April 19, 2018

The Honorable Mike McGuire
Chair, Senate Governance and Finance Committee
State Capitol, Room 2082
Sacramento, CA 95814

Re: SB 1469 (Skinner): Land use: accessory dwelling units
As amended on April 16, 2018 – OPPOSE
Set for hearing in Senate Governance and Finance Committee April 25, 2018

Dear Senator McGuire,

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), and the League of California Cities (LCC) are opposed to Senate Bill 1469 by Senator Nancy Skinner. This bill would significantly amend the statewide standards that apply to locally-adopted ordinances concerning accessory dwelling units (ADUs), even though the law was thoroughly revised in 2016 Legislative Session. These revisions were a product of two carefully-negotiated bills that only became effective in January 2017, with further amendments during the 2017 Legislative Session. All local agencies that worked in good faith to implement those laws would have to reopen their ordinances yet again to comply with the provisions of SB 1469. Our organizations are opposed to this complete rewrite of the statutes pertaining to ADU's for the following reasons.

Reverses Existing ADU Law. The last major changes to the state's ADU law only became effective on January 1, 2017. Since that time, counties and cities have updated their ordinances to be consistent with state law by designating areas where ADU's are allowed and have imposed development standards consistent with the law. SB 1469 reverses the framework of the existing law, instead requiring ordinances to identify only where ADUs are *prohibited*. This would likely require every agency that updated their ordinance pursuant to the last bills to reopen the revisions made in 2016 and 2017 once again—a costly and unnecessary burden.

Precludes Imposition of Impact Fees. Existing ADU law allows units of up to 1,200 square ft. Builders of pre-fabricated homes have developed new models that meet this size limit and include up to four bedrooms and two bathrooms. Existing ADU law requires that impact fees be charged in proportionate to the size of the unit, so such a four-bedroom unit would not be charged the same fees as an efficiency-sized studio unit. Despite the fact that such ADUs will clearly have impacts on infrastructure similar to the impacts of a new single family home, this bill would preclude the imposition of any impact fees designed to offset the costs of new or expanded infrastructure that residential growth requires.

Precludes Undefined "Other Fees or Charges." SB 1469 provides that ADU's "shall not be subject to impact fees, connection fees, capacity charges, *or any other fees or charges levied by a local agency*…." The scope of this last clause is unclear, and will invite litigation. Does "any other fees or charges" include ordinary processing fees to recover the local agency's cost to process the ADU application? If so, this represents a taxpayer subsidy for permit applicants, and a significant unreimbursed state mandate. What other fees are (or are not) prohibited by this provision? As written, this provision will be difficult to administer, and will financially harm the very same county departments responsible for permitting ADUs and serving their future residents.

Allows ADUs in Non-Residential Zones. The 2016 ADU law revisions applied only to residentially-*zoned* land. SB 1469 would require local agencies to approve ADUs "in areas where a single-family or multifamily dwelling is *authorized*." The reason for this change is unclear, but the new language could be interpreted to mandate that ADU's be allowed on any parcel with an existing single-family home, regardless of the zoning. This change will intensify non-conforming land uses, creating conflict with other policy goals. For instance, counties and cities must consider whether allowing additional residential living space in an agricultural or industrial zoned parcel would create new conflicts with adjacent land uses such as established businesses. Under existing law, local agencies have discretion to allow ADUs in such contexts when there is an existing legal non-conforming dwelling unit. Given the potential for conflict, such units should continue to be discretionary on commercial, agricultural, or industrial lands.

Precludes Legitimate Restrictions on Parcel Size and Lot Coverage. In unincorporated areas, where many parcels do not have public water or sewer service, parcel sizes and lot coverage standards are important regulatory tools for ensuring that a particular lot can actually accommodate an ADU. Instead of allowing counties to establish reasonable, generally applicable standards identifying those parcels unable to accommodate required well and septic services, this bill requires such issues to be considered on a case-by-case, which will create uncertainty and confusion for applicants.

Conflicts with Concurrent Legislation. SB 1469 amends the same section of law as Senate Bill 831 (Wieckowski). We urge the Committee to ensure that these two measures do not move forward with conflicting language.

Department of Housing and Community Development Guidelines Process. HCD should not be given authority to create guidelines that would have the effect of overriding a local land use ordinance without going through the formal rulemaking process under the Office of Administrative Law. The normal rulemaking process is necessary to ensure that the public and affected local governments have sufficient input on the development of such regulations.

Preponderance of Evidence Standard. The preponderance of evidence standard is inappropriate for judicial review of a legislative decision by elected officials to prohibit ADUs or make them a discretionary use in areas where additional residential construction may present a threat to health and safety. This will merely invite litigation in which judges will be asked to second-guess decisions made through democratic process. For instance, how much evidence would a local agency need to provide in order to convince a judge that making ADUs discretionary in areas without community water or sewer service is justified, or to preclude ADUs in a high fire hazard severity area? The existing substantial evidence standard is appropriate and sufficient.

Junior Accessory Dwelling Units. Current ADU law requires that local agencies allow conversions of existing space into an ADU. Given that this requirement supports development of additional living space that is largely similar to that authorized by the current optional junior accessory dwelling unit (JADU) law, the mandatory JADU requirement in this bill is unnecessary and duplicative.

Timing for Approval. We recognize that the sixty-day timeframe for permit approval is based on a similar standard for discretionary applications under the Permit Streamlining Act. We hope to work with the author to ensure that any similar timeframe for ADU permits is workable in the context of granting a ministerial permit.

For these reasons, we respectfully oppose SB 1469. If you need additional information regarding our position on this measure, please do not hesitate to contact Christopher Lee of CSAC at (916) 327-7500 (clee@counties.org), Tracy Rhine of RCRC at (916) 447-4806 (trhine@rcrcnet.org), Jolena Voorhis of UCC at (916) 327-7531 (jolena@urbancounties.com), or Jason Rhine of LCC at (916) 658-8200 (jrhine@cacities.org).

Sincerely,

Christopher Lee
Associate Legislative Representative
CSAC

Jolena L. Voorhis
Executive Director
UCC

Tracy Rhine
Legislative Representative
RCRC

Jason Rhine
Legislative Representative
LCC

cc: The Honorable Nancy Skinner, Member of the State Senate
Members of the Senate Governance & Finance Committee
Anton Favorini-Csorba, Consultant, Governance & Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus