



October 27, 2023

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to environmental reviews and housing development fees (A.G. File No. 23-0025, Amendment #1).

Background

Local Governments Rely on Various Local Revenue Sources to Serve Their Communities. Local governments rely on a variety of taxes and fees to fund their services, like schools, fire and police, public works, and parks. The property and sales taxes generally are the largest sources of local tax revenue for cities and counties. However, constitutional restrictions on raising property taxes and voter approval requirements to change or enact new taxes restrict local governments' revenue raising ability. In addition to taxes, local governments levy a variety of fees. Examples include parking meter fees, building permit fees, regulatory fees, and judicial fines and penalties. Fees do not require voter approval and are therefore a relatively easier means of raising local revenue to support specific services.

Local Government Planning and Approval of New Housing. California's cities and counties make most decisions about when, where, and to what extent housing will be built. Specifically, cities and counties enact zoning ordinances to set property-specific land use requirements. A community's zoning ordinances typically determine how land can be used—such as for single family homes, multifamily homes, or commercial buildings. In addition, zoning ordinances also set the rules for the size and design of buildings. As a result, zoning controls how much housing a community can build. However, state law requires cities and counties to approve those housing projects that meet certain conditions.

Local Governments Authorized to Levy Fees on New Housing Developments. State law authorizes local governments to levy fees on housing developers, known as a development fee.

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Rather than supporting general purposes, development fees are intended to pay for services needed to build new housing or to offset the impacts of growth on the community. State law requires development fees be supported by an analysis establishing the relationship between the fee amount and the use for which it is collected, and authorizes developers to request an audit of the fees, but generally the law does not establish a fee cap. For example, a local government could impose a development fee on a new housing project to pay for the costs of expanding water and sewer lines and adding lanes to roads to support more traffic. (Under current law, fees to mitigate the impact of traffic are often calculated based on vehicle miles traveled—an estimate of the total additional miles driven by all drivers in the area as a result of the project.) Development fees contribute to the developer's total cost of construction, thereby increasing the cost of housing. Recent studies of development fees levied in a sample of California cities found that total fees frequently amounted to tens of thousands of dollars per unit being constructed. Additionally, local governments and developers can enter into development agreements. These negotiated contracts establish conditions and requirements on proposed projects. For example, an agreement could require the developer to build or improve a local park. The extent to which these agreements impact project costs is uncertain.

Review of Environmental Impacts Often Required on New Housing and Infrastructure Projects. The California Environmental Quality Act (CEQA) was enacted in 1970 in order to ensure that state and local entities consider the environmental impacts of their decisions regarding projects. Under CEQA, projects include those carried out by state and local entities themselves and private projects. For example, a project could include a housing development, transportation facility expansion, utility infrastructure, or other construction project undertaken by a private company, state, or local entity. A project that may cause a significant change in the environment is subject to CEQA review (1) if it is subject to state or local approval and (2) does not fall within an exemption identified in state statute or regulation. (We discuss some of these exemptions further below.)

CEQA Review Provides Information About Potential Impacts to the Public. Under CEQA, the lead public entity—which is either carrying out the project, or in the case of a private project, has responsibility for overseeing or approving the project—must first conduct a preliminary analysis to determine whether a project may have significant environmental impacts. If the lead entity finds that a project may create possible significant impacts, then it is required to produce and certify an Environmental Impact Report (EIR). An EIR provides detailed information about a project's likely effect on the environment, considers ways to mitigate significant adverse environmental effects, and examines alternatives to the project. If an EIR finds that a project will have significant adverse environmental impacts, a public entity is prohibited from approving the project unless one of the following two conditions is met: (1) the project sponsor makes modifications that substantially lessen the adverse environmental effects or (2) the public entity finds that economic or other project benefits outweigh the adverse environmental effects.

CEQA Enforced Through Litigation. Public entities are responsible for their own compliance with CEQA requirements. However, members of the general public—such as individuals, other public entities, and private or nonprofit organizations—have the authority to enforce CEQA through civil litigation. For example, a CEQA lawsuit may allege that an EIR is deficient because it did not provide for adequate measures to mitigate the negative environmental effects of the project or consider appropriate alternatives to the project that would reduce its environmental harm.

CEQA Can Delay Projects or Reduce Project Activity. The CEQA process can provide valuable information to decision-makers and help to avoid unnecessary environmental impacts. However, it

can also delay a project's schedule for a variety of reasons. For instance, it can take significant time to prepare and certify an EIR. Additionally, if a CEQA lawsuit is filed challenging a project's EIR, the project is often delayed until the lawsuit is resolved. Additionally, in some cases, CEQA can result in project sponsors reducing the size and scope of a project, or even potentially not undertaking a project, in response to concerns raised during the process.

Various Types of Projects Covered by CEQA Exemptions and Streamlining Provisions. As mentioned above, some projects are exempt from CEQA by regulation or statute. In recent years, the Legislature has expanded the types of projects that are excluded from the requirements of CEQA by statute, including housing projects that meet certain specified criteria. In addition, the Legislature has provided for a more streamlined process with regard to CEQA legal challenges for specified types of projects, including certain housing, retail, commercial, energy infrastructure, water-related, and transportation projects.

Proposal

Limits Type of CEQA Litigants. Under the measure, the general public could no longer file lawsuits alleging noncompliance with CEQA for housing and related infrastructure, utility, and public service projects. Instead, under the measure, such lawsuits could only be filed by (1) the District Attorney of the county in which the project is located or (2) the California Attorney General for projects that span multiple counties.

Caps Some State and Local Fees. The development fees levied by local entities on new housing could not exceed 2 percent of the construction costs. For example, fees levied by a city and special district would be capped at 2 percent of labor and construction costs. Additionally, regulatory fees levied by the state on housing, infrastructure, utility, or public service projects could not exceed 1 percent of the construction costs. The state regulatory fee cap would not apply to fees expressly authorized in state law.

Prohibits Use of "Vehicle Miles Traveled." Fees related to vehicle miles traveled could not be levied on new housing, infrastructure, or public service projects.

Major Fiscal Effects

Reduced Local Government Development Fee Revenue. The 2 percent cap on local government development fees would reduce local government revenue likely by at least hundreds of millions of dollars per year, potentially exceeding \$1 billion per year. The overall effect would depend on how the measure is interpreted by the courts, and effects would vary by jurisdiction based on the current fee levels and construction costs in the area. To the extent local governments increase the use of development agreements in response to the cap on fees, these development agreements could offset local governments' costs associated with development.

Savings From Fewer CEQA Lawsuits on Public Projects. Most CEQA lawsuits are not filed by District Attorneys or the California Attorney General. By limiting CEQA lawsuits to these entities, the measure would reduce the number of CEQA lawsuits filed for housing and related infrastructure, utility, and public service projects. To the extent that this results in fewer lawsuits being filed against public projects—such as government-sponsored affordable housing, water, or electric utility projects—this could shorten project time lines and reduce the costs incurred by public entities to complete these projects. The amount of savings to state and local governments is uncertain but potentially significant and would depend on how broadly the measure is interpreted by the courts.

CEQA Enforcement-Related Costs. Depending on the implementation of the measure and decisions by District Attorneys and the California Attorney General, these entities could incur new costs associated with enforcing CEQA for housing and related infrastructure, utility, and public service projects.

Increased Housing Production. The measure likely would increase housing production to an unknown amount. Housing projects would be less likely to be downsized due to environmental mitigation efforts and projects would be more likely to move forward due to fewer lawsuits. Additionally, fewer lawsuits could allow for housing to be built more quickly. Furthermore, lower development fees on new housing could make more housing projects feasible for developers.

Other Economic Effects. If the measure results in more new construction, it could have other fiscal effects on state and local governments. For example, additional housing construction could increase property tax revenue going to local governments and schools. More housing also could mean more people living in the state. More people would mean more tax revenues but also increased government costs to provide public services. These changes are uncertain, but potentially significant.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects.

- Reduced local government development fee revenue, likely at least hundreds of millions of dollars per year, and potentially exceeding \$1 billion per year.
- Uncertain, but potentially significant, savings to state and local governments as a result of lower project costs due to fewer CEQA lawsuits being filed against public projects.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Joe Stephenshaw
Director of Finance