



April 18, 2018

The Honorable Cecilia Aguiar-Curry
Chair, Assembly Local Government Committee
State Capitol, Room 5144
Sacramento, CA 95814

RE: Assembly Bill 3147 (Caballero) – OPPOSE

Dear Assembly Member Aguiar-Curry:

On behalf of the Rural County Representatives of California (RCRC), the Urban Counties of California (UCC), the California State Association of Counties (CSAC), the League of California Cities (LCC), and the California Special Districts Association (CSDA), we regret to inform you of our opposition to Assembly Bill 3147, authored by Assembly Member Anna Caballero, which would provide that a housing development project shall not be subject to a fee, charge, dedication, reservation, or other exaction that is more than the fee, charge, dedication, reservation, or other exaction in effect at the time that the application for the housing development project is deemed complete.

Local governments and planners appreciate the need to provide builders with some level of certainty regarding the fees and other conditions applicable to their proposed development before they make substantial investments pursuing the development. However, that certainty often comes with social costs. The roads, fire stations, water and sewer facilities, and other necessary assets that will serve future residents of the development - or to mitigate the development's environmental impacts - are not without cost. And, these do not become less expensive as time goes on. "Freezing" development fees and related conditions for an extended period of time ultimately means that the local government cannot recover the ever-increasing costs of those facilities - which in turn means that construction of those facilities may be delayed, or never fully occur. These consequences must be balanced against the builders' certainty interests, in order to avoid creating unmitigated impacts or future underserved communities.

Current provisions of California law are sensitive to this balance. The existing statutes governing the "freezing" of development fees and conditions place clear time limits upon the duration of the "freeze" – carefully defining both the beginning of that period (complete application for a vesting tentative map) and the end (generally one to

five years after recordation of the final map, depending on the nature of the project).¹ As the Legislature has progressively lengthened the life of tentative maps (and thus the duration of the “freeze”), it has taken deliberate steps to “mitigate some of the impacts of repeated subdivision and parcel map extensions on cities and counties” by allowing local governments to levy a fee or impose a condition that requires the payment of a fee upon the issuance of a building permit for maps that have been extended.² These statutes further mitigate the potential negative consequences of the “freeze” by explicitly permitting local governments to impose new conditions when necessary to avoid condition dangerous to health or safety, or to comply with state or federal law.

Assembly Bill 3147 unfortunately fails to consider these consequences. The bill would “freeze” all fees, charges, and exactions relating to housing developments for a much longer period of time, without exception.³ The “freeze” would start earlier in the development process (commencing with legislative approvals - such as general plan amendment or rezoning - which often predate the tentative maps by years), and extend indefinitely (apparently in perpetuity to any building permit within the development). There is often a period of years, or even decades, between the initial application for approval of the very first land use entitlement relating to a project and issuance of the final building permit. During the period, the costs of infrastructure and public services inevitably rise. This bill would prevent local governments from recovering those costs, thereby resulting in inadequate public facilities.

In addition to the aforementioned social costs, the bill perversely *discourages* speedy approval of housing developments. If the “freeze” commences with the very first development entitlement, conscientious local governments, who desire to fully fund and provide adequate public facilities and services, will be encouraged to defer that approval until the developer can provide positive assurances that the project will actually proceed immediately without delay. Further, the inability to ensure that the applicable fees will *actually produce* sufficient funding to construct the necessary facilities within a reasonable timeframe may make it more difficult to rely on those fee mechanisms as

¹ See, e.g., Government Code sections 66498.1 through 66498.9 (relating to vesting tentative maps) and Government Code section 65961 (relating to residential projects).

² Such provisions were included in the first recession-era extension statute (see Senate Local Government Committee analysis of Assembly Bill 333 (Fuentes) of 2009, http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0301-0350/ab_333_cfa_20090611_114725_sen_comm.html) and have been included in the subsequent extensions through 2013 (Assembly Bill 116 (Bocanegra) of 2013).

³ It is unclear exactly how broadly this “freeze” would apply. Current vesting provisions apply only to the city or county that approved the development, and generally do not “freeze” the authority of other service providers. (*Tarbet v. East Bay Municipal Utility Dist.* (2015) 236 Cal.App.4th 348.) As written, the bill could be interpreted to affect fees and exactions by these other agencies, as well.

The Honorable Cecilia Aguiar-Curry
Assembly Bill 3147
April 18, 2018
Page 3

mitigation for environmental impacts under CEQA⁴ - thereby encouraging legal challenges and consequent delays.

For the reasons stated, we respectfully urge your 'No' vote on AB 3147. If you should have any questions or concerns, please do not hesitate to contact Tracy Rhine of RCRC at (916) 447-4806, Jolena Voorhis of UCC at (916) 327-7531, Christopher Lee of CSAC at (916) 327-7500, Jason Rhine of LCC at (916) 658-8264, or Anthony Tannehill of CSDA at (877) 924-2732.

Sincerely,



TRACY RHINE
Legislative Advocate
RCRC



JOLENA L. VOORHIS
Executive Director
UCC



CHRISTOPHER LEE
Associate Legislative Representative
CSAC



JASON RHINE
Legislative Representative
LCC



ANTHONY TANNEHILL
Legislative Representative
CSDA

cc: The Honorable Anna Caballero, Member of the State Assembly
Members of the Assembly Local Government Committee
Consultant, Assembly Local Government Committee

⁴ See, e.g., *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173 ["to be adequate, these mitigation fees ... must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing"].