




Outlook

[PDF] Public Comment for 12/4/25 Planning Commission meeting

From Jack Farrell <jack@yesinmybackyard.org>

Date Thu 12/4/2025 6:01 AM

To PLANNING COMMISSION <planningcommission@ci.capitola.ca.us>

 1 attachment (94 KB)

12_4_25 Capitola Housing Element Program Obligations, Agenda Item 6C.docx.pdf;

Good morning,

Please find attached correspondence from YIMBY Law regarding item 6C of tonight's agenda.

Sincerely,

Jack Farrell *he/him*

Research Attorney

267-218-1147



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12/04/2025

City of Capitola
Planning Commission
Capitola City Hall
420 Capitola Avenue
Capitola, CA 95010

Re: Agenda Item 6C - Enforcement of Housing Element Commitments under State Law

Dear members of the Capitola Planning Commission:

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law sues municipalities when they fail to comply with state housing laws, including the Housing Element Law. YIMBY Law writes to remind the City of Capitola of its obligations under California Housing Element Law, Government Code §§ 65580 et seq., § 66300 (SB 330, the “Housing Crisis Act”) and the No Net Loss provisions of Government Code § 65863.

Government Code § 65583 requires each jurisdiction’s housing element to include “a program which sets forth a schedule of actions” that the city “is undertaking or intends to undertake” to implement the goals, policies, and objectives of the housing element. Once adopted and certified by HCD, these programs are not optional. They are enforceable commitments, and jurisdictions are required to follow through. Government Code § 65583(c) uses mandatory language: programs “shall” identify actions, timelines, and responsible agencies. The Legislature’s intent is clear—cities must not simply adopt programs as aspirational statements but must carry them out in good faith.

The City’s actions and statements regarding the Mall redevelopment program, identified as 1.7 in the Housing Element are fundamentally inconsistent, creating legal risk and undermining the Housing Element’s goals. The City has taken two mutually exclusive legal positions regarding the Mall rezoning:

The City has previously asserted that the Mall rezoning as described in Program 1.7 is not a capacity shortfall rezoning program subject to the strict one-year Housing Element Law deadline (Gov. Code § 65583.2(h)). This assertion relied on the claim that the C-R zoned Mall parcels currently allow unlimited residential density, meaning there was no

shortfall to rectify. This allowed the City to bypass a rezoning deadline that would have expired approximately one year ago.

Now, while advancing the rezoning to facilitate the Housing Element's assumed 48 dwelling units per acre (du/ac), the City's own consultant has stated that achieving 48 du/ac is not currently feasible under existing regulations and requires the proposed upzoning to update height and FAR standards. If the current zoning already provides unlimited capacity, then imposing a new, lower maximum density of 48 du/ac, coupled with numerous new constraints, constitutes a downzoning.

The proposed amendment would replace the current unlimited density allowance with a maximum of 48 du/ac. Under SB 330, a jurisdiction may not reduce the "housing capacity" of a site below what was allowed on January 1, 2018. The City's staff report claims compliance but has not publicly provided the required "no net loss" analysis.

Critically, the 48 du/ac maximum must be evaluated in light of multiple new constraints that were not part of the January 1, 2018 baseline, including a commercial space requirement (increased from 25,000 sq ft to 40,000 sq ft) that consumes FAR, a minimum 85-room hotel, reducing land area, prescriptive parking requirements, a 2.5% open space requirement, and newly proposed objective standards requiring new internal streets with 16-foot setbacks, further consuming developable area. Taken together, these constraints materially reduce the residential capacity of the site.

This is a clear and significant downzoning. No Net Loss provisions prohibit such a reduction in residential capacity on any parcel without an increase in capacity elsewhere in the jurisdiction. Moreover, the downzoning implicates a major Housing Element program. If Capitola wishes to alter or remove commitments in its housing element, it may only do so by following the statutory amendment process set forth in Government Code § 65585. This requires a public process including a public review period, HCD's review and comment, and a duly noticed public hearing and adoption of the amendment by the City Council.

We also encourage recognition of the CEQA-exempt status of this rezoning. Fulfilling Housing Element programs is not subject to CEQA review under California law. (Public Resources Code § 21080.085.) Because this action is squarely within the city's zoning authority under Government Code section 65850, no further environmental review is required. Conducting additional analysis or "tiering" from other studies would only introduce uncertainty, prolong the timeline, and expose the city to potential litigation from opponents who might use CEQA as a tactic for delay.

Without going through this process, Capitola cannot ignore or abandon the programs it committed to in its adopted housing element. Failure to comply with Housing Element law exposes Capitola to significant legal risk. This includes potential litigation under Government Code § 65587, enforcement actions by the California Attorney General, loss of state funding eligibility, and the risk of being subject to Builder's Remedy projects.

We urge you to take these responsibilities seriously to ensure compliance with state law and to help meet the urgent housing needs of Capitola and the region.

I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,

A handwritten signature in black ink that reads "Sonja Trauss". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

Sonja Trauss
Executive Director
YIMBY Law