The 2016-17 Budget:

Considering Changes to Streamline Local Housing Approvals

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This is an initial response to the Governor's proposal—which was a part of the administration's May Revision released on May 13, 2016—to change state law to streamline certain local housing proposals. The proposal has many complex interactions with state and local laws and our review was conducted quickly. (Should we learn of new issues or facts relevant to the proposal, we may update our online post in the coming weeks.) For more thorough discussions of the state's housing challenges, see our earlier reports *California's High Housing Costs: Causes and Consequences* and *Perspectives on Helping Low-Income Californians Afford Housing*.

SUMMARY

Local Resistance Is a Barrier to More Housing Development. For decades, California's local communities—particularly coastal communities—have built too little housing to accommodate all those who wish to live here. California's cities and counties make most decisions about when, where, and to what extent housing will be built. Many local communities have used this authority in ways that have constrained housing development. These community decisions understandably reflect residents' concerns about the changes that new housing may bring. New housing—and the associated new residents—can exacerbate traffic congestion and parking shortages, stretch local facilities, slow home price appreciation, and alter the community's character.

Consequences of California's Housing Shortage Are Extensive. At the same time, too little home building has serious adverse effects that extend beyond a community's boundaries. These consequences are extensive. Housing costs in California have risen rapidly, posing a host of challenges for many Californians—especially low-income Californians. The state's economy also has been hampered as the movement of workers into the state's productive local economies has been slowed. There is good reason to believe that local communities do not fully account for these costs when deciding how much housing to build.

Change Will Be Difficult. California's rapidly rising housing costs pose a difficult dilemma for state policy makers. If the status quo is maintained, there is little reason to believe local communities will depart from their past practices. The state's housing challenges almost certainly will worsen. At the same time, bringing about a meaningful increase in housing production would require a major shift in the way cities and counties plan for and approve housing. Such a change likely would be complicated and contentious.

Governor's Proposal Has Merit. Recognizing the need for policy changes to facilitate more home building, the Governor has proposed significant changes to how cities and counties approve housing. These proposed changes have the potential to be an important first step toward addressing California's housing shortage. We believe the Governor's proposal warrants serious consideration from the Legislature.

Strengthen and Expand Governor's Proposal. We also suggest the Legislature consider some modifications to strengthen and expand the Governor's proposal. Most notably, we suggest the Legislature expand the number of housing projects eligible for streamlined approval by lowering the affordability requirements developers must meet. We also recommend changes to guard against possible actions some communities may take to hinder the use of streamlined approval.

More Policy Changes Needed to Address This Issue. Looking beyond this year, the administration has committed to consider additional policy changes to encourage housing production. Along these lines, we suggest the Legislature continue to explore other ways to encourage more home building in California's coastal communities. Additional policy changes aimed at ensuring local planning and zoning rules provide sufficient opportunities for home building would be a critical complement to the Governor's proposal.

LOCAL GOVERNMENT PLANNING AND APPROVAL OF NEW HOUSING

California's cities and counties make most decisions about when, where, and to what extent housing will be built. To provide context for the Legislature in considering the Governor's proposed changes, we discuss in this section the basics of how local communities plan for and approve housing.

General Plan Defines a Community's Long-Term Vision

General Plan Charts Path of Future Development. Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. The land use element sets a community's goals on the most fundamental planning issues—such as the distribution of uses throughout a community, as well as population and building densities—while other elements address more specific topics. Communities also may include elements addressing other topics—such as economic development, public facilities, and parks—at their discretion.

Housing Element Outlines How a Community Will Meet Its Housing Needs. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its regions housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Regional Housing Needs Allocation Process Defines Each Community's Fair Share of Housing. Each community's fair share of housing is determined through a process known as Regional Housing Needs Allocation (RHNA). The RHNA process has three main steps:

- ***State Departments Develop Regional Housing Needs Estimates.*** To begin the process, the state department of Housing and Community Development (HCD) estimates the amount of new housing each of the state's regions would need to build to accommodate projected household growth. Household growth projections are based on an analysis of demographic trends and population growth estimates from the state Department of Finance. Each region's housing needs are grouped into four categories based on the anticipated income levels of future households: very-low, low, moderate, and above-moderate income. (Very-low income is defined as less than 50 percent of an area's median income, low income 50 percent to 80 percent, moderate income 80 percent to 120 percent, and above-moderate income more than 120 percent.)

- ***Regional Councils of Government Allocate Housing Within Each Region.*** Next, regional councils of governments (regional planning organizations governed by elected officials from the region's cities and counties) allocate a share of their region's projected housing need to each city and county. Cities and counties receive separate housing targets for very-low, low, moderate, and above-moderate income households. Each council of government develops its own methodology for allocating housing amongst its cities and counties. State law requires, however, that each region's allocation methodology be consistent with their Sustainable Community Strategy—a state-mandated long-range regional strategy to reduce regional greenhouse gas emissions through transportation and land use planning.

- ***Cities and Counties Incorporate Their Allocations Into Their Housing Elements.*** Finally, cities and counties incorporate their share of the regional allocation into their housing element. Communities typically do so by demonstrating how they plan to accommodate their projected housing needs in each income category.

Some Communities Do Not Comply With Housing Element Requirements. State law requires HCD to review each community's housing element for compliance with state requirements. In recent years, HCD has found that most (around 80 percent) housing elements comply with state laws. (Despite this, only a minority of communities actually meet their home building targets.) A minority of communities, however, have either adopted a noncompliant housing element or failed to submit their housing element to HCD for timely review. Communities without an approved housing

element face limited ramifications. Noncompliant communities are ineligible for various housing-related state grant funds, which represent a very small share of local government resources. Courts may also suspend a local government's permitting authority until its housing element is approved, although this may have limited effect on communities less inclined to development.

Zoning Implements the General Plan

Zoning Is the Primary Tool for Implementing the General Plan. Cities and counties enact zoning ordinances to turn the broad policy goals outlined in their general plans into property-specific requirements. A community's zoning ordinance typically defines each property's allowable use and form. Use dictates the broad category of development that is permitted on the property—such as single-family residential, multi-family residential, or commercial. Form dictates building height and bulk, the share of land covered by buildings, and distance of buildings from neighboring properties and roads (known as setback). Zoning ordinances also often place additional restrictions on property owners—such as minimum parking requirements—to mitigate a property's potential effects on surrounding properties.

Zoning Determines the Type of Housing Built. Rules about form effectively determine how many housing units can be built on a particular site (referred to as housing density). A site with one- or two-story height limits and large setbacks typically can accommodate only single-family homes. Conversely, a site with height limits over one hundred feet and limited setbacks can accommodate higher-density housing such as multi-story apartments. Rules such as minimum parking requirements also can shape housing densities. If a community requires abundant onsite parking, a developer would have to dedicate more land to parking lots, reducing the number of housing units that can be built.

Zoning Key to Meeting Housing Needs. Zoning rules determine the size of a community's housing stock by dictating how many sites housing can be built on and at what densities. Zoning rules, therefore, must allow for new housing on a sufficient number of sites and at sufficient densities if a city or county is to meet its community's housing needs.

Permitting Addresses Project Specifics

Housing Developers Must Obtain City or County Approval. Before housing developers can build new housing, they generally must obtain one or more permits from city or county planning departments and, in many cases, must also obtain approval from local planning commissions and city councils or county boards of supervisors.

Some Projects Permitted Via an Administrative Process. Some housing projects can be permitted by city or county planning staff without further approval from elected officials. These projects are typically referred to as "by right." By-right projects 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. By-right approval is uncommon for large housing developments.

Additional Public Review Often Required. Most large housing projects are not allowed by right. Instead, these projects are vetted through both public hearings and administrative review. In addition, local planning commissions and, in some cases, city councils or county boards of supervisors must give their consent. Several factors can trigger additional public review. Many communities have policies that, as a default, require new housing (particularly large, dense projects) to go through a discretionary, public review process to safeguard against potential effects to neighbors. Under

these policies, planning commissions and elected officials review projects and can require developers to make changes to a project's scale or design and place additional conditions upon their approval. In some cases, projects may be denied even if they are consistent with existing general plan and zoning requirements. Many projects also require additional public review because they are not consistent with existing general plan or zoning requirements and, therefore, necessitate action from elected officials to waive or amend these rules.

Projects Often Required to Undergo Design Review. In addition to seeking approval of basic building permits, housing projects are routinely required to go through a "design review" process. Design review primarily aims to ensure that the physical form and aesthetic of a proposed development are in line with the community's established principles and the character of the surrounding neighborhood.

Review of Environmental Impacts Often Required

The California Environmental Quality Act (CEQA) was enacted in 1970 in order to ensure that state and local agencies consider the environmental impact of their decisions when approving a public or private project. Most housing projects that require discretionary review and approval are subject to CEQA review, while projects permitted by right generally are not.

CEQA Review Provides Information About Potential Impacts to the Public. Under CEQA, before approving new housing (or other development), cities and counties usually must conduct a preliminary analysis to determine whether a project may have significant adverse environmental impacts. If it is determined that a project might create significant impacts, then an environmental impact report (EIR) must be prepared. An EIR provides detailed information about a project's likely effect on the environment, considers ways to mitigate significant adverse environmental effects, and examines alternatives to the project. Where an EIR finds that a project will have significant adverse environmental impacts, a city or county is prohibited from approving the project unless one of the following two conditions is met: (1) the project developer makes modifications that substantially lessen the adverse environmental effects or (2) the city or county finds that economic or other project benefits override the adverse environmental effects.

Voters Decide Many Land Use Issues

While most land use decisions are made by city and county elected officials and staff, a considerable number of land use issues have been decided by voters in recent decades. Land use issues may be placed before voters by (1) an initiative proposed by resident groups, elected officials, or other parties or (2) a referendum on a recent land use decision made by elected officials. In some cases, voters are asked to set broad general plan and zoning policies, while in other cases they are asked whether or not specific projects should be permitted.

COMMUNITIES PLAN FOR AND PERMIT TOO LITTLE HOUSING

In *California's High Housing Costs*, we showed that far too little housing is built in California's coastal urban areas to accommodate all those who wish to live there. We noted that this shortfall results from a variety of factors. Most important among them is that residents of California's coastal communities are hesitant to allow new housing and, therefore, use their communities' land use authority to limit housing construction. Local resistance is amplified by two state policies. First, California's local finance structure often encourages cities and counties to favor nonresidential development. Second, opponents of new housing can use the CEQA review process to delay proposed development and, in some cases, compel builders to reduce the size or scope of projects. Below, we discuss these findings in more detail.

Too Little Housing Built on the Coast

California Coast: High Demand Met With Constrained Supply. California's coast is in high demand as a place to live and work. Its temperate climate, scenic views, diverse populations, and economic opportunities make it a desirable location for many. Various observations strongly suggest that California's coastal communities build too little housing to satisfy this high demand.

Coastal Home Building Low by National and Historical Standards. In recent decades, construction of new housing in California's coastal metropolitan areas (referred to as "metros" below) was low by national and historical standards. Between 1980 and 2010, the number of housing units in the typical U.S. metro grew by 54 percent, compared with 32 percent for the state's coastal metros. Home building was even slower in Los Angeles and San Francisco, where the housing stock grew by only around 20 percent. The rate of housing growth along the state's coast also is low by California historical standards. During an earlier 30-year period (1940 to 1970), the number of housing units in California's coastal metros grew by 200 percent.

Similarly Desirable Locations Outside of California Build More Housing. Home building in California's coastal metros has been significantly lower than in metros outside of California that have similar desirable characteristics—such as temperate weather, coastal proximity, and economic growth—and, therefore, likely have similar demand for housing. For example, Seattle (a coastal metro with economic characteristics and average temperatures that are similar to California's Bay Area metros) added new housing units at about twice the rate as San Francisco and San Jose over the last two decades.

Coastal Communities Resist New Housing

Residents Often Anxious About New Housing. Existing residents of a community often feel that new housing is a threat to their well-being. Some residents fear new housing will lower the value of their home. Others fear new housing will bring changes to their lifestyle or standard of living, such as increased traffic congestion or strained local resources. Hesitance about new housing can lead residents to pressure local officials to use their land use authority to slow or block new development. Residents may call for elected officials to enact restrictive zoning rules or encourage elected officials to scale back or reject projects during discretionary review processes. In many cases, residents also directly intervene in land use

decisions via the initiative and referendum process. These types of responses have been a major factor in the undersupply of housing in California's coastal communities.

Benefits of New Housing Often Unclear to Existing Residents. While new housing can have drawbacks for a community's residents, new housing also brings benefits. Building new housing can help make housing more affordable both for renters and new home buyers. Improvements in housing affordability often are not limited to the community where the building occurs, as regional housing markets often are highly integrated. Further, building more housing in a community provides opportunities for households to live in the community who otherwise could not. This is particularly important in communities with higher wages and economic opportunities. Allowing more households to move to these communities likely helps them improve their personal economic situation. It also can promote regional and statewide economic growth by enhancing employers' access to skilled workers. These benefits, however, are often unclear to existing residents because those who may benefit often live outside the community. Because of this, communities often focus on the potential drawbacks of new housing while undervaluing the potential benefits. This imbalance can lead communities to plan for and permit less housing than may be optimal from a regional or statewide perspective.

Concerns Over Housing Appear to Be Heightened on California Coast. Compared with the rest of the country, efforts to restrict housing appear to occur more often in California's coastal communities, suggesting that community opposition to housing is heightened in these areas. For instance, over two-thirds of California's coastal cities and counties have adopted policies explicitly aimed at limiting housing growth. Additionally, residents in California's coastal communities often vote to limit housing development. Our review of local elections data between 1995 and 2011 found that voters in California's coastal communities took a position that limited housing growth about 55 percent of the time. On average, coastal communities as a whole approved five measures per year limiting housing growth (or rejected measures allowing new building).

Fiscal Incentives Exacerbate Local Dynamics

Local Governments Weigh Fiscal Impacts of Land Use Decisions. When property is developed, communities usually receive increased tax revenues but also often face increased demand for public services and infrastructure. Because different types of developments yield different amounts of tax revenues and service demands, local governments commonly examine these fiscal effects when considering new developments or planning for future development. As a matter of fiscal prudence, development that does not generate sufficient revenues to fund a local government's new costs often is revised or rejected.

California Communities Often Benefit Less From Residential Development. In California, many cities and counties find that housing developments lead to more local costs than offsetting tax revenues. This is because these properties do not produce sales or hotel tax revenues directly and the state's cities and counties typically receive only a small portion of the revenue collected from the property tax. In contrast, cities and counties typically find that commercial developments that generate sales or hotel taxes yield the highest net fiscal benefits. Not surprisingly given these incentives, many cities and counties have oriented their land use planning and approval process disproportionately towards the development of commercial establishments and away from housing.

CEQA Can Be Used to Delay or Reduce Building Activity

The CEQA process can provide valuable information to decision makers and help to avoid unnecessary environmental impacts. The CEQA review process also provides many opportunities for opponents to raise concerns regarding a project's potential effects on a wide array of matters, including parking, traffic, air and water quality, endangered species, and historical site preservation. A project cannot move forward until all concerns are addressed, either through mitigation or with a determination by elected officials that benefits of the project outweigh the costs. In addition, after a local governing board approves a project, opponents may file a lawsuit challenging the validity of the CEQA review. As a result of these factors, CEQA review can be time consuming for developers. Our review of CEQA documents submitted to the state by California's ten largest cities between 2004 and 2013 indicates that local agencies took, on average, around two and a half years to approve housing projects that required an EIR. The CEQA process also, in some cases, results in developers reducing the size and scope of a project in response to concerns discovered during the review process.

GOVERNOR'S PROPOSAL TO STREAMLINE MULTIFAMILY HOUSING APPROVALS

California's local communities often fail to fully recognize the benefits of new housing. Because of this, they have and likely will continue to approve less housing than is ideal from a regional or statewide perspective. This will result in continued challenges for many Californians and slowed economic growth. To avoid this outcome, state policy makers would need to make major changes to how cities and counties plan for and approve housing. Consistent with this, the Governor's May Revision proposal includes proposed changes to how cities and counties approve multifamily housing. These proposed changes have the potential to be an important first step toward addressing California's housing shortage. We believe the Governor's proposal warrants serious consideration from the Legislature.

Below, we describe the Governor's proposal. In the next section, we offer some ways the Legislature could strengthen the Governor's proposal.

By-Right Approval of Certain Housing Projects. The administration proposes that cities and counties require only by-right approval for housing projects that meet certain conditions. Cities and counties would not be allowed to require any type of discretionary approval process for qualifying housing projects. To be eligible for by-right approval, a housing development would need to:

- ***Conform With Existing General Plan and Zoning Rules.*** A project generally must be on a site designated for housing by a local general plan or zoning laws. The project also must be consistent with "objective general plan and zoning standards" in place at the time the project applies for city or county approval. No definition for objective general plan and zoning standards is provided.

- ***Be Multifamily Housing.*** Only projects with two or more housing units per structure would be eligible.

- ***Be Infill Housing.*** A project must be surrounded by "urban uses," defined as housing, commercial buildings, public facilities, or transportation infrastructure. Specifically, a site proposed for development must either (1) neighbor urban uses or (2) have at least 75 percent of its perimeter bordered by urban uses.

- ***Meet Affordability Requirements.*** A project must set 20 percent of its housing units at prices affordable to low-income households for at least 30 years. These requirements would be lower for projects within one-half mile of an existing or planned transit stop. In these cases, developers would need to set aside either (1) 10 percent of the housing for low-income households or (2) 5 percent for very-low-income households.

- ***Not Develop Certain Types of Land.*** The site proposed for development also generally could not be prime farm land, wetlands, or a hazardous waste site nor within a very high fire hazard area, an earthquake fault zone, or a flood plain.

Sets Timeline for Cities and Counties to Object to Streamlined Approval. Under the Governor's proposal, a developer of a project that meets the above conditions must notify the appropriate city or county of its intent to seek by-right approval. After receiving this notification, the city or county would have 30 days to review the project and inform the developer in writing if it believes the project is not consistent with general plan and zoning standards. If the city or county does not provide a written determination within 30 days, the project is automatically deemed to meet general plan and zoning standards.

Expedited Design Review. The Governor's proposal does not preclude cities and counties from conducting design review of housing projects. The proposal, however, likely would reduce the scope of some communities' design review processes. Specifically, design review could not take longer than 90 days nor could it interfere with the by-right approval of an eligible project.

Eligible Projects Would Not Require CEQA Review. Under the Governor's proposal, the by-right approval of eligible projects generally would not be an action subject to CEQA review. As a result, eligible housing projects would not need to undergo a CEQA analysis.

Requires Relocation Assistance for Displaced Households. The Governor's proposal would require a developer to provide relocation assistance to households if they are displaced by a housing project that takes advantage of by-right approval.

MODIFICATIONS COULD STRENGTHEN GOVERNOR'S PROPOSAL

The Governor's proposed by-right approval rules, if enacted, would be an important step toward increasing housing production in California. Nonetheless, we feel changes could be made to the Governor's proposal to bring about even more home building and, consequently, even greater improvements in housing affordability.

Expand Number of Housing Projects Eligible for Streamlining

Practical Limits on How Much Housing Can Be Set Aside as Affordable. The cost of building, operating, and maintaining housing for low-income households often exceeds the rents these households are able to pay. When new housing is set aside for low-income households, these excess costs may be covered by (1) subsidies from federal, state, and local governments; (2) reduced expenditures for land and construction; or (3) reduced profits for builders and investors. All three of these options are limited. Federal, state, and local funds are finite and often oversubscribed. Developers have limited control over costs for labor, building materials, and land. And those who finance housing require a minimum return on their investment, below which they will chose to invest elsewhere. These factors place a practical limit on how much housing can be set aside for low-income households without making a project infeasible.

Local Conditions Vary. The amount of housing developers feasibly can set aside for low-income households varies across communities. Many factors contribute to this variation. Costs for labor, materials, and land vary, as does the availability of funding for public subsidies. Further, localities differ in the design and build quality standards they require. These differences are displayed in the variation of local inclusionary housing policies—local requirements for developers to set aside a portion of newly constructed housing for lower-income households. In the San Francisco Bay Area, nearly three-quarters of cities have inclusionary housing policies. Set aside requirements vary from 4 percent to 20 percent, with most requiring 10 percent to 15 percent of units to be set aside for lower-income households.

20 Percent Probably Too High for Many Housing Projects. Many local inclusionary housing policies have set aside requirements that fall below the Governor's proposed 20 percent requirement for housing not near transit. This suggests that, in at least some of these communities, a 20 percent requirement may be infeasible for many home builders. For example, after San Francisco's set aside requirement was increased to 15 percent in 2006, the San Francisco Bay Area Planning and Urban Research Association noted that these requirements were so high that they "were beginning to suppress housing production except in the most expensive parts of town." In 2012, voters approved a measure to reduce the requirement to 12 percent. (This requirement is not perfectly comparable to the Governor's as it applies to moderate-income households, which generally require smaller subsidies.)

Important to Encourage All Types of Housing Construction. The Governor has correctly noted that heightened public pressure and sometimes unreasonable demands arising from local discretionary reviews can force housing projects to be scaled back or abandoned entirely. If the state's housing shortage is to be addressed, discretionary review likely will need to be scaled back for all types of housing development. As we have discussed in *California's High Housing Costs* and *Perspectives on Helping Low-Income Californians Afford Housing*, all types of housing construction are needed to tackle the state's housing shortfall and improve housing affordability—including affordability for low-income Californians. Requiring developers to set aside 20 percent of housing for low-income households, however, may prevent many developers from taking advantage of the proposed streamlined approval. This could substantially limit how much new housing the Governor's proposal will produce.

Expand Number of Housing Projects Eligible for Streamlining. In light of California's need for a dramatic increase in housing production, we suggest the Legislature reduce the Governor's

affordability requirements to expand the number of projects that will be eligible for streamlined approval. Local variation and the complexity of development finance make it difficult to know for certain what threshold would be feasible for most developers. The Legislature, should it enact the Governor's proposal, would need to pick a reasonable starting point and monitor whether or not it proves to be feasible for developers over time.

Consider Aligning Affordability Requirements With Density Bonus Law. One possible starting point could be for the Legislature to align these requirements with the state Density Bonus Law—a state policy that offers incentives and regulatory relief to housing developers that set aside a portion of their housing for low-income households. Developers are eligible for benefits under the Density Bonus Law if they set aside 10 percent of their housing for low-income households or 5 percent for very-low-income households. (While these are the minimum eligibility requirements, projects setting aside additional housing may receive additional benefits.) Aside from expanding the pool of housing projects eligible for streamlined approval, aligning affordability requirements also could enhance the effectiveness of the Density Bonus Law by increasing the benefits provided to eligible developers.

Preempt Local Efforts to Avoid Streamlining Rules

Past Efforts to Encourage Housing Have Met Local Resistance. Over the years, the Legislature has enacted many laws to encourage or compel cities and counties to build more housing. In many cases, local communities have pushed back against these changes. Local communities have broad authority to set planning and zoning rules. These rules often are very complex, specifying dozens of restrictions and standards property owners and builders must follow. Some communities have taken advantage of this complexity to lessen the effectiveness of state requirements. Examples of this include:

- ***Second Housing Units.*** In 2002, the Legislature enacted Chapter 1062 of 2002 (AB 1866, Wright), requiring by-right approval for second housing units (also known as "granny flats") that meet specified standards. After the passage of Chapter 1062, some cities modified their local zoning rules in an effort to limit its effect. For example, a city in Los Angeles County adopted local zoning rules that limited second units to lots that are 15,000 square feet or larger—larger than 80 percent of residential lots in Los Angeles County—and capped citywide construction of second units at 20 units per year.

- ***Growth Caps.*** Beginning in the 1970s, in response to the various pressures to increase housing production—including state housing element requirements—over 100 cities and counties enacted annual housing caps. These caps permitted only a certain amount of housing to be built in a community each year. Often, these restrictions precluded cities and counties from satisfying their housing element requirements to plan for their future growth needs. Courts have more recently invalidated many of these growth caps for conflicting with housing element requirements. Nonetheless, many caps were in effect for many years prior to being invalidated, likely leading to substantially less housing construction.

- ***Housing Moratoriums.*** The state Housing Accountability Act—enacted

in 1982—prohibits a city or county from denying a proposed housing development that is consistent with general plan and zoning standards unless the project would jeopardize public health and safety. Faced with this requirement, but hesitant to approve proposed housing projects, several local communities enacted housing moratoriums in an effort to avoid the Housing Accountability Act. In 2001, the Legislature enacted Chapter 939 of 2001 (SB 1098, Alarcón), to limit local housing moratoriums to 45 days.

Given past experiences, the Legislature may wish to consider adding provisions to the Governor's proposal to guard against possible actions some communities may take to hinder the use of streamlined approval.

Prevent Locals From Applying Different Rules to Streamlined Projects. Cities and counties may attempt to make it less feasible for developers to take advantage of streamlined approval by creating other barriers to these projects within their zoning and planning codes. To avoid this, the Legislature could prohibit cities and counties from applying more stringent zoning rules, higher permitting or development fees, or any other differential treatment to a project because it wishes to take advantage of streamlined approval. The Legislature also could prohibit cities and counties from enacting annual caps on the number of projects that may seek by-right approval.

Define Objective General Plan and Zoning Standards. General plan and zoning laws are very complex and often highly prescriptive. Because of this, it may not be immediately clear which general plan and zoning standards are considered objective and whether a proposed development meets those standards. Further, some city and county zoning rules were adopted decades ago and do not reflect present development practices. In these cases, housing projects must routinely request "variances" from zoning rules. Cities and counties may attempt to use theses ambiguities to deny eligibility for by-right approval, forcing developers to either go through discretionary reviews or challenge the determination in court. To forestall this scenario, the Legislature could more clearly define what general plan and zoning standards a project must meet to be eligible for by-right approval.

Facilitate Enforcement

Developers May Be Reluctant to Challenge Local Noncompliance. Disagreements may arise between cities and counties and housing developers seeking streamlined approval. Should this occur, the developer of an eligible project (or other interested parties) would need to ask the courts to compel the city or county to allow by-right approval. Project developers, however, may be reluctant to challenge a city or county in court. Developers often build multiple projects within the same city or county over a number of years. Because of this, developers may find it is in their long-term best interest to maintain a good relationship with the city or county by not challenging it on any particular project.

Facilitate Enforcement by Other Interested Parties. As a project's developer may be reluctant to assert its eligibility for by-right approval, it could be beneficial to ensure that other interested parties—such as potential residents of the development, affected residents of the locality or region, or organizations that advocate for more home building—are able to bring these challenges. To facilitate these types of challenges, provisions could be added to the Governor's proposal to clarify that these groups have standing to bring a challenge and may recover attorney's fees in a successful suit.

LOOKING AHEAD

The Governor's proposal to change how local communities approve housing projects would be an important first step toward addressing California's housing shortage. We believe the Governor's proposal warrants serious consideration from the Legislature.

No one policy change, however, can solve California's housing challenges. Looking beyond the budget cycle, the administration has committed to consider additional policy changes to encourage housing production. Consistent with this, we suggest the Legislature continue to explore other ways to encourage more home building in California's coastal communities. While it may not be obvious to existing local residents, new housing development can bring important benefits for their community, their region, and the state as a whole.

Importantly, while the Governor's proposal could change significantly how local communities approve housing, it does little to address whether or not they plan for sufficient housing. Hesitant to permit the additional housing this proposed new law could bring, local communities might change their planning and zoning rules to reduce home building opportunities. In prior years, this has been a favored approach of local communities concerned about growth. For this reason, additional policy changes aimed at ensuring local planning and zoning rules provide sufficient opportunities for home building would be a critical complement to the Governor's proposal should it be enacted.

The Governor's proposal, as well as any future efforts to address the state's housing shortage, are likely to be contentious and difficult. Our view is that the severity of California's housing challenges calls for putting all policy options on the table.

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This brief was prepared by Brian Uhler and reviewed by Jason Sisney. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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