



April 8, 2017

Assembly Member Richard Bloom
Room 2003
State Capitol
Sacramento, California 95814

SUBJECT: **OPPOSE UNLESS AMENDED – AB 1585 (BLOOM)**
STATE COMMITTEE OVERRIDE OF LOCAL HOUSING
DECISIONS – IN ASSEMBLY HOUSING AND
COMMUNITY DEVELOPMENT COMMITTEE –
WEDNESDAY, APRIL 19TH

Dear Assembly Member Bloom:

The American Planning Association, California Chapter (APA California) must respectfully oppose AB 1585 as currently drafted. The bill would completely change the approval process for housing at the local and state level by requiring each local agency to form a new affordable housing zoning board, requiring the board to issue a new “single application comprehensive permit”, requiring HCD to establish a housing appeals committee, and granting the state housing appeals committee the ability to determine if the local agency’s action with respect to approval or conditions on a housing project were appropriate. APA supports changes in existing law, including by right housing approvals, and funding for housing, infrastructure and planning, that would speed up approvals of housing in California. The changes in this bill however would add another layer of laws on top of the already comprehensive housing and environmental laws that local governments and developments must currently navigate.

We would like to discuss with you APA’s recommended housing production strategies as well as the “single application for a comprehensive permit” concept the bill now requires. It isn’t clear what the goals for both the new zoning board and the single application are, how the process or permits would be different than provided under current local processes, or whether systems already in place might be modified instead of increased. But, as drafted these new provisions eliminate a number of thresholds in existing law that ensure a fair approval process, such as the existing requirement that an application be deemed complete, and review and approval timelines that allow adequate time for the notice of public hearing and response to comments, as well as CEQA review. In addition, APA does not believe that the single

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application needs to be so prescriptive, requiring a brand-new review process, to work.

However, APA cannot support the state-level affordable housing zoning appeals board also required in the bill. As you know, it is based on the Massachusetts 40 B law that allows a developer who has had a permit denied to appeal to a state board to overturn or modify that decision. The 40B law is complicated, but AB 1585 is even more complicated than 40B. California's housing laws are quite different than laws on the books in Massachusetts. The key differences: CA already has the housing element law and the Housing Accountability Act (HAA) along with the other many laws listed in the first section of this bill, including a longer statute of limitations to challenge the housing element in support of affordable housing, restrictions on disapproval of housing developments, the least cost zoning law, the density bonus law, streamlined approvals for accessory dwelling units and efficiency units, by-right housing approvals, the no-net-loss-in zoning density law limiting downzoning and density reductions, attorney fees required to be paid by persons who sue to halt affordable housing, reduced timelines to approve affordable housing applications, limiting moratoriums on multifamily housing, prohibiting discrimination against affordable housing, and the Fair Employment and Housing Act.

Layering this new law on top of this long list of California's existing housing statutes and approval processes would be a nightmare. And, because it isn't a replacement law but an addition of a new layer of laws and oversight, it will require court interpretations to sort it out.

The state appeals board is structured like a court hearing in Massachusetts. The new AB 1585 appeals board, on the other hand, appears to be more of an administrative panel, not an independent or representative body, that will have extraordinary power to override local decision making. It creates a specific structure for local decision making and appeals in two parts, local decision + another layer of review, adding to the time for project approval. It is also way too proscriptive and would pose public participation issues for citizens, interested in projects that are sent to the appeals board, who will be required to travel to Sacramento for public hearings. The staff/legal time and costs incurred by local agencies trying to comply with this new process also seems overly punitive.

It is also unclear why the bill does not recognize California's existing housing appeal process. Under the existing HAA, if a court finds that the local agency disapproved, or conditioned approval in a manner that renders infeasible the project or emergency shelter without making the required findings or without making sufficient findings, the act requires the court to issue an order or judgment compelling compliance with its provisions within 60 days, including an order that the local agency take action on the development project or emergency shelter. The act authorizes the court to impose fines if it finds that a local agency acted in

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bad faith when it disapproved or conditionally approved the housing development or emergency shelter and failed to carry out the court's order or judgment within 60 days of the court's judgment. The act requires that the fines be deposited into a housing trust fund and committed for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. This existing ability to appeal a local housing decision currently in the HAA has been used successfully to achieve the same goals of AB 1585 without the major drawbacks and costs of an appointed state appeals body. And, as with the laws listed above, this bill would interfere with rather than enhance these remedies. For instance, it is unclear whether an applicant would be able to appeal in court under existing law **and** appeal to the new state committee if either process does not result in project approval deemed appropriate by the developer.

APA does support providing increased funding to the Attorney General to focus enforcement on jurisdictions that do not entitle housing projects. New authority for enforcement of the housing element law and HAA by the AG combined with the existing court appeal process is a much better and more targeted approach, does not add additional costs/hoops/layers of review and time to the process for every local agency, and doesn't have the potential to second guess every local decision made consistent with existing law.

It is also important to note that existing laws make it exceedingly difficult to deny affordable housing projects now. In our experience, the chief obstacle to these projects are CEQA lawsuits, which can delay a project for years making them financially infeasible, and the time and expense taken to comply with CEQA. Continuing to layer additional requirements on local governments will not resolve this issue.

If you have any questions, please contact APA California's lobbyists, Sande George or Lauren De Valencia with Stefan/George Associates, 916-443-5301 or sgeorge@stefangeorge.com and lauren@stefangeorge.com.

Sincerely,

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