

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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August 14, 2020

Daniel Golub
Holland and Knight
50 California Street, Suite 2800
San Francisco, CA 94111

**RE: Housing Accountability Act Bonding Requirements
Letter of Technical Assistance**

Dear Daniel Golub:

The California Department of Housing and Community Development (HCD) recognizes the challenge of interpreting ever-changing housing laws. The purpose of this letter is to offer assistance in the interpretation of and compliance with the Housing Accountability Act (HAA) (Gov. Code, § 65589.5). Specifically, you inquired whether a bond under Government Code section 65589.5, subdivision (m), must “cover a project applicant’s increased costs and other consequences of the amount of time it took to get through the legal process.”

Section 65589.5, subdivision (m), is clear on several points: (1) It is mandatory (the local agency “shall post a bond”); (2) the Legislature gave significant discretion to the court to set the bond amount (“in an amount to be determined by the court”); and (3) the bond is to run to the benefit of the plaintiff if the plaintiff is the project applicant.

The HAA provides for appellate bonding and states relevant part:

If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant. (Gov. Code, § 65589.5, subd. (m).)

In this provision, the Legislature has waived, to some degree, the immunity from damages that normally extends to local agencies, recognizing that the project applicant incurs costs due to the delay of its project when a local agency appeals. (Contrast Gov. Code, § 65589.5, subd. (m), with Code Civ. Proc., § 995.220, subd. (b) [local public entities do not have to post bonds].)¹

¹ *City of South San Francisco v. Cypress Lawn Cemetery Association* (1992) 11 Cal.App.4th 916, 922 [“Section 995.220 supplements [the local agency’s] immunity, which clearly reflects the deliberate conclusion of the Legislature that the public good is best served by excusing governmental entities from the security requirements otherwise imposed on litigants.”].)

Further, a court fixing the amount of any bond ought to give effect to the following statutory directive:

It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing. (Gov. Code, § 65589.5, subd. (a)(2)(L).)

Thus, interpretations that are consistent with the statutory preference for interpretations that promote the provision of housing ought to be preferred over other interpretations.

Returning to your original question – whether a bond under Government Code section 65589.5, subdivision (m), must “cover a project applicant’s increased costs and other consequences of the amount of time it took to get through the legal process” – this discretion remains with the court and would depend on the facts of the case. Accordingly, HCD cannot comment on whether such bond would be appropriate in any particular instance. If you have additional questions, please contact Melinda Coy, of our staff, at Melinda.Coy@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief