# I’m Your Density: Avoiding a Costly Pitfall Under California’s No Net Loss Law

Feb 07, 2025

**Categories:**

Multifamily Matters Publications

**Authors:**

Craig D. Hardwick

In *Back to the Future*, George McFly fumbles his pick-up line by declaring, “I’m your density.” He was not a great romancer, but he might have made a good real estate developer.

The demand for housing in California has long exceeded the available supply, resulting in some of the highest housing prices in America. Although the California legislature cannot force anyone to build additional homes, it can require cities and counties to modify their zoning laws  to ensure there is enough land available on which to build the necessary housing, should a developer wish to do so.

As part of this effort, each California city and county is required to include in the Housing Element of its General Plan an inventory of housing sites necessary to meet the “reginal housing need allocation,” or RHNA, assigned to that city or county by the California Department of Housing and Community Development. The RHNA not only specifies the total number of housing units needed, but it also allocates that number among four separate income categories: very low income; low income; moderate income; and above moderate income. The department periodically updates each jurisdiction’s RHNA, and each jurisdiction must in turn update its Housing Element every eight years to address the updated RHNA.

Of course, a lot can change during those eight-year periods. A city or county which initially identified housing sites sufficient to meet its RHNA may find itself falling short after a few years if it has approved residential developments on those housing sites at densities lower (or at different income levels) than those contemplated in the Housing Element. To guard against this, California enacted Government Code Section 65863, known as the “No Net Loss Law.” The obligations created by that law generally apply only to cities and counties. However, those obligations can be shifted to the developer if the developer doesn’t do its due


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

diligence and carefully draft its development proposal, as discussed further below.

## California's No Net Loss Law

Under the No Net Loss Law, if a city or county approves a development proposal that calls for a lower density (or different income category allocation) than that set forth in the Housing Element, and if as a result the remaining housing sites in the city or county fail to meet the RHNA, then the city or county has 180 days to "identify and make available additional adequate sites to accommodate the jurisdiction's share of the regional housing need by income level."

The No Net Loss Law goes on to say that the city or county shall be "solely responsible for compliance . . . *unless* a project applicant requests in their initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need . . . In that case, the city, county, or city and county *may require the project applicant to comply* with" the requirement to find additional adequate sites (emphasis added).

## More Density, Certainly Not Less

The task of designing a housing project and obtaining development entitlements is difficult enough. The last thing a developer wants to do is make it harder by having to find "additional adequate sites" within a city or county to backfill gaps in the RHNA created by a proposal that fails to maximize the RHNA assigned to the development site.

To avoid this added and unnecessary burden, a developer should study the city or county Housing Element to determine the RHNA assigned to the development site, and then put forth an initial development plan which proposes density and income levels not less than the site's assigned RHNA. If the city or county thereafter rejects the proposal as too dense and asks you to submit a revised plan having a lower density, you can do so without having to bear the burden of finding additional adequate sites, since your *initial*


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

application did not create RHNA deficits.

So, to all you housing developers out there, take our advice and be like George McFly. When you find your true density, don't settle for, or propose, anything less.

Frost Brown Todd counsels investors, developers, local governments, nonprofits, and other key stakeholders on housing transactions across the country. We stay at the forefront of all legislative and regulatory updates within the industry and are ready to assist clients with navigating the ever-changing regulatory environment. For more information, please contact the authors or any attorney with Frost Brown Todd's Multifamily Housing industry team or Real Estate practice group.

---

## Multifamily Matters Blog

***Providing relevant legal perspectives to keep developers, investors, and lenders at the forefront of the multifamily industry in our footprint.***

Subscribe for Updates

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons