

SB 439 (Skinner)

Protecting Affordable Housing from Frivolous Lawsuits

Summary: This bill will strengthen existing protections for affordable housing projects by providing additional remedies to curtail non-meritorious litigation that can delay or kill projects even after they secure local approval.

Problem: Despite the well-established need, affordable and supportive housing projects face vocal opposition across the state, making these projects more difficult to site, more time-consuming to approve, and more costly to build. Current law provides numerous protections for proposed affordable and supportive housing developments seeking local approval. For example, Government Code Section 65008 prohibits discrimination in land use decision-making based on the income, race, and other protected characteristics of the intended occupants of a development. The Housing Accountability Act limits local governments' ability to deny an affordable housing development or attach conditions that render the project infeasible. In addition, the law requires many affordable and supportive housing developments to be approved by right if they meet various requirements, such as being in an infill area not sited in toxic locations.

Despite the many tools policymakers have provided to ensure affordable and supportive housing projects can move forward, too often developers continue to face non-meritorious litigation attacking their projects even after securing local approval. This type of litigation is pursued by NIMBYs who, having tried unsuccessfully to stop the development during the approval process, turn to the courts, knowing that the prospect of ongoing litigation may deter funding for the project and cause untenable delays and expenses.

One example involves a project Eden Housing proposed in downtown Livermore, which would provide 130 units affordable to households earning 20% to 60% of Alameda County's area median income. The project overcame community opposition during the local approval process and won unanimous support from the city council, but Save Livermore Downtown (SLD) then filed a suit

claiming the city's approval violated CEQA and the state's Planning and Zoning Law. Over the next 18 months, the court consistently rejected SLD's claims, asserting that the claims are "almost utterly without merit" and that the court's decision to reject them was "not a close call." The project would already be complete today but for the litigation. Instead, Eden has yet to break ground and is waiting to see if SLD is going to file an appeal and further delay the project.

The challenge to the Livermore project is hardly unique and represents an increasingly common NIMBY tactic. For example, a similar saga ensued when a local merchant challenged a 49-unit supportive housing project in the Boyle Heights neighborhood of Los Angeles. There, the developer endured a five-year local approval process only to then be forced to defend its project against a meritless suit brought by a neighboring merchant. The Lorena Plaza project finally broke ground in 2022 after years of delay and at greatly increased cost.

Solution: This bill would establish a special motion to strike, similar to the motion that is permitted under state Anti-SLAPP law, to quickly end litigation filed against approved affordable housing projects that has no likelihood of success on the merits

Support:
California Housing Consortium (sponsor)
Public Interest Law Project (sponsor)

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