
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 281 **Hearing Date:** 7/10/2023
Author: Grayson
Version: 4/13/2023
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and zoning: housing: postentitlement phase permits

DIGEST: This bill requires special districts to comply with specified timeframes, similar to those for cities and counties, when reviewing and approving postentitlement phase permit applications from housing developers.

ANALYSIS:

Existing law:

- 1) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.
- 2) Establishes the Permit Streamlining Act (PSA), which, among other things, establishes time limits within which state and local government agencies must either approve or disapprove permits to entitle a development.
- 3) Defines “postentitlement phase permit” as follows:
 - a) Includes all nondiscretionary permits required by the local agency after the entitlement process to begin construction of a development that is intended to be at least two-thirds residential, excluding specified planning permits, entitlements, and other permits. These permits include, but are not limited to, all of the following:
 - i) Building permits, and all inter-departmental review required for the issuance of a building permit;
 - ii) Permits for minor or standard off-site improvements;
 - iii) Permits for demolition; and
 - iv) Permits for minor or standard excavation and grading.
 - b) Excludes discretionary or ministerial planning permits, among others.

- c) Excludes a permit required and issued by the California Coastal Commission, a special district, or a utility that is not owned and operated by a local agency, or any other entity that is not a city or county.
- 4) Requires a local agency, defined to include a city or county, to compile one or more lists of information that will be required from any applicant for a postentitlement phase permit, as specified.
- 5) Specifies a process for approving postentitlement permits, as specified.

This bill:

- 1) Requires a special district to respond to an application from a housing development project for service from the special district or for a post-entitlement phase permit a local agency has deemed complete but requires separate approval from the special district.
- 2) Requires a special district's response to be in writing and to include, pursuant to the timelines in 3) below, next steps in the review process, including additional information that may be required of the applicant to begin to review the application for service or approval.
- 3) Requires a special district to respond within 30 business days for a housing development project with 25 units or fewer, and within 60 business days for a housing development project with 26 units or more.
- 4) Specifies this bill does not limit the amount of comments, feedback, revisions, or requests for additional information a special district may provide to an applicant or local agency.
- 5) Specifies this bill does not require a special district to approve an application or serve a housing development within a specified time-period.

COMMENTS:

- 1) *Author's statement.* "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.”

- 2) *Zoning and land use approvals, generally.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. A zoning ordinance may be subject to the California Environmental Quality Act (CEQA) if it will have a significant impact upon the environment. The adoption of ADU ordinances, however, are explicitly exempt from CEQA. There are also several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially, or by-right, 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 CEQA, while projects permitted ministerially generally are not.

The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review per CEQA, design review, and project review by the local agency’s legislative body (city council or county board of supervisors) or by a planning commission, to whom the legislative body has delegated.

- 3) *The Permit Streamlining Act.* The 1977 Permit Streamlining Act (PSA) requires public agencies to act fairly and promptly on applications for development proposals, including housing developments. Public agencies must develop lists of the information that applicants must provide in order for a development application, including an application for housing, to be complete and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development

projects are complete and request additional information; failure to act results in an application being “deemed complete.” If an application is incomplete, the PSA requires local agencies to exhaustively list all information needed to make a development application complete and prohibits local agencies from asking for additional information that was not initially required.

Once a complete application for a development has been submitted, the PSA requires local officials to act within a specific time-period after completing any environmental review documents required under CEQA, ranging between 60 and 180 days. If the local government fails to approve or disapprove the application in the applicable time-period, the application is deemed approved.

- 4) *Nondiscretionary Postentitlement Permits.* The PSA establishes timelines for agencies to determine whether a permit for an entitlement is complete and timelines for approving or denying a development proposal that is deemed complete. Once a development proposal is approved by the local agency, the developer is still required to submit a range of nondiscretionary permits to the local agency for approval in order to actually complete the work to construct the building. These permits can include building permits and other permits for: demolition; grading; excavation; electrical, plumbing, or mechanical work; encroachment in the public right-of-way; roofing; water and sewer connections or septic systems; fire sprinklers; and home occupations.

The PSA applies to the discretionary approval phase of a development review process, this is the phase where the local agency, in its discretion, decides whether or not it approves of the concept outlined in the development proposal. Because the local agency is exercising discretion, these approval decisions are subject to CEQA. Once the development proposal is approved by the local agency, the next phase of review involves the ministerial review of objective permits associated with the development proposal that ensure the proposal is compliant with state and local building codes and other measures that protect public health, safety and the environment. The timelines established in the PSA do not apply to these nondiscretionary permits.

- 5) *Timelines for postentitlement permits.* AB 2234 (Rivas, Chapter 651, Statutes of 2022) required cities and counties to process non-discretionary permits in an expedited manner. First, the city or county must determine whether an application is complete, and notify the applicant within 15 days after receiving the application. If the local agency determines an application is incomplete, the local agency must provide the applicant with a list of incomplete items and a description of how the application can be made complete. After receiving a notice the application was incomplete, an applicant may cure and address the items that are deemed to be incomplete by the local agency. Upon receipt of a

corrected application, the local agency must notify the applicant within 15 business days whether the additional application has remedied all incomplete items. If a local agency does not meet the timelines required for determining whether an application is complete, and the application or resubmitted application states it is for a postentitlement phase permit, AB 2234 deems complete the application or resubmitted application.

Cities and counties must then complete review of the application within 30 days for projects with 25 units or less, and 60 days for projects 26 units or more, unless the city or county makes a finding the permit might have a specific, adverse impact on public health or safety, within the applicable time limit. Cities and counties must also establish an appeals process. If an applicant appeals, the local agency must make a final determination within specified timelines.

- 6) *Special treatment.* AB 2234 did not apply to post-entitlement permits issued by special districts. Special districts are limited-purpose local governments – separate from cities and counties. Within their boundaries, special districts provide focused public services such as fire protection, sewers, water supply, electricity, parks, recreation, sanitation, cemeteries, and libraries.

This bill requires special districts to act within certain periods on these post-entitlement projects. Specifically, the special district has to respond within 30 days for a housing project with 25 units or fewer, or 60 days with greater than 26 units. The written notice must include the next steps in the review process, including any information required to begin, or continue the review process. After receiving notice that an application requires additional information, an applicant may provide the requested information directly to the special district. A special district must continue to review each submission to determine additional relevant information and provide written notice of the next steps or additional information required within those timeframes.

- 7) *Here, there, and everywhere.* This bill was heard in the Senate Governance and Finance Committee on June 21 and received a vote of 8-0.

RELATED LEGISLATION:

AB 2234 (Rivas, Chapter 651, Statutes of 2022) — required cities and counties to process non-discretionary permits in an expedited manner, as specified.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, July 5, 2023.)

SUPPORT:

Housing Action Coalition (Sponsor)
Abundant Housing LA
Bay Area Council
California Apartment Association
California Building Industry Association (CBIA)
California Housing Consortium
California YIMBY
Circulate San Diego
CivicWell
Council of Infill Builders
Dignitymoves (UNREG)
East Bay YIMBY
Facebook, INC.
Fieldstead and Company, INC.
Grow the Richmond
Habitat for Humanity California
How to ADU
Midpen Housing
Midpen Housing Corporation
Mountain View YIMBY
National Association of Hispanic Real Estate Professionals
Non-profit Housing Association of Northern California (NPH)
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
Sand Hill Property Company
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley Leadership Group
SLO County YIMBY
South Bay YIMBY
Southside Forward
Ventura County YIMBY
YIMBY Action

OPPOSITION:

None received.

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