

April 4, 2023

The Honorable Nancy Skinner
California State Senate
1021 N Street, Suite 8630
Sacramento, CA 95814

Re: SB 439 (Skinner) – Protecting Affordable Housing Projects from Frivolous Lawsuits – SUPPORT

Dear Senator Skinner,

On behalf of MidPen Housing Corporation, we write in support of Senate Bill 439, your bill to strengthen existing protections for affordable housing projects by providing additional remedies to curtail non-meritorious litigation that can delay or kill projects even after they secure local approval.

MidPen Housing is one of the nation’s leading nonprofit developers, owners, and managers of high-quality, affordable housing and onsite resident services. Since MidPen was founded in 1970, we have developed over 125 communities and 8,500 homes for low-income families, seniors and those with supportive housing needs throughout Northern California.

The pandemic has shown us all the essential role affordable housing plays in every California community — providing shelter, support, and community to some of the state’s most vulnerable populations, from seniors and veterans to teachers, firefighters, and many other hard-working families. California currently has a gap of 1.2 million homes affordable to lower-income households and on any given night, roughly 160,000 people in California experience homelessness. While the state has taken significant steps in recent years to address the housing and homelessness crises, there is much more to be done to make housing more accessible and affordable to lower-income Californians in every community.

Despite the well-established need, affordable and supportive housing projects face vocal opposition across the state, making these projects more difficult to site, more time-consuming to approve, and more costly to build. Current law provides numerous protections for proposed affordable and supportive housing developments seeking local approval. For example, Government Code Section 65008 prohibits discrimination in land use decision-making based on the income, race, and other protected characteristics of the intended occupants of a development. The Housing Accountability Act limits local governments’ ability to deny an affordable housing development or attach conditions that render the project infeasible.

Despite the many tools policymakers have provided to ensure affordable and supportive housing projects can move forward, too often developers continue to face non-meritorious litigation attacking their projects even after securing local approval. This type of litigation is pursued by NIMBYs who, having tried unsuccessfully to stop the development during the approval process, turn to the courts, knowing that the prospect of ongoing litigation may deter funding for the project and cause untenable delays and expenses.



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One example involves a project Eden Housing proposed in downtown Livermore, which would provide 130 units affordable to households earning 20% to 60% of Alameda County's area median income. The project overcame community opposition during the local approval process and won unanimous support from the city council, but Save Livermore Downtown (SLD) then filed a suit claiming the city's approval violated CEQA and the state's Planning and Zoning Law. Over the next 18 months, the court consistently rejected SLD's claims, asserting that the claims are "almost utterly without merit" and that the court's decision to reject them was "not a close call." The project would already be complete today but for the litigation. Instead, Eden has yet to break ground and is waiting to see if SLD is going to file an appeal and further delay the project.

The challenge to the Livermore project is hardly unique and represents an increasingly common NIMBY tactic. SB 439 would establish a special motion to strike, similar to the motion that is permitted under state Anti-SLAPP law, to quickly end litigation filed against approved affordable housing projects that has no likelihood of success on the merits.

This bill provides a necessary tool to protect affordable housing developments from frivolous lawsuits, expediting the construction of approved affordable housing developments and helping our state meet its affordable housing goals.

Thank you for your leadership on this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew O. Franklin".

Matthew O. Franklin
President and CEO
MidPen Housing Corporation

cc:

Nevada V. Merriman, Director of Policy, MidPen Housing
Senator Mike McGuire
Senator Bill Dodd
Senator Susan Eggman
Senator Steve Glazer
Senator Nancy Skinner
Senator Aisha Wahab
Senator Josh Becker
Senator Dave Cortese
Senator John Laird
Senator Alex Padilla
Senator Diane Feinstein
Assemblymember Jim Wood
Assemblymember Cecilia Aguiar-Curry
Assemblymember Lori Wilson



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Assemblymember Damon Connolly
Assemblymember Phil Ting
Assemblymember Matt Haney
Assemblymember Mia Bonta
Assemblymember Rebecca Bauer-Kahan
Assemblymember Liz Ortega
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