September 6, 2024

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: Assembly Bill 1893 (Wicks) – REQUEST FOR VETO

Dear Governor Newsom,

On behalf of the Rural County Representatives of California (RCRC), the League of California Cities (Cal Cities) and the California State Association of Counties (CSAC), we respectfully request your veto of Assembly Bill 1893 (Wicks). We conceptually agree with the author that the "builder's remedy" should be reformed and clarified, for the benefit of all parties. Presently, the builder's remedy exists only as a negative implication in the Housing Accountability Act (HAA) – i.e., local agencies are allowed to deny certain projects under the HAA based on noncompliance with general plan and zoning requirements *only* if certain conditions are met, thereby implying that such projects may *not* be denied on that basis if those conditions are *not* met. Builder's remedy projects must still comply with objective development standards – but which sets of standards apply, and what those standards may contain is not specified. Further, the interaction with other laws, including the California Environmental Quality Act (CEQA) and the numerous streamlining provisions adopted by the Legislature in recent years is not always clear. These ambiguities disadvantage both housing developers, who are uncertain of their rights, and local agencies, who are uncertain of their obligations.

Any revision to the builder's remedy should *improve* clarity and administrability – and should not undermine the Legislature's other policy choices in this area. A city or county general plan is the "constitution of land use" for the jurisdiction and is required by state law to address and implement a wide range of important public policies. Overriding this "constitution" is strong medicine that has the potential to impact not only the affected local agency, but also a wide range of other parties, including environmental and labor stakeholders. This

remedy should therefore be deployed carefully to ensure that the right balance is struck between the need for housing and the other important state policies that the general plan is required to serve. Likewise, care must be taken when delineating the development standards that are – or are not – applicable to such projects, to avoid undermining the often equally critical state policies embodied in those standards.

Unfortunately, Assembly Bill 1893 presents a jumble of limitations on local agencies' processing and approval of such projects, which are both individually unclear and lacking in any internal consistency. For example, builder's remedy projects must "comply with objective, quantifiable, written development standards, conditions, and policies," but the bill also declares that "*shall be deemed in conformity*" with applicable standards and requirements. Likewise, AB 1893 prohibits applying objectives standards that "[p]reclude a project...from being constructed as proposed by the applicant." It's unclear the intent of this provision. By their nature, standards impose *some* limitation on the desires of the regulated community, or they are not standards at all. (Adding to the confusion, this limitation applies to projects that "meet [ ] the requirements allowed to be imposed" by the bill, which appear to be the very same requirements that this limitation overrides.) Moreover, AB 1893 requires local agencies to prove that compliance with *any* objective standards does not make the project infeasible. It is unclear how an agency could do this without access to the developer's financials. The provisions of AB 1893 do not resolve the confusion in current law – it unfortunately makes them worse.

AB 1893 also introduces additional uncertainties into the interaction between the HAA and other laws – and threatens to undermine the Legislature's policy choices in this area. For instance, AB 1893 automatically grants any builder's remedy project two additional density bonus "incentives or concessions" without any additional commitment to affordability. This contravenes the careful framework laid out in the Density Bonus Law, which calibrates the number of these valuable incentives provided to any project in order to achieve the maximum feasible number of affordable units. AB 1893 even dispenses with *any* affordability requirement for some builder's remedy projects. (Proposed GC 65589.5(h)(3)(C)(IV).)

In addition to the builder's remedy provisions, AB 1893 also declares that a local agency "disapproves" an HAA project (not limited to builder's remedy projects) if the agency "[u]ndertakes an unjustified, dilatory, or egregious course of conduct, including sustained inaction or the imposition of burdensome processing requirements, from which a reasonable person would conclude that

the local agency effectively disapproves the proposed housing development project." As above, the underlying intention of this provision is understandable: Bad faith delay in decision-making can, sometimes, be intended to and actually function as the disapproval of an application. However, this provision of AB 1893 contains an overlapping set of ambiguous terms that will certainly promote litigation, but will most certainly not fulfill the function of separating conscientious processing of development applications from bad faith stonewalling.

Moreover, many of the "processing requirements" and timeframes utilized by local agencies – which an applicant may feel are "unjustified" or "dilatory" – nonetheless serve other important policies, such as transparency, accountability, and inclusion of other stakeholders. Any reform in this area must be sensitive to these realities. For example, last year's Assembly Bill 1633 (Ting) addressed similar concerns regarding unjustified or dilatory CEQA review. That bill was the product of nearly two years of negotiation between stakeholders and struck a careful balance between the need for alacrity in housing approvals and the needs for robust public participation and environmental review. Similar balance can likely be obtained on the subject of general processing delay – but AB 1893 does not do so.

For these reasons, our organizations respectfully request your veto of AB 1893.

Respectfully,

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cc: The Honorable Buffy Wicks, Member, California State Assembly