

modification request, the original project approval shall remain valid and shall be further extended during the pendency of the litigation.

This bill:

- 1) Defines “permit” as a variance, CUP, or any other development permit but does not include: (1) a building permit or other permit issued pursuant to the building standards code or other applicable local building code for the construction, demolition, or alteration of building, whether discretionary or nondiscretionary; a permit for minor or standard excavation and grading; (3) a permit for demolition; (4) a permit of minor or standard excavation and grading; or (5) any non discretionary permit or review that is required or issued by the local agency after the entitlement process has been completed to begin construction.
- 2) Provides that the period-of-time before a permit or project approval issued by a local government or state agency expires shall not include the period-of-time during which an action or proceeding involving the approval or conditional approval of the permit to project approval is or was pending.

COMMENTS:

- 1) *Author’s statement.* “Assembly Bill 2117 is a simple bill. All it does is ensures that local and state permits do not expire on an approved project while a CEQA challenge is taking place.”
- 2) *Housing planning and zoning.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of developments, such as the type of housing that can be built on properties within the zone. In addition, before building new housing, housing developers must obtain one or more permits from the city or county.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

- 3) *Housing entitlements and permitting process.* In general, constructing a housing development project requires local government approval at multiple stages; this approval process is often referred to as the entitlement process. An approval is generally considered an entitlement when it locks in the regulatory standards that a local government or state agency can apply to a project. Entitlements are powerful documents as they provide certainty to developers, which can help them secure financing for a project. However, entitlements also constrain the ability of local governments and state agencies to adjust for new conditions. Additionally, when an issued entitlement is outstanding, it alters the ability of the local government or state agency to approve other projects that could potentially be impacted by the pending project. Therefore, various entitlements are subject to expiration, although many may be extended at the discretion of the local government or state agency.

According to a study conducted by Berkeley Law School and others, *Getting It Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process*, in which local government land use and review processes across selected cities in the Bay Area and Southern California were examined, “the processes by which local governments review residential development projects under their zoning ordinances and under CEQA varies from city to city. As a result, developers seeking to construct residential projects often must learn to navigate very different and complicated land use systems, even if they work in the same region.” In addition, developers of affordable housing projects must navigate a web of overlapping eligibility criteria and application deadlines for various state and local housing programs, which often results in project delays as developers work to line up various funding sources.

Local governments generally set their own timelines for planning approval and entitlement expiration through local municipal codes. The local policies and procedures surrounding the granting of these extensions vary from jurisdiction to jurisdiction. However, in some cases, state law establishes timelines for the validity of approvals, such the Subdivision Map Act, which establishes a minimum life for subdivision maps that may be extended by the local agency, the Permit Streamlining Act which establishes timelines for local officials to act on a project approval within a specified timeframe following completion of environmental review under the CEQA, or streamlined, ministerial housing approvals under SB 35 (Wiener, 2017).

- 4) *Timelines for litigation.* State law sets out a variety of procedures for challenging local agency land use decisions in the courts. A plaintiff can only

raise issues brought up during the public hearing process or in writing before the decision, except if the issue couldn't have been raised by someone exercising reasonable diligence, or if the local agency stopped the issue from being raised. State law also places time limits by which someone must bring an action to litigate local agency land use decisions.

Litigation often targets housing approvals in particular. According to the Little Hoover Commission on CEQA, *CEQA: Targeted Reforms for California's Core Environmental Law*, "approximately a quarter of CEQA suits target some form of housing development, the most common single type of project challenged by CEQA litigation."

Some land use statutes, such as the Subdivision Map Act and SB 35 (Wiener, Chapter 366, Statutes of 2017), exclude time spent in litigation from counting towards the expiration of a development approval, others do not.

This bill excludes the time when litigation over a permit approval is pending from counting towards the period of time before a permit or project approval issued by a city, county, or state agency expires.

5) *Incoming!* This bill was heard on June 11, 2024 in the Local Government Committee and passed out on a 7-0 vote.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, June 26, 2024.)

SUPPORT:

BuildCasa
California Builders Alliance
California Building Industry Association
County of Butte
International Interior Design Association Northern California Chapter
International Interior Design Association Southern California Chapter
Sacramento Regional Builders Exchange
Sand Hill Property Company
SPUR
The Two Hundred
YIMBY Action

OPPOSITION:

None received.

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