit, provided that the use
18 is consistent with residential use.

19 (3) Housing density in the area is at least 20 units per acre of
20 multifamily housing on the developable land area or eight units
21 per acre for single-family homes on the developable land area.

22 (4) The development of housing is permitted, consistent with
23 neighborhood building and use patterns and any applicable building
24 codes.

25 (5) Limitations or moratoriums on residential use do not apply
26 to any of the area.

27 (6) The area is not subject to any general age or other occupancy
28 restrictions, except that the city, county, or city and county may
29 allow for the development of specific projects exclusively for the
30 elderly or the disabled or for assisted living.

31 (7) Housing units comply with all applicable federal, state, and
32 local fair housing laws.

33 (8) The area of the proposed housing sustainability district does
34 not exceed 15 percent of the total land area under the jurisdiction
35 of the city, county, or city and county unless the office approves
36 a larger area in furtherance of the purposes of this chapter.

37 (9) The total area of all housing sustainability districts within
38 the city, county, or city and county does not exceed 30 percent of
39 the total land area under the jurisdiction of the city, county, or city
40 and county.

1 (10) The ordinance establishing the housing sustainability
2 district provides for the manner of review by an approving
3 authority, as designated by the ordinance, pursuant to Section
4 66205 and in accordance with the rules and regulations adopted
5 by the office.

6 (11) Development projects in the area comply with the
7 requirements of Section 66208, regarding the replacement of
8 affordable housing units affected by the development.

9 (c) The city, county, or city and county may apply uniform
10 development policies or standards that will apply to all projects
11 within the housing sustainability district, including parking
12 ordinances, public access ordinances, grading ordinances, hillside
13 development ordinances, flood plain ordinances, habitat or
14 conservation ordinances, view protection ordinances, and
15 requirements for reducing greenhouse gas emissions.

16 (d) The city, county, or city and county may provide for mixed
17 use development within the housing sustainability district.

18 (e) An amendment or repeal of a housing sustainability district
19 ordinance shall not become effective unless the department
20 provides written approval to the city, county, or city and county.
21 The city, county, or city and county may request approval of a
22 proposed amendment or repeal by submitting a written request to
23 the department. The department shall evaluate the proposed
24 amendment or repeal for the effect of that amendment or repeal
25 on the city's, county's, or city and county's housing element. If
26 the department does not respond to a written request for amendment
27 or repeal of an ordinance within 60 days of receipt of that request,
28 the request shall be deemed approved.

29 (f) The housing sustainability district ordinance shall do all of
30 the following:

31 (1) Provide for an approving authority to review permit
32 applications for development within the housing sustainability
33 district in accordance with Section 66205.

34 (2) (A) Require that at least 20 percent of the residential units
35 constructed within the housing sustainability district be affordable
36 to very low, low-, and moderate-income households and subject
37 to a recorded affordability restriction for at least 55 years.

38 (B) This paragraph shall not be construed to nullify an
39 inclusionary zoning ordinance requiring a greater percentage of

1 the residential units within a project to be affordable to very low,
2 low-, and moderate-income households.

3 (3) Specify that a project is not deemed to be for residential use
4 if it is infeasible for actual use as a single or multifamily residence.

5 (4) Require that an applicant for a permit for a project within
6 the housing sustainability district do the following, as applicable:

7 (A) Certify to the approving authority that either of the following
8 is true, as applicable:

9 (i) That the entirety of the project is a public work for purposes
10 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
11 2 of the Labor Code.

12 (ii) If the project is not in its entirety a public work, that all
13 construction workers employed in the execution of the project will
14 be paid at least the general prevailing rate of per diem wages for
15 the type of work and geographic area, as determined by the Director
16 of Industrial Relations pursuant to Sections 1773 and 1773.9 of
17 the Labor Code. If the approving authority approves the
18 application, then for those portions of the project that are not a
19 public work all of the following shall apply:

20 (I) The applicant shall include the prevailing wage requirement
21 in all contracts for the performance of the work.

22 (II) Contractors and subcontractors shall pay to all construction
23 workers employed in the execution of the work at least the general
24 prevailing rate of per diem wages.

25 (III) Except as provided in subclause (IV), the obligation of the
26 contractors and subcontractors to pay prevailing wages may be
27 enforced by the Labor Commissioner through the issuance of a
28 civil wage and penalty assessment pursuant to Section 1741 of the
29 Labor Code, which may be reviewed pursuant to Section 1742 of
30 the Labor Code, within 18 months after the completion of the
31 project, or by an underpaid worker through an administrative
32 complaint or civil action. If a civil wage and penalty assessment
33 is issued, the contractor, subcontractor, and surety on a bond or
34 bonds issued to secure the payment of wages covered by the
35 assessment shall be liable for liquidated damages pursuant to
36 Section 1742.1 of the Labor Code.

37 (IV) Subclause (III) shall not apply if all contractors and
38 subcontractors performing work on the project are subject to a
39 project labor agreement that requires the payment of prevailing
40 wages to all construction workers employed in the execution of

1 the project and provides for enforcement of that obligation through
2 an arbitration procedure. For purposes of this subclause, “project
3 labor agreement” has the same meaning as set forth in paragraph
4 (1) of subdivision (b) of Section 2500 of the Public Contract Code.

5 (V) Notwithstanding subdivision (c) of Section 1773.1 of the
6 Labor Code, the requirement that employer payments not reduce
7 the obligation to pay the hourly straight time or overtime wages
8 found to be prevailing shall not apply if otherwise provided in a
9 bona fide collective bargaining agreement covering the worker.
10 The requirements of paragraph (2) of subdivision (c) of Section
11 1773.1 of the Labor Code do not preclude use of an alternative
12 workweek schedule adopted pursuant to Section 511 or 514 of the
13 Labor Code.

14 (B) For projects with a cost exceeding ___ dollars (\$___), certify
15 to the approving authority that a skilled and trained workforce will
16 be used to complete the project. For purposes of this paragraph,
17 “skilled and trained workforce” has the same meaning as provided
18 in subdivision (d) of Section 2601 of the Public Contract Code. If
19 the approving authority approves the application, the following
20 shall apply:

21 (i) The applicant shall require in all contracts for the
22 performance of work that every contractor and subcontractor at
23 every tier will individually use a skilled and trained workforce to
24 complete the project.

25 (ii) Every contractor and subcontractor shall use a skilled and
26 trained workforce to complete the project.

27 (iii) Except as provided in clause (iv), the applicant shall provide
28 to the approving authority, on a monthly basis while the project
29 or contract is being performed, a report demonstrating compliance
30 with this subparagraph. A monthly report provided to the approving
31 authority pursuant to this clause shall be a public record under the
32 California Public Records Act (Chapter 3.5 (commencing with
33 Section 6250) of Division 7 of Title 1) and shall be open to public
34 inspection. An applicant that fails to provide a monthly report
35 demonstrating compliance with this subparagraph shall be subject
36 to a civil penalty of ten thousand dollars (\$10,000) per month for
37 each month for which the report has not been provided. Any
38 contractor or subcontractor that fails to use a skilled and trained
39 workforce shall be subject to a civil penalty of two hundred dollars
40 (\$200) per day for each worker employed in contravention of the

1 skilled and trained workforce requirement. Penalties may be
2 assessed by the Labor Commissioner within 18 months of
3 completion of the project using the same procedures for issuance
4 of civil wage and penalty assessments pursuant to Section 1741
5 of the Labor Code, and may be reviewed pursuant to the same
6 procedures in Section 1742 of the Labor Code. Penalties shall be
7 paid to the State Public Works Enforcement Fund.

8 (iv) Clause (iii) shall not apply if all contractors and
9 subcontractors performing work on the project are subject to a
10 project labor agreement that requires compliance with the skilled
11 and trained workforce requirement and provides for enforcement
12 of that obligation through an arbitration procedure. For purposes
13 of this subparagraph, “project labor agreement” has the same
14 meaning as set forth in paragraph (1) of subdivision (b) of Section
15 2500 of the Public Contract Code.

16 (g) This section shall not be construed to affect the authority of
17 a city, county, or city and county to amend its zoning regulations
18 pursuant to Chapter 4 (commencing with Section 65800), except
19 to the extent that an amendment affects a housing sustainability
20 district.

21 (h) The city, county, or city and county shall comply with
22 Chapter 4.3 (commencing with Section 21155.10) of Division 13
23 of the Public Resources Code.

24 66202. (a) (1) A city, county, or city and county that has
25 proposed an ordinance establishing a housing sustainability district
26 in accordance with this chapter may apply to the office for
27 preliminary approval of a housing sustainability district. The office
28 shall make a preliminary determination as to the eligibility of the
29 proposed housing sustainability district for approval.

30 (2) The office shall grant an application for preliminary approval
31 for a zoning incentive payment if it determines that the proposed
32 ordinance meets the requirements of this chapter. If the office
33 denies the application, it shall inform the applicant city, county,
34 or city and county of the deficiencies in its application. A city,
35 county, or city and county may reapply upon correcting those
36 deficiencies identified in the office’s denial.

37 (3) The office shall transmit its determination to the applicant
38 city, county, or city and county and to the department.

1 (b) A city, county, or city and county that has proposed an
2 ordinance establishing a housing sustainability district shall submit
3 all of the following information with its application:

4 (1) A description of the boundaries of the proposed housing
5 sustainability district.

6 (2) A description of the developable land within the proposed
7 housing sustainability district.

8 (3) A description of other residential development opportunities
9 within the city, county, or city and county, including infill
10 development and reuse of existing buildings within already
11 developed areas.

12 (4) A copy of the city's, county's, or city and county's housing
13 element, adopted in accordance with Article 10.6 (commencing
14 with Section 65580) of Chapter 3.

15 (5) A copy of the housing sustainability district ordinance
16 adopted pursuant to Section 66201.

17 (6) A copy of the environmental impact report prepared pursuant
18 to Section 21155.10 of the Public Resources Code.

19 (7) A copy of the city's, county's, or city and county's design
20 review standards, if any, developed pursuant to Section 66207.

21 (8) Any other materials that establish the city's, county's, or
22 city and county's compliance with the requirements of Section
23 66201.

24 (c) Following preliminary approval of an application pursuant
25 to subdivision (a) and upon receipt of acknowledgment that the
26 housing sustainability district ordinance has taken effect, the office
27 shall confirm approval within 45 days of receipt of the application.

28 66203. (a) On or before October 1 of each year following the
29 approval of a city's, county's, or city and county's housing
30 sustainability district by the office under Section 66202, the
31 department shall issue a certificate of compliance if it finds that
32 the city, county, or city and county has satisfied all of the following
33 requirements:

34 (1) The city, county, or city and county has in effect a housing
35 sustainability district ordinance adopted pursuant to Section 66201.

36 (2) The housing sustainability district complies with the
37 minimum requirements of subdivision (b) of Section 66201.

38 (3) The city, county, or city and county has only denied a permit
39 for a residential development consistent with its housing

1 sustainability district ordinance, the provisions of its housing
2 element, or the requirements of this chapter.

3 (4) The city, county, or city and county has not adopted a design
4 review standard pursuant to Section 66207 that adds unreasonable
5 costs to a residential or mixed use development, or impairs the
6 economic feasibility of a proposed development, within the housing
7 sustainability district.

8 (b) If the department finds that a city, county, or city and county
9 does not satisfy all of the requirements of subdivision (a), the
10 department may deny certification of the housing sustainability
11 district. A denial pursuant to this subdivision shall not affect the
12 validity of the housing sustainability district ordinance or the
13 application of the ordinance to a development or proposed
14 development within the housing sustainability district.

15 (c) The department may require a city, county, or city and county
16 to provide any information it deems necessary to review that city's,
17 county's, or city and county's housing sustainability district as
18 required by this section.

19 66204. (a) A city, county, or city and county with a housing
20 sustainability district approved by the office under Section 66202
21 shall be entitled to a zoning incentive payment, upon appropriation
22 of funds by the Legislature for that purpose, in the following
23 amounts:

24	25 Projected Construction of New	26 Amount of Payment
	27 Residential Units	
28	29 20 or fewer	30 \$__
31	32 21 to 100	33 \$__
34	35 101 to 200	36 \$__
37	38 201 to 500	39 \$__
40	501 or more	\$__

33 The amount of payment provided to a city, county, or city and
34 county pursuant to this section shall be based on the number of
35 new residential units constructed within the housing sustainability
36 district. Replacement units constructed in accordance with Section
37 66208 shall not be considered new residential units for purposes
38 of this section.

39 (b) The office shall issue the first half of the zoning incentive
40 payment to the city, county, or city and county upon preliminary

1 approval of the housing sustainability district ordinance and
2 issuance of the environmental impact report pursuant to Section
3 21155.10 of the Public Resources Code. The department shall
4 issue the second half of the zoning incentive payment within 10
5 days of submission of proof of issuance of building permits by the
6 city, county, or city and county for the projected units of residential
7 construction within the zone, provided that the city, county, or city
8 and county has received a certificate of compliance for the
9 applicable year pursuant to Section 66203.

10 66205. (a) (1) A city, county, or city and county may
11 incorporate provisions in its housing sustainability district
12 ordinance prescribing the contents of an application for a permit
13 for residential development.

14 (2) The city, county, or city and county may charge an
15 application fee to persons seeking government approval of a project
16 within the housing sustainability district. A fee charged pursuant
17 to this paragraph shall be established to defray the costs of
18 preparation, adoption, and administration of the housing
19 sustainability district plan, including costs incurred related to the
20 implementation of Chapter 4.3 (commencing with Section
21 21155.10) of Division 13 of the Public Resources Code. As nearly
22 as can be estimated, the fee charged shall be a prorated amount in
23 accordance with the applicant's relative benefit derived from the
24 housing sustainability district plan.

25 (3) The housing sustainability district ordinance may provide
26 for referral of an application for a permit to any officers, agencies,
27 boards, or bureaus of the city, county, or city and county for review
28 and comment. A reviewing officer, agency, board, or bureau shall
29 provide any comments on an application within 60 days of receipt.

30 (b) The applicable provisions of the city's, county's, or city and
31 county's general plan and housing sustainability district ordinance
32 in effect at the time an application is submitted to the approving
33 authority shall govern the application for the purposes of the
34 following:

35 (1) The processing and review of the application.

36 (2) The pendency of any appeal of a decision of the approving
37 authority.

38 (3) If the application is approved, for five years following
39 approval of the application.

1 (4) If the application is denied, to any further application for
2 the same proposed development filed within two years following
3 the date of the denial, unless the applicant elects to proceed under
4 the city's, county's, or city and county's general plan and housing
5 sustainability district ordinance in effect at the time when he or
6 she submits that further application.

7 (c) (1) The applicant shall file an application for a permit with
8 the clerk of the city, county, or city and county and with the
9 approving authority.

10 (2) The authority shall conduct a public hearing in accordance
11 with the Ralph M. Brown Act (Chapter 9 (commencing with
12 Section 54950) of Part 1 of Division 2 of Title 5) and issue a
13 written decision on the application within 120 days of receipt of
14 the application, unless extended by agreement between the
15 approving authority and the applicant. The approving authority
16 shall file a copy of its written decision with the clerk of the city,
17 county, or city and county.

18 (3) If the approving authority fails to act within 120 days, or
19 within the period agreed upon by the approving authority and the
20 applicant, as applicable, the application shall be deemed approved.
21 In the event an application is deemed approved pursuant to this
22 paragraph, the applicant shall provide notice to any interested
23 parties and notify the clerk of the city, county, or city and county
24 within 14 days of the application being deemed approved. The
25 notice provided to interested parties shall specify that any appeals
26 must be filed within 20 days following the clerk's receipt of the
27 notice.

28 (4) The approving authority shall issue to the applicant a copy
29 of its written decision, including the name and address of the owner
30 of the property proposed to be developed, an identification of the
31 property proposed to be developed, the development plans, and
32 certification that a copy of the decision has been filed with the
33 clerk of the city, county, or city and county.

34 (d) (1) In reviewing an application for a permit pursuant to this
35 section, the approving authority shall consider the requirements
36 of the housing sustainability district ordinance and of this chapter,
37 including the requirement that the applicant replace affordable
38 housing units affected by the proposed development pursuant to
39 Section 66208.

1 (2) The approving authority may deny an application only for
2 the following reasons:

3 (A) The proposed development project does not fully comply
4 with the housing sustainability district ordinance.

5 (B) The applicant has not submitted all of the required
6 information or paid an application fee required by the housing
7 sustainability district ordinance and necessary for an adequate and
8 timely design review or assessment of potential impacts on nearby
9 property.

10 (C) The approving authority determines, based upon substantial
11 evidence in light of the whole record of the public hearing on the
12 project, that a physical condition on the site of development that
13 was not known and could not have been discovered with reasonable
14 investigation at the time the application was submitted would have
15 a specific adverse impact upon the public health or safety and that
16 there is no feasible method to satisfactorily mitigate or avoid the
17 specific adverse impact. As used in this subparagraph, “specific
18 adverse impact” means a significant, quantifiable, direct, and
19 unavoidable impact based on identified objective written public
20 health or safety standards, policies, or conditions, as in existence
21 at the time the application is deemed complete.

22 (e) The clerk of the city, county, or city and county shall certify
23 the following, as applicable, on a copy of the written decision of
24 the approving authority:

25 (1) No appeal has been filed, or has been dismissed or denied,
26 within 20 days of the issuance of the decision of the approving
27 authority.

28 (2) The application is deemed approved by reason of the failure
29 of the approving authority to issue a decision within 120 days of
30 submission of the application.

31 66206. (a) If the approving authority denies an application for
32 a permit submitted in accordance with Section 66205 or has
33 approved it with conditions rendering the project infeasible for
34 residential use, the applicant may appeal that decision by filing a
35 complaint in the superior court.

36 (b) An appeal pursuant to this section shall be filed within 20
37 days after the approving authority has filed its decision to deny or
38 conditionally approve the application with the clerk of the city,
39 county, or city and county. The applicant shall provide notice of
40 the appeal and a copy of the complaint to the clerk of the city,

1 county, or city and county. The applicant shall, within 14 days of
2 filing the complaint, serve written notice and provide a copy of
3 the complaint to all defendants by certified mail. The court shall
4 dismiss the complaint if the applicant does not, within 21 days of
5 filing the complaint, file an affidavit with the clerk of the court
6 certifying that the notices required by this paragraph have been
7 provided.

8 (c) The complaint shall allege the specific reasons why the
9 approving authority's decision does not satisfy the requirements
10 of the housing sustainability district ordinance, the provisions of
11 this chapter, or other applicable law. The complaint shall name
12 the approving authority as a defendant.

13 (d) The approving authority shall have the burden of proving
14 that its decision satisfies the requirements of the housing
15 sustainability district ordinance, the provisions of this chapter, or
16 other applicable law based on substantial evidence in light of the
17 whole record.

18 66207. (a) A city, county, or city and county may, in
19 accordance with the regulations adopted by the office, adopt design
20 review standards applicable to development projects within the
21 housing sustainability district to ensure that the physical character
22 of development within the district is complementary to adjacent
23 buildings and structures and is consistent with the city's, county's,
24 or city and county's general plan, including the housing element.
25 However, a design review standard shall not add unreasonable
26 costs to a residential or mixed use development, or unreasonably
27 impair the economic feasibility of a proposed development, within
28 the housing sustainability district. Design review of a development
29 within a housing sustainability district shall not constitute a
30 "project" for purposes of the California Environmental Quality
31 Act (Division 13 (commencing with Section 21000) of the Public
32 Resources Code).

33 (b) Design review standards adopted pursuant to this section
34 shall be adopted at the same time as the housing sustainability
35 ordinance and submitted to the office with the city's, county's, or
36 city and county's application pursuant to Section 66202. Any
37 subsequent additional design review standards or amendment of
38 existing design review standards shall be subject to written
39 approval by the department in the same manner as specified in

1 subdivision (e) of Section 66201, relating to the amendment or
2 repeal of a housing sustainability ordinance.

3 66208. (a) If a proposed development within a housing
4 sustainability district includes any parcels being used for affordable
5 housing at the time the application is submitted to the approving
6 authority, the approving authority shall condition its approval of
7 the application on the applicant's agreement to replace those
8 affordable housing units.

9 (b) For the purposes of this section, the following definitions
10 shall apply:

11 (1) "Affordable housing" shall mean a parcel of property that
12 meets any of the following criteria:

13 (A) The parcel includes rental dwelling units that are or, if the
14 dwelling units have been vacated or demolished in the five-year
15 period preceding the application, have been subject to a recorded
16 covenant, ordinance, or law that restricts rents to levels affordable
17 to persons and families of lower or very low income.

18 (B) The parcel is subject to rent or price control through a public
19 entity's valid exercise of its police power.

20 (C) The parcel includes a housing development that is currently
21 occupied by low- or very low income households.

22 (2) "Replace" shall mean either of the following, as applicable:

23 (A) If any affordable housing units described in subdivision (a)
24 are occupied on the date of application, the proposed housing
25 development shall provide at least the same number of units of
26 equivalent size or type, or both, to be made available at affordable
27 rent or affordable housing cost to, and occupied by, persons and
28 families in the same or lower income category as those households
29 in occupancy. For unoccupied affordable housing units described
30 in subdivision (a) in a development with occupied units, the
31 proposed housing development shall provide units of equivalent
32 size or type, or both, to be made available at affordable rent or
33 affordable housing cost to, and occupied by, persons and families
34 in the same or lower income category in the same proportion of
35 affordability as the occupied units. All replacement calculations
36 resulting in fractional units shall be rounded up to the next whole
37 number. The replacement units shall be subject to a recorded
38 affordability restriction for at least 55 years.

39 (B) If all affordable housing units described in subdivision (a)
40 have been vacated or demolished within the five-year period

1 preceding the application, the proposed housing development shall
2 provide at least the same number of units of equivalent size or
3 type, or both, as existed at the highpoint of those units in the
4 five-year period preceding the application to be made available at
5 affordable rent or affordable housing cost to, and occupied by,
6 persons and families in the same or lower income category as those
7 persons and families in occupancy at that time, if known. If the
8 incomes of the persons and families in occupancy at the highpoint
9 is not known, then one-half of the required units shall be made
10 available at affordable rent or affordable housing cost to, and
11 occupied by, very low income persons and families, and one-half
12 of the required units shall be made available for rent at affordable
13 housing costs to, and occupied by, low-income persons and
14 families. All replacement calculations resulting in fractional units
15 shall be rounded up to the next whole number. The replacement
16 units shall be subject to a recorded affordability restriction for at
17 least 55 years.

18 66209. (a) The office shall be responsible for the
19 administration of this chapter with respect to the approval of a
20 housing sustainability district pursuant to Section 66202 and the
21 award of the first half of the incentive payment pursuant to Section
22 66204. The department shall be responsible for the administration
23 of this chapter in all other respects, including the continued
24 compliance of a housing sustainability district with this chapter
25 and the award of the second half of the incentive payment pursuant
26 to Section 66204.

27 (b) (1) The department shall conduct, or cause to be conducted,
28 an annual review of the housing sustainability district program.
29 The department may require participating cities and counties to
30 provide data on housing sustainability districts within their
31 jurisdiction as necessary to conduct this review and prepare the
32 report required by this subdivision.

33 (2) The department shall publish a report on its Internet Web
34 site no later than November 1, 2018, and each November 1
35 thereafter. The report shall include all of the following:

36 (A) The status of the program through the fiscal year prior to
37 the publication of the report.

38 (B) An identification and description of cities and counties
39 seeking preliminary determination from the office.

1 (C) An identification of approved housing sustainability districts
2 and the incentive payments awarded for each pursuant to Section
3 66204.

4 (D) A summary of the land area within both proposed and
5 approved housing sustainability districts and the purposes for which
6 it is zoned.

7 (E) The number of projects under review by an approving
8 authority, proposed residential units, building permits issued, and
9 completed housing units as of the date of the report's publication.

10 (F) An estimate, for the current and immediately succeeding
11 fiscal year, of the number and size of proposed new districts,
12 potential number of residential units allowed in new districts, and
13 anticipated construction activity.

14 66210. If no construction has started in a housing sustainability
15 district within three years of the date that the first half of the
16 incentive payment pursuant to Section 66204 has been made, the
17 city, county, or city and county shall return the full amount of
18 zoning incentive payments it has received under this chapter to
19 the department. Amounts repaid pursuant to this section shall be
20 used for further incentive payments.

21 SEC. 3. Chapter 4.3 (commencing with Section 21155.10) is
22 added to Division 13 of the Public Resources Code, to read:

23

24 CHAPTER 4.3. HOUSING SUSTAINABILITY DISTRICTS

25

26 21155.10. (a) A lead agency shall prepare an environmental
27 impact report when designating a housing sustainability district
28 pursuant to Section 66201 of the Government Code to identify and
29 mitigate, to the extent feasible, environmental impacts resulting
30 from the designation. The environmental impact report shall
31 identify mitigation measures that may be undertaken by housing
32 projects in the housing sustainability district to mitigate the
33 environmental impacts identified by the environmental impact
34 report.

35 (b) Notwithstanding any other law, the procedures established
36 pursuant to subdivision (c) shall apply to an action or proceeding
37 brought to attack, review, set aside, void, or annul the certification
38 of the environmental impact report prepared pursuant to this
39 chapter or the approval of the designation.

1 (c) On or before July 1, 2018, the Judicial Council shall adopt
2 a rule of court to establish procedures applicable to actions or
3 proceedings brought to attack, review, set aside, void, or annul the
4 certification of the environmental impact report for the designation
5 or the approval of the designation that require the actions or
6 proceedings, including any potential appeals therefrom, be
7 resolved, to the extent feasible, within 270 days of certification of
8 the record of proceedings pursuant to subdivision (e).

9 (d) (1) The draft and final environmental impact report shall
10 include a notice in not less than 12-point type stating the following:

11
12 THIS EIR IS SUBJECT TO SECTION 21155.10 OF THE
13 PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG
14 OTHER THINGS, THAT THE LEAD AGENCY NEED NOT
15 CONSIDER CERTAIN COMMENTS FILED AFTER THE
16 CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE
17 DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE
18 CERTIFICATION OF THE EIR OR THE APPROVAL OF THE
19 DESIGNATION IN THE EIR IS SUBJECT TO THE
20 PROCEDURES SET FORTH IN SECTION 21155.10 OF THE
21 PUBLIC RESOURCES CODE. A COPY OF SECTION 21155.10
22 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE
23 APPENDIX TO THIS EIR.

24
25 (2) The draft environmental impact report and final
26 environmental impact report shall contain, as an appendix, the full
27 text of this section.

28 (3) Within 10 days after the release of the draft environmental
29 impact report, the lead agency shall conduct an informational
30 workshop to inform the public of the key analyses and conclusions
31 of that report.

32 (4) Within 10 days before the close of the public comment
33 period, the lead agency shall hold a public hearing to receive
34 testimony on the draft environmental impact report. A transcript
35 of the hearing shall be included as an appendix to the final
36 environmental impact report.

37 (5) (A) Within five days following the close of the public
38 comment period, a commenter on the draft environmental impact
39 report may submit to the lead agency a written request for
40 nonbinding mediation. The lead agency shall participate in

1 nonbinding mediation with all commenters who submitted timely
2 comments on the draft environmental impact report and who
3 requested the mediation. Mediation conducted pursuant to this
4 paragraph shall end no later than 35 days after the close of the
5 public comment period.

6 (B) A request for mediation shall identify all areas of dispute
7 raised in the comment submitted by the commenter that are to be
8 mediated.

9 (C) The lead agency shall select one or more mediators who
10 shall be retired judges or recognized experts with at least five
11 years' experience in land use and environmental law or science,
12 or mediation.

13 (D) A mediation session shall be conducted on each area of
14 dispute with the parties requesting mediation on that area of
15 dispute.

16 (E) The lead agency shall adopt, as a condition of approval, any
17 measures agreed upon by the lead agency and any commenter who
18 requested mediation. A commenter who agrees to a measure
19 pursuant to this subparagraph shall not raise the issue addressed
20 by that measure as a basis for an action or proceeding challenging
21 the lead agency's decision to certify the environmental impact
22 report or the designation of the housing sustainability district.

23 (6) The lead agency need not consider written comments
24 submitted after the close of the public comment period, unless
25 those comments address any of the following:

26 (A) New issues raised in the response to comments by the lead
27 agency.

28 (B) New information released by the public agency subsequent
29 to the release of the draft environmental impact report, such as
30 new information set forth or embodied in a staff report, proposed
31 permit, proposed resolution, ordinance, or similar documents.

32 (C) Changes made to the designation after the close of the public
33 comment period.

34 (D) Proposed conditions for the designation, mitigation
35 measures, or proposed findings required by Section 21081 or a
36 proposed reporting and monitoring program required by paragraph
37 (1) of subdivision (a) of Section 21081.6, where the lead agency
38 releases those documents subsequent to the release of the draft
39 environmental impact report.

1 (E) New information that was not reasonably known and could
2 not have been reasonably known during the public comment period.
3 (7) The lead agency shall file the notice required by subdivision
4 (a) of Section 21152 within five days after the approval of the
5 designation.
6 (e) (1) The lead agency shall prepare and certify the record of
7 the proceedings in accordance with this subdivision and in
8 accordance with Rule 3.1365 of the California Rules of Court.
9 (2) No later than three business days following the date of the
10 release of the draft environmental impact report, the lead agency
11 shall make available to the public in a readily accessible electronic
12 format the draft environmental impact report and all other
13 documents submitted to or relied on by the lead agency in the
14 preparation of the draft environmental impact report. A document
15 prepared by the lead agency after the date of the release of the
16 draft environmental impact report that is a part of the record of the
17 proceedings shall be made available to the public in a readily
18 accessible electronic format within five business days after the
19 document is prepared or received by the lead agency.
20 (3) Notwithstanding paragraph (2), documents submitted to or
21 relied on by the lead agency that were not prepared specifically
22 for the project and are copyright protected are not required to be
23 made readily accessible in an electronic format. For those
24 copyright-protected documents, the lead agency shall make an
25 index of these documents available in an electronic format no later
26 than the date of the release of the draft environmental impact report,
27 or within five business days if the document is received or relied
28 on by the lead agency after the release of the draft environmental
29 impact report. The index must specify the libraries or lead agency
30 offices in which hardcopies of the copyrighted materials are
31 available for public review.
32 (4) The lead agency shall encourage written comments on the
33 project to be submitted in a readily accessible electronic format,
34 and shall make any such comment available to the public in a
35 readily accessible electronic format within five days of its receipt.
36 (5) Within seven business days after the receipt of any comment
37 that is not in an electronic format, the lead agency shall convert
38 that comment into a readily accessible electronic format and make
39 it available to the public in that format.

1 (6) The lead agency shall indicate in the record of the
2 proceedings comments received that were not considered by the
3 lead agency pursuant to paragraph (6) of subdivision (d) and need
4 not include the content of the comments as a part of the record.

5 (7) Within five days after the filing of the notice required by
6 subdivision (a) of Section 21152, the lead agency shall certify the
7 record of the proceedings for the approval or determination and
8 shall provide an electronic copy of the record to a party that has
9 submitted a written request for a copy. The lead agency may charge
10 and collect a reasonable fee from a party requesting a copy of the
11 record for the electronic copy, which shall not exceed the
12 reasonable cost of reproducing that copy.

13 (8) Within 10 days after being served with a complaint or a
14 petition for a writ of mandate, the lead agency shall lodge a copy
15 of the certified record of proceedings with the superior court.

16 (9) Any dispute over the content of the record of the proceedings
17 shall be resolved by the superior court. Unless the superior court
18 directs otherwise, a party disputing the content of the record shall
19 file a motion to augment the record at the time it files its initial
20 brief.

21 (10) The contents of the record of proceedings shall be as set
22 forth in subdivision (e) of Section 21167.6.

23 21155.11. This division does not apply to a housing project
24 undertaken in a housing sustainability district designated by a local
25 government if both of the following are met:

26 (a) The housing project meets the conditions specified in the
27 designation for the housing sustainability district.

28 (b) The housing project is required to implement appropriate
29 mitigation measures identified in the environmental impact report
30 prepared pursuant to Section 21155.10 to mitigate environmental
31 impacts identified by that environmental impact report.