

# COUNTY OF SANTA BARBARA

## LEGISLATIVE ANALYSIS FORM

*This form is required for the Legislative Program Committee to consider taking an advocacy position on an issue or legislative item*

<b>BILL NUMBER:</b> "By-Right" Housing Proposal	<b>AUTHOR:</b> Governor
<b>INTRO/AMEND DATE:</b>	<b>AUTHOR'S POLITICAL PARTY:</b>
<b>BILL STATUS:</b>	

**1) BILL SUBJECT:**

"By-Right" Housing Proposal process change

**2) FROM DEPARTMENT:**

CEO

**3) IS THIS ITEM SPECIFICALLY REFERENCED IN THE LEGISLATIVE PLATFORM?**

No

**4) WHICH POLICY-RELATED MATTER IS OF CONCERN WITH THIS BILL?**

Affordable Housing, Land Use

**5) HOW WOULD THIS BILL IMPACT THE COUNTY? (*Current practices, responsibility, authority, pros/cons, affected programs and/or services, etc.*)**

Would expedite the affordable home building process by waiving the CEQA process. The criteria would consist of whether the local requirements are met, an infill sight, if the location criteria are met, and if the housing will include a certain % of affordable units. Will impose timelines on local governments and limit local discretions, but ultimately allow for more expedited development.

**6) IMPACT ON COUNTY PROGRAM:**

- |   |   |                                |
|---|---|--------------------------------|
| <input checked="" type="checkbox"/> Major | <input type="checkbox"/> Minor            | <input type="checkbox"/> None  |
| <b>SANTA BARBARA COUNTY IMPACT:</b>       | <input checked="" type="checkbox"/> Major | <input type="checkbox"/> Minor |
| <b>STATEWIDE IMPACT:</b>                  | <input checked="" type="checkbox"/> Major | <input type="checkbox"/> Minor |
|   |   | <input type="checkbox"/> None  |

*Explanation of Impacts:*

The proposal would decrease the ability of jurisdictions to conduct discretionary review of proposed attached affordable housing developments.

**7) WOULD THIS BILL IMPACT (*Legislative Principles*):**

- |   |   |  |
|---|---|--|
| a. Job growth and Economic Vitality?                      | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| b. Efficient service delivery and operations?             | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| c. Fiscal stability?                                      | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| d. Inter-agency cooperation?                              | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| e. Local control?   | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |
| f. Health and human services?                             | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |
| g. Community sustainability and environmental protection? | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |

*Additional Comments:*

Largest impact would likely be on Local Control, as discretionary review and CEQA would be hindered.



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**8) FISCAL IMPACT ON THE COUNTY:**

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Increase | <input type="checkbox"/> Revenue Decrease | <input checked="" type="checkbox"/> Unfunded Mandate |
| <input type="checkbox"/> Cost Increase               | <input type="checkbox"/> Cost Decrease    | <input type="checkbox"/> Undetermined                |
| <input type="checkbox"/> None                        |   |  |

*Additional Comments:*

Could be additional property taxes

**9) OTHER AGENCIES THAT SHOULD REVIEW THIS BILL:**

**10) CSAC POSITION ON BILL:**

- |  |                                 |   |
|--|---------------------------------|---|
| <input type="checkbox"/> Support               | <input type="checkbox"/> Oppose | <input type="checkbox"/> Support if Amended           |
| <input type="checkbox"/> Oppose unless Amended | <input type="checkbox"/> Watch  | <input checked="" type="checkbox"/> No position taken |

**11) OTHER LOCAL OR STATEWIDE ORGANIZATIONS THAT HAVE TAKEN A POSITION ON THIS BILL:**

*(Indicate support or opposition for each)*

**12) PROPOSED AMENDMENTS: (Attach separate sheet)**

**13) RECOMMENDATION:**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Support           | <input type="checkbox"/> Recommend Support to Board*     | <input type="checkbox"/> Support if Amended    |
| <input checked="" type="checkbox"/> Oppose | <input type="checkbox"/> Recommend Opposition to Board*  | <input type="checkbox"/> Oppose unless Amended |
| <input type="checkbox"/> Watch             | <input type="checkbox"/> Send to Board with No Position* | <input type="checkbox"/> No Position (Why?)    |

\* Indicates that the department believes that the Board of Supervisors should take a formal position on this bill

*Additional Comments:*

This proposal is similar to AB 2522 (Bloom) Attached Housing, which staff had previously recommended opposition. That bill stalled and the Legislative Committee did not take action. Following the previous recommendation, this is an Oppose Position due to the conflict with Local Control of the County's Legislative Principles.

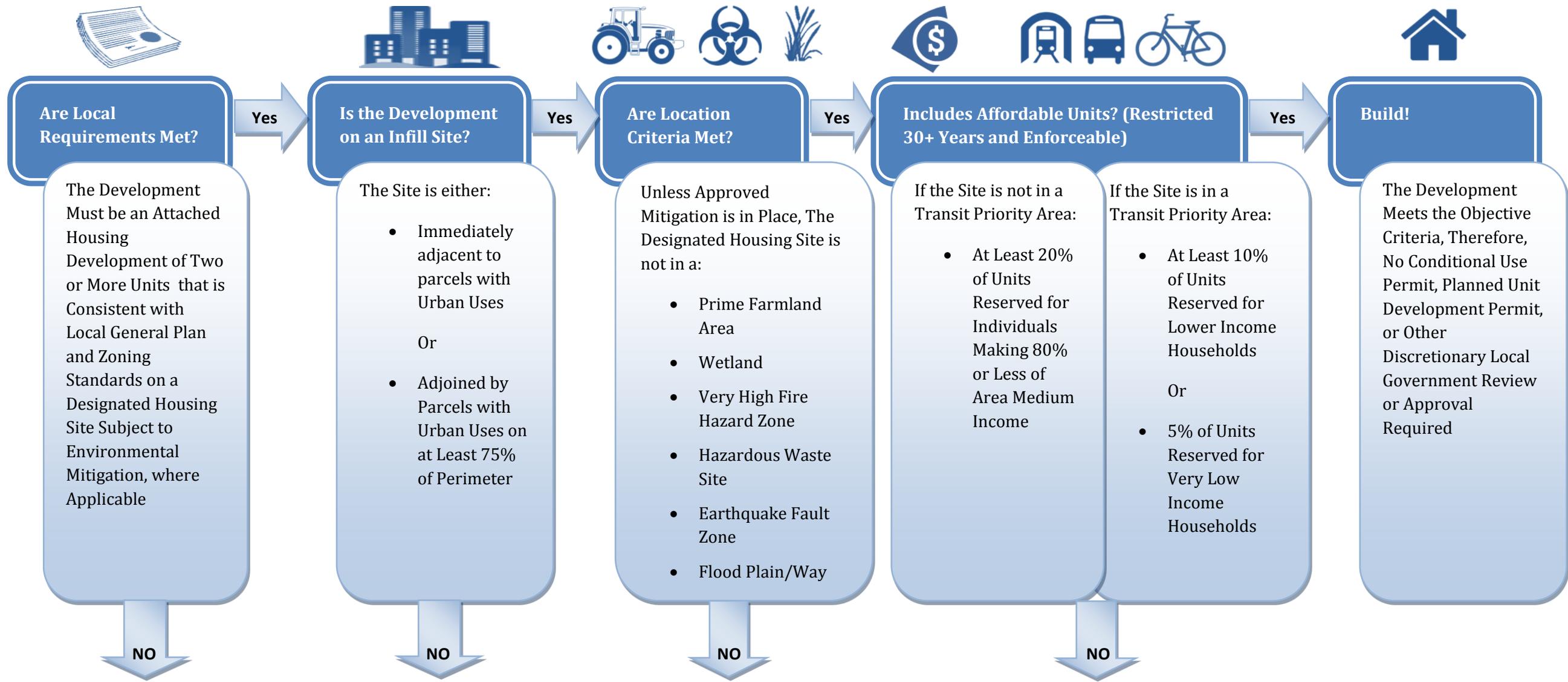
**14) LEGISLATIVE ANALYSIS FORM PREPARED BY:**

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# Proposed “By-Right” Process for Developments with Affordable Housing Units



**Are Local Requirements Met?**

The Development Must be an Attached Housing Development of Two or More Units that is Consistent with Local General Plan and Zoning Standards on a Designated Housing Site Subject to Environmental Mitigation, where Applicable

Yes

**Is the Development on an Infill Site?**

The Site is either:

- Immediately adjacent to parcels with Urban Uses
- Or
- Adjoined by Parcels with Urban Uses on at Least 75% of Perimeter

Yes

**Are Location Criteria Met?**

Unless Approved Mitigation is in Place, The Designated Housing Site is not in a:

- Prime Farmland Area
- Wetland
- Very High Fire Hazard Zone
- Hazardous Waste Site
- Earthquake Fault Zone
- Flood Plain/Way

Yes

**Includes Affordable Units? (Restricted 30+ Years and Enforceable)**

If the Site is not in a Transit Priority Area:

- At Least 20% of Units Reserved for Individuals Making 80% or Less of Area Medium Income

If the Site is in a Transit Priority Area:

- At Least 10% of Units Reserved for Lower Income Households
- Or
- 5% of Units Reserved for Very Low Income Households

Yes

**Build!**

The Development Meets the Objective Criteria, Therefore, No Conditional Use Permit, Planned Unit Development Permit, or Other Discretionary Local Government Review or Approval Required

NO

NO

NO

NO

**Local Review Process Required**

The Development is Subject to Current Local Entitlement Process, According to the Discretionary Review Requirements of Individual Jurisdictions.

## **Streamlining Affordable Housing Approvals – Proposed Trailer Bill**

**SECTION 1.** Section 65400.1 is added to the Government Code, to read:

65400.1. (a) A development applicant or development proponent pursuant to Section 65913.3 of the Government Code may submit information describing the development, including, but not limited to, land use and zoning designations and requested permit(s) for the development to the Department of Housing and Community Development in a reporting format to be made available. The information submitted shall be compiled along with information pursuant to subparagraph (B) of subsection (2) of subdivision (a) of Section 65400 and Section 65588 of the Government Code as follows:

- (i) Upon receipt of a local government determination regarding the development submittal, or
  - (ii) Issuance of a building permit for the development.
- (b) The Department of Housing and Community Development shall annually review and report on its website the information that has been submitted pursuant to this section.

**SEC. 2.** Section 65913 of the Government Code is amended to read:

65913. (a) The Legislature finds and declares that there exists a severe shortage of affordable housing, especially for persons and families of low and moderate income, and that there is an immediate need to encourage the development of new housing, not only through the provision of financial assistance, but also through changes in law designed to do all of the following:

- (1) Expedite the local and State-supported residential development process.
- (2) Assure that local governments zone sufficient land at densities high enough for production of affordable housing.
- (3) Assure that local governments make a diligent effort through the administration of land use and development controls and the provision of regulatory concessions and incentives to significantly reduce housing development costs and thereby facilitate the development of affordable housing, including housing for elderly persons and families, as defined by Section 50067 of the Health and Safety Code.

These changes in the law are consistent with the responsibility of local government to adopt the program required by subdivision (c) of Section 65583.

(b) The Legislature further finds and declares that the costs of new housing developments have been increased, in part, by the existing permit processes and by existing land use regulations and that vitally needed housing developments have been halted or rendered infeasible despite the benefits to the public health, safety, and welfare of those developments and despite the absence of adverse environmental

impacts. It is, therefore, necessary to enact this chapter and to amend existing statutes which govern housing development so as to provide greater encouragement for local and state governments to approve needed and sound housing developments.

(c) The provisions of Section 65913.3 of the Government Code promote the attainment of Section 65580 of the Government Code and also facilitate significant actions designed to affirmatively increase fair housing choice, furthering the objectives of the Federal Fair Housing Act, 42 U.S.C. 3601, and implementing regulations.

**SEC. 3.** Section 65913.3 is added to the Government Code, to read:

65913.3. (a) For the purposes of this section, the following terms shall have the following meanings:

(1) "Attached housing development" or "development" means a newly constructed structure containing two or more dwelling units that is a housing development project, as defined by subdivision (2) of subsection (h) of Section 65589.5 of the Government Code, but does not include a second unit, as defined by subdivision (4) of subsection (i) of Section 65852.2 of the Government Code, or the conversion of an existing structure to condominiums.

(2) "Designated housing sites" means sites designated to allow housing development by the general plan, a zoning ordinance, or for which a certified environmental review document includes provisions to mitigate potential harm.

(3) "Land-use authority" means any entity with state-authorized power to regulate land-use permits and entitlements conferred by local governments.

(4) "Land-use restriction" means covenants restricting the use of land, recorded regulatory agreements, or any other form of an equitable servitude.

(5) "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a service interval frequency of 15 minutes or less during the morning and afternoon peak weekday commute periods, and offering weekend service.

(6) "Public agency" means a federal, state, or local government agency, or a local or regional housing trust fund which has been funded or chartered by a federal, state, or local government agency.

(7) "Required by law to record" means, but is not limited to, a development applicant or development proponent is required to record a land-use restriction based on any of the following:

(i) As a condition of award of funds or financing from a public agency.

(ii) As a condition of the award of tax credits.

(iii) As may be required by a contract entered into with a public agency.

(8) "Transit priority area" means an area within one-half mile of a major transit stop that is existing or planned within the adopted general plan or specific plan of a local government.

(9) "Urban uses" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(b) A development that satisfies all the following criteria shall be a permitted use by right as that term is defined in subdivision (i) of Section 65583.2 of the Government Code:

(1) The development applicant or development proponent has submitted to the local government its intent to utilize this authority, and certifying under penalty of perjury that, to the best of its knowledge and belief, it conforms with all other provisions identified herein.

(2) The development is consistent with objective general plan and zoning standards in effect at the time that the subject development is submitted to the local government pursuant to this section.

(3) The development is located on a site that is either immediately adjacent to parcels that are developed with urban uses or at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.

(4) The development must be an attached housing development, for which the development applicant or development proponent already has recorded, or is required by law to record, a land-use restriction, which shall require all the following:

(i) A duration of at least 30 years or more.

(ii) Enforceability by a public agency or by any member of the public.

(iii) For developments within a transit priority area, a restriction of the development's real property to a level of affordability equal to or greater than either of the following:

(A) At least ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) At least five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(iv) For developments not within a transit priority area, a restriction of the development's real property to a level of affordability equal to or greater than at least twenty (20) percent or more of the residential units restricted to and occupied by individuals whose income is eighty (80) percent or less of area median gross income.

(5) Except for developments that are located on designated housing sites, the development is not located on a site that is any of the following:

(A) Either "prime farmland" or "farmland of statewide importance," as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation.

(B) Wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code; however, this limitation shall not apply to sites excluded from the specified hazard zones by a local agency pursuant to subdivision (b) of Section 51179 of the Government Code or sites that have adopted sufficient fire

hazard mitigation measures as may be determined by their local agency with land-use authority.

(D) Hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed-uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in the official maps published thereby.

(F) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a floodplain development permit pursuant to Sections 59 and 60 of Title 44 of the Code of Federal Regulations.

(G) Within a flood way as determined by maps promulgated by the Federal Emergency Management Agency, unless the development receives a no rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(c) If the applicable city, county, or city and county determines that the development is inconsistent with objective general plan and zoning standards, then it must provide the development proponent written documentation of which standard or standards the development is not consistent with, as well as explain why the development is not consistent with that standard or standards, all within thirty (30) calendar days of submittal of the development to the local government pursuant to this section. If the documentation described in this subsection fails to identify the objective standard or standards that the development is not consistent with, if it fails to provide an explanation of why it is inconsistent therewith, or if it is not provided to the development proponent within thirty (30) calendar days of submittal, then for the purposes of this section, the development shall be deemed to satisfy paragraph (2) of subdivision (b) of this section.

(d) Any design review of the development shall not exceed ninety (90) days from the submittal of the development to the local government pursuant to this section, and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section and the effect thereof.

(e) A development that satisfies subdivision (b) of this section shall not be subject to the requirements of Section 65589.5 of the Government Code in order to be accorded by right status under this section.

(f) The review of a permit, license, certificate, or any other entitlement, including, but not limited to: the enactment and amendment of zoning or design review ordinances or guidelines, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps, by any public agency with land-use authority over any development that satisfies subdivision (b) of this section shall be ministerial.

(g) This section shall be enforceable pursuant to a writ of mandate issued pursuant to Section 1085 of the Code of Civil Procedure.

(h) The development applicant or development proponent may submit information describing the development pursuant to Government Code Section 65400.1(a).

(i) The Legislature finds and declares that this section shall be applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is a matter of vital statewide importance.

(j) Any and all individuals displaced by a development that is approved through the ministerial process authorized by this section shall be accorded relocation assistance as provided in the California Relocation Assistance Act set forth in Section 7267.8 et seq.

(k) This section shall apply, notwithstanding anything to the contrary contained in this code or in any other law.



® May 31, 2016

TO: CSAC Housing, Land Use and Transportation Policy Committee

FROM: Kiana Valentine, Legislative Representative  
Chris Lee, Legislative Analyst

RE: **Governor's May Revision "By-Right" Multifamily Housing Proposal**

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The Governor proposed budget trailer bill language (TBL) that would seek to streamline the development of attached multifamily housing projects that include a specified percentage of units affordable to households with lower incomes. Unlike AB 2522 (Bloom), which was limited in application to cities and unincorporated areas with higher population densities, the TBL would apply to any attached housing project that is located on a site designated and zoned for housing in the local government's general plan or zoning ordinance and that is surrounded on at least 75% of its perimeter by urban uses. Given the fact that the Bloom proposal stalled in the Assembly prior to its first policy committee hearing, it is unclear whether the Governor's broader proposal will be able to gain any political traction.

Key elements of the Governor's "by-right" housing approval proposal include:

**Projects Eligible for By-Right Approval.** As defined in the TBL, an attached housing development projects can include multifamily residential projects, vertical mixed use projects with neighborhood commercial on the first floor, or transitional and supportive housing. Projects consistent with the affordability criteria in the TBL as well as the objective general plan and zoning standards at the time of submitting the application must be approved by-right. For the purposes of the TBL, by right means that a conditional use permit, a planned development permit, or another discretionary local government review or approval that would constitute a project for the purposes of CEQA cannot be required. Design review is allowed to the extent that it does not constitute a discretionary project for the purposes of CEQA.

**Affordability Requirements.** In transit priority areas (TPAs)<sup>1</sup> the development must include either ten percent of units affordable to low income households or five percent of units for very-low income households in order to be eligible for by-right approval. Outside of TPAs, a project must include at least twenty percent of the units affordable for households making eighty percent or less of the median area income. The affordability provisions prescribed by the TBL must be recorded against the development's property for a term of 30 years or more and be enforceable by a public agency or any member of the public.

**Site Restrictions.** Unless a project is located on a designated housing site (i.e. already identified for housing in the general plan and zoning ordinance for housing), the TBL "by-right" provisions are not applicable to housing projects on sites that are located on prime farmland or farmland of statewide significance, certain sites with hazardous waste issues, certain areas with very high fire hazard severity zones, wetlands, earthquake fault zones, floodplains or floodways.

<sup>1</sup> TPAs are defined as areas within one-half mile of an existing or planned transit stop with rail transit service, a ferry terminal also served by bus or rail, or a bus transit stop with at least 15-minute peak-hour headways.

**Problematic Timeframes for Local Review.** The TBL unfortunately includes timeframes whereby local governments would have to make a written determination as to whether a proposed housing development was consistent with objective general plan and zoning standards for the site. If the local government fails to provide an explanation why a project is inconsistent within thirty days or fails to respond, then the project is deemed consistent with the standards and eligible for by-right approval. The TBL also places a time limit of ninety days on local government design review of an eligible housing development. CSAC has consistently opposed such review timeframes and remedies, especially given the pre-existing authority afforded project proponents under the Permit Streamlining Act.

**Enforcement and Reporting.** The TBL would allow a court to enforce the law by a writ of mandate, thereby a local government to approve a project by-right when the project is entitled to such approval under this proposal. The bill would also allow project proponents or applicants to submit information on performance of local governments under the “by-right” approval provisions, which would be compiled by the Office of Planning and Research along with local agency’s annual reports on their progress in meeting their share of the Regional Housing Needs Allocation. The information would be annually review and reported on the Department of Housing and Community Development website.

**Policy Considerations.** CSAC staff is seeking policy guidance from the committee to determine what the association’s stance should be on the potential streamlining opportunities for housing developments under the proposed TBL. While the proposal would limit local discretion and impose arbitrary timelines for local government review, it would also facilitate more expeditious development of affordable and market rate housing that is consistent with both objective standards in adopted local plans and in non-discretionary design review processes. Recall that CSAC’s platform recognizes the a statewide affordable housing crisis and the HLT Policy Committee adopted priorities that included direction to staff to find ways for counties to proactively partner with cities and the state to address a variety of housing issues.

## Policy Questions Regarding “By-Right” Housing Proposal

1. Does your county require a use permit or some other discretionary permit for the construction of attached multifamily housing projects within zones that are designated to accommodate multifamily attached housing?
  - a. If so, would you be concerned that qualified projects would only be subject to non-discretionary review?
  - b. If not, do you have concerns related to non-discretionary processes your county has in place (e.g. design review, etc.) that should be listed in the bill as applicable to eligible projects?
2. The Administration asserts that thoughtful upfront planning through the General Plan and specific plans and associated public outreach and participation and CEQA review are sufficient to capture community input and potential environmental impacts at the project level. Do you agree, disagree, and why?
3. Are the affordability standards too high or too low for a given project context? I.E. 10% low or 5% very-low in areas with high-quality transit<sup>1</sup>, or 20% affordable to households making less than 80% of the “median area income” everywhere else.
  - a. Too low in TPAs?
  - b. Too high outside of TPAs?
4. Are you concerned with timeframes for local agency review? CSAC has typically opposed such requirements.
  - a. 30 days to determine consistency with “objective” zoning/general plan standards; deemed consistent if agency fails to respond.
  - b. 90 days for design review.

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<sup>1</sup> Areas within one-half mile of an existing or planned transit stop with rail transit service, a ferry terminal also served by bus or rail, or a bus transit stop with at least 15-minute peak-hour headways.

## **Relevant CSAC Platform Language**

### Section 1: GENERAL PRINCIPLES

- Counties have and must retain a primary responsibility for basic land use decisions.

### Section 2: THE COUNTY ROLE IN LAND USE

#### C. Environmental Analysis

- The environmental review process under the California Environmental Quality Act (CEQA) provides essential information to be constructively used in local decision-making processes. Unfortunately, the CEQA process is too often used as a legal tool to delay or stop reasonable development projects.
- The CEQA process and requirements should be simplified wherever possible including the preparation of master environmental documents and use of tiered EIRs and negative declarations, including Climate Action Plans and associated environmental impact reports for tiering under CEQA. The length of environmental reports should be minimized without impairing the quality. Further, California Counties 48 other public agencies (federal, state, regional, affected local jurisdictions, special districts, etc.) should participate in the environmental review process for plans and projects in order to provide a thorough review and analysis up front and avoid conflicts in future discretionary actions.

### Section 3: STATE ROLE IN LAND USE

- Local government recognizes that state government has a legitimate interest in proper land use planning and utilization of those lands which are of critical statewide concern. The state interest shall be statutorily and precisely defined and strictly limited to those lands designated to be critical statewide concern in concert with attainable and specified state goals and policies. The state's participation in land use decisions in those designated areas shall be strictly limited to insuring the defined state interest is protected at the local level. Any regulatory activity necessary to protect the state's interest, as defined in statute, shall be carried out by local government.
- Adequate financial resources shall be provided, before a state-mandate is activated, to insure local government has the ability to carry out state-mandated planning requirements.

### Section 6: HOUSING

- Housing is an important element of economic development and essential for the health and wellbeing of our communities. The responsibility to meet the state's housing needs must be borne by all levels of government and the private sector. CSAC supports a role by the state Department of Housing and Community Development that focuses on assisting local governments in financing efforts and California Counties advising them on planning policies-- both of which strive to meet the state's housing needs. HCD's role should focus on facilitating