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As California's housing crisis swirls through the national news, attention has focused on statewide upzoning bills. Sen. Scott Wiener's ballyhooed effort to allow 4-5 story buildings near transit was tabled until 2020, but earlier this fall the legislature effectively terminated single-family zoning, authorizing homeowners to add two "accessory" dwellings to their property.

Less widely appreciated is that the legislature has also empowered a state oversight body, the Department of Housing and Community Development (HCD), to make local governments rezone for much more housing while removing unnecessary constraints to development. It was not one big reform that put HCD in the driver's seat. Rather, as we show in a new working paper (issue brief, full paper), the department's newfound position is the byproduct of a number of individually modest reforms that work together to enable administrative interventions which would have been (legally speaking) unimaginable just a few years ago.

We argue, for example, that HCD can effectively double the amount of "zoned capacity" that local governments must provide, by requiring local governments to account for development probabilities in their housing plans. The department can also enact metrics and standards for whether the supply of housing within a local government's territory is substantially constrained. Leveraging these standards, HCD could require poorly performing local governments to commit to speedy, ministerial permitting of projects that conform to the locality's housing plan.

To put these ideas in context, let's turn the clock back to 1980. In that year, California enacted an ambitious statutory framework to make local governments accommodate their "fair share" of "regional housing need." But the law on the books was not enough to overcome entrenched local resistance. The Legislative Analyst estimates that between 1980 and 2010, developers produced only about half of the housing units that would have been needed to keep California housing prices from escalating faster than the national average. Similarly, during the most recent planning cycle, California's local governments permitted, on average, only about half of what was determined to be their share of regional housing need.

Some of the blame for these failures rests with the misbegotten process by which California determines regional "need" and then allocates production targets among

local governments. And some of the blame lies with the rickety state-law conveyer belt for converting housing targets into actual production.

Our new white paper focuses on the conveyor belt. It theory, it works like this: (1) a local government, after receiving its housing target, revises the housing element of its general plan, showing that there exist developable or redevelopable parcels with "realistic" zoned capacity to accommodate the locality's production target; (2) the draft housing element is submitted to the state housing department, HCD, for review and approval; (3) if HCD disagrees with the housing element's assessment of capacity, the department may require the local government to include "program actions" for rezoning and removal of other constraints; (4) the local government then enacts the housing element and implements the program actions; and finally (5) if the local government improperly denies a zoning-compliant project, the developer may sue under the state's Housing Accountability Act (HAA) to get her project approved.

This conveyor belt was prone to all sorts of breakdowns. But in the last couple of years, the legislature has substantially reinforced it. Among other things, the legislature has amended the HAA to prevent local governments from denying or reducing the density of a proposed housing project if any reasonable person could deem the project to be consistent with the general plan (which includes the HCD-approved housing element), notwithstanding local zoning and development standards that are more restrictive. This effectively reverses the traditional norm of deference to local governments on questions about the consistency of local zoning with the general plan, and allows developers to end-run restrictive zoning if a local government fails to complete a rezoning promised in its housing element.

Yet the reinvigorated HAA won't accomplish all that much unless housing elements are beefed up too. This is where HCD's new authority comes into play. Historically, the department's reach was tightly circumscribed. HCD could issue interpretive guidelines, but local governments were obligated only to consider them. HCD could find a housing element noncompliant, but if the local government then turned to the courts, the courts would likely approve it—deferring to the local government's judgment at the expense of the department's. HCD's review of housing elements was also frustrated by a lack of systematic, reliable information about local permitting practices, zoned capacity, and more.

All of this is changing. The legislature has authorized HCD to issue "standards, forms and definitions" concerning the analytic side of the housing element,

including the assessment of developable sites' capacity, while tightening the standards for what qualifies as a developable site. The department's new standard-setting charge extends to local governments' obligation to report annually to HCD on housing development applications, approvals, and processes. The legislature has also authorized HCD to decertify housing elements midcycle for failures of implementation, and backstopped decertification with fiscal penalties and more. This allows for both more immediate response by HCD to recalcitrant local governments (rather than having to wait through the eight-year cycle until it's time for a new housing element), and for more effective penalties (in the past, the stiffest penalty available against noncompliant local governments was a court order shutting down all development in the jurisdiction, a penalty that might not have stung for growth-averse cities). Finally, we argue that the legislature has tacitly ratified HCD's preferred, functional gloss on whether a housing element complies with state law, abrogating the traditional judicial standard, which was highly deferential to local governments.

The import of any one of these reforms, considered in isolation from the rest, would be modest. But they work together to fundamentally transform the position of HCD. Ambiguities in the new substantive requirements of housing element law provide occasion for HCD to exercise its "standards, forms, and definitions" authority. HCD's expanded authority over local governments' reporting will allow the department to obtain information it needs to make good decertification decisions, and also to shape the analytical side of the housing element. The legislative ratification of HCD's gloss on what is required for a housing element to comply with state law should result in judicial deference to HCD's findings of noncompliance. And judicial deference to the department's decertification decisions, coupled with newly serious penalties for remaining out of compliance, should make local governments much more willing to accede to the department's demands.

This is not to say that all is well with California's planning-for-housing framework. There's certainly important work that the legislature still needs to do. But it's equally important to ask whether HCD will have the necessary resources and leadership to take advantage of its new authority. The director's position has been vacant since late summer, and it's up to governor to choose the department's next leader. When he was running for office, Governor Newsom boldly announced that he would more than triple California's rate of housing production. The ball is in his court.