American Planning Association
California Chapter

Making Great Communities Happen

March 21, 2018

Assembly Member Daly
Room 3120
State Capitol
Sacramento, California 95814

SUBJECT: AB 3194 (DALY) – NOTICE OF OPPOSITION UNLESS AMENDED
ADDITIONAL AMENDMENTS TO THE HOUSING ACCOUNTABILITY ACT – IN ASSEMBLY HOUSING & COMMUNITY DEVELOPMENT AND LOCAL GOVERNMENT COMMITTEES

Dear Assembly Member Daly:

The American Planning Association, California Chapter (APA California) must respectfully oppose your measure, AB 3194. This bill would make another round of changes to the Housing Accountability Act (HAA) before the two measures just passed last year, that made major changes to the HAA, have had a chance to be implemented and their impacts assessed.

Specifically, AB 3194 would prohibit a local government from 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 land use or housing element of the General Plan. The General Plan and the land use element were never intended to be as specific as a zoning ordinance – it covers different areas of the city with general categories. This major change 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, forcing the General Plan map to be like the much more specific zoning map. If the Legislature intends to make such a fundamental change to a very general document after it has been approved, it should give cities and counties time to update the General Plan and land use element to take into account this new, zoning function.

However, if the bill is amended to instead allow the developer to use the density specified in the housing element or zoning ordinance for a specific

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site, whichever is higher, APA would support that change. The housing element is the most detailed element in the General Plan and includes site-specific density information certified by 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.

AB 3194 would also amend the definition of "specific adverse impact" to require that the impact be "imminent" in order for a city or county to determine that a project density should be reduced, or the project denied, because there is a specific, adverse impact upon the public health or safety. This would overturn a really old court decision from 1988, Mira Development Corp. v. City of San Diego. Since that time, there have been many decisions that have clarified what a specific adverse impact means. So, this change isn't relevant to how "specific adverse impact" is commonly defined today, nor does it make sense. How can a health and safety issue for a project be "imminent" if the project hasn't been built? For instance, what if a developer can only make a project work if she or he adds drainage to a site that would run into another property whose owner would then have to deal with the runoff? It is a health and safety issue but isn't an imminent one because the project hasn't been built so the impact hasn't occurred. This is a requirement that can't be met and should be deleted from the bill.

In addition, the circumstances under which a city or county can deny a project or reduce densities under the HAA were just substantially narrowed. Another change isn't 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 & safety that can't 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 doesn't 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

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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 & affordable projects.
- A $10,000 per unit fine must be imposed if the jurisdiction ignores a court's decision in an HAA challenge.

If the changes above are made, APA would support this bill. If you have any questions, please contact our lobbyist, Sande George, with Stefan/George Associates, sgeorge@stefangeorge.com, 916-443-5301.

Sincerely,

John C. Terell

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Vice President, Policy and Legislation - APA California

cc: Governor's Office
OPR
Republican Caucus

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