



MEMO TO: MEMBERS OF THE ASSEMBLY HOUSING & COMMUNITY DEVELOPMENT COMMITTEE

FROM: AMERICAN PLANNING ASSOCIATION, CALIFORNIA CHAPTER
 RURAL COUNTY REPRESENTATIVES OF CALIFORNIA
 LEAGUE OF CALIFORNIA CITIES
 URBAN COUNTIES OF CALIFORNIA
 CALIFORNIA STATE ASSOCIATION OF COUNTIES

DATE: JUNE 22, 2018

SUBJECT: **SB 765 (WIENER) – NOTICE OF OPPOSITION**
 SUBSTANTIAL POLICY CHANGES TO SB 35 STREAMLINING FOR HOUSING AND COMMERCIAL
 DEVELOPMENT – IN ASSEMBLY HOUSING & COMMUNITY DEVELOPMENT COMMITTEE –
 WEDNESDAY, JUNE 27th

On behalf of the the American Planning Association, California Chapter (APA CALIFORNIA), Rural County Representatives of California (RCRC), the League of California Cities (LCC), the Urban Counties of California (UCC), and the California State Association of Counties (CSAC), our organizations have respectfully taken an oppose position on SB 765. SB 765 would make a number of substantial policy changes to SB 35 signed into law last year. It was just amended on June 14th and then again on June 18th.

APA has the following concerns:

ADDS MODERATE-INCOME HOUSING TO STREAMLINING PROVISIONS OF SB 35 WITHOUT AFFORDABILITY REQUIREMENTS

SB 765 as amended will allow projects with 50% moderate-income units to use the SB 35 streamlining without requiring the project to include any low-income units or deed restrictions in many areas where some affordability is now required. Affordability, covenants and deed restrictions should be added to 50% moderate-income projects.

STREAMLINES HOUSING AND COMMERCIAL PORTIONS OF A MIXED-USE PROJECT

Under the bill, the nonresidential portions of an eligible mixed-use project would also be subject to streamlined ministerial approval. This is a major change in policy and would be difficult for cities and counties to implement, as commercial development often involves more variables than residential development and is consequently harder to address through a ministerial process. When using the term ‘mixed use’ here, most people would interpret this language to mean “vertically integrated mixed use,” which is not the same thing as having multiple uses spread across large sites, which some developers will attempt to describe as mixed use, even though it confers none of the benefits of vertically integrated mixed-use development. It would make more sense to require vertical mixed use to receive the streamlining.

ADDS VAGUE INTENT LANGUAGE WITHIN STATUTORY LANGUAGE

The bill now includes some very broad and rather vague intent language in the middle of the statutory language: "It is the policy of the state that this paragraph should be interpreted and implemented in a manner



to afford the fullest possible weight to the interest of, and the approval and provision of, the highest number of housing units." There is similar intent language in the paragraph regarding design review. This seems likely to generate disputes between local governments and housing proponents as it could be subject to any number of differing interpretations.

ADDS SUBDIVISION MAP ACT PROVISIONS TO SB 35

SB 35 currently excludes projects that involve a subdivision unless certain criteria are met. This bill provides that where those criteria are actually met, the subdivision itself is also subject to streamlined approval. This sounds like a clarification of the existing SB 35 – but resolving the manifest and numerous inconsistencies with the Subdivision Map Act may prove challenging for local jurisdictions, and wholesale overriding of the “the primary regulatory control” for subdivisions is generally troubling. Also, subdivisions pursuant to the Subdivision Map Act are subject to CEQA so clarification regarding CEQA applicability is needed. In addition, the subdivision findings seem to conflict with Map Act requirements. If the legislature wants subdivisions for SB 35 projects to be ministerial, it would be helpful if the language were made explicit about which aspects of the Map Act still are applicable.

ADDS NEW TERM “ORIGINAL SUBMITTAL” RATHER THAN USING COMPLETE APPLICATION

The bill includes language referring to the “original submittal” of an application, which continues to be problematic given that applicants often turn in minimally compliant development applications. Why make the city or county provide written documentation of conflicts with specific standards in effect at the time of the “original submittal” of the project based on an incomplete application? The State should be consistent and give cities and counties a clear timeline regarding the application of development standards and regulations: the date that the application is deemed complete. The “original submittal” date gives developers/applicants extensive leeway to start an application asap and then not move forward for a long time. Additionally, if a city rejects an SB 35 application for not complying with the statute’s threshold requirements, and the developer amends the application and resubmits, it wouldn’t make sense to hold the city to a timeline based on the original submittal. This change would also arguably fix the inclusionary percentage in a city at the 10% required by SB 35 and not allow any of those cities to impose inclusionary requirements on new applications at any level higher than 10 % (assuming they don’t already have a higher requirement on the books now – or at least before the time of the “original submittal”.) A number of jurisdictions may be working on updating their inclusionary requirements or adopting requirements in the wake of AB 1505, and this provision would eliminate that option.

COMBINES DENSITY BONUS LAW WITH SB 35 BUT LOWERS AFFORDABILITY

This bill, in combining the Density Bonus Law with this law, appears to lower affordability requirements. For example, in a 10% inclusionary jurisdiction, a development automatically gets a 20% density bonus and one concession/incentive simply by going through this SB 35 approval process. Cities have very little discretion to deny a requested concession/incentive at this point so it’s difficult to see how this would allow cities to actually apply even their objective zoning standards allowed in SB 35. This essentially could allow an SB 35 project to get the streamlined approval process without doing much that isn’t already required of them in a city that has a 10% inclusionary requirement on the books. APA recommends that this amendment be clarified that for SB 35 purposes, the project proponent will have to satisfy the 10% for SB 35 plus the additional affordable percentage to qualify for density bonus.



For questions please contact Sande George, APA California, sgeorge@stefangeorge.com; Jason Rhine, League, jrhine@cacities.org; Chris Lee, clee@counties.org, CSAC; Tracy Rhine, RCRC, TRhine@rcrcnet.org ; Jolena Voorhis, Urban Counties, Jolena@UrbanCounties.com.

cc: Governor's Office
Assembly Housing & Community Development Committee
OPR
Republican Caucus