

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

AB 281 (Grayson) – As Amended March 9, 2023

**SUBJECT:** Planning and zoning: housing: postentitlement phase permits

**SUMMARY:** Requires special districts to respond, within specified timeframes, to applications from housing development projects for service or approval. Specifically, **this bill:**

- 1) Requires special districts to respond to applications from housing development projects as follows:
  - a) Requires special districts to respond to each of the following types of requests for service or approval:
    - i) Direct requests from project applicants;
    - ii) Requests from local government based on an application for a post-entitlement phase permit received by the local government from a project applicant; and
    - iii) Subsequent submissions of additional information provided by an applicant in response to a notice from a special district requesting more information.
  - b) Requires the special district's response to include additional information that may be required of the applicant to begin to review the application for service or approval or next steps in the review process.
  - c) Provides the following timeframes for the special district to respond in writing:
    - i) Within 30 business days for a housing development project with 25 units or fewer; or
    - ii) Within 60 business days for a housing development project with more than 25 units.
- 2) Specifies that a housing development applicant may provide additional information requested by a special district directly to the special district.
- 3) Specifies that this bill does not limit the amount of comments, feedback, revisions or requests for additional information that a special district may provide to an applicant or local agency.
- 4) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

**EXISTING LAW:**

- 1) Defines "special district" to mean an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries, when authorized as specified. A special district includes a county service area, but excludes the state, a county, a city, a school

district, a community college district, an assessment district, an improvement district, a community facilities district, an air pollution control district, or an air quality maintenance district (Government Code Section 56036).

- 2) Establishes standards and requirements for the local agencies to review non-discretionary post-entitlement phase permits, including:
  - a) Defining the post-entitlement phase to include all nondiscretionary permits and reviews filed after the entitlement process has been completed that are required or issued by the local agency to begin construction of a housing development. Such permits include demolition permits, grading permits, and building permits;
  - b) Requires local governments to specify in detail the information that will be required from any applicant for a post-entitlement phase permit, and to post that information on their website;
  - c) Specifies the process for the local government to determine whether a post-entitlement phase application is complete, including specified timelines for review;
  - d) Specifies the process for local governments to complete review of a post-entitlement phase permit, including specified timelines to comment and approve the permit; and
  - e) Specifies a process for an applicant to appeal a decision of a local government to not approve a post-entitlement phase permit (GC Section 65913.3).

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

**Author's Statement:** According to the author, "AB 2234 (Robert Rivas, 2022) was a straightforward measure that helped standardize the process for the review of post-entitlement building permits, requiring local agencies to post information related to post-entitlement permits for housing projects, and established timelines for local agencies to process these permits, depending on the size of a development. While AB 2234 was an important step to help prevent delays in the post-entitlement process, it did not apply to special districts, who often have to provide feedback to local governments before they issue the post-entitlement permits. AB 281 would apply similar timelines for special districts to provide feedback on a post-entitlement permit that has been deemed complete by a local agency. This is a good government bill that seeks to apply similar standards across the board for the review of post-entitlement permits, and would reduce delays and barriers to housing production."

**Planning for and Entitling Housing:** Planning for and entitling new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority. Cities and counties enforce this land use authority through zoning regulations, such as the allowed density and height for a project, parking requirements, and setbacks. Cities and counties also enforce this land use authority

through their control of the entitlement process, which is the process by which the city or county grants permission for a proposed housing development to be built.

Existing state laws, including the Permit Streamlining Act, the Housing Accountability Act, and the Housing Crisis Act of 2019, establish parameters on the entitlement process. These parameters are designed to ensure that public agencies act fairly and promptly on applications for housing development proposals. These laws require public agencies to compile lists of information that applicants must provide, and explain the criteria they will use to review permit applications. Once a developer has submitted a complete application for development, these laws require that the project be subject only to the ordinances, policies, and standards adopted and in effect at the time of the application, and require local officials to act within a specific time-period after completing any environmental review documents required under the California Environmental Quality Act.

***Approving Post-Entitlement Permits and Service:*** Once a housing project has been entitled by a local government, it enters the “post-entitlement phase.” During this phase, a project must receive additional permits designed to ensure the health and safety of the future residents of the project and surrounding neighbors. Post-entitlement phase permits include permits to prepare the site for new development, including demolition permits and grading permits. Post-entitlement phase permits also include all the building permits for the new construction.

Until recently, there were no state laws that set parameters for how cities and counties were compelled to act during the post-entitlement phase. This changed with the passage of AB 2234 (Robert Rivas), Chapter 651, Statutes of 2022. AB 2234 established important new parameters for approving post-entitlement permits, including:

- Requiring local governments to specify in detail the information that will be required from any applicant for a post-entitlement phase permit, and to post that information on their website;
- Specifying the process for the local government to determine whether a post-entitlement phase application is complete, including specified timelines for review;
- Specifying the process for local governments to complete review of a post-entitlement phase permit, including specified timelines to comment and approve the permit; and
- Specifying a process for an applicant to appeal a decision of a local government to not approve a post-entitlement phase permit.

***Special Districts and Post-Entitlement Permits and Approvals:*** Special districts are local government entities that provide specialized services such as water and energy, fire protection and public safety, and removal of garbage and wastewater. Special districts may be “independent,” in that they were created and are governed independently of other government agencies. They may also be “dependent,” in that they are affiliated with another government entity, typically by having the same governing body as the local city or county. There are nearly 3,300 special districts in California (as compared to 548 cities and counties).

While AB 2234 established parameters for post-entitlement phase permits approved by cities and counties, it did not speak to post-entitlement phase permits or requests for service that need to be reviewed by special districts. Yet almost all housing development projects require review by

special districts, to approve the permits themselves or to agree to provide service to the new housing development.

This bill would replicate elements of AB 2234, but for special districts. It requires the special districts to respond when they receive an application for service or approval from either a local government or the proponent of a housing project. Specifically, this bill requires special districts to respond to inquiries on housing development projects within 30 days for smaller projects with 25 units or fewer and within 60 days for larger projects with greater than 25 units. In their response, the special districts must provide additional information that may be required to begin to review the application for service or approval or next steps in the review process. This bill does not require special districts to approve permits or agree to provide service in a specified timeframe.

***Arguments in Support:*** Supporters of the bill argue that it provides a clearer process for both developers and special districts when dealing with post-entitlement phase permits. According to the Housing Action Coalition (the bill's sponsor), "This measure streamlines the process a builder may need to develop in a special district. This measure will expedite construction by making all participants aware of the documentation needed to build in a special district."

***Arguments in Opposition:*** None on file.

***Committee Amendments:*** This bill, like AB 2234, establishes parameters for the post-entitlement permit process that will provide more certainty for proponents of housing developments. However, as currently written, the bill could create process confusion for both project proponents and the special districts charged with approving these permits and/or providing service to the development. As such, **the committee may wish to consider the following amendments to the bill, all of which are technical in nature:**

- **Provide the relevant definitions for housing development project, local agency, and special district;**
- **Clarify that the law is applicable in the following circumstances:**
  - **When a housing development is applying for service from a special district; and**
  - **When a housing development is applying for approval of a post-entitlement permits from a special district, and a local agency has deemed the permit application to be complete pursuant to the requirements of AB 2234;**
- **Specify that the special district must reply to requests for service and approval from housing developments directly to the applicant;**
- **Clarify that the special district needs to respond with information on next steps in their review process, which may include the need for more information from the applicant;**
- **Specify that this section does not require the special district to approve the application or serve the housing development project within a specified timeframe. The purpose of this language is to distinguish the provisions of this section from the provisions of AB 2234, which require local agencies to approve post-entitlement phase permits within a specified timeframe.**

***Related Legislation:***

AB 1114 (Haney, 2023): This bill would expand the provisions of AB 2234 to apply to discretionary post-entitlement phase permits in addition to non-discretionary post-entitlement phase permits. AB 1114 is pending in this Committee.

AB 2234 (R. Rivas), Chapter 651, Statutes of 2022: Required local agencies to post information related to post-entitlement phase permits for housing development projects, process those permits in a specified time period depending on the size of the housing development, and establish a digital permitting system if the local agency meets a specific population threshold.

***Double Referred:*** This bill was also referred to the Assembly Committee on Local Government, where it was passed on a 7-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Housing Action Coalition (Sponsor)  
Abundant Housing LA  
California Apartment Association  
California Building Industry Association  
California Housing Consortium  
CBIA  
Circulate San Diego  
CivicWell  
Council of Infill Builders  
DignityMoves  
East Bay Yimby  
Facebook, INC.  
Fieldstead and Company, INC.  
Grow the Richmond  
Habitat for Humanity California  
How to ADU  
MidPen Housing  
Mountain View Yimby  
Napa-Solano for Everyone  
Non-profit Housing Association of Northern California (NPH)  
Northern Neighbors Sf  
Peninsula for Everyone  
People for Housing - Orange County  
Progress Noe Valley  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
San Francisco Yimby  
San Francisco-Marin Food Bank  
San Luis Obispo Yimby  
Sand Hill Property Company  
Santa Cruz Yimby  
Santa Rosa Yimby

Silicon Valley Leadership Group  
South Bay YIMBY  
Southside Forward  
SPUR  
The Two Hundred  
Ventura County YIMBY  
YIMBY Action

**Opposition**

None on file.

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