

Legislative UPDATE

By Sande George, Stefan/George Associates, APA Legislative Advocate



APA California legislative update

Budget stalemate holds up bills – Governor late in signing and vetoing key planning measures – October 2008

Due to the state budget stalemate, and the Governor's promise to veto items on his desk if a budget was not signed, the Legislature held the bills rather than risking a veto. After signing the budget, the Governor was sent hundreds of bills at one time, giving him one week rather than 30 days to take action on the bills. Having very little time to analyze the bills, he vetoed hundreds of the measures on his desk, including several planning bills. He did, however sign the big one: SB 375. Below is the list of final actions on the key planning bills. To get the final status of other planning measures and veto messages, please visit the APA California website.

A few bills that APA California had concerns with at the end of session didn't pass. Those include:

AB 2219 (Parra) – Approval of Subdividers' Voluntary Water Savings Measures

SB 303 (Ducheny) – BIA Alternative to SB 375 (SB 375 is on the Governor's desk)

SB 1500 (Kehoe) – Restrictions and Fees on Projects in State Fire Responsibility Areas

For those bills that landed on the Governor's desk at the end of session, here is the final tally of signatures and vetoes:

AB 842 (JONES) – Regional Plans and VMT Reduction for Infrastructure Bond Criteria – VETOED

This bill requires the Department of Housing and Community Development (HCD), when ranking applications for funding under the Infill Incentive Grant (Infill) Program and the Transit Oriented Development Implementation (TOD) Program, to give priority to projects located in areas where the local or regional entity has adopted a general plan, transportation plan, or regional blueprint that will reduce the growth of vehicle miles traveled (VMT) by at least 10 percent, and the project is consistent with that planning document. APA was concerned that the bill, as it moved out of the Assembly, would conflict with the Notice of Funding Availability already issued for infrastructure bond funds, and would require local governments to prove that VMT was reduced by 10 percent, which isn't viable. The Senate amended the bill to deal with the second concern. As amended, the bill clarifies that the 10 percent reduction is for growth increment in VMT, rather than an absolute 10 percent reduction of VMT, and requires HCD, when ranking applications, to rely on the expertise of the Department of Transportation (Caltrans).

AB 1017 (MA) – Timelines for CEQA Appeal – VETOED

This bill establishes a deadline process for bringing an appeal of a California Environmental Quality Act (CEQA) action taken by a non-elected decision-making body (e.g., planning department or commission) to the elected body. This bill originally mandated a 30-day appeal period rather than matching the appeal period specified by local ordinance. The Senate amended the bill to require the elected body to set the appeal for hearing upon filing, require the hearing within 90 days of filing, and require the decision within 30-45 days after the hearing. As amended, AB 1017 also provides that the statutory time limits for judicial appeal of the CEQA decision do not begin until after the elected body acts on the

administrative appeal, provides that a notice of approval or determination filed by the non-elected body is set aside until the approval or determination has been appealed to the elected body, and requires San Francisco only to provide a 30-day deadline for appeals filed in a city and county. With these amendments, APAC California removed its opposition to the measure.

AB 1221 (MA) – Transit Village District Changes – VETOED

This bill expands the definition of transit village planning districts from 1/4 mile to 1/2 mile around a transit facility and requires Infrastructure Financing Districts to set-aside 20 percent of the tax increment revenues for affordable housing.

AB 2280 (SALDANA) – Density Bonus Clarifications – SIGNED

This bill is co-sponsored by APA California and the League. It makes various changes to the density bonus law to clarify the substantial changes the law has undergone over the years. AB 2280 is not as comprehensive as we originally would have liked due to opposition from housing advocate representatives. For instance, we had to remove the clarification that developers must request a density bonus upon application and that a developer is entitled to concessions and incentives only when requesting a density bonus. As the bill was sent to the Governor, it will still resolve many conflicts that the existing statute has caused between developers and local agencies and will:

1. Specify that for purposes of calculating the density bonus, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus to prevent double counting.
2. Extend to five years the length of a time a local government has to expend its share of funds from the sale of a moderate-income density bonus unit.

Continued on page 15

APA California Chapter "QUICK LEG INFO"

Feature Now on Website Homepage

APA California Chapter has added a quick legislative information feature — members can now quickly and easily access key information right from the home page, without signing in. Under the new QUICK LEG INFO feature (under the Consultant Directory link), just click on the "Hot Bill List" link. That link connects members to reports on the hot bills, APA California Chapter positions, and the status of each measure.

Please take the time to review this time-saving new feature.

Legislative Update

(Continued from page 5)

3. State that local governments do not have to approve requests for concessions or incentives or grant any waivers or reductions of development standards that would be contrary to state or federal law.
4. Clarify that a city or county cannot apply development standards on a density bonus project that would physically preclude construction of the development at the allowable density or with the required concessions or incentives.
5. Delete the requirement that a developer show that the requested waivers or modifications of development standards are necessary to make the housing units economically feasible.
6. Clarify that the law allows an applicant for a density bonus to submit to the city or county a proposal for the waiver or reduction of development standards that will physically preclude construction at the allowable density or with the required concessions or incentives.
7. Clarify that a request for the waiver or reduction of development standards does not reduce or increase the number of incentives or concessions to which the applicant is entitled.
8. Clarify that the density bonus for senior housing is 20 percent of the number of senior units included in the housing development.
9. Clarify that the definition of "housing development" means a development project for five or more residential units and that for the purpose of calculating a density bonus, the residential units must be on contiguous sites that are the subject of one development application.
10. Authorize cities and counties to grant higher density bonuses than provided for in the density bonus law if permitted by local ordinance.
11. Change the definition of "development standard" to include a (one) site or construction condition, such as a height limitation, a setback requirement, a floor area ratio, an onsite open space requirement, or a parking ratio that applies to a residential development, the application of which would physically preclude the construction of the housing development at the density allowed.
12. Specify that in determining a project's density bonus, if the density allowed under the jurisdiction's zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

AB 2447 (JONES) – Restrictions on Development in High Fire Areas – VETOED

This bill requires a county to deny approval of a tentative map or parcel map if the proposed map will cause increased development in a state responsibility area or a very high fire hazard severity zone unless the county makes a finding that the design and location of each lot in the subdivision and subdivision as a whole would allow improvements to be made

consistent with any regulations promulgated by the Board of Forestry or adopted by the county and certified by the Board and that sufficient structural fire protection and suppression services will be available for the subdivision. It also requires a county to notify each applicable fire protection agency and the department of any application for a subdivision and solicit comments on the sufficiency of fire protection services for the proposed subdivision. APA California is neutral on the bill as amended.

AB 3005 (JONES) – Lower Fees for Infill Projects Near Transit – SIGNED

This bill was substantially amended and now requires a local agency, when imposing a fee for the purpose of mitigating vehicular traffic impacts on a housing development located near a transit station and meeting other specified characteristics, to set the fee at a rate that reflects reduced automobile trip generation, unless the local agency finds that the development would not significantly reduce automobile trip generation. HCD is the sponsor and suspects that some housing developments are being overcharged for traffic impact fees and not getting credit for the reduced impact that they may have on traffic due to their proximity to transit. Although the bill has the right goal, it will micromanage fees that are already based, among many other requirements, on the reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. AB 3005 will now also require a local agency, when imposing a fee for the purpose of mitigating vehicular traffic impacts on a housing development, to set the fee at a rate that reflects reduced automobile trip generation if the housing development satisfies these characteristics: the development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length, is within a half mile of a store that sells food, and provides either the minimum number of parking spaces required by local ordinance or no more than one onsite parking space for zero to two bedroom units and two onsite spaces for three or more bedroom units, whichever is less. To ensure that existing projects do not get underfunded by retroactive restrictions on fees, the bill was amended to specify that the bill's provisions do not apply until January 1, 2011, to a housing development that is located within an area covered by a capital improvement plan for traffic facilities that was adopted on or before January 1 2009. APA California still opposes this measure.

SB 375 (STEINBERG) – Regional Transportation Planning, Housing, CEQA and Global Warming Emission Reduction Strategies – SIGNED

APA California, as this bill was finally amended, supports SB 375. It is the result of hours of negotiation with a number of interested parties, including APA California, the League, CSAC, BIA, housing advocates and environmental groups. Sponsored by the League of Conservation Voters, the bill has three main parts:

1. Sets up a new regional GHG transportation planning process and Sustainable Communities Strategy or SCS, adopted by the Metropolitan Planning Organizations in conjunction with the Regional Transportation Plan is beginning in 2011, with no requirement for local governments to be consistent with the SCS.
2. Enacts new CEQA benefits for infill and projects consistent with the SCS, and transportation funding for projects consistent with the SCS.
3. Requires RHNA alignment with the RTP process for cities and counties within a Metropolitan Planning Organization that adopts its RTP every four years, including an 8-year housing element to be phased in over time after 2011, and a requirement for cities and counties to complete zoning for the 8-year RHNA no later than three years after either the date the housing element is adopted, or the date that is ninety days after receipt of comments from HCD, whichever is earlier. There are also a couple of limited zoning extension options.

This bill is extremely complicated, dealing with multiple issues. APA California's website has a full analysis and outline of the bill's provisions. In addition, APA, with the League and CSAC, will be developing a Q&A on this bill to further assist cities and counties in understanding and implementing this measure.

SB 732 (STEINBERG) – Prop 84 Planning Loans – SIGNED

This bill allocates funds from Proposition 84 including loans for updating General Plans and regional plans.

SB 1237 (COX) – Map Act Changes – VETOED

This bill makes minor changes to the Subdivision Map Act regarding remainder parcels, property dedications and deadlines for lot line adjustments. APA originally had a number of concerns with this bill but removed opposition as amended.

Also of note:

SB 1185 (LOWENTHAL) – Map Act Extension

This bill, which was signed by the Governor prior to the end of session, extends the life of existing tentative maps by one year, but allows cities and counties to extend tentative maps by one additional year.