



Housing Element Site Inventories: Why Buffers and Excess Capacity Matter

No Net Loss Requirements

The No Net Loss Requirements Law (Government Code § 65863) ensures that assumptions jurisdictions make in Housing Element site inventories match what is actually built. A jurisdiction's Housing Element must identify adequate sites to accommodate its regional housing needs allocation (RHNA) at all income levels. A jurisdiction must make sure it maintains sites that can accommodate *both* the overall number of units projected and the number of units at each income level.

Unless jurisdictions have more sites in their Housing Element inventory than the minimum required, they may fall out of compliance if they:

1. Reduce a site's residential density.
2. Approve development applications with fewer units on the site than identified in the Housing Element.
3. Approve development applications with higher income units than stated in the Housing Element.

Process

When development proposals are received, jurisdictions must compare the proposal for that site to the assumptions in the Housing Element. If the proposal has fewer units, or different affordability assumptions, jurisdictions must demonstrate:

- **Buffer** - That their Housing Element has enough of a buffer that there are still available sites to meet the RHNA.

- **Higher than expected units** - Other developments identified in the Housing Element came in above the assumptions in the Housing Element.
- **Developments on sites not in the Housing Element** - Sites not identified in the Housing Element are moving forward with housing.

If none of the above are true, jurisdictions within 180 days after approval of the new development must:

- **Identify other sites**- Identify other sites that are eligible based on the criteria for Housing Element site inventories that created the shortfall.
- **Rezone** – Identify other sites that may require rezoning to accommodate the shortfall

The RHNA Buffer

To reduce the likelihood of having to rezone, it is a best practice to have 15 to 30+ percent more units listed in the inventory than are required to meet a jurisdiction's RHNA. *This is especially important for the moderate, low and very low-income categories.*

HCD allows jurisdictions to use zoned density as a proxy for lower income, as long as certain statutory requirements are met. These include counting sites zoned at a minimum of 20 or 30 units per acre as affordable, depending on jurisdictional size ¹. This is called the default density. While this is helpful in getting a certified Housing Element, it is likely that some sites that were considered affordable in the

¹ 20 DUA for suburban jurisdictions; 30 DUA for jurisdictions in a metropolitan county.

inventory based on zoned densities will not produce enough (or any) affordable housing. In this case, the buffer provides jurisdictions with the flexibility to use other sites to make up the difference. For example:

In the Housing Element, a jurisdiction listed a one-acre site, zoned at 30 units per acre. The jurisdiction assumed, for Housing Element purposes, all 30 units were affordable.

A few years after the adopting the Housing Element, the jurisdiction gets a proposal for 30 units on the site, but only five of those units are affordable.

Unless the jurisdiction had a buffer, there would be a shortfall of 25 affordable units, and the jurisdiction would need to rezone or show additional capacity somewhere else.

The need for a buffer or extra sites is most likely to arise in affordable units, because of the default density. However, jurisdictions could run into problems with market-rate units if developments come in at lower densities than anticipated. For example:

A jurisdiction listed a two-acre site, zoned at 15 units per acre, for a total of 30 above moderate units. If the actual development is 20 units, there would be a shortfall of 10 above moderate units.

If both examples happened, the jurisdiction would remain in compliance for above moderate because the shortfall of 10 is more than offset by the 25 extra from the first scenario. However, they would still need to make up the 25 low and very low units on another site or through rezoning.

A jurisdiction can provide a RHNA buffer in several ways. The most common is including more sites than necessary in the inventory. Other ways to buffer are to be conservative about the capacities of sites in the inventory, be conservative in estimating affordable units on sites (especially those zoned at default densities or above) or rezoning sites to a density above what is needed to accommodate the allocation.

While it is important to be realistic about what can feasibly be built on the inventory sites, these buffers give jurisdictions needed flexibility over the planning horizon to stay in compliance with state law, since many factors affect development trends and decisions.

Helpful Links

- [HCD No Net Loss Law Government Code § 65863 Memo](#)
- [HCD Housing Element Site Inventory Guidebook \(Government Code § 65583.2\)](#)