



BUILDING INDUSTRY ASSOCIATION

BIA Bay Area Governmental Affairs & Advocacy

2009 Year in Review

BIA BAY AREA 2009 GOVERNMENTAL AFFAIRS & ADVOCACY: EXECUTIVE SUMMARY

BIA BAY AREA's 2009 governmental affairs and advocacy accomplishments were a bright spot in what was another extremely difficult year for the building industry. The business and regulatory environment challenged the Association to do more with less—and with an extraordinary partnership of the membership and governmental affairs staff, BIA BAY AREA did just that. From air quality to zoning, from region wide regulatory proposals to local land use issues, BIA BAY AREA vigorously and successfully represented the building industry, saving literally tens of millions in regulatory costs.

BIA BAY AREA substantially expanded the breadth of its advocacy in 2009. Building on steps taken in prior years, BIA BAY AREA reestablished an effective presence in urban jurisdictions like Oakland and San Francisco—reestablished rather than established, as historically, BIA BAY AREA maintained an active governmental affairs presence in these areas. BIA BAY AREA had an immediate impact. In Oakland, BIA BAY AREA played a lead role in shaping the City's green building proposal, and blocked onerous planning and historical preservation regulations. In San Francisco, BIA BAY AREA played a key role in shaping the Mayor's package of legislative proposals to stimulate new development and construction. In San Jose, BIA BAY AREA continued its longstanding advocacy, including opposing a proposed inclusionary zoning ordinance (and preventing its adoption in 2009), and an ill-conceived tax on higher density development.

In expanding its presence, BIA BAY AREA remained fully committed to advocating forcefully for housing choices, opportunities and well planned projects in other communities. BIA BAY AREA registered governmental affairs successes such as fee reduction, fee deferral, and significant regulatory relief in places like Fairfield, Solano County, Antioch, Brentwood, Contra Costa County, Dublin, Livermore, San Ramon, Alameda County, Pleasanton, Gilroy, Morgan Hill, Hayward, Santa Rosa, Windsor, and Sonoma County. When necessary, BIA BAY AREA used the courts to vindicate important member and public rights: BIA BAY AREA challenged an arbitrary and unlawfully adopted attempt to establish a regional policy to prohibit any more than 900 acres of "greenfields" from being developed per year *throughout the entire Bay Area*. BIA BAY AREA also filed suit against Santa Rosa's attempt to require applicants for all new residential projects to vote annex into a special tax district and impose a special tax on its property—a tax not imposed on existing residences and not imposed to fund a higher level of general governmental services for those paying the tax.

BIA BAY AREA played a leading role in addressing increasingly important regional agency regulatory initiatives: BIA BAY AREA—ensured that SB 375 Implementation Policies contain important pro-housing provisions such as requiring the region to plan to accommodate a 20-year housing supply and that cities and counties zone land at appropriate densities within 3 years of updating their housing elements; fought an aggressive proposal to expand BCDC's regulatory jurisdiction from the current 100-foot shoreline band to the equivalent of the 100-year flood plain; secured important changes to the region's stormwater regulations; and prevented the BAAQMD from adopting a potentially very damaging proposal to update its CEQA Air Quality Guidelines. 2009 also saw BIA BAY AREA solidify its role as the voice of the building industry in the Bay Area. Print and television journalists regularly sought out BIA BAY AREA staff and members for comment, insight, and information for their stories on green building, fees and exactions, endangered species, financing and credit, market conditions, regulatory proposals, and many more subjects. BIA BAY AREA's credibility and relationships also led

governmental agencies and other stakeholders to look to BIA BAY AREA to represent the Bay Area building industry.

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New Familiar Places—BIA BAY AREA Reestablishes a Region-Wide Presence

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In expanding its presence, BIA BAY AREA remained fully committed to advocating forcefully for housing choices, opportunities and well planned projects in other communities,

recognizing that it is neither politically nor economically feasible, nor consistent with household choices, to shoehorn all new growth into a small number of large Bay Area cities. In 2009, BIA BAY AREA registered governmental affairs successes in places like Fairfield, Solano County, Antioch, Brentwood, Contra Costa County, Dublin, Livermore, San Ramon, Alameda County, Pleasanton, Gilroy, Morgan Hill, Hayward, Santa Rosa, Windsor, and Sonoma County. When necessary, BIA BAY AREA used the courts to vindicate important member and public rights: BIA BAY AREA challenged an arbitrary and unlawfully adopted attempt to establish a regional policy to prohibit any more than 900 acres of “greenfields” from being developed per year *throughout the entire Bay Area*. BIA BAY AREA also filed suit against Santa Rosa’s attempt to require applicants for all new residential projects to vote annex into a special tax district and impose a special tax on its property—a tax not imposed on existing residences and not imposed to fund a higher level of general governmental services for those paying the tax. BIA BAY AREA’s lawsuit contends that the requirement violates the right to vote freely in a constitutionally mandated election and violates state law requirements governing the purposes for which special taxes may be imposed on new housing. In 2009, BIA BAY AREA also challenged excessive fees imposed by Zone 7 and the Sunnyslope Water District, and successfully concluded a multi-species critical habitat lawsuit that saw overreaching critical habitat designations reduced by over 100,000 acres for five species, including the exclusion of over 1,000 acres (including the Communications Hill area planned for development in San Jose) from critical habitat designated for the Bay checkerspot butterfly.

Regional Regulation Moves to the Foreground—BIA BAY AREA Engages

Recently, the impact of regulations adopted by Bay Area regional governmental agencies on the building industry has steadily increased. 2009 saw a marked acceleration of this trend. In May 2009, *The Tuesday Report* (BIA BAY AREA’s revamped and highly regarded weekly governmental affairs update) identified several sweeping regulatory initiatives undertaken by Bay Area regional governmental agencies that would directly impact the building industry. In each case, BIA BAY AREA included the issue in its governmental affairs agenda, worked with coalition partners whenever possible, and ensured that the building industry’s concerns and ideas were clearly understood by decision makers. BIA BAY AREA successfully fought an aggressive proposal to expand BCDC’s regulatory jurisdiction from the current 100-foot shoreline band to the equivalent of the 100-year flood plain, and represented the building industry on a Technical Advisory Committee to evaluate a proposed BAAQMD Indirect Source Rule that could impose a GHG impact fee on every development project in the Bay Area. BIA BAY AREA’s significant regional successes included—

- **SB 375 Implementation Policies:** In early 2009, the Joint Policy Committee (JPC), a regional coordinating body comprising representatives from the Association of Bay Area Governments (ABAG), Metropolitan Transportation Commission (MTC), Bay Area Air Quality Management District (BAAQMD), and Bay Conservation and Development Commission (BCDC) released a proposed set of policies to implement SB 375—

California's landmark land use and transportation planning legislation. The implementation policies are critical to the building industry because they establish the framework for developing the region's Sustainable Communities Strategy (essentially the Bay Area's 20-year regional land use and transportation planning blueprint) pursuant to SB 375. The draft proposal contained a number of very troubling recommendations, including that the region lobby the State for the most stringent possible GHG emission reduction target, and that it attempt to persuade federal agencies to alter longstanding interpretation of federal planning regulations that require regional land use plans to be realistic and reasonably likely to be implemented. Also problematic was fact that the draft did not contain policy language regarding the hard won housing reform elements of SB 375. Through written comments and a high level meeting with JPC representatives, BIA BAY AREA made the case for significant revisions. The JPC responded and adopted final SB 375 Implementation Policies that contain very favorable provisions regarding SB 375's pro housing elements, including the requirements that the Bay Area identify sufficient land within the region to accommodate a 20-year housing supply, and that cities and counties zone land at appropriate densities to meet their housing needs within 3 years of updating housing elements.

- **Regional Stormwater Regulation:** In October 2009, the San Francisco Regional Water Quality Control Board (Water Board) adopted a new Municipal Regional Permit (MRP). The MRP is one of the most significant and expansive regulatory programs in existence, covering potentially any activity that causes or affects stormwater runoff. The Water Board worked on the MRP for over 5 years, and BIA BAY AREA was involved throughout the process. For the building industry, the most important part of the final 100-plus page MRP is Provision C.3. Provision C.3 regulates how much stormwater that falls on a project site must be treated, where it must be treated, and how it must be treated. Like MS4 permits adopted by other regional boards in California, the MRP takes a fundamentally different (and more costly and restrictive) approach to stormwater regulation than had the prior generation of permits. While the MRP will impose new costs on the building industry, BIA BAY AREA's consistent and active involvement throughout the process led to adoption of a permit that is much more reasonable and feasible than would have been adopted without BIA BAY AREA's participation—hence the opposition of environmental groups and their unsuccessful attempt to modify the MRP to “conform” it to already adopted permits in several Southern California regions. For example, BIA BAY AREA worked to ensure that the MRP considers the potential impact of new requirements on smart growth, infill, and redevelopment projects, and that it does not include the kind of rigid limitations on impervious surface area found in other permits. Also of great importance, at BIA BAY AREA's request, the MRP contains a reasonable and effective grandfather provision. The initial draft MRP did not contain a grandfather provision and but for BIA BAY AREA's intervention public and private

projects in the pipeline would have incurred literally millions of dollars in additional compliance costs.

- Climate Change and Air Quality: In 2009, BAAQMD began a process to update its CEQA Guidelines for air quality including, for the first time, a threshold of significance related to GHG emissions. Because local governments and project applicants rely on BAAQMD's guidelines to make determinations on air quality impacts when reviewing projects under CEQA, the updated guidelines will directly impact projects throughout the Bay Area. BIA BAY AREA conducted a thorough technical and legal review of the proposed guidelines that identified significant problems with the proposal, and the real possibility that if adopted unchanged they would penalize higher density, transit-oriented, and mixed use projects—the very type of projects policy makers anticipate will be necessary to achieve California's AB 32 goals and successfully implement SB 375. BIA BAY AREA submitted extensive comments on the proposal and provided constructive alternatives. The opposition voiced by BIA BAY AREA—and a large contingent of local governments—led to some positive changes to the proposal and a delay of the BAAQMD Board's consideration of the matter to 2010. In light of media coverage highlighting criticism of the proposal—including print stories in the *New York Times* and *Mercury News* and a televised story on KPIX—an increasing number of Board members began expressing reservations about the proposal and suggesting that the process should be re-opened. As a result, a bad proposal that proponents hoped to ram through in November was postponed 3 times and the issue will not be considered until April 2010.

BIA BAY AREA members and staff also played important roles in federal and state level building industry successes, including the of federal and state housing tax credits, blocking onerous FHA financing requirements, and securing important local land use and project protections in the Delta as part of the negotiations leading to enactment of landmark water and Bay-Delta oversight reform legislation.

Voice of the Bay Area Building Industry

2009 saw BIA BAY AREA solidify its role as the voice of the building industry in the Bay Area. Print and television journalists regularly sought out BIA BAY AREA staff and members for comment, insight, and information for their stories on green building, fees and exactions, endangered species, financing and credit, market conditions, regulatory proposals, and many more subjects. BIA BAY AREA's credibility and relationships also allowed it to generate news coverage and publicity on key issues such as a proposed “infill tax” in the South Bay that resulted in a front-page story in an influential area newspaper.

Governmental agencies and other stakeholders also looked to BIA BAY AREA to represent the Bay Area building industry. BIA BAY AREA's Cheryl O'Connor was appointed

to ABAG's Regional Policy Committee invited to participate in a Sonoma County Supervisor's Economic Forum, and served on the leadership of the Jobs Housing Coalition and EDAB. Paul Campos served on MTC, BAAQMD, and ABAG advisory committees and was named Bay Planning Coalition's Outstanding Member for 2009; and Bob Glover was appointed by the Mayor of Santa Rosa to an affordable housing task force and by the Solano County Transportation Authority to a transportation fee advisory group. BIA BAY AREA also established the Construction Coalition—a successful advocacy partnership in the North Bay with the North Coast Builders Exchange.

Local Regulatory Reform—BIA BAY AREA Took the Initiative

BIA BAY AREA's members identified local regulatory relief as an important priority for 2009. In response, BIA BAY AREA developed a strategic approach centered on the housing element update process as the vehicle for implementing reform. State housing element law requires cities and counties, when updating their housing elements, to identify and where feasible eliminate or mitigate, local policies that act as constraints to new housing. State law also directs the California Department of Housing and Community Development (HCD) to ensure that a local government complies with these requirements as a condition to obtaining housing element certification. BIA BAY AREA met with HCD officials early in 2009 to suggest a coordinated focus on Bay Area housing element updates to push for fee reduction, fee deferral, project approval extension, and inclusionary zoning reform at the local level. HCD was very receptive to the proposal and worked closely with BIA BAY AREA throughout the year. This strategic partnership helped BIA BAY AREA obtain significant regulatory relief in many Bay Area cities, counties, and other local agencies. Some examples—

- Contra Costa County reduced its inclusionary zoning in lieu fees for for-sale projects from \$25,000 per market rate unit to \$3,875—a savings of \$1.8 million for a 100-unit project. The County entirely eliminated the inclusionary requirement for rental projects.
- Brentwood reduced its inclusionary zoning fee by \$7,495 per unit.
- Dublin suspended its public art fee for 2 years—saving \$1.02 million for a 581-unit project. Dublin also decreased traffic impact fees up to 12%.
- Oakley repealed its childcare facilities fee.
- Fremont reduced fees citywide by 10% and 25% in the Central Business District.
- The East Contra Costa County Habitat Conservation Plan fee was reduced by 11%.
- Livermore reduced its affordable housing fee by ___ per unit
- Hayward dropped a proposed \$1,000+ per unit child-care facilities fee.
- Windsor postponed indefinitely an \$8,000 impact fee increase.
- Solano County postponed indefinitely a \$7,000 per unit transportation impact fee.
- San Benito County voted to suspend its inclusionary zoning requirement.
- The Scotts Valley Unified School District reduced its school fees nearly 50%

- Many agencies began allowing payment of impact fees to be deferred—including Brentwood, Concord, San Ramon, Contra Costa County, the Mt. Diablo Unified School District, Livermore, Pleasanton, and the Tri-Valley Transportation Council.
- Central Contra Costa Sanitary District became the first special district to defer fee payment until close-of-escrow.
- Many jurisdictions approved automatic extension of local entitlements—including Oakland, San Jose, Vacaville, Monterey County, and Lafayette.
- In response to demands from HCD, Livermore and Hayward committed to adjusting their inclusionary zoning requirements by a date certain to conform to current market conditions.

On the local level, BIA BAY AREA also continued its leadership role in the green building arena. BIA BAY AREA worked with San Jose, Sonoma County, Union City, Alameda County, Contra Costa County, and Santa Rosa to implement green building ordinances. In recognition of its advocacy for effective and balanced green building policies, BIA BAY AREA was awarded a special “Early Adopter” award by Build-It-Green at BIG’s annual dinner and awards ceremony.
