



American Planning Association
California Chapter

Making Great Communities Happen

APA CALIFORNIA LEGISLATIVE UPDATE

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The 2013 Legislative Session came to an end on September 12th. As usual, however, the end of session was not without a few last minute pieces of legislation that were completely gutted and replaced with brand new language. APA California lobbied the Legislature on hundreds of bills as they made their way through their final stages of committees and floor votes. Nearly one-half of the key planning bills we lobbied are now two-year bills and dead for this year, or were amended to include APA-suggested language. APA was also able to reach agreement on a number of high priority bills.

For a full list of hot planning bills with up-to-the minute status, please go to the legislative page on APA California's website at www.apacalifornia.org.

The key planning measures that were active until the end of session include:

AB 52 (Gatto) Impacts of Projects on Tribal Resources Under CEQA – This bill would have provided a statutory process for Native American tribes to engage in the California Environmental Quality Act review process to avoid significant effects on tribal resources. The amended bills in print continued to include processes, definitions and timelines that were not consistent with CEQA. APA California, as well as the League of Cities and California Building Industry attorneys, continued through the last week of session to work with the tribes on language that would ensure tribal resources are protected, but also ensure that changes made to CEQA were feasible within and compatible with the existing CEQA process. The Governor also suggested amendments to the bill. In the end, the author, sponsors, Governor and interested parties simply ran out of time to agree on amendments and meet the deadlines to pass the bill out of the Senate. The tribes plan to continue to work on the bill this fall and move it in January.

APA California Position: Work with tribes on definitions and process

Location: Two-Year Bill

AB 116 (Bocanegra) Automatic Two-year Extension on Newer Subdivision Maps – This bill would have once again automatically extended the expiration date of any tentative map or vesting tentative map by an additional 24 months. The APA California Review Team decided not to support the automatic extension again this year unless the bill was amended to allow cities and counties discretion over these automatic extensions applied to very old maps. Due to the many years of automatic extensions since the early 90's, some of these unexpired maps are now over twenty years old and likely do not meet current General Plan and zoning requirements. APA

worked with the author and sponsors to amend the bill to, for the first time, provide local agencies with some discretion over these old maps before extensions are granted. AB 116, as signed by the Governor, would provide for an automatic 24-month extension for subdivision maps that were approved **on or after January 1, 2000** and have not yet expired. **But for maps approved before January 1, 2000 (maps over 13 years old), the subdivider will be required to follow the following local process for approval of the extension:**

- The subdivider will be required to file an application with the local agency at least 90 days prior to the expiration of the map.
- If the local agency determines that the map is consistent with applicable zoning and General Plan requirements in effect when the application is filed, the time at which the map expires will be extended by 24 months.
- If the local agency determines that the map is not consistent with applicable zoning and General Plan requirements in effect when the application is filed, the agency may deny or conditionally approve a 24-month extension.
- Upon application, the map will automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs last.
- If the advisory agency denies a subdivider's application for an extension, the subdivider will be allowed to appeal to the legislative body within 15 days after the advisory agency has denied the extension.

APA California Position: Support as Amended

Location: Signed by the Governor – Urgency Bill – *In effect as of July 11, 2013*

AB 325 (Alejo) Extended Statute of Limitations (SOL) on Housing Element Adoption & Ordinances - This bill, as introduced, was similar to four similar versions introduced by housing advocates in past years which failed to pass or were vetoed. It would have originally extended the statute of limitations to challenge lawfully-adopted housing elements and ordinances from the current one year and 150 days to over 4 years. APA, the League, CSAC and RCRC argued successfully that those jurisdictions that receive HCD-certified housing elements should not be subject to a longer statute of limitations than was determined reasonable in the *Pleasanton* case. As a result, the bill was amended in the Assembly to keep the total one year and 150 day statute of limitations for jurisdictions that receive HCD certification. However, at the advocates' request, the time to provide the notice of deficiency to the city or county was extended from 90 days to 9 months. The amendment also kept the current 60 days for local agencies to respond, but, at our request, reduced the period to sue from one year to six months. As the bill moved through the Senate, the housing advocates and the sponsor continued to suggest that they needed the longer 4-year SOL for the 15 cities and counties that in this last round self-certified their housing elements, as well as to challenge density bonus, least-cost-zoning and local growth ordinances in every jurisdiction, regardless whether or not the local agency has an HCD-certified housing element. The Governor's office in the mean time was interested in finding a compromise on these remaining challenges. After many hours of negotiation, and requests by Senators and Assembly Members to reach a compromise with local governments and planners, the author, sponsors, APA and local government organizations agreed to the following:

- **The sponsors agreed not to seek further amendments to the statute of limitations addressed in AB 325 or other changes to the statute of limitations for at least three years.**
- **For jurisdictions with housing elements certified by HCD:** The statute of limitations will be 9 months to provide notice to the local agency, 60 days for the local agency to respond, and 6 months to serve the lawsuit challenging the adoption of the housing element.
- **For jurisdictions with housing elements that are self-certified by the jurisdiction:** The statute of limitations will be 2 years to provide notice, 60 days to respond, 1 year to challenge.

- **For challenges to the adoption of density bonus, least cost zoning and growth ordinances:** The statute of limitations will be 6 months to provide notice, 60 days to respond, 6 months to challenge.
- Provisions related to implementation and court review were also resolved.

With these amendments and agreements, APA California removed its opposition to the bill and is now neutral.

APA California Position: Neutral as Amended

Location: Signed by the Governor

AB 551 (Ting) New Urban Agriculture Incentive Zones – This bill would enact the Urban Agriculture Incentive Zones Act and would authorize a county and a landowner to enter into a contract to enforceably restrict the use of vacant, unimproved, or otherwise blighted lands for small-scale commercial production of agricultural crops. APA asked that the bill be amended to define the term “urban” and include cities in its provisions, as most urban areas fall within their boundaries. Both of those issues were addressed and APA took a support position. In its final stage, the bill was amended again to authorize animal husbandry to be included in these zones. APA did not take a position on this amendment, but asked that the bill be clarified to give local agencies the discretion to determine which agricultural uses and farm animals would be acceptable in these zones – the bill now includes language that leaves that discretion to local agencies.

APA California Position: Support as Amended

Location: Signed by the Governor

AB 564 (Mullin) Redevelopment Successor Agency Enforceable Obligations – This bill would prohibit the Department of Finance, once a finding of completion is issued, from future modification or reversal of an action of approval by an oversight board for specified enforceable obligations of a successor agency, with the exception of an amendment to an enforceable obligation initiated by a successor agency.

APA California Position: Watch

Location: Vetoed by the Governor

AB 662 (Atkins) Redevelopment Successor Agencies and IFDs – This bill would allow an infrastructure financing district to include portions of former redevelopment project areas, and would make other changes to dissolution requirements for former redevelopment agencies.

APA California Position: Watch

Location: Vetoed by the Governor

AB 1092 (Levine) Mandated Electric Vehicle Charging Infrastructure – This bill would have required new construction with four or more offstreet parking spaces to include 1 electric vehicle charging station per each 4 parking spaces. APA California raised concerns that such a requirement would be too onerous. Similar to amendments suggested by APA, the bill was amended to require the California Building Standards Commission to adopt, approve, codify, and publish mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and nonresidential development.

APA California Position: Support as Amended

Location: Signed by the Governor

AB 1229 (Atkins) Inclusionary Zoning for Rental Housing - This bill would re-authorize cities and counties to adopt ordinances with inclusionary rental housing requirements for lower income households. The recent appellate court decision in *Palmer/ Sixth Street Properties v. the City of Los Angeles* created uncertainty for local agencies regarding the use of inclusionary housing programs for rental properties. This bill would clarify and restore control to local agencies to adopt and continue to fully implement previously adopted inclusionary housing policies for both for-sale and rental housing.

APA California Position: Support

Location: Vetoed by the Governor

AB 1330 (Speaker Perez) Targeted Enforcement of Businesses in Top 15% of Disadvantaged Communities

- This bill would have imposed double fines on businesses violating emission and disposal permit requirements that are located in the top 15% of disadvantaged communities. This bill went through many draft versions before the final version was finally in print the last week of session. APA met with the Speaker's office to express our concerns with requirements in the drafts for extensive General Plan, CEQA and local permitting-related outreach, translations, notice, hearings, and other mandates. Fortunately, the final version of the bill didn't include those extensive local government requirements and did provide priority to the 15% most disadvantaged communities for specified grant monies. However, APA remained concerned with provisions included in the final version of the bill that created the potential to "redline" the communities in the 15% to be designated as "disproportionately impacted by environmental hazards" - similar to our concerns with CalEnviroScreen. The bill would have mandated double fines on targeted businesses in the designated 15% of disadvantaged communities for violations that "result in an increased level of emissions or discharges that exceeds a level permitted". APA believes that facilities in any part of the state should not violate permit limits for emissions or discharges. But because the bill would not have distinguished between habitual violators and those businesses that rarely violate, or distinguished between the severity of the releases, those targeted businesses would have received fines that they would not have received in any other areas of the state – just because they were located in one of the communities designated in the 15%. APA remains concerned that this practice could have caused businesses already in these disadvantaged communities to move their facilities and their jobs to other locations or refrain from expanding those facilities, and hamper the abilities of cities and counties to attract new businesses and their jobs to these areas that so need them. Due to the substantial opposition to this bill, the Speaker decided to postpone further consideration of the bill until next year.

APA California Position: Concern with redlining provisions

Location: Moved to Inactive File (on the last night of session) - Two-Year Bill

AB 1331 (Rendon) and SB 42 (Wolk) Water Bond Framework – These two bills at the end of session were substantially amended to provide a framework for a new water bond to be placed on the ballot. These bills were postponed until January, however, to allow the Legislature more time to determine the total amount of the bond, the core purposes and priorities, and allow for more public input this fall. The bond will now be slated for the November 2014 election.

APA California Position: Working with Board and Review Teams to Determine Position and APA Priorities

Location: Two-Year Bills

AB 1359 (Hernandez) Quimby Act Fees - This bill would authorize Quimby Act fees to be used for the purpose of developing new or rehabilitating existing park or recreational facilities in a neighborhood other than the neighborhood in which the fees are paid, as long as the park or facilities would still serve those paying the fee and other requirements are met. APA didn't take a position on the bill until an amendment was added that would have required the Quimby Act fees to be paid on the date of the final inspection or the date of the issuance of the certificate of occupancy, whichever was earlier. Existing law requires payment at the time of the recording of the final map or parcel map, unless a later time is specified in a local ordinance. APA argued that payment of the fee at the time of map recordation allows local agencies the lead-time to appropriate the funds for, and construct or rehabilitate park facilities needed to serve the project, so that new facilities are available for use closer in time to when the residents take occupancy. The amendment would have created a substantial lapse in time before fees could be used to provide facilities for those new residents, and a lag period before recreational facilities funded with the fees could become available. APA asked that the bill be amended to reflect existing law, which the author agreed to do. As a result, APA remains neutral on the bill.

APA California Position: Neutral as Amended

Location: Signed by the Governor

SB 4 (Pavley) Regulation of Fracking – This bill will regulate fracking in California. It requires regulations, notice, and disclosure of fracking activities rather than imposing a moratorium. APA watched this measure closely to be sure that its provisions would not prohibit cities and counties from enacting local ordinances or mitigation requirements to deal with local impacts related to fracking activities.

APA California Position: Watch

Location: Signed by the Governor

SB 341 (DeSaulnier) Redevelopment Agency Low and Moderate Income Housing Fund Activities – This bill revises rules governing the activities of redevelopment agency low and moderate income housing fund activities. This bill appears to be effective however only if the RDA is reinstated.

APA California Position: Watch

Location: Signed by the Governor

SB 391 (DeSaulnier) The California Homes and Jobs Act of 2013 – This bill would have enacted the California Homes and Jobs Act of 2013 and created the California Homes and Jobs Trust Fund in the State Treasury. APA California supports the goal of this measure to provide a permanent source of funding for affordable housing. However, the last month of session the author decided to take more time to work on this bill in 2014.

APA California Position: Support

Location: Two-Year Bill

SB 454 (Corbett) Electric Vehicle Charging Stations Open Access Act – This bill would set up a public access process for owners of electric vehicles using private electric charging stations located on public parking property, similar to the system used by bank ATM's. It would provide that persons desiring to use the electric vehicle charging stations would not be required to pay a subscription fee or obtain a membership as a condition of using the station, but would allow the owners of the electric vehicle charging station to require additional out-of-network charges to non-members as long as the charges are disclosed. APA California believes this bill sets up a fair process to ensure all electric vehicle owners can depend on existing charging stations when needed, while allowing the station owners to charge a "foreign fee" to pay for that service.

APA California Position: Support

Location: Signed by the Governor

SB 731 (Steinberg) CEQA "Updating" Provisions – This bill would have made a number of changes to CEQA and was to be the vehicle for major CEQA reforms and updates this year. APA California worked with the author on the provisions in the bill and suggested other CEQA changes proposed by ECAT. Most of those suggested changes were not taken in this bill, and it retained several provisions as of the last week of session that were opposed by interested parties on both sides of the issues, and others that did not significantly streamline the CEQA process. On the last day of session, Pro Temp Steinberg announced he was making SB 731 a two-year bill in favor of statewide CEQA improvements requested by the Governor to be included in SB 743, the Pro Temp's CEQA streamlining bill for the proposed Sacramento King's basketball stadium. (See discussion on SB 743.) As currently drafted, SB 731, among other changes, included provisions that:

- Specified that aesthetic impacts of transit priority infill projects are not subject to CEQA. (APA supports.)
- Required a 15-day notice period for draft findings related to a statement of overriding considerations or finding that an EIR mitigation is feasible. (APA had asked for a more balanced approach to this issue to deal with late information.)
- Required concurrent preparation of the administrative record at applicant request and expense. (APA supports.)

- Required the lead agency to prepare an annual report on project compliance with mitigation measures. (APA opposes given expense and current mitigation monitoring requirements already in place.)

APA California Position: Support if Amended

Location: Two-Year Bill

SB 743 (Steinberg) CEQA – CEQA Infill and Transit Priority Project Streamlining and Judicial Review Streamlining for Environmental Leadership Development Projects (AB 900) and Sacramento King’s Proposed Stadium – This is the only significant CEQA measure passed this year. The bill would establish special administrative and judicial review procedures, and mitigation requirements under CEQA for the City of Sacramento's proposed entertainment and sports center project (i.e., Sacramento Kings arena) intended to decrease potential impediments to construction of the project. It additionally would provide a fix to AB 900 to remove an unconstitutional provision struck down in a recent court case. Of more importance to APA, however, SB 743 includes broader amendments to CEQA requested by the Governor. APA supports the infill and transit-streamlining proposals in this bill, although there are timing and definitional changes that should be clarified in clean-up legislation next year. As sent to the Governor, SB 743 includes the following provisions that apply beyond the Sacramento project:

- Specifies that aesthetic impacts and parking impacts related to residential, mixed-use residential or an employment center project within infill and transit priority areas can't be considered significant impacts on the environment.
- Requires OPR to provide CEQA guidelines revisions to establish alternative transportation thresholds of significance, as well develop an alternative metric for assessing traffic impacts within transit priority areas. As soon as the revised guidelines are in effect, automobile delay described only by level of service cannot be considered a significant impact for projects in a transit priority area.
- Exempts transit-oriented, urban infill projects from CEQA if they are consistent with a specific plan for which an EIR was prepared, and are consistent with the use, intensity, and policies of a sustainable communities strategy (SCS) or alternative planning strategy (APS) pursuant to SB 375.
- Provides a fix to AB 900 (the bill designed to streamline court review for major green projects called environmental leadership development projects) to deal with a constitutional issue. Requires that challenges to an EIR and approval of these environmental leadership development projects, and any appeals, be resolved within 270 days of the certification of the record of proceedings.

APA California Position: Support if Amended

Location: Signed by the Governor