AB 369, Anti-Nimby Law

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AB 369 (Dutra), (Chapter 237, Statutes of 2001) amends Anti-Nimby law to permit applicants to receive reasonable attorney fees and costs if a court finds the city or county violated the law by illegally denying or imposing conditions on an affordable housing proposal that is consistent with the local government's general plan, zoning and development policies.

• **Why Is AB 369 Needed:** Since 1990, state law has required local governments to follow certain steps before denying an affordable housing development application. Two years ago, the law was strengthened to require local governments to have objective health and safety reasons for denying affordable housing developments. Unfortunately, the law enacted 10 years ago and the amendments made two years ago provide no remedy to applicants whose proposals are illegally denied. Because current law is inadequate, too many appropriately zoned, desperately needed low -and moderate-income housing proposals continue to be illegally denied. For example:

A 46-unit housing proposal for working families in a Southern California city died when the city, working with a neighborhood group that opposed the development, reduced the density on dozens of acres on the west side of town to 30% of what the general plan provided for. The development would have been the first multifamily housing built in the city in a decade.

A private developer proposed a mixed-use, transit-oriented infill project meeting all zoning requirements of the city. Citing neighborhood opposition, and ignoring the city's general plan and zoning ordinance and the endorsement of the development by city planning staff, the city zoning board rejected the proposal. The developer complains that under existing law there is "almost nothing we can do".

We contend that the law is ineffective and few cases are being brought because there is no remedy when cities ignore the law and deny housing applications. Developers do not use the law because lawsuits are costly and they cannot recover their attorneys fees. And even if they did prevail, we strongly believe it is not good policy for builders to add thousands of dollars in cost to each new home when they are a successful litigant.

• **The Bill:** AB 369 provides for awards fees to a prevailing plaintiff. It does not provide for an award if the defendant prevails. That is consistent with the intent of the law to provide a consequence for localities that violate the law. AB 369 also requires the court to award attorney's fees and costs of suit to the prevailing plaintiff, "except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of the statute." This narrow exception gives the court some limited discretion to deny fees in very unusual circumstances.

Language that permitted a court to order approval of illegally denied developments and award actual predevelopment damages to illegally denied applicants was deleted from earlier versions of the bill.

• **Housing Not Lawsuits**: For a decade since Anti-Nimby law was enacted, City Attorneys and County Counsels have advised local elected officials that they cannot deny certain housing developments without violating state law. In some cases, local officials decide to follow the law, refuse to cave into neighborhood pressure and approve the housing development. In other cases, they ignore the law with impunity and deny the development. By adding a consequence for violating the law, the effect of AB 369 will be to provide an additional incentive for local governments to do the right thing and approve needed housing.