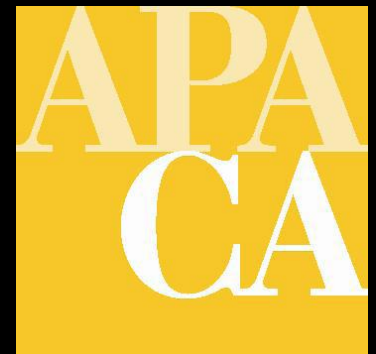




LEGISLATION 2011

Sande George
Stefan/George Associates
APA CA Lobbyist



THE ETERNAL BUDGET DEBATE

- CEQA
 - HCD Cuts
 - Realignment of State and County Responsibilities/Funding
 - OPR – Still Standing But Few Staff Still There
 - Shortfall In Revenues Already – Education Cuts Automatic
-

THE DEATH OF REDEVELOPMENT?

- AB X1 26 - Death
 - Dissolves RDAs as of October 1, 2011 unless they comply with AB X1 27
- AB X1 27 – Resurrection with major strings
 - RDA may continue if adopt ordinance to participate in the Alternative Voluntary Redevelopment Program
 - AVRP requires the RDA to make painful annual payments to fund schools, fire and transit agencies beginning fiscal year 2011-2012

RDA/LEAGUE LAWSUIT

- Are bills unconstitutional and in conflict with Prop 22 which prohibits the state from taking local government funds?
- Or can the Legislature eliminate an entity it created?
- Supreme Court Stays - Court to decide case by January 15th – Oral arguments began this week
- APA position: reform, don't eliminate an important planning and economic development tool

Sb 450 – tight reigns on L&M funds - vetoed

- SB 450 (Lowenthal) – Low & Mod Fund
- GOVERNOR VETOED - due to lawsuit
- Includes 77 “reforms” to RDA law re: L&M Funds
- To address use of L&M Funds for:
 - non-redev planning and admin costs
 - underwriting salaries of city staff
 - buying property never used for affordable housing
 - hiring a lobbyist

Obviously.... L&M funds to be target if rda's continue

Also included:

- HCD authority to audit L&M funds paid for by RDAs
- L&M funds sent to AG if not timely spent
- Spending cap for general and admin costs to 10% of L&M Fund & 10% for program and project costs
- Requirement to contract to develop, obtain entitlement and secure full financing for affordable housing within 5 years
- If not done in 5 years, requirement to reimburse L&M Fund 150% of cost of property or 150% of current market value, whichever is greater, plus interest

Governor's veto message for ab 450

- I am returning Senate Bill 450 without my signature. This measure contains significant legal changes that will affect Low and Moderate Income Housing funds managed by redevelopment agencies, but this bill is a little ahead of its time. The California Supreme Court has indicated that it will rule on California Redevelopment Agency v. Matosantos by January 15, 2012, and I believe it would be premature to enact such substantive reforms before that time. Sincerely, Edmund G. Brown Jr.

ENHANCED CEQA ACTION TEAM: ECAT

- APA/AEP public/private CEQA practitioners
 - Co-chairs: Alling, Parkinson, Rivasplata, Snow
 - To enhance CEQA's efficiency & effectiveness while maintaining original purposes of CEQA
 - Response to growing criticism of CEQA and draconian CEQA proposals
 - Now up on APA website
-

ECAT: FIVE MAJOR ISSUES

- Disruptive late hits/document dump & ineffective severance provisions for courts (Litigation Process)
 - Ineffective infill project streamlining provisions
 - Difficulty in defending MNDs/NDs in light of “fair argument” principle
 - Legally vulnerable & ineffective tiering provisions
 - Difficulties in analyzing cumulative impacts
-

“These days everything is a jobs bill”

- Quote from Peter Schrag – CA Progress Report
 - What happened last three days of session!!!
 - Dems said no to SB 241 and other Republican requested CEQA reforms:
 - SB 241 – Prohibited court review of a lead agency’s certification of an EIR or MND, as well as project approval, for 125 projects selected by BT&H over 5 years
-

STADIUM AND MEGA PROJECT ALTERNATIVE

- SB 292 – Signed by Governor – Expedited judicial review for LA Stadium
- Not a CEQA exemption/applicant pays
- AB 900 – Signed by Governor – Expedited judicial review for mega green projects chosen by Governor with minimum \$100 million investment
- Applies to Environmental Leadership Development Projects – ELDP' s

...ELDP'S

- Applies to residential, retail, commercial, sports, cultural, entertainment, recreational, renewable energy/mftg projects (**not industrial – not infrastructure**)
 - Project must be LEED silver or better
 - Achieve a 10% greater standard for transportation efficiency
 - **Located on infill site and carbon neutral**
 - Consistent with SCS
 - **Must choose to use prior to Draft EIR release**
-

Questions remain.....

- AB 900 WORKING GROUP? ISSUES INCLUDE:
- What projects qualify?
- Reconcile definition of ELDP and Gov' s criteria for choice of project?
- Infill required?
- Projects in pipeline qualify?
- EJ component?

SB 226 – SOME REFORM NOW, SOME LATER

- SB 226 – SIGNED BY GOVERNOR
- Late Hits OUT
- Requires OPR to develop CEQA guidelines for statewide standards for review of SB 375 infill projects by 2013
- Authorizes referral of a proposed action to adopt or substantially amend a GP to adjacent local government to be conducted concurrently with a scoping meeting
- Authorizes a local agency to submit comments on the proposed GP action at a CEQA scoping meeting

Sb 226 & governor's green project agenda

- Exempts from CEQA review the installation of solar energy systems on the roof of building or parking lot
Makes thermal powerplant certification process applicable to proposed solar thermal powerplants proposing convert to photovoltaic technology
- Provides that a project's greenhouse gas emissions shall not, by themselves, cause project to be ineligible for a CatEx
- Solar on Disturbed Ag Exemption OUT

next steps & players – ECAT Plus

- Simitian/Governor/ECAT Plus
- Fall CEQA discussions through Simitian – goal for bill to Governor by Spring – all issues on the table (particularly infill/late hits)
- Brown quote: centralize decision-making so that local officials aren't able to slow or block the development of renewable resource projects

HOUSING ISSUES

- HEWG – Started in January to deal with SB 375/HE issues and local/HCD review conflicts
 - No concrete recommendations
 - Budget cuts: eliminated 30% HCD HE review staff budget
-

FUTURE HCD

- ✘ How conduct reviews more efficiently + deal with review conflicts
 - ✘ Governor rumored to be considering housing agency realignment and/or other changes
-

HCD REVIEW CONFLICTS REMAIN OVER:

- default densities
 - available sites (approved projects vs built projects)
 - counting rehab sites/use of vacant properties
 - HCD review policies and HCD Guidelines
-

3-YEAR STATUTE OF LIMITATIONS VETOED

- Author: Alejo Sponsors: Housing Advocates
- Attempt: Third **APA: OPPOSE**
- STATUS: Vetoed by Governor
- 3-year statute of limitations for challenging the adoption of the HE (ACTUALLY 4!)
- Locals need finality of land use decisions not lawsuits
- Lots of new remedies, requirements & SB 375
- Can't adopt a perfect housing element – broad differences in interpretation

GOVERNOR SAID NO THIS YEAR BUT – ISSUE WILL MOST LIKELY BE BACK NEXT YEAR

- Housing advocates should instead be encouraged to work with locals BEFORE housing element is adopted
- **Governor's Message:** I am returning Assembly Bill 1220 without my signature. This bill increases the statute of limitations from 90 days to 3 years for a citizen to file a Notice of Deficiency in a locally adopted housing element. **While I understand the value of using the courts to compel compliance with state housing goals, there should be a balance between a local government's planning authority and citizen oversight. This bill tilts that balance and creates too much uncertainty.**

LIMITS ON LOCAL PARKING REQUIREMENTS

- AB 710
- Author: Skinner Sponsors: Infill Builders
- STATUS: Failed 18-19 on S Floor Last Night
- Limits local parking requirements to one-size-fits-all 1 space per 1,000 square feet of nonresidential improvements and 1 space per residential unit in transit intensive areas
- Locals can require higher minimum parking standards if find through a recent parking utilization study that existing parking within 1 mile has a peak occupancy exceeding 85%

NO PARKING & NO TRANSIT ALTERNATIVES?

- Some exemptions, for example if the project and adjoining properties are restricted to floor area ratio below 0.75
- Defines “transit intensive area” to be within 1 mile of existing major transit stop or within ¼ mile of the center line of a high-quality transit corridor of a planned major transit stop
- Infill builders argue high parking spaces near transit routes results in higher developer costs and lower densities - & a continuing issue.....
- Lots of opposition from a broad mix of housing advocates, local governments and planners, unions

AB 742 – mining impact on sacred sites

- AUTHOR: B. Lowenthal APA: Watch
- SPONSORS: Pechanga Indian Reservation
- STATUS: 2-year Bill Pending Negotiations
- Prohibits Riverside County (lead agency) from approving a mining operation reclamation plan proposed in Riverside County at or near a location the Tribe considers sacred, the Place of Creation, without the Tribe's consent

Sb 244 – Planning for disadvantaged communities

AUTHOR: Wolk SPONSORS: CRLA (APA Support)

✘ STATUS: SIGNED by Governor

REQUIRES:

-LAFCOs to consider disadvantaged unincorporated communities (DUCs)

-in sphere of influence updates and municipal service reviews after July 1, 2012

-including recommending annexation/extension of service areas

PLAN FOR DISADVANTAGED COMMUNITIES.....

- Requires cities and counties to review and update the land use element with data and analysis of community needs upon next revision of the housing element
- Requires the land use element to include based on existing info (from LAFCO or local agency):
 - Cities: identification of each DAC within the city's sphere
 - Counties: identification of each legacy community within county boundaries not including area within a sphere

NO REQUIREMENT TO FIX THEM NOW

- MUST INCLUDE:
 - Description of community, map of location
 - AND ANALYSIS OF:
 - water
 - wastewater
 - stormwater drainage
 - structural fire protection needs/deficiencies
 - financing alternatives
- (analysis and actions substantially reduced from original bill)

APA CA AMICUS COMMITTEE ACTIONS

- Int' l Church of Foursquare Gospel v. San Leandro
 - Church bought property in Industrial Park Zone – did not allow assembly uses
 - Zone changes / GPA necessary to allow use
-

IS LAND USE A COMPELLING INTEREST?

- In response to applications City undertook comprehensive review of Assembly Uses
 - Adopted Assembly Use Overlay – but did not apply overlay to Church property
 - Did apply to 196 properties – over 200 acres
 - Application to apply it to church property
 - Review pursuant to 8 neutral standards – denied
-

UNDUE BURDEN TO CHURCH?

- US District court found City acted properly, and that it was not an undue burden on the church because other options existed
 - City's compelling interest in protecting industrial land for industrial use warranted the burden on the Church

REVERSAL OF GOOD DECISION

- 9th Ct of Appeals – Reversed
 - Regulations Substantially burdened Church
 - Protection of industrial land was not compelling.
- CCAPA Amicus Brief to support review by the United States Supreme Court
 - Prepared on Committee's behalf by Robinson & Cole

IMPLEMENTATION OF SB 375 SCS BY REGIONS

- SCS development just starting with San Diego
 - Sacramento Next
 - OPR issuing written comments
 - ARB also staffing up to comment on modeling
 - Housing Element interaction and fair share requirements potential conflict
-

Ab 208 – fuentes – Map extension again

- STATUS: SIGNED BY GOVERNOR
- SPONSOR: BIA APA CA: Support
- Extends by 24 months the expiration date of any tentative map, vesting tentative map or parcel map that has not expired as of 7/15/11 and that will expire before 1/1/14
- Extends expiration date by 24 months for any other approval by a state agency related to a development project included in the map
- Doesn't count litigation or moratoria extensions in determining if a map expires by 1/1/15

TOTAL LENGTH OF MAP 16 YRS

- ✘ Total length of map limited to 16 years (Proposed but not included in the bill)
- ✘ Reduces from 5 to 3 years the time after the approval/recording of the map during which a local agency is prohibited from imposing conditions on a building permit
- ✘ Prohibition on conditions does not prohibit a city or county from levying a fee or condition that requires the payment of a fee upon the issuance of a building permit or after, including mitigation fees

Ab 542 – allen – default densities

- STATUS: 2-year bill SPONSOR: Napa County
- APA CA: Consider as part of HEWG
- Allows a county, in determining adequate sites, to use densities less than default density to accommodate lower-income households under certain conditions (site is owned by county, set aside for affordable housing, site is zoned at 10 units per acre, site is close to jobs and within 1 mile of grocery store or school)
- Response to HCD disapproving densities lower than the default densities

AB 602 - OLSEN - SKIP ONE HE REVISION

- STATUS: 2-year bill SPONSOR: City of Riverbank
- APA CA: Consider as part of HEWG
- Would until January 1, 2017, allow a local government that has received a confirmation of compliance from HCD, and that updates its housing element not more than every 5 years, to delay one HE revision until the next scheduled revision date

Ab 654 – hueso – inspections of mills act properties

- STATUS: Signed by Governor
- APA CA: NEUTRAL AS AMENDED
- Requires historical properties subject to Mills Act Contracts to be inspected prior to a new agreement and every 5 years thereafter
- Allows local agencies to charge fee
- Requires local agencies to take actions to enforce the contracts
- Author found many local agencies were not enforcing these contracts

Ab 679 – Allen - very low-income housing credit

- STATUS: 2-year bill SPONSOR: Napa County
- APA CA: Watch
- Extends law that allows Napa County through October 31, 2022 to meet up to 15% of its RHNA for lower-income households by committing funds for affordable housing units within cities in the county if various conditions are met
- County funded 104 units of low- and very low-income in the City of Napa but can't get full credit because the city is not willing to absorb a proportional amount of the County's mod- and above mod-income RHNA as required

Ab 752 – brownley – sea level action plan

- ✘ STATUS: 2-year bill SPONSOR: State Controller
- ✘ APA CA: Watch
- ✘ Requires a local trustee of granted public trust lands to prepare a sea level action plan by July 1, 2013
- ✘ Plan would include maps indicating areas impacted by SLR, strategies to mitigate or prevent damage to existing and future development and infrastructure

Ab 931 – dickinson – infill ceqa exemption

- STATUS: 2-Year Bill SPONSOR: AUTHOR
- APA CA: Would prefer the ECAT proposal
- Allows a “transit proximity project” to be subject to be eligible for the SB 375 infill exemption until adoption of the SCS
- Allows an “employment priority project” (commercial) to also use the SB 375 infill exemption
- ISSUES: Ensure urban infill exemptions include counties; should infill projects comply with air district mitigation requirements

AB 1027 – Buchanan – use of utility poles by cable & phone companies

- STATUS: SIGNED BY GOVERNOR
- SPONSORS: Cable & TV APA CA: Watch
- Requires local publicly owned electric utilities, including irrigation districts
- to make space on their utility poles and support structures available for use
- by cable television corporations, video service providers, telephone corporations

Ab 1103 – huffman – rehab housing definition

- ✘ STATUS: Chaptered SPONSOR: City of Novato
- ✘ APA CA: Watch
- ✘ Adds units on foreclosed property to the types of existing units a local government can count towards meeting the RHNA if it provides funding to make the units affordable for at least 40 years
- ✘ Requests that the HEWG discuss the default densities issues

AB 1183 – Berryhill - Limit on CEQA standing to sue

- STATUS: 2-year bill SPONSOR: Republican Package
 - APA CA: Prefer ECAT proposals
 - Would limit the standing to sue under CEQA to the Attorney General
-

Ab 1185 – torres – ceqa exemption for existing vacant retail (also sb 620 – correa)

- STATUS: 2-year bill SPONSOR: Associated Builders & Contractors
- APA CA: Oppose
- Exempts from CEQA until January 1, 2015 alterations of existing vacant retail structures not more than 60,000 square feet if meet certain conditions
- Conditions impractical, requiring information unknown until after project completed and traffic impacts were not included in any conditions

Ab 1265–nielsen –williamson act fix

- STATUS: Chaptered SPONSOR: Counties & Ag
- APA CA: Support Urgency Measure
- Reenacts the self-help Williamson Act short term subvention program repealed by February budget
- Creates a temporary program that counties can use when the state's open space subventions are cut
- Allows counties to increase the assessed values of Williamson Act contracted land and divert the resulting property tax revenues, allowing counties to renegotiate the terms of the contract in order to preserve the program and still recoup some lost revenues

Ab 1300 – blumenfield – medical marijuana regulation

- ✘ STATUS: Signed by Gov SPONSOR: LA City Attorney
- ✘ APA CA: Watch
- ✘ Provides a local agency may enact and enforce an ordinance regulating the location, operation or establishment of a medical marijuana operation
- ✘ To address MM operation lawsuits alleging state law is all they need to comply with and that locals are not allowed to adopt local ordinances or enforce them and allows locals to eliminate bad dispensaries

SB 132 – Lowenthal – state planning priorities for school facilities

- STATUS: 2-year bill SPONSOR: Author
- APA CA: Support
- Requires the State Allocation Board to review requirements and policies for the modernization of existing or building of new school facilities to ensure they reflect state planning priorities (put in statute by APA-sponsored bill)
- Promote infill, protect resources and ag, encourage efficient development patterns including building adjacent to developed areas first after infill

SB 184 – leno – right to inclusionary ordinances

- STATUS: 2-year bill SPONSOR:
CRLA/WC
- APA CA: Support
- Overturns the Palmer decision and expressly authorizes a city or county to establish inclusionary housing requirements as a condition of development

SB 791 – Steinberg – regional congestion reduction charge

- SPONSOR: Regional Agencies
- APA CA: Needs local input - Double gut & amend (health bill as signed)
- *Authorizes an MPO to impose, for up to 30 years, a regional transportation congestion reduction charge on purchasers of motor vehicle fuel in all or part of its jurisdiction*
- *Collected by the fuel retailer or wholesaler and transmitted to BOE*
- *Requires MPO to determine transportation demand reduction projects funded by charge directly benefits by reducing vehicle congestion*

SB 469 – vargas – walmart economic impact reports before approval

- ✘ SPONSOR: Unions
- ✘ Requires local agencies to prepare an economic impact report it approves or disapproves the construction or conversion of superstore retailers – GOVERNOR VETOED:
- ✘ This measure would require cities and counties to prepare an economic-impact report when evaluating plans to develop certain big-box stores. While I recognize that the merits of large-scale projects need to be carefully considered, plenty of laws are already on the books that enable and in some cases require cities and counties to carefully assess whether these projects are in a community's best interests. This bill would add yet another layer of review to an already cumbersome process.

Sb 618 – wolk – solar use on impaired ag lands

- STATUS: SIGNED BY GOV SPONSOR: Farm Bureau
- APA CA: Neutral as amended
- Allows county and landowner to jointly rescind Williamson Act contract on agriculturally unproductive lands and enter into solar-use easement for use for PV solar facilities
- Steers solar facilities from productive lands
- Allows solar on land consisting predominately of soil with significantly reduced ag productivity for ag activities and
- Land that has severely adverse soil conditions that are detrimental to agricultural activities and production

sb 653 – steinberg – new local tax & fee authority

- STATUS: 2-year bill SPONSOR: AUTHOR
- APA CA: Watch
- Authorizes local agencies to impose a local personal income tax, vehicle license fee, transactions & use tax, oil severance tax, tax on alcohol, soft drinks & cigarettes, and medical marijuana tax with majority voter approval

Sb 792 – steinberg – access to mineral resources required in land use plans

- ✘ STATUS: Signed by Gov SPONSOR:CA
Construction & Industrial Materials Association
- ✘ APA CA: Neutral as amended
- ✘ Requires a lead agency for permitting a mining operation to consider access to significant deposits of mineral resources (of statewide and regional significance) in its General Plan
- ✘ To encourage use of mineral resources near to construction sites

AB 1300/Sb 847 – authority over medical marijuana facilities

- ✘ SB 847: Prohibits MM facilities that operate through a storefront or mobile retail outlet from being located within a 600-foot radius of a school unless the local agency authorizes it by ordinance
- ✘ AB 847 VETOED: “I have already signed AB 1300 that gave cities and counties authority to regulate medical marijuana dispensaries -- an authority I believe they already had. This bill goes in the opposite direction by preempting local control and prescribing the precise locations where dispensaries may not be located. Decisions of this kind are best made in cities and counties, not the State Capitol.”

Sb 881 – web info on sites for renewable energy projects

- STATUS: 2-year bill SPONSOR: Author
- APA CA: Watch
- Requires OPR to compile info on and put on website permitting requirements, siting issues and opportunities in regions of the state, information on areas of the state identified as having potential for renewable energy development
- Requires OPR to develop guidelines for an optional energy element in GP

JOIN THE APA CA LEGISLATIVE REVIEW TEAM

- Most work done online now
- Reviews from different agencies from different parts of state important
- APA CA has access to information before legislation is introduced or amendments
- Contact Sande at sgeorge@stefangeorge.com if you would like to join