May 2, 2018

The Honorable Tom Daly
Member, California State Assembly
State Capitol, Room 3120
Sacramento, CA 95814

RE: Assembly Bill 3194 – OPPOSE UNLESS AMENDED
As Amended April 30, 2018

Dear Assembly Member Daly:

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 American Planning Association California Chapter (APACA), we regret to inform you of our "Oppose Unless Amended" position on your Assembly Bill 3194 which will make numerous changes to the Housing Accountability Act (HAA).

AB 3194 would prohibit a local government from disapproving an eligible project or requiring a rezoning of a project site if the existing zoning ordinance does not allow the maximum residential use, density, and intensity allocable on the site by the housing element or land use element of the General Plan adopted or updated in the last 10 years. The General Plan and the land use element were never intended to be as specific as a zoning ordinance – rather, they are designed to provide the flexibility necessary for coherent long-term planning. Counties and cities typically have outlying areas that presently lack the infrastructure and services necessary for higher density development, but will be appropriate for such development in the future, as the urban core grows and infrastructure expands. Moreover, in areas zoned for very low-density housing, replacing the zoning with densities allowed under the much broader general plan designation could drastically increase allowed densities in areas that are either inappropriate or not planned for more intensive residential development.

Under current law, General Plan land use elements are long-term documents that accommodate these needs through flexible general designations, which are made more specific through zoning as future growth occurs. AB 3194 represents a major change that would take away the whole purpose of the General Plan being *general* and would eliminate the long-standing relationship between the General Plan and zoning. This will result either in General Plans that allow high-density development to "sprawl"

into areas that do not yet have the requisite infrastructure and services, or will alternatively induce local jurisdictions to remove such flexibility from the General Plan entirely, thereby undermining its function as a long-term planning document. Either outcome is perversely harmful to the development of adequate housing throughout California.

Amendments taken in the Assembly Committee on Housing and Community Development require that the densities set forth in the housing element prevail if a conflict exists between the land use element and the housing element. This language continues to allow the land use element of a jurisdiction's general plan to govern zoning decisions – e.g., where the project is located on a site not identified in the housing element – which is not the intended function. Additionally, it is uncertain what would constitute a "conflict" between a land use and housing element, and therefore unclear which density standards would govern any particular project. This ambiguity can only be resolved through costly litigation.

Alternatively, AB 3194 should be amended to allow the developer to use the density specified in the housing element or zoning ordinance, whichever is higher. Specifically, we request that page 12, lines 5 through 16 be deleted and replaced with the following language:

> *(4) For purposes of paragraph (2), the density of a housing development project is not inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, or requirement if the housing development project is proposed on a site that is identified in the local agency's housing element and is proposed to be developed at a density that is consistent with the density specified in the housing element for that site.*

The housing element is the most detailed element in the General Plan and includes site specific density information certified by the California Housing and Community Development Department (HCD). The zoning is required to be updated within three years to reflect the housing element densities if there are not enough sites already zoned at those densities within the jurisdiction. But, if that rezoning has not been completed, using the more updated housing element densities makes sense and creates accountability for local jurisdictions.

AB 3194 also states the intent of the Legislature to establish a high threshold for local agencies to justify denying or conditioning a project for health and safety reasons and states that those reasons rarely occur. The bill also states that the Legislature declares that regularly occurring planning issues do not meet the health and safety threshold required for denying or conditioning a project. The existing law establishes a high threshold. The existing law is detailed and specific. It does not simply allow local agencies to deny projects for "health and safety reasons." It requires local agencies to identify a "specific, adverse impact" on the public health or safety. A "specific, adverse

impact" is a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." A statement of legislative intent implies that something about the existing language is unclear. We request this language is deleted from the bill in its entirety.

The circumstances under which a city or county can deny a project or reduce densities under the HAA were just substantially narrowed last year. Another change is not necessary. As part of the 2017 Housing Package signed by the Governor, AB 678/SB 167 and your own measure, AB 1515, all of these additional requirements now apply to new projects:

- A housing development project is deemed consistent with an applicable plan or other local provision if there is "substantial evidence that would allow a reasonable person to conclude" it is consistent.
- If a project complies with "objective" General Plan, zoning, and subdivision standards, a jurisdiction can only reduce density or deny a project if there is a "specific adverse impact" to public health and safety that cannot be mitigated in any other way.
- The definition of "lower density" was changed to include conditions "that have the same effect or impact on the ability of the project to provide housing".
- If a jurisdiction decides to deny or reduce the density of a project, the city or county must identify objective standards the project does not comply with.
- The city or county must also provide a list of any inconsistencies with a plan, program, policy, ordinance, standard, requirement or similar provision within 30-60 days of determining the application is complete explaining why the project is inconsistent or the project is deemed consistent.
- Findings under the HAA must to be based on the 'preponderance of the evidence,' not merely 'substantial evidence'.
- Attorneys' fees are now allowed for both market-rate and affordable projects.
- A $10,000 per unit fine must be imposed if the jurisdiction ignores a court's decision in an HAA challenge.

For these reasons, we have adopted an "Oppose Unless Amended" position on AB 3194. If you have any questions, please contact Tracy Rhine at trhine@rcrcnet.org, Jolena Voorhis at jolena@urbancounties.com, Christopher Lee at clee@counties.org, Jason Rhine at jrhine@cacities.org, or Sande George at sgeorge@stefangeorge.com.

Sincerely,

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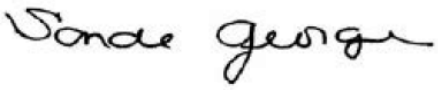

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cc: Members of the Assembly Local Government Committee
Consultant, Assembly Local Government Committee