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Council on Affordable Housing's 3rd Round Regulations
Navigating the COAH Objection Process

Over the next several months a number of municipalities will be petitioning the Council on Affordable Housing ("COAH") for 3rd Round substantive certification. If you have land you would like included or excluded from a municipality's Fair Share Plan, it is important to understand the process for objecting to a municipality's petition for certification.

Most municipalities that were under COAH jurisdiction had to petition COAH for 3rd Round substantive certification by December 20, 2005, or lose their protection from builders' remedy lawsuits. However, the 75 municipalities with a 2nd Round substantive certification expiring after December 20, 2005, have until the earlier of May 15, 2007, or the expiration date of their 2nd Round substantive certification to petition for 3rd Round substantive certification.

A municipality must publish in the newspaper notice of its petition to COAH, following which objectors have 45 days to file objections. An objection must contain certain elements, some of which include: (1) stating each aspect of the Plan to which it objects and the basis for each objection, (2) proposing modifications that would resolve the objection, and (3) demonstrating that any proposed site is suitable for COAH development.

There are many potential bases for objections. Objectors can challenge whether a municipality provided sufficient information. For instance, if the municipality claims it will enter into a regional contribution agreement (RCA), it must identify a specific municipality, demonstrate that it has entered into an agreement, and show that the funds are available.

Objectors may also challenge the credits a municipality is claiming. For instance, units might not have been built within the proper time period or might not have the proper affordability restrictions in place.

There are many other potential ways to attack a municipality's Plan as well, requiring an in depth review of the particular Plan.

Following an objection, COAH must prepare a pre-mediation report or request additional information from the municipality within 60 days. When the pre-mediation report is complete, the municipality designates representatives to participate in the mediation, such as the municipal planner, municipal attorney and mayor. The mediation process can last up to 150 days. If no settlement is reached, the COAH mediator will decide whether to continue mediation or refer the matter to the Office of Administrative Law for resolution.

In sum, as there are a number of municipalities that have to petition COAH by May 15, 2007, in order to remain under COAH's jurisdiction. Interested developers should be aware of what the municipality is projecting for its growth over the next 10 years and how the municipality plans to address its affordable housing obligation.

This information is not to be construed as legal advice. If you have any questions regarding a municipality's status before COAH or a municipality's Fair Share Plan, or if you would like to discuss this issue or any other real estate matter, please do not hesitate to contact any of the following attorneys:

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