

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1515 (Friedman) – As Amended March 28, 2019

SUBJECT: Planning and zoning: community plans: review under the California Environmental Quality Act.

SUMMARY: Prohibits a court from invalidating a development project when specified legal actions are taken pursuant to the California Environmental Quality Act (CEQA) against an updated community plan in which the project is located. Specifically, **this bill:**

- 1) Prohibits a court, in any order that results from an action or proceeding to attack, review, set aside, void, or annul the acts or decisions of a local agency in adopting an update to a community plan on the grounds of noncompliance with CEQA, from invalidating, reviewing, voiding, or setting aside the approval of any development project for which either of the following applies:
 - a) The development project is approved before the court issues a stay in connection with the action or proceeding or an order or writ requiring the challenged environmental impact report (EIR) or community plan update to be rescinded or set aside; or,
 - b) The application for the development project is deemed complete, pursuant to the Planning and Zoning Law, before the court issues a stay, order, or writ described in a), above.
- 2) Provides that this bill does not affect or alter the obligation of a project that is consistent with an approved community plan update to comply with CEQA.
- 3) Repeals the provisions of this bill on January 1, 2025, but provides that this repeal shall not affect any right or immunity granted pursuant to this bill to a development project that meets the requirements of 1), above, before January 1, 2025.
- 4) Provides the following definitions:
 - a) “Community plan” means a plan that meets all of the following requirements:
 - i) The plan was adopted by a city or county for a defined geographic area within its jurisdictional boundaries;
 - ii) The plan serves as the land use element, pursuant to the Planning and Zoning Law, for the area covered by the plan;
 - iii) The plan has not been updated for more than 10 years before the operative date of this bill;
 - iv) The plan includes two or more transit priority areas, as defined in CEQA;

- v) The city or county that adopts the plan has adopted, on or after January 1, 2015, a circulation or mobility element as a part of the general plan;
 - vi) The city or county that adopts the plan has a housing element that includes housing capacity to sufficiently accommodate regional housing needs projects as set forth in the Planning and Zoning Law; and,
 - vii) The city or county that adopts the plan has adopted a vehicle miles traveled threshold of significance for the area covered by the plan in compliance with specified provisions of the California Code of Regulations, which provide guidelines for implementing CEQA and determining the significance of transportation impacts;
- b) “Development project” means any project undertaken for the purpose of development, including a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. “Development project” does not include any ministerial projects proposed to be carried out or approved by public agencies; and,
 - c) “Update” means a substantial amendment to a community plan that is intended to bring the community plan up to date with the most current land use policies and that includes amendments to both the plain text and plan land use map, as well as the adoption or amendment or any zoning ordinances necessary to bring zoning into consistency with the community plan.
- 5) Makes a number of findings and declarations pertaining to the purposes of this bill.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** CEQA requires a lead agency to prepare and certify an EIR on a project that it proposes to carry out or approve that may have a significant effect on the environment. Alternatively, the lead agency may adopt a negative declaration if it finds that the project will not have a significant effect on the environment.

CEQA limits the review of a project if the parcel meets the following requirements: if it is zoned or designated in a community plan to accommodate a particular density of development; an EIR was certified for that zoning or planning action; and, the project is consistent with the zoning or community plan. However, CEQA also requires a court, if it finds that any determination, finding, or decision of a public agency has been made without compliance with CEQA, to enter an order that includes one or more specified mandates, including a mandate to void the determination, finding, or decision of the public agency.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development and the development of any land outside its boundaries that bears relation to its planning. After the legislative body has adopted a general plan, the planning agency prepares specific plans for the systematic implementation of the general plan. These specific plans include community plans, which guide land use planning at the neighborhood level. These plans are considered “projects” under CEQA.

Therefore, community plans are subject to CEQA's review, public process, and mitigation requirements.

Existing law is silent as to what happens to the implementation of an updated community plan when its associated environmental document is challenged in court. In most cases, the updated plan remains in effect during the legal challenge, unless the court takes action to void the environmental clearance and rescind the plan. This potential rescission creates a state of uncertainty and prevents projects from utilizing the updated community plan while the environmental legal challenge is pending – possibly delaying all development in the plan area, including housing developments that would meet the plan's goals and objectives.

- 2) **Author's Statement.** According to the author, "While most jurisdictions update the land use element of their general plan as part of their general plan update, those with multiple community plan areas update these documents individually, requiring community plans to be reviewed through separate reviews pursuant to the act. In some jurisdictions with multiple community plans, these plans have not been updated in recent years to reflect changing local priorities as well as efforts to improve air quality, reduce climate pollution, increase transit ridership, reduce vehicle miles traveled, and provide more affordable housing.

"In 2017, the Los Angeles Department of City Planning, in collaboration with all city agencies, was directed to update Los Angeles' Land Use Element by 2024. Los Angeles' Land Use Element is comprised of 35 Community Plans that contain the guiding goals and principles for how each plan area should grow. Some of these plans are over 20 years (old) and cannot adequately address state and local priorities around housing, job creation, climate change, and transportation. To date, six Community Plans have been recently updated, 16 updates are currently underway, and 13 more updates will be launched by 2020.

"One significant obstacle to updating these plans is the uncertainty that results if the environmental review document prepared pursuant to the act for the community plan update is challenged in a court. During the litigation process, it is unclear whether the community plan or the update will be in effect, causing developers and planners great uncertainty and potentially delaying all development in that community plan area and affecting the ability to obtain the needed housing intended by the community plan update.

"AB 1515 assists the Community Plan update process and provides clarity to the local governments, residents, and developers on how to implement an updated Community Plan should its environmental document be challenged in court. By removing uncertainty during this period, development projects approved and deemed complete under an updated Community Plan would have confidence in moving forward, bringing the city closer to meeting the goals in the updated plan."

- 3) **Bill Summary.** This bill prohibits a court from invalidating, reviewing, voiding, or setting aside the approval of a development project in any order that results from an action or proceeding to attack, review, set aside, void, or annul the acts or decisions of a local agency in adopting an update to a community plan on the grounds of noncompliance with CEQA.

A development project would have to meet one of the following requirements in order to enjoy the protections of this bill:

- a) The project would have to be approved before the court issues a stay in connection with the action or proceeding, or an order or writ requiring the challenged EIR or community plan update to be rescinded or set aside; or,
- b) The application for the development project must be deemed complete before the court issues the stay, order, or writ.

The provisions of this bill would also be limited to a community plan that meets all of the following requirements:

- a) The plan must be adopted by a city or county for a defined geographic area within its jurisdictional boundaries;
- b) The plan must serve as the land use element for the area covered by the plan;
- c) The plan must not have been updated for at least 10 years;
- d) The plan must include two or more transit priority areas;
- e) The city or county that adopts the plan must have adopted, on or after January 1, 2015, a circulation or mobility element as a part of its general plan;
- f) The city or county that adopts the plan has a housing element that includes housing capacity to sufficiently accommodate regional housing needs projects; and,
- g) The city or county that adopts the plan must have adopted a vehicle miles traveled threshold of significance for the area covered by the plan in compliance with provisions of the California Code of Regulations that provide guidelines for implementing CEQA and determining the significance of transportation impacts.

The bill further defines its parameters to specify that a community plan update must be a substantial amendment to a community plan that is intended to bring the community plan up to date with the most current land use policies. The update must also include amendments to both the plain text and plan land use map, as well as the adoption or amendment or any zoning ordinances necessary to bring zoning into consistency with the community plan.

This bill also clarifies that it does not affect or alter the obligation of a development project that is consistent with an approved community plan update to comply with CEQA.

This bill is sponsored by Mayor Eric Garcetti, City of Los Angeles.

- 4) **Committee Amendment.** This bill does not specify that it applies to charter cities, which would leave out a number of cities, including the City of Los Angeles. The Committee may wish to amend this bill to apply its provisions to charter cities.
- 5) **Arguments in Support.** Mayor Eric Garcetti, City of Los Angeles, sponsor of this measure, writes, "AB 1515 is critical for cities like Los Angeles that are seeking to update their community plans to meet statewide housing production and environmental goals...AB 1515 will help to advance our Community Plan updates and provide clarity to the city, residents,

and developers on how to implement an updated Community Plan in the event that its environmental documents are challenged in court. Providing certainty to development projects during the period of an environmental challenge is critical to meeting the goals of the updated plan.

“Importantly, AB 1515 is narrowly tailored to clarify what happens to development projects proposed under an updated plan if the plan is challenged in court. AB 1515 maintains and supports the requirements under CEQA to disclose all environmental impacts associated with an updated community plan and does not prohibit a plan’s environmental review from being challenged. Additionally, AB 1515 would only apply to community plans that have already met a high set of specific criteria aimed at advancing local and state priorities, including housing and environmental goals.”

6) **Arguments in Opposition.** None on file.

7) **Double-Referral.** This bill is double-referred to the Natural Resources Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Mayor Eric Garcetti, City of Los Angeles [SPONSOR]
California Association of REALTORS®
California Professional Association of Specialty Contractors
City of San Diego

Opposition

None on file

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