

Attachment A

Streamlining Affordable Housing Approvals Trailer Bill Technical Modifications (6-10-16)

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:

(1) Upon receipt of a local government determination regarding the development submittal.

(2) 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-, and so as to assure that economic contributions by taxpayers and the private sector to support housing are cost-effectively and efficiently deployed to promptly create new housing in locations and at densities that have already been approved by local governments in general plans and zoning codes.

(c) It is the intent of the Legislature that the provisions of Section 65913.3 of the Government Code advance all of the following:

(1) Provisions of Government Code Section 65008.

(2) Implementation of State planning priorities pursuant to Government Code Section 65041.1.

(3) Attainment of Section 65580 of the Government Code.

(4) 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.

(5) Objectives of the California Global Warming Solutions Act of 2006, commencing with Section 38500 of the Health and Safety Code.

(6) Compliance with non-discretionary inclusionary zoning ordinances adopted by localities.

(7) By right approval for developments that are consistent with objective land-use standards as defined in Section 65913.3(a)(9) and adopted by a locality, including but not limited to housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(8) Attainment of sufficient housing to accommodate all local government shares of regional housing need referenced in Section 65584 and improve reporting progress pursuant to Section 65400 for the legislature to amend Section 65913.3 or take additional measures to further attain the State's planning priorities.

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) "Approved remediation measures" shall mean measures included in a certified environmental impact report to mitigate the impact of residential development in the subject location; or uniformly applied development policies or standards that have been adopted by the local government to mitigate the impact of residential development in that location.

(2) "Affordable housing cost" or "Affordable rent" shall be as defined by Health and Safety Code subdivision (b) of Section 50052.5 or subdivision (b) of Section 50053, respectively.

(3) "Attached housing development" or "development" means a newly-constructed structure containing two or more new 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 unit from conversion of an existing structure to condominiums.

(4) "Department" means the Department of Housing and Community Development.

(5) "Financial assistance" means any award of public financial assistance that is

conditioned upon the satisfaction of specified award conditions; this term shall include but not be limited to: the award of tax credits through and by the California Tax Credit Allocation Committee, and the award of grants or loans by any state agency or any public agency.

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

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

(8) “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.

(9) “Objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by the public official; the standards must be uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and public official prior to submittal. Such standards may be embodied in alternate objective land-use standards adopted by a locality, and may include but are not limited to housing overlay zones , specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(10) “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.

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

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

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

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

(12) “Transit priority area” means an area within one-half mile of a major transit

stop that is existing or planned, provided the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

(13) "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 of 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 proponent has submitted to the local government its intent to utilize this authority, and has certified under penalty of perjury that, to the best of the person's knowledge and belief, the development conforms with all other provisions identified herein.

(2) The development is consistent with the following objective planning standards: land use and building intensity designation applicable to the site under the general plan and zoning code, land use and density or other objective zoning standards, and any setback or objective design review standards, all as in effect at the time that the subject development is submitted to the local government pursuant to this section.

(3) The development is located either on a site that is immediately adjacent to parcels that are developed with urban uses or on a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses or bounded by a natural body of water. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

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

(A) A duration of at least 30 years for owner-occupied developments or 55 years for rental developments.

(B) That any public agency and any member or members of the public, including non-profit corporations, may bring and maintain an enforcement action to assure

compliance with this land use restriction. This sub-paragraph (B) shall also be deemed satisfied where a public agency that provides financial assistance to a development has the exclusive right to enforce the subject land use restriction.

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

(i) 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.

(ii) 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.

(D) For developments not within a transit priority area, a restriction on the real property of the development 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 gross county area median income.

(5) Unless the development incorporates approved remediation measures in the following locations as applicable to the development, the development is not located on a site that is any of the following:

(A) "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 any of the following:

(i) Sites excluded from the specified hazard zones by a local agency

pursuant to subdivision (b) of Section 51179 of the Government Code.

(ii) Sites that have adopted sufficient fire hazard mitigation measures as may be determined by their local agency with land-use authority.

(iii) Sites that are within a five (5) mile driving distance of the nearest fire station.

(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 as referenced in section 2622 of the Public Resources Code, unless the development complies with applicable fault avoidance setback distances as required by the Alquist Priolo Act and complies with applicable State-mandated and objective local seismic safety building standards.

(F) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain 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.

(H) Within an area determined by the Department to be inappropriate for affordable housing development by additional objective criteria, including areas severely lacking in access to public transit, accessibility to employment or educational opportunities, and residentially supportive retail and service amenities, all as to be determined through regulations adopted by the Department at its discretion; until the Department adopts such regulations this sub- paragraph (H) shall not be interpreted to prohibit any such site. The Department is authorized, but not mandated, to adopt regulations to implement the terms of this sub- paragraph (H); and such regulations

shall be adopted pursuant to the Administrative Procedures Act set forth in Government Code section 11340 et seq. Division 13 of the Public Resources Code shall not apply to either: the Department's adoption of the regulations authorized by this section, or any financial assistance awarded by any public agency to any development that satisfies subdivision (b) of this section. This section shall be operative regardless as to whether the Department adopts the regulations authorized by this section.

(I) Within a site that has been designated in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, or a site that has been listed in the California Register of Historical Resources pursuant to section 5021 of the Public Resources Code.

(6) Unless the proposed housing development replaces units at a level of affordability equal to or greater than the level of a previous affordability restriction, the development must not be on a site in which any of the following apply:

(A) The site includes a parcel or parcels on which rental dwelling units are, or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income.

(B) The site is subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households.

(7) The development applicant or proponent shall provide a copy of the declaration required by subsection (b)(1) of this section to all landowners of legal parcels adjacent to the development concurrent with filing the submittal authorized by this section. This sub-paragraph (7) may be satisfied if the aforementioned declaration is mailed to the landowners at the address identified for receipt and payment of taxes through the applicable county assessor, or if mailed to the subject adjacent parcel's postal address.

(8) The development shall not be upon a site that is Prime Farmland, 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.

(c) If the applicable local government determines that the development is inconsistent with at least one of the objective planning standards delineated in subsection (b)(2), then it must provide the development applicant or proponent written documentation of which standard or standards the development is not consistent with, and a written explanation 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 applicant or 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) This section does not relieve an applicant or public agency from complying with the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(g) The review or approval of a permit, license, certificate, or any other entitlement, by any public agency with land-use authority over any development that satisfies subdivision (b) of this section shall be ministerial.

(h) Any person, as defined in Section 11405.70, seeking to require a City, County, or public agency to ministerially review or approve the matters set forth in subdivision (g) or enforce the by right provisions of subdivision (b) shall have the right to enforce this Section through a writ of mandate issued pursuant to Section 1085 of the Code of Civil Procedure. Owners of legal parcels adjacent to any development that

obtains by right approval under this section may also obtain relief through a writ of mandate issued pursuant to Section 1085 of the Code of Civil Procedure, the petition for which must be filed within thirty days of the earlier of the adjacent land-owners receipt of written notice of the subject approval, or actual notice of the approval.

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

(j) 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.

(k) 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 Real Property Acquisition and Relocation Assistance Act, set forth in Chapter 16, commencing with Government Code Section 7260. The development applicant or proponent shall be responsible for paying for relocation assistance expenses incurred by any local agency as a result of this section.

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

(m) Nothing in this section shall be construed to expand or contract the authority of local government to adopt an objective standard by ordinance or charter amendment requiring housing developments to contain a fixed percentage of housing units affordable to and occupied by persons of specified lower or moderate incomes. Any affordable housing units shall be credited against the affordable units required to be created pursuant to subsection 65913.3(b)(4).

(n) A locality may adopt and publish a list clarifying its existing objective planning standards that a development must be consistent with as referenced in subsection (b)(2) of this Section.