



May 18, 2016

To: All Members of the Assembly and Senate

Re: Development “By Right” Proposal for Affordable Housing - **STRONG OPPOSE**

We write to express our strong opposition to the development “by right” proposal. The proposal is a direct attack on local governments and local communities which could easily have the perverse effect of **reducing** affordable housing, exposing children to toxic air pollution, increasing traffic and urban sprawl, and completely preempting all local control over housing development.

The proposal would allow developers to avoid any local permitting process and instead require ministerial, “by right” land use entitlements for giant projects that include only token affordable housing and are not located in urbanized areas. The proposal would exempt even major developments from environmental review pursuant to the California Environmental Quality Act (“CEQA”). Development “by right” would contribute to urban sprawl, prevent local agencies from shaping development in their communities and deprive local governments of the ability to protect its citizens from major public health impacts, such as childhood asthma and other illnesses. It is both dangerous and unnecessary. “By right” is totally wrong.

The development “by right” proposal is **not** about providing affordable housing on infill sites in urbanized areas. Instead, the bill would allow 95% of the development, no matter how large, to be market rate luxury housing and require only 5% affordable housing. This gift to developers is not limited to urban infill. Instead, the bill would allow development “by right” in undeveloped, unincorporated areas as long as the parcel is adjacent to virtually any existing development, including a lone, single family house. Finally, the bill prohibits local government from protecting existing affordable housing from being replaced with luxury housing, so long as that housing provides token affordable housing. This would encourage a net **decrease** of affordable units.

Even more perverse, this proposal would preempt **more stringent** affordable housing requirements. For example, San Francisco currently requires developments to provide at least 15% affordable housing and is considering increasing that requirement to 25%. This proposal would instead allow developers to

demolish existing affordable housing, displace the residents, and substitute a high rise luxury apartment building so long as 5% of the units were affordable. The City would be powerless to stop it.

By preempting the ability of local governments to exercise their judgment to shape development, this proposal is a not-very-subtle exemption that blows a hole in CEQA. The proposal deprives local governments of their historic rights to have some control over new development. However, unlike existing CEQA exemptions and streamlining provisions for affordable housing, infill and transit priority projects, development "by right" is not limited to projects unlikely to result in significant environmental impacts. Instead, it would simply tie the hands of local government in approving major development projects with significant impacts on local communities. CEQA is vital to protecting California's public health and natural resources. Degraded land, air and water quality, and human health is an ongoing crisis across the State, and urban areas are no exception. Not only are residents of cities already exposed to air pollution and hazardous materials which are often concentrated in low income disadvantaged communities, but cities and the many other areas touched by this proposal are also home to various natural features, such as creeks, parks, and wildlife areas, that are sensitive to degradation and pollution.

Development "by right" ignores the many serious environmental and public health impacts infill development can have in urban areas. For example, construction of residential high rise projects in cities like Los Angeles and Oakland causes high concentrations of air pollutants, such as nitrous oxides and ozone, that often exceed local Air District thresholds for health and safety along with carcinogenic exhaust from diesel engines. And often times, there are multiple construction projects happening at one time in a small area magnifying the danger to current residents, especially children already victimized by rampant childhood asthma. These projects can cause serious health problems to nearby residents and future occupants of these buildings. This proposal would prevent local government from protecting its residents from these health hazards.

Furthermore, demolishing old buildings containing toxic materials like asbestos can cause harmful materials to leech into soil and groundwater in cities. In cities across the country, the threats to clean water are very real. Constructing on sites containing hazardous waste can expose construction workers and neighbors to toxic and carcinogenic chemicals. Grading for construction in cities mobilizes contamination leading to contaminated water not only in the cities themselves, but downstream in rivers and bays and along the coastline. Again, local government would be powerless to prevent these dangerous impacts.

Currently, local governments engage in the CEQA process to evaluate and prevent these dangers. By giving permits to developers "by right," local governments would be prohibited from performing their historic duties under CEQA to protect their citizens. There are many such threats that are addressed only by CEQA:

- ✓ Only CEQA requires an agency to consider disproportionate impacts on communities of color and low income communities.
- ✓ Only CEQA distinguishes between pollution sources based on their location, such as a refinery across the fence from housing project or a power plant upwind of a low income community.
- ✓ Only CEQA requires an agency to assess risks to construction workers and people nearby from exposure to soil or groundwater contamination prior to construction.

- ✓ Only CEQA requires an agency to analyze, disclose and mitigate whether the resultant cancer risk is acceptable for a newly proposed use.
- ✓ Only CEQA requires public agencies to assess groundwater overdraft and contamination.
- ✓ Only CEQA addresses water pollution from runoff from roads and other sources of pollution.
- ✓ Only CEQA requires public agencies to analyze and mitigate a project's traffic and public transportation impacts.
- ✓ Only CEQA requires public agencies to consider a project's impacts on parks, schools, bike paths, community centers and public spaces.
- ✓ Only CEQA requires agencies to consider a project's impact on water and sewage systems, roads, and fire and police facilities.
- ✓ Only CEQA requires public agencies to coordinate local land use decisions to protect adjoining communities from incompatible development.
- ✓ Only CEQA requires an agency to consider the cumulative impacts from many projects.
- ✓ Only CEQA requires an agency to consider alternatives to the proposed project.

CEQA mandates and enables local agencies to consider these environmental and public health risks. General plans and zoning regulations are written with the expectation that individual projects will be reviewed once proposed. The CEQA review process also affords the public an opportunity to lend its voice, and in many instances, crucial expertise, to city planning. Without the careful analysis that CEQA requires during environmental review, many of these issues will fall by the wayside thus contributing to more air and water pollution and higher health risks to city residents. Furthermore, limiting the public's ability to participate in city planning is not only directly counter to the spirit of CEQA, but would be a detriment to everyone, including city leadership, workers, residents, and developers.

We understand the need for more housing and other infill development, and support worthy projects. But development "by right" goes too far. By precluding environmental analysis and readily available mitigation measures that can protect local residents, this proposal puts the health and well being of people at risk, especially children. Simply put this proposal would be a disaster for the environment, the public and the future residents of these developments.

Furthermore, development "by right" is unnecessary. **CEQA already provides many exemptions for affordable housing** – exemptions that incorporate standards to protect the environment, the public and affordable housing residents. In addition, the transit priority provisions of CEQA also provide a specific streamlining process for projects that commit to providing affordable housing. Development "by right" would conflict with these existing CEQA streamlining and exemption provisions:

- The Government Code and CEQA exempt residential projects that are proposed pursuant to a previously approved specific plan. (GC § 65457; 14 CCR § 15182)

- The Government Code and CEQA exempt residential zoning changes that are proposed pursuant to a previously approved specific plan. (GC §§ 65457, 65453; 14 CCR § 15182)
- The Government Code and CEQA exempt residential planned unit developments that are proposed pursuant to a previously approved specific plan. (GC § 65457; 14 CCR § 15182)
- CEQA exempts certain low-income housing projects. (PRC § 21159.23)
- Except for peculiar project or site impacts, CEQA exempts projects that are consistent with the development density in existing zoning, a community plan, or general plan policies. (PRC § 21083.3; 14 CCR § 15183.)
- CEQA exempts infill projects in urban areas when effects have been addressed in a planning decision or by uniformly applicable development policies. (PRC § 21094.5; 14 CCR § 15183.3)
- CEQA allows agencies to streamline infill by addressing greenhouse gas emissions at a programmatic level (in a general plan, long range development plan, or a separate GHG reduction plan), instead of on a case-by-case basis. (GC § 65457; PRC §§ 21083.3, 21084, 21094, 21159.28, 21155.1; 14 CCR § 15183.5))
- CEQA exempts affordable housing projects that meet certain criteria. (PRC § 21159.21; 14 CCR § 15194)
- CEQA exempts residential infill projects that meet certain criteria. (PRC § 21159.21; PRC § 21159.24; 14 CCR § 15195)
- CEQA exempts the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcel, meeting certain criteria. (14 CCR § 15315)
- CEQA exempts in-fill development that is consistent with the general plan and zoning and is on up to five acres that has no habitat or significant impacts. (14 CCR § 15332)
- CEQA exempts the conversion of an existing rental mobile home park to a resident initiated subdivision, cooperative, or condominium for mobile homes. (PRC § 21080.8; 14 CCR § 15282)
- CEQA exempts the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county pursuant to state law. (PRC § 21080.17; 14 CCR § 15282; Ref: GC §§ 65852.1, 65852.2)
- CEQA exempts consideration of, among other issues, aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area. (PRC § 21099)

Simply put, development “by right” is not about providing affordable housing in urbanized areas. It would create a broad expansion of the current exemptions and streamlining provisions for affordable housing projects, while contributing to sprawl and eliminating every single protection for the environment and the public contained therein. It would be a disaster for local government, local communities, the environment and the citizens of California.

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For these reasons, we strongly and unequivocally oppose development "by right" and urge your opposition.

Sincerely,

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