



April 2, 2021

Dear Assemblymember Rivas,

Thank you for participating in LandWatch's Legislative Working Group on Housing & Climate. We very much appreciate your leadership on these critically important and interrelated issues.

I wrote to follow up on the questions we had about SB 10, introduced by Senator Weiner and coauthored by you and Senators Atkins and Caballero. As amended in the Senate February 24, SB10 would

- permit a city or county to rezone transit-rich, jobs-rich, or urban infill areas for up to 10 units regardless of local restrictions such as a local voter initiative;
- exempt that rezoning action and any action to update the general plan for consistency from CEQA; and
- bar ministerial approval of residential or mixed use projects over 10 units in these rezoned areas.

The LandWatch Board has not yet reviewed or taken a position on SB 10, in part because the language is not clear to us. We seek clarification so we may consider the bill.

First, although there is no cross reference, it appears that SB 10 is intended to integrate with SB 35's Gov. Code Section 65913.4, which requires ministerial approval of housing development if

- the project is multifamily
- the project is located in qualifying sites zoned for residential or mixed use
- the jurisdiction has not met its RHNA allocation
- the project has specified percentages of deed restricted affordable units
- the project meets objective zoning and design review standards
- the project meets certain labor conditions
- the project is not in certain enumerated kinds of sites

We are not clear whether and why SB 10 is intended to limit the size of projects subject to ministerial approval under existing law. SB 35 has no limit on the number of units in a project that may be ministerially approved. Ministerial or by right approval of projects regardless of the number of units is also currently permitted through Gov. Code Section 65583.2(i) and 65589.5(f). However, SB 10 provides categorically through its proposed Gov. Code Section 65913.5(b)(1) that, "notwithstanding any other law," projects over 10 units on parcels rezoned pursuant to its provisions shall not be approved ministerially or by right and shall not be exempt from CEQA.

We are also not clear whether and why SB 10 is intended to limit the size of projects subject to CEQA exemption under existing law. As noted, SB 10 would bar CEQA exemptions from projects over 10 units in its rezoned areas. There are a number of potential CEQA exemptions

applicable to housing development that could otherwise apply, e.g., Gov Code, Section 65457(a) and Public Resources Code Sections 21155.4, 21158.5, 21155.10, 21159.20 to 21159.27.

These two questions might be resolved if, instead of providing that "notwithstanding any other law" projects over 10 units shall not be ministerially approved or exempt from CEQA, SB 10 simply provided that "noting in this section is intended" to permit ministerial approval or CEQA exemption of projects over 10 units. SB 10 could also provide a savings subdivision, similar to SB 35's Gov. Code Section 65913.4(g), that this section shall not affect a development proponent's ability to use any other available alternative streamlined, by right, or ministerial permit processing procedure.

Finally, this may be a technicality, but SB 10's proposed Gov. Code Section 65913.5(a)(1) allows a rezone for projects up to 10 units "notwithstanding any local restrictions on adopting zoning ordinances." As the the recent amendment to SB 10's proposed Gov. Code Section 65913.5(a)(2) recognizes, an enabling general plan amendment may be required to ensure that this zoning ordinance is consistent with the general plan, which is mandatory for non-charter cities. However, proposed Gov. Code Section 65913.5(a)(1) fails to permit any needed general plan consistency amendment to be made notwithstanding local restrictions on general plan amendments. If a citizen initiative restricts future general plan amendments, e.g., by requiring a ratifying vote for a future general plan amendment, then it may not be possible for the local government to make a valid rezone. We are not clear whether this is intended.

We understand that SB 10 has not and may not come to the Assembly. However, if it does, we would like to understand how it is intended to work.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. DeLapa". The signature is fluid and cursive, with the first name "Michael" and last name "DeLapa" clearly distinguishable.

Michael D. DeLapa  
Executive Director