American Planning Association
California Chapter

Making Great Communities Happen

April 3, 2019

Senator Nancy Skinner
Room 5094
State Capitol
Sacramento, California 95814

SUBJECT: SB 330 (Skinner) – Oppose Unless Amended
Housing Crisis Act of 2019
In Senate Government & Finance Committee Wednesday, April 10th

Dear Senator Skinner:

The American Planning Association, California Chapter has taken an oppose unless amended position on SB 330 as recently amended. SB 330 would freeze or prohibit a number of housing-related requirements for 10 years with the goal of speeding up housing production in areas with the most severe housing shortages. We appreciate your staff meeting with APA to thoroughly discuss the issues that APA outlined in our original letter of concerns.

It is important to note that APA believes that the general concepts in the bill are worth pursuing. APA supports the freeze for local limits on the number of land use approvals or permits, as well as the imposition of a moratorium on housing development without a health or safety finding. Voiding requirements for local voter approval before key housing decisions are made also makes sense. In the amendments to the Permit Streamlining Act, APA also agrees with the clarification that in response to the local agency's determination that the application for development project is not complete, the local agency may only decide if an amended application has items on the submittal requirement checklist that were listed in the original list of items that were not complete. Jurisdictions should not be asking for new requirements beyond the list.

However, other provisions in the bill are too proscriptive and will have widely differing impacts depending on the circumstances in the city or county, notwithstanding our organization's general support for the concept of requiring jurisdictions to plan for and facilitate their fair share of housing development. A number of sections in the bill are also confusing, and the multiple repeated sections raise the concern that the bill may not be internally consistent. It also confers substantial benefits to developers without provisions to require affordability for the projects that will benefit from the restrictions placed on local planning departments.

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In addition, it is difficult to judge if the requirements in the bill will really produce more housing faster and more affordably. Enforcement of required upzoning and requiring use by right on all of those sites would have more immediate impacts. A tight definition of "housing emergency" and who determines when it starts, and ends would also make for a cleaner process, rather than changing the entitlement procedures for projects every year based on fluctuations in the housing market.

Below are APA's major concerns:

Restrictions on General Plan, zoning and specific plan requirements

-The General Plan, zoning and specific plan sections of the bill should be combined into one section rather than the repetitive differing code sections that are hard to read and sort out. The repetitive structure will lead to inconsistencies that a single list of imposed provisions would avoid.

-Making the determination of "affected county or city" each year would be too difficult to implement. Instead, APA suggests that the bill use the SB 35 model: once a jurisdiction is determined to be subject to the provisions, there is a check every 4 years to determine if circumstances have changed.

-The threshold of "land where housing is an allowable use" should be clarified. Even on agricultural land at least one house is allowed, but these rural lands should not be part of the state's effort to provide additional residential opportunities.

-Changing land use designations to a less intensive use is extremely limiting and difficult to administer. It also makes it difficult to do long range planning and attract development. APA suggests instead focusing on residential capacity, expanding the no net loss provision that currently applies only to sites identified in the housing element to instead apply to all sites citywide.

-Freezing requirements in effect on January 1, 2018 leaves a lot of critical requirements off the table. For instance, all of the housing requirements imposed in legislation last year could not be imposed, or new requirements related to a newly adopted General Plan or approved housing element, or wildfire, seismic, energy and inclusionary requirements. Many new building and efficiency measures are actually useful and do not increase costs. Ideally, the start date should relate to the date the emergency is ordered or specified, and limitations should be focused on increasing predictability by limiting non-objective standards but not focused on measures that result in healthier, safer, or more affordable communities, even if the requirements affect a developer's bottom line.

-This same concern holds for the requirement that design standards cannot be imposed if they are not objective or if they are more costly than those in effect on January 1, 2018. The retroactive provisions will cause complete confusion. This will be hard to define, is too subjective and will be too difficult for the local agency to determine what will be covered. In some ways, any standard would increase costs. Efforts to improve fire safety, increase energy efficiency, etc. should continue to be permitted. It could also impede or undermine local requirements to meet other state priorities, such as the reduction of VMT and sustainability, and make standards objective. A better alternative would be to be more straightforward about what the bill is actually targeting.

-Specific to S. 65850 that applies to zoning, (B) (i) prohibits a moratorium or other similar restriction on or limitation of housing development "other than to specifically protect against an imminent threat to the health and safety…" An imminent threat is an impossible threshold. The purpose of a moratorium is to prevent anticipated problems before they threaten the health and safety of residents, such as a moratorium for jurisdictions without water allocations or other legitimate health/safety issues such as potential wildfire threat. Such issues are not imminent, but they are clearly legitimate reasons for a building moratorium until measures can be put in place to deal with them.

-The definition of "objective standard" is the definition of SB 35, but outside the SB 35 context it should be triggered from completeness, not application submittal, to be consistent with the Housing Accountability Act and the Permit Streamlining Act.

Amendments to the HAA

The changes in this new proposed section unfortunately include a number of amendments to the HAA that were strongly opposed by APA when the HAA was revised just two years ago.

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-It introduces a new concept of a "complete initial application" rather than using "complete application". APA is opposed to adding this new term. Cities and counties rely on the determination that an application is complete as a black and white determination that applies in numerous instances and statutes. When is "complete initial application" determined? What if the information is not actually complete? The completeness determination is already a short process, so this change does not even accomplish any new streamlining. This section would also restrict the imposition of new fees after this stage. Regulatory fees don't change but are imposed later in the project and are necessary. This is not a helpful new layer of requirements in the development process.
-Adding in (6) the SB 35 definition of "objective standard" to the HAA makes sense, but the trigger of having the standards in place "before submittal of an application" doesn't work with the "complete initial application" concept. Again, the trigger for non-SB 35 projects should be at the time the application is deemed complete. Freezing objective standards retroactively before submittal of a complete initial application is backwards.
-The new (o) raises a number of new issues. The addition of (D) helps get rid of the unlimited vesting issue from the original version of the bill. And although commencing the construction within 3 years following the date the project received "final approval" is consistent with the longer life of the permit just put into law last year, given the purpose of this bill, a shorter timeframe to inspire faster construction after approval is warranted. Since there is no deadline by which the developer has to pull the building permit, the developer has time before that clock starts to get financing, construction contracts, etc. in place and get started – 18-24 months should be more than enough time then to commence construction. Additionally, the exceptions in (E) and (3) don't work together. If the applicant initiates the change, it should be their risk that new standards apply. The density increase language in (E) is ok, but (3) makes it hard to know how to apply certain physical development standards to portions of projects, and it would be preferable for standards to apply to all (or none) of a project.

<u>Definition of "complete initial application"</u>
-As stated above, APA strongly objects to the addition of a new complete application layer. And, the new definition in S. 65941.1 does not include enough information to lock in a project as envisioned in this bill. The list of required information doesn't include for instance ownership verification, public notice information, materials required by the subdivision ordinance (if a map requested), landscape plan, or full environmental checklist/EA/or local equivalent.
-The standardized checklist in (b) is a reasonable concept, but the checklist should be developed by the jurisdiction, with requirements limited to those materials identified in advance. OPR could then develop a standard form for those jurisdictions without capacity to do their own.

<u>Limit of three hearings</u>
S. 65905.5 would limit hearings to three. That is an arbitrary limit and may not be enough for particularly large or controversial projects. Requiring a specific time requirement instead would still allow the local agency flexibility to complete all necessary hearings and is a fairer process.

<u>S. 65913.3 – Another provision for specific projects similar to the earlier General Plan, zoning and specific plan limitations and freezing fees for 10 years</u>
-Freezing changes on January 1, 2018 is too limiting as noted in the first three sections of the bill. And, to the extent the language is similar to the first three sections, APA has the same concerns as noted above.
-Restricting fees to the amount in place as of January 1, 2018 is particularly problematic as is eliminating all fees for affordable housing. There are legitimate reasons fees may either increase or decrease over ten years and those fees and costs can't be shifted to existing residents. There is also no liability protection offered to jurisdictions in exchange for a process that forces them to cut corners at risk to public health and safety. And, not all jurisdictions have funding to waive fees – this is a major new mandate.

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Process for projects required to have a conditional use permit, zoning variance, or other permit

In (B) (3) of 65913.10, the bill would "lock historic status at time of completeness". This will not always be possible. If this is not done correctly, this provision could lead to the unconscionable loss of legitimately historic building, neighborhoods, districts, cultural artifacts, and Native American tribal resources. It may not always be possible to tell what may underlie a site at the completeness stage.

Amendments to the PSA

Language should be added to prevent the clock from running while a developer is withholding information.

New S. 65950 – Limits on hearings and total approval process time

-As stated, the three hearings limit is arbitrary and may not be enough depending on the size and complexity of the project. It also isn't clear if the limitation includes study sessions, Planning Commissions which have specified authority under state law, or appeals.

-This section now also limits consideration and final action on a project to no longer than 12 months. Twelve months is not nearly long enough to complete an EIR if one is required. It is important to note that the PSA is designed to complete CEQA first and then project approval must occur within 12 months. But since the bill now requires the CEQA timeline to be mandatory not directory, CEQA would have to be completed within the PSA timeline. It isn't possible to meet CEQA and review comments and make changes. Courts now are requiring much more detail and analysis and CEQA requires certain things that take longer than the bill's timeframe. It is better not to rush it and lose in court – that takes longer.

If you have any questions, please contact our lobbyist, Sande George, with Stefan/George Associates, sgeorge@stefangeorge.com, 916-443-5301.

Sincerely,

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Vice President, Policy and Legislation - APA California

cc: Senate Government and Finance Committee, Republican Caucus
OPR, Governor's office

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