New Laws and Guidance to Support Multifamily Development

Multifamily entitlement and development have never been without risk. Ask any seasoned pro and you are sure to hear about last minute political maneuvering, NIMBY opposition, California Environmental Quality Act (CEQA) challenges, and worse—and that's before factoring in construction costs, carry, and the endless list of other variables required to get a development project out of the ground.

There is some cause for hope, however, and it begs the question – are we in a golden age of residential redevelopment? Having fully acknowledged the deepening housing crisis, the state has embraced an activist role by approving legislation that provides support and resources for housing projects. The last legislative session was no different, with the approval of numerous laws that either created new rights or enhanced existing rights. And, in support of that legislative effort, the California Department of Housing and Community Development (HCD) has dramatically increased its level of engagement in providing interpretations of state law and, in many cases, applying that law to specific projects through enforcement actions and Letters of Technical Assistance.

A sample of recent housing legislation developments, include:

- **"Stackable" Density Bonus up to 100%:** AB 1287 (Effective 2024) amended State Density Bonus Law (DBL) to create a new "stackable" density bonus that permits up to a 100% density bonus in exchange for reservation of affordable units. It also allows, for the first time, use of moderate-income rental (rather than for-sale) units to achieve a bonus. These benefits all build upon existing DBL, which already provides tremendous value for developers through incentives/concessions and waiver of development standards.
- **Limited CEQA Reform:** AB 1633 (Effective 2024) amended the Housing Accountability Act (HAA) to give developers of qualifying in-fill projects the ability to challenge a local government's use of CEQA as a means to delay approval of a project.
- **No CEQA for Projects Under 10 Units:** SB 684 (Effective 2024) created a streamlined, ministerial approval process for development projects of 10 or fewer residential units.
- **Residential Use of Commercial/Office Properties:** AB 2243, which is still pending, would make substantive amendments to AB 2011 (2022), which established a by-right (no CEQA) approval process to redevelop office and commercial sites with housing. AB 2011 has suffered from lack of widespread use due to its myriad requirements. AB 2243 seeks to amend the Government Code to make it more advantageous for developers.
- **Increased Land Area for Density Bonus Projects:** In a 2023 Letter of Technical Assistance, HCD opined that a project's maximum base density under the DBL is calculated using the project's "gross" acreage, which includes all areas owned in fee. Importantly, that includes all fee areas that are subject to easement, including adjacent public streets for which the local jurisdiction only took an easement for public travel. This can add substantial acreage to project sites, allowing for larger, denser projects.

Individually and collectively, these developments and others not listed (e.g., Builders' Remedy) help move the balance of power in favor of residential development and away from the risk and uncertainty that had been hallmarks of large-scale residential entitlement efforts. The 30+ member Cox, Castle & Nicholson land use team is actively, and aggressively, applying these laws to help our clients achieve their business goals with minimum risk. Please reach out if we can help.

COX CASTLE

Sean Matsler
Partner
smatsler@coxcastle.com
949.260.4652

Christopher Burt
Senior Counsel
cburt@coxcastle.com
949.260.4606