Date of Hearing: May 12, 2020

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 3234 (Gloria) – As Amended May 4, 2020

SUBJECT: Subdivision Map Act.

SUMMARY: Defines small lot subdivisions and authorizes local governments to adopt small lot ordinances that streamline certain provisions of the Subdivision Map Act (SMA) for subdivisions of land that meet the definition of a small lot subdivision. Aligns SMA approval of tentative and parcel maps for housing development projects with provisions of the Housing Accountability Act (HAA). Specifically, **this bill**:

1) Defines a small lot subdivision as a subdivision of land that meets the following:

   a) The subdivision is located on a site that includes all of the following features:

      i) The site is an infill site, defined as a site that was either previously developed or is a vacant site where at least 75% of the perimeter of the site adjoins parcels that are developed with qualified urban uses;

      ii) The site is located in an area or designated place identified as an urbanized area or urbanized cluster by the United States Census Bureau;

      iii) The site is zoned for, or has a general plan designation that allows for, single-family dwelling units, multifamily dwelling units, or mixed-use developments;

      iv) The site is less than five acres;

      v) The site's minimum lot size is no smaller than 1,200 feet, unless a smaller size is approved by the local agency; and,

      vi) The site's maximum lot size is 2,000 square feet or less.

   b) The subdivision is located on a site that does not include any of the following features:

      i) The site does not include parcels created within the past 10 years, unless the parcel was created as the result of the plan of a redevelopment agency;

      ii) The site does not require more than one parking space per parcel;

      iii) The development of the site does not require the demolition or alteration of any of the following types of housing:

         (1) Housing that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

         (2) Housing that is subject to rent or price control; or,

         (3) Housing occupied by tenants within the last seven years.

iv) The site does not include a parcel where the owner of residential property has withdrawn accommodations for rent or lease within the last 15 years;

c) The site does not contain either of the following:

i) A historic structure that is on a national, state, or local historic register; or,

ii) Tribal Cultural Resources identified pursuant to the city, county, or city and county's consultation with a California Native American tribe, undertaken in compliance with the California Environmental Quality Act (CEQA).

2) Authorizes a city or county to provide for the creation of small lot subdivisions provided that the city or county adopts a small lot subdivision ordinance that includes provisions that:

a) Incorporate the definition of small lot subdivision specified in 1), above; and,

b) Allow for concurrent processing of grading permits, building permits and other approvals necessary to commence construction upon approval of a parcel map.

3) Allows a city or county that adopts a small lot ordinance pursuant to 2) above, to require smaller lots, less parking, or greater density than the levels established in the small lot subdivision definition specified in 1), above.

4) Provides that an action by a city or county to adopt a small lot subdivision ordinance that meets the requirements outlined in 2) and 3), above is not subject to CEQA.

5) Amends the SMA to allow a small lot subdivision to be eligible for a parcel map and prohibits a local government from requiring:

a) A tentative and final map for a parcel that is created in connection with a small lot subdivision; or,

b) A tentative map in connection with a parcel map for a parcel that is being created in connection with a small lot subdivision.

6) Extends limitations on improvements local governments can require for subdivisions of less than five parcels, to small lot subdivisions that meet the definition in 1), above.

7) Requires a local government to ministerially approve a parcel map created in connection with a small lot subdivision that meets the definition in 1), above.

8) Requires a local government to approve a tentative map or a parcel map for a housing development project if substantial evidence in the record demonstrates the following:

a) The proposed map, and the design or improvement of the proposed subdivision is consistent with the objective standards contained in the applicable general and specific plans and all applicable zoning and design review standards;

b) That the design of the subdivisions or the proposed improvements would not result in specific adverse impacts to public health and safety, or that feasible methods can be applied to mitigate the adverse impact; or,

c) That the design of the subdivision or the proposed improvements will not conflict with specified easements acquired by the public for access through, or use of property within the proposed subdivision, unless the governing body finds that substantially equivalent alternate easements will be provided.

9) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

1) Planning and Zoning Law requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.

2) 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.

3) Requires, under CEQA, lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) for this action, unless the project is exempt from CEQA.

4) Provides, pursuant to the SMA, the following related to the subdivision of land:

   a) Requires a city or county to require a tentative and a final map for all subdivisions of land creating five or more parcels, except for subdivisions which meet specified conditions;

   b) Requires a city or county to require a parcel map for subdivisions meeting specified conditions;

   c) Allows a city or county to require a tentative map where only a parcel map is required;

   d) Limits the improvements a city or county may require for a subdivision of land that is less than five parcels; and,

   e) Requires a legislative body of a city or county to deny approval of a tentative map or a parcel map if it makes any of the following findings:

      i) That the proposed map is not consistent with applicable general and specific plans;

      ii) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans;

      iii) That the site is not physically suitable for the type of development;

      iv) That the site is not physically suitable for the proposed density of development;

v) That the design of the subdivision or the proposed improvements are likely to cause environmental damage, injure wildlife, or are likely to cause serious public health problems; or,

vi) That the design of the subdivision or the type of improvements will conflict with certain easements providing access through or use of property within the proposed subdivision.

5) Establishes the HAA, which provides that when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the housing development project's application is complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon specified written findings.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **Background.** State Planning and Zoning Law, the California Environmental Quality Act, the Subdivision Map Act, and the Housing Accountability Act all establish parameters that govern local development.

   a) ***Planning and Zoning Law.*** Planning and approving new housing is mainly a local responsibility. The California Constitution allows every city and county to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority.

   State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory "elements," including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions – including most zoning ordinances and other aspects of development permitting including subdivisions of land –must be consistent with their general plans.

   b) ***California Environmental Quality Act.*** 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. Amendments to zoning ordinances and general plans are considered projects and are therefore subject to CEQA review.

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. If mitigation measures are

required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

c) ***The Subdivision Map Act.*** The SMA establishes a statewide regulatory framework for controlling the subdividing of land, which generally requires a subdivider to submit, and have approved by the city or county in which the land is situated, a tentative map. Cities and counties approve tentative maps that are consistent with their general plans, attaching scores of conditions. Once subdividers comply with those conditions, local officials must issue final maps. Approving tentative maps is a discretionary action. However, once the conditions of a tentative map are met, a final map is typically approved ministerially.

For smaller subdivisions (lot splits), the level of improvements local governments can require for the subdivisions are statutorily limited and local officials issue parcel maps rather than tentative and final maps. Parcel maps may be approved through a one-step discretionary process at the local level. However, local governments may, at their discretion, require a tentative parcel map followed by final parcel map for these subdivisions.

d) ***The Housing Accountability Act.*** The HAA was enacted in 1982 in response to concerns over a growing rejection of housing development by local governments due to not-in-my-backyard (NIMBY) sentiments among local residents (SB 2011, Greene). The HAA, also known as the "Anti-NIMBY" legislation, restricts a local agency's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA limits the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the economic, social, and environmental effects of the action. When a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project or approve it on the condition that it be developed at a lower density, must make written findings based on substantial evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project.

2) **Author's Statement.** According to the author, "One primary factor contributing to California's housing and homelessness crises has been the underproduction of housing units in the state. Large parcels of developable land are often underutilized, particularly in urbanized, infill areas, because the process for subdividing the lot can be too cumbersome and make the project infeasible. AB 3234 establishes an opt-in small lot subdivision framework for local agencies to consider adopting. The framework limits the number of improvements an agency may impose upon a subdivided parcel while ensuring this time-certain process is limited to urban infill areas where the supporting infrastructure already exists. By providing housing development project proponents the needed certainty when considering whether to subdivide a parcel, this bill maintains local control of planning decisions while helping to spur the production of desperately needed housing units."

3) **"Missing-Middle" Housing**. The cost of housing in California is the highest of any state in the nation. Additionally, the pace of change has far outstripped that in other parts of the country. While housing in California was 30% more expensive than the U.S. average in 1970, now it is 250% more expensive. Although incomes have also increased over that

period, they have done so at a much slower pace. The result is that housing has become much more expensive. Only 28% of households can buy the median priced home. More than half of renters and 80% of low-income renters are rent-burdened, meaning they pay more than 30% of their income towards rent. According to a 2016 McKinsey Global Institute report, Californians pay $50 billion more per year for housing than they are able to afford (nearly $3,000 per household).

One of the many reasons that housing is too expensive is the type of housing that is being built. Almost all of the housing built in California is single-family (which can be an inefficient use of land) and mid- and high-rise construction (which is expensive to build). One strategy to reduce the cost of housing is to facilitate the construction of "missing-middle" housing types that accommodate more units per acre, but are not inherently expensive to build. This includes medium-density housing, such as duplexes, fourplexes, garden apartments, town homes, and so forth. In addition to being land-efficient while being less expensive to build, these housing types have several other benefits, including:Being more contextually similar to existing single-family neighborhoods;

a) Providing sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods;

b) Helping expand the pool of homebuilders, since the construction and building materials are comparatively less complicated than larger mid- and high-rise structures; and,

c) Being naturally less expensive in the market because each living unit is typically smaller than a single-family home, thereby helping increase access to opportunity and facilitating neighborhood equity and inclusion.

A major reason that these units are not being built is that not enough land is designated for multi-family housing under local zoning. A 2019 Terner Center survey of California cities and counties revealed that only 7% of local jurisdictions zoned more than half their land for multi-family housing, and only 35% zoned one quarter of their land for multi-family housing.

Additionally, even when land is properly zoned to allow the development of smaller units, existing maps may need to be subdivided into smaller parcels to allow for smaller homes that based on their size are "affordable by design." Several cities have sought to encourage the development of smaller "starter homes," such as town homes and bungalows in single family neighborhoods, as well as in areas zoned for commercial and multifamily development that remain undeveloped or underdeveloped by adopting small lot ordinances that streamline the development process for smaller homes.

This bill seeks to encourage the development of small lot homes by exempting from CEQA ordinances that streamline aspects of the subdivision process under the SMA and meet certain objective standards.

4) **Small Lot Ordinances.** In response to the growing housing affordability crises, several cities have considered adopting small lot ordinances to allow streamlined development of smaller single-family homes that can be built at a greater density than traditional single-family neighborhoods.

Notably, the City of Los Angeles developed a small lot ordinance in the early 2000s, to encourage the development of smaller townhomes and bungalows on undeveloped lots within the City. The ordinance reduced the minimum lot size substantially for single family homes and allowed small lot homes to be built in undeveloped commercial and multifamily lots. Since 2010, 1,413 small lot units have been issued a certificate of occupancy in the City of Los Angeles. Small lot subdivisions in the City are permitted at the existing residential density allowed in the zone. The City has found that approved small lot subdivisions in multifamily residential zones have an average density of 39 dwelling units per acre and approved small lot subdivisions in medium or medium-high density multifamily zones have an average density of 61 dwelling units per acre. While this density is lower than the maximum density allowed for in these zones, it is substantially higher than the eight-unit-per-acre density in single-family zones in the City of Los Angeles.

Local ordinances and efforts notwithstanding, under the SMA, creating higher density small lot homes on undeveloped parcels typically requires a developer to go through a two-step tentative and final map process before construction can proceed. This is the case even if the small lot homes would achieve the same density as a multifamily dwelling complex built on the same existing parcel. For example, a one acre parcel in an area zoned for a density of 20 units per acre could be used to create a 20 unit apartment complex. However, to develop small lot homes at the same density on that parcel, the SMA requires a developer to first apply for a tentative and final map to create 20 separate lots before small lot homes can be built. ***This bill*** seeks to streamline the subdivision process under the SMA by permitting jurisdictions to allow subdivisions designed to create small lot homes that comply with objective requirements to use a single-step parcel map approval process.

5) ***Tentative and Parcel Maps.*** For large subdivisions (five parcels or more), a city is required to issue a tentative and final map. Tentative maps are discretionary actions and cities may attach conditions to the map prior to approval. Once a developer meets the requirements of a tentative map, a final map will be issued. For smaller subdivisions, a parcel map may be issued, which allows for a simpler one-step process. A parcel map does not require the issuance of a tentative map. However, under the SMA, local governments may require a tentative map in connection with a parcel map. This makes the issuance of a parcel map a two-step process and more similar to the tentative and final map process required for larger subdivisions.

   This bill seeks to streamline the subdivision process for small lot subdivisions that are less than five acres in size by:

   a) Extending the parcel map process to small lot subdivisions that would otherwise be required to obtain a tentative and final map; and,

   b) Making the issuance of a parcel map for a small lot subdivision a one-step ministerial process for small lot subdivisions that meet the objective criteria in the bill.

   The objective standards that a subdivision must meet under the bill are designed to ensure that small lot subdivisions are only eligible for a one-step ministerial parcel map if they include certain attributes that protect low-income households, the environment, and cultural resources. These criteria include requirements that the parcel to be subdivided:

   a) Is an urban infill project;

b) Does not involve the elimination of low income or deed restricted housing;

c) Meets maximum size requirements; and

d) Does not disturb historic or Tribal Cultural Resources.

These provisions effectively limit the applicability of the bill to urban infill areas where the supporting infrastructure improvements that are normally required in the subdivision process already exist. In addition to meeting these criteria, a small lot subdivision is only eligible for the streamlined parcel map process provided for in the bill if the city or county where the land will be subdivided elects to adopt a small lot ordinance that incorporates the provisions of this bill.

6) **Overlapping Provisions in the SMA and the HAA.** The SMA requires a city or county to disapprove tentative and parcel maps, if the proposed subdivision does not meet specified criteria. The listed criteria includes objective standards as well as standards that may be subjective in nature, including whether the site is "physically suitable" for the development. In effect, if the city or county finds that a development is not physically suitable, under the SMA, it must disapprove the tentative or parcel map, effectively denying any project that is contingent upon the map approval.

In contrast, under the provisions of the HAA, when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the housing development project's application is completed, a city or county can only disapprove the project if the local agency makes a finding that project will have a "specific adverse impact" and that there is no feasible method to mitigate or avoid the adverse impact. "Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Effectively under the HAA, subjective standards cannot be a basis for denial of a housing development project.

While the SMA requires a local government to disapprove a tentative or parcel map that is not physically suitable, the HAA prohibits a local government from disapproving a housing development project based on subjective standards. Whether a site is "physically suitable" is not necessarily an objective standard, creating a potential conflict in how these two laws are implemented when a housing development project requires a tentative or parcel map. This ambiguity regarding the predominance of the SMA or the HAA has led to litigation between developers and local government. See: *Eden Housing, Inc. v. Town of Los Gatos,* County of Santa Clara Superior Court, Case No. 16CV300733, and *Honchariw v. County of Stanislaus* (2011) 200 Cal. App. 4th. 1066.

Of note, the County of Stanislaus denied a housing development project on the grounds that the site was not physically suitable and therefore must be denied under provisions of the SMA. The County of Stanislaus argued that unless and until the County Board of Supervisors makes all of the findings required under the SMA, then the written findings that must be made pursuant to the HAA in order to deny a project are not required. In *Honchariw v. County of Stanislaus,* the court found otherwise and held that a finding that a project is not approvable under the SMA does not relieve a city or county from compliance with the HAA for housing development projects.

While the court held that the County did not proceed in the manner required by law by denying the approval without making the findings of the HAA, or otherwise demonstrating that the project violated objective standards, the court did not specifically define "objective" for purposes of compliance with the HAA. However, while reviewing the history of the HAA, the court explained it had been "amended to strengthen the law by taking away an agency's ability to use what might be called a 'subjective' development 'policy' (for example, 'suitability')…" supporting the idea that that physical suitability is not an objective standard.

Last year, SB 330 (Skinner), Chapter 654, Statutes of 2019, amended the HAA to define, until 2025, "objective" as "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official."

This bill seeks to resolve statutory ambiguity between the SMA and the HAA. The bill amends the SMA to clarify that a tentative or parcel map for a housing development project, as defined under the HAA, can only be disapproved on the basis of objective findings that are consistent with the HAA.

7) **Related Legislation.** This bill includes provisions that are substantially similar to provisions in AB 2666 (Boerner Horvath) and AB 3155 (Robert Rivas), which were referred to the Housing and Community Development Committee. Should all three bills move forward, the authors should work to resolve any overlapping or conflicting provisions in their legislation.

8) **Committee Amendments.** The Committee may wish to consider a number of technical amendments to the bill:

   a) The author and sponsor intend for the provisions streamlining the subdivision process to only be applicable in a city or county that opts-in to the provisions of the bill by adopting an ordinance. In the bill's amendments to Government Code Sections 66411.1, 66426, and 66428, it is not entirely clear that the streamlined provisions are only applicable in a city or county that adopted an ordinance. The Committee may wish to consider an amendment to those sections clarifying that the streamlined SMA provisions are only applicable in a city or county that adopts an ordinance pursuant to proposed Section 66462.1.

   b) The language includes an erroneous reference to a nonexistent section of the Government Code (Section 65913.6). The Committee may wish to consider an amendment removing this reference from the bill.

9) **Arguments in Support.** The American Planning Association, California Chapter (APA California) writes, "AB 3234 allows local jurisdictions to create ordinances to review and approve small lot subdivision developments that would receive a streamlined, ministerial approval. Specifically, these developments would require only a parcel map if the development is located on an infill site, is zoned for single-family, multi-family or mixed-use and is no larger than five acres. The bill also sets reasonable restrictions on minimum and maximum lot size square footage and parking requirements calibrated to ensure reasonable densities and compact development to promote lower cost construction and home ownership opportunities. Importantly, the bill also applies anti-displacement protections and protections for historical and tribal cultural resources. APA California believes that the streamlined

approval of small lot developments will encourage expedited housing development that Californians desperately need. Encouraging streamlining of developments with smaller lots creates a path to produce higher density, smaller units that are intended to be more affordable by design…

"Under existing law, a local jurisdiction may not approve a tentative map or parcel map unless it makes specified findings, including some findings that are not objective. However, a court of appeal decision – Honchariw v. County of Stanislaus (2011) 200 Cal.App.4th 1066 – ruled that Map Act findings that are not objective cannot be used to deny a project under the HAA. This leaves public agencies in an impossible situation when it feels that subjective Map Act criteria has not been met: approve the project under the HAA in violation of the Map Act, or deny the project as required by the Map Act in violation of the HAA.

"AB 3234 will make the traditional Map Act findings inapplicable to residential subdivisions. Instead, the bill would replace those findings with objective standards for residential development projects, including that the proposed map is consistent with objective standards contained in applicable general plan, specific plans and all applicable zoning and design review standards. This amendment would harmonize the Map Act's requirements with the HAA, further advancing the state's goal of promoting housing development for all."

10) Arguments in Opposition. None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association, California Chapter [SPONSOR]
Bay Area Council
California Association of Realtors
California Building Industry Association
California Community Builders
California YIMBY

Opposition

None on file

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