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CALIFORNIA EXTENDS RESIDENTIAL HOUSING DEVELOPMENT ENTITLEMENTS DUE TO COVID-19

To Our Clients and Friends:

California's housing shortage continues as the state grapples with the COVID-19 pandemic. In an effort to mitigate delays in housing production throughout the state, California Governor Gavin Newsom recently signed into law Assembly Bill 1561 ("AB 1561"), which extends the validity of certain categories of residential development entitlements. Devised as a remedy for impediments to housing development as a result of interruptions in planning, financing, and construction due to the pandemic, AB 1561 helps cities and counties that would otherwise need to devote significant resources to addressing individual permit extensions on a case-by-case basis.

AB 1561 adds a new section to the state's Government Code, Section 65914.5, that extends the effectiveness of "housing entitlements" that were (a) issued and in effect prior to March 4, 2020 and (b) set to expire prior to December 31, 2021. All such qualifying housing entitlements will now remain valid for an additional period of eighteen (18) months.

Section 65914.5 broadly defines a "housing entitlement" to include any of the following:

1. A legislative, adjudicative, administrative, or any other kind of approval, permit, or other entitlement necessary for, or pertaining to, a housing development project issued by a state agency;
2. An approval, permit, or other entitlement issued by a local agency for a housing development project that is subject to the Permit Streamlining Act (Cal. Gov. Code § 65920 *et seq*);
3. A ministerial approval, permit, or entitlement by a local agency required as a prerequisite to the issuance of a building permit for a housing development project;
4. Any requirement to submit an application for a building permit within a specified time period after the effective date of a housing entitlement described in numbers 1 and 2 above; and
5. A vested right associated with an approval, permit, or other entitlement described in numbers 1 through 4 above.

Notably, specifically *excluded* from the definition of a "housing entitlement" are: (a) development agreements authorized pursuant to California Government Code Section 65864; (b) approved or conditionally approved tentative maps which were previously extended for at least eighteen (18) months on or after March 4, 2020 pursuant to Government Code Section 66452.6; (c) preliminary applications under SB 330 (the Housing Crisis Act of 2019); and (d) applications for development approved under SB 35 (Cal. Gov. Code § 65913.4).

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Further, housing entitlements which were previously granted an extension by any state or local agency on or after March 4, 2020, but before the effective date of AB 1561 (*i.e.* September 28, 2020), will not be further extended for an additional 18-month period so long as the initial extension period was for no less than eighteen (18) months.

The definition of a “housing development project” is broad and includes any of the following: (x) approved or conditionally approved tentative maps, vesting tentative maps, or tentative parcel maps for Subdivision Map Act compliance (Cal. Gov. Code § 66410 *et seq*); (y) residential developments; and (z) mixed-use developments in which at least two-thirds (2/3rds) of the square footage of the development is designated for residential use. For purposes of calculating the square footage devoted to residential use within a mixed-use development, the calculation must include any additional density, floor area, and units, and any other concession, incentive, or waiver of development standards obtained under California’s Density Bonus Law (Cal. Gov. Code § 65915); however, the square footage need not include any underground space such as a basement or underground parking garage.

AB 1561 makes clear that while the extension provision of Section 65914.5 applies to all cities, including charter cities, local governments are not precluded from further granting extensions to existing entitlements.



Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. For additional information, please contact any member of Gibson Dunn’s Real Estate or Land Use Group, or the following authors:

*Doug Champion – Los Angeles (+1 213-229-7128, dchampion@gibsondunn.com)
Amy Forbes – Los Angeles (+1 213-229-7151, afortbes@gibsondunn.com)
Ben Saltsman – Los Angeles (+1 213-229-7480, bsaltsman@gibsondunn.com)
Matthew Saria – Los Angeles (+1 213-229-7988, msaria@gibsondunn.com)*

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