July 24, 2020

The Honorable Anna Caballero
Member, California State Senate
State Capitol, Room 5052
Sacramento, CA 95814

Re: Senate Bill 1385 (Caballero): Local planning: housing: commercial zones
As Amended on June 18, 2020 - Concerns

Dear Senator Caballero,

The Urban Counties of California (UCC), the California State Association of Counties (CSAC), and the Rural County Representatives of California (RCRC) write to reiterate the concerns we have previously identified in our proposed amendments to SB 1385, which would create a new process allowing residential development on commercial sites, including allowing qualifying projects to use the streamlined application procedures of Senate Bill 35 (Wiener, 2017).

UCC, CSAC, and RCRC are supportive of the fundamental goal of SB 1385, which, similar to Assembly Bill 3107 (Bloom), seeks to provide opportunities for redevelopment of underutilized commercial sites, many of which are near transit and jobs centers. In fact, many counties already allow multifamily residential uses within some of their commercial zones. We appreciate your office's ongoing work with our organizations to address technical issues with the bill, but we continue to have the following substantive policy concerns that we would like to see addressed in order to move into a "support" position on the bill.

Exclude Commercial Zones that Authorize Incompatible Uses

Commercial uses can vary in type and intensity with some commercial uses being more compatible with housing development than others. For instance, allowable commercial uses in unincorporated areas can include surface mining, outdoor storage, auto salvage, auto repair, hog farms, oil wells, and certain manufacturing and assembly uses.

Accordingly, we request that SB 1385 be amended to apply to only office or retail uses in commercial zones. This will lessen the likelihood of issues relating to incompatible uses, as well as limit applicability to zones more commonly located near transit and job centers. An alternative approach to addressing this issue would be to limit the applicability of *both* sections of the bill to sites that were previously developed with an office or commercial use and are now at least partially vacant.

Offer Housing Element Credit for Eligible Sites

Consistent with concerns we have outlined on other bills seeking to provide statewide overrides to local zoning codes, we request that SB 1385 be amended to allow counties to count some significant portion of nonvacant commercial sites where SB 1385 would apply toward their regional housing needs allocation (RHNA) requirements, irrespective of whether the current zoning allows for residential uses. Similar to procedures used to determine the opportunities for accessory dwelling units to count toward RHNA , jurisdiction-level analysis based on market conditions and other relevant factors affecting the propensity for residential redevelopment of these commercial sites could substitute for the individual site-by-site analysis otherwise required for "nonvacant" sites.

SB 1385 is premised on the assumption that many previously developed commercial sites are underutilized, and therefore represent a prime opportunity for redevelopment as multifamily housing. This is especially true as the retail sector struggles to compete with online options—a trend that seems poised to accelerate with the COVID-19 pandemic. The current public health crisis could also potentially lead to changes in demand for office space, with some businesses permanently transitioning to a "work from home" arrangement.

If SB 1385 is not amended to provide local agencies with an opportunity to count some portion of these sites toward meeting RHNA requirements, as described above, we request that the bill be amended to align implementation timelines with AB 3107, including the addition of a sunset provision consistent with the current version of that bill.

Include Workable Reallocation Provisions

Along the same lines, counties should be able to designate some commercial properties for exclusively nonresidential uses to ensure opportunities for economic development, especially as California looks to recover from the COVID-19 pandemic. The current version of SB 1385 includes a "reallocation" provision, but would be impractical to use, as local governments do not have sufficient information to make the required findings related to construction costs.

We propose amending the bill to allow local agencies to reallocate residential capacity available pursuant to SB 1385 to alternative sites that are eligible to be included in the housing element inventory of adequate sites. This would allow local agencies to retain exclusively commercial zoning to key sites important to local economic development goals, while requiring the city or county to identify residential zones that could accommodate the higher, "reallocated" density.

Rely on Commercial Zoning Rather than General Plan Designations

We propose that SB 1385 be amended to use the zoning code rather than any element in the General Plan, as counties update their zoning code on much more regular intervals. This amendment will help ensure that only the most appropriate sites are used for housing development based on the jurisdiction's most recent housing element and update to their zoning code. This amendment will also help prevent issues related to incompatible uses, as general plan designations typically allow a broader range of uses than specific zoning designations.

Remove Language Related to Community Facilities Districts

We propose deleting the provisions in the bill related to community facilities districts. Developers currently have the ability to request establishment or annexation to a Community Facilities District and we question why existing taxpayers should lose the ability to protest an annexation. Further, the

Mitigation Fee Act already precludes agencies from charging impact fees for facilities funded by other sources, such as Mello-Roos. Finally, the bill includes a reference to "services" and "construction costs," which do not clearly line up with the types of costs recoverable through either impact fees or Mello-Roos special taxes.

We appreciate the opportunity to continue working with you to resolve these concerns as the bill is considered in the Assembly. Should you have any questions about our position, please do not hesitate to contact Jean Kinney Hurst (UCC) at jkh@hbeadvocacy.com, Christopher Lee (CSAC) at clee@counties.org, or Tracy Rhine (RCRC) at trhine@rcrcnet.org.

Sincerely,

Christopher Lee
California State Association of Counties

Jean Kinney Hurst
Urban Counties of California

Tracy Rhine
Rural County Representatives of California

cc: Hank Brady, Consultant, Assembly Local Government Committee
Stephanie Park, Consultant, Office of Senate President pro Tempore Atkins
Anton Favorini-Csorba, Consultant, Senate Governance and Finance Committee