



## **Housing, Land Use & Transportation Policy Committee**

### **2015 CSAC Legislative Conference**

**Thursday, May 28, 2015 ■ 8:30 a.m. to 10:00 a.m.**

**Sheraton Grand Sacramento ■ Gardenia Ballroom ■ Ballroom Level  
Sacramento ■ California**

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#### **AGENDA**

Chair, Supervisor, Phil Serna, Sacramento County  
Vice Chair, Supervisor David Rabbitt, Sonoma County

- 8:30 a.m.    I.    **Welcome, Introductions & Approval of the Agenda**  
*Chair, Supervisor, Phil Serna, Sacramento County*  
*Vice Chair, Supervisor David Rabbitt, Sonoma County*
- 8:35 a.m.    II.    **State Affordable Housing Legislation**  
*Zachary Olmstead, Office of Assembly Speaker Toni Atkins*  
Attachment One: AB 1335 Fact Sheet and CSAC Support if Amended Letter  
Attachment Two: AB 35 Fact Sheet and CSAC Support Letter
- 8:45 a.m.    III.    **New Transportation Technology: Contra Costa Transportation Authority  
GoMentum Station**  
*Jack Hall, Contra Costa Transportation Authority*
- 9:00 a.m.    IV.    **Tribal Intergovernmental Issues Update:**
  - **Federal Advocacy Efforts**
  - **State-tribal Gaming Compacts**
  - **Discuss creating a forum for counties to discuss tribal affairs issues***Supervisor David Rabbitt, Sonoma County*  
*Supervisor Diane Dillon, Napa County*  
Attachment Three: CSAC Fee-to-Trust Reform Testimony  
Attachment Four: Summary of Jackson Rancheria Band of Miwuk Indians Compact
- 9:20 a.m.    V.    **Update on Activities of the California Transportation Commission's Road  
Charge Technical Advisory Committee**  
*Supervisor David Finigan*  
*Kiana Buss, Legislative Representative*  
Attachment Five: CTC Stakeholder Letter and Road Charge Fact Sheet



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- 9:40 a.m.    VI.    **Federal Transportation Reauthorization**  
*Kiana Buss, Legislative Representative*  
*Chris Lee, Legislative Analyst*  
Attachment Six: Feinstein and Denham Letters on Local Bridges  
Attachment Seven: Denham Legislation on NEPA Reciprocity
- 9:50 a.m.    VII.    **Legislative Update**  
*Kiana Buss, Legislative Representative*  
*Chris Lee, Legislative Analyst*  
Attachment Eight: Opposition Letter – AB 1347 (Chiu): Public contracts: claims  
Attachment Nine: Opposition Letter – AB 57 (Quirk): Wireless permitting  
Attachment Ten: Opposition Letter – AB 1236 (Chiu): EV charging stations  
Attachment Eleven: Support Letter – SB 321 (Beall): Motor vehicle fuel excise taxes  
Attachment Twelve: Support Letter – SB 16 (Beall): Transportation funding
- 10:00 a.m.    VIII.    **Adjournment**

## LIST OF ATTACHMENTS

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- Attachment One..... AB 1335 Fact Sheet and CSAC Support if Amended Letter
- Attachment Two..... AB 35 Fact Sheet and CSAC Support Letter
- Attachment Three..... CSAC Fee-to-Trust Reform Testimony
- Attachment Four..... Summary of Jackson Rancheria Band of Miwuk Indians Compact
- Attachment Five ..... CTC Stakeholder Letter and Road Charge Fact Sheet
- Attachment Six..... Feinstein and Denham Letters on Local Bridges
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Transportation funding

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**Attachment One**  
AB 1335 Fact Sheet and CSAC Support if Amended Letter



**IN BRIEF**

The Building Homes and Jobs Act establishes a permanent funding source for affordable housing, through a small fee on real estate transaction documents, excluding home sales.

**THE ISSUE**

California has a housing affordability crisis.

- According to the Public Policy Institute of California (PPIC), as of February 2015, roughly 36 percent of mortgaged homeowners and approximately 48 percent of all renters are spending more than one-third of their household incomes on housing.
- California continues to have the second lowest homeownership rate in the nation and the Los Angeles metropolitan area is now a majority renter region. In fact, five of the eight lowest homeownership rates in the nation are in California metropolitan areas.
- California has 12 percent of the United States population, but 20 percent of its homeless population -- 63 percent of these homeless Californians are unsheltered (the highest rate in the nation).
- At any given time, 134,000 Californians are homeless. California has 24% of the nation’s homeless veterans and one-third of the nations’ chronically homeless. The state also has the largest numbers of unaccompanied homeless children and youth, with 30% of the national total.

**BACKGROUND**

Increasing the construction, building, and availability of affordable housing is good for the economy, the budget, job creation, and families:

- The Bay Area Council, the Los Angeles Area Chamber of Commerce, the Los Angeles Business Council, the Orange County Business Council, and the Silicon Valley Leadership Group agree that less affordable housing impedes California businesses from attracting and retaining workers.

- On average, a single homeless Californian incurs \$2,897 per month in county costs for emergency room visits and in-patient hospital stays, as well as the costs of arrests and incarceration. Roughly 79% of these costs are cut when that person has an affordable home.
- An estimated 29,000 jobs would be created annually for every \$500 million spent on affordable housing.

**THE SOLUTION**

Increased and ongoing funding for affordable housing is critical to stabilize the state’s housing development and construction marketplace. If developers know that there is a sustainable source of funding available, they will take on the risk that comes with development — and create a reliable pipeline of well-paying construction jobs in the process.

The Building Homes and Jobs Act will utilize a pay as you go approach and generate hundreds of millions of dollars annually for affordable housing through a \$75 fee on real estate recorded documents, excluding those documents associated with home sales. Funds generated will leverage an additional \$2 to \$3 billion in federal, local, and bank investment.

**SUPPORT\***

Treasurer John Chiang, Los Angeles Mayor Eric Garcetti, San Diego Mayor Kevin L. Faulconer, San Francisco Mayor Edwin M. Lee, and Oakland Mayor Libby Schaaf.

San Diego Housing Federation, Housing California, California Building Industry Association, California Infill Federation, Bay Area Council, San Diego Regional Chamber of Commerce, California Housing Consortium, Silicon Valley Leadership Group, and Western Center on Law & Poverty

\*Partial list

**FOR MORE INFORMATION**

Zack Olmstead, Office of Speaker Toni G. Atkins  
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May 15, 2015

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The Honorable Jimmy Gomez  
Chair, Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, CA 95814

**Re: AB 1335 (Atkins): Building Homes and Jobs Act  
As amended on May 14, 2015 – SUPPORT IF AMENDED  
Set for Hearing May 20, 2015 – Assembly Appropriations Committee**

Dear Assembly Member Gomez:

The California State Association of Counties (CSAC) has taken a support if amended position on Assembly Bill 1335 by Assembly Speaker Toni Atkins, which would create the Building Homes and Jobs Act. Specifically, AB 1335 would establish a permanent source for affordable housing by assessing a \$75 fee on real estate transaction documents, excluding home sales. The fee would generate approximately \$700 million annually and leverage additional capital to support affordable rental and ownership housing.

CSAC has adopted policy in support of a permanent source for affordable housing, as communities in counties all across the state struggle with housing affordability and meeting the demand for more affordable housing units. The Legislative Analyst's Office recently reported that housing prices in California continue to far exceed prices in the rest of the country. The average price of a home in the state is two-and-a-half times the average national price and rents are fifty percent higher than the rest of the country.

In recognition of the affordable housing crisis in the state, CSAC supports the bill's bold efforts to tackle this difficult but vital issue. We do request, however, that the bill be amended to clarify the new fee requirement to avoid implementation issues and ensure that AB 1335 is applied uniformly across California's 58 counties.

***Amendment Requested:*** The bill should clarify when the recording fee shall be imposed by replacing the phrase "in connection with a transfer" to "concurrently with" found on page 6, lines 2-3. CSAC is concerned that the language as currently drafted is too ambiguous and could either be interpreted differently by different counties, or, given the proposed \$225 cap, lead to attempts to avoid paying a recording fee.

As public agencies with land use authority and a statutory requirement to plan for affordable housing, it is critical that counties have a role in developing the investment strategy for the revenues generated by AB 1335. Moreover, given the primary role of counties in implementing many of the state's health, mental health, and justice programs, all of which impact or are affected by housing, a county representative would bring a critically-important perspective to the board. We appreciate the April 30 amendment that adds two local government representatives to the governing board responsible for advising the California Department of Housing and Community Development on the Investment Strategy. Furthermore, we support the appointment of six public members by the Speaker of the Assembly and the Senate President pro Tempore.

AB 1335 requires the fee to be imposed on single transactions per parcel of real property. While this seems like a natural way to track and assess fees, it does not account for the systems the recorders currently have in place, where information is organized by the names of grantees or grantors and by types of recorded document. Accordingly, clerk-recorders must be able to recover their actual cost to upgrade systems to ensure that their systems can accommodate this new responsibility. We appreciate that AB 1335 includes language allowing recorders to recover the actual and necessary administrative costs incurred in implementing the fee program. This provision is especially important given that current systems will need to be adjusted to make the collection of fees pursuant to AB 1335 feasible.

Finally, CSAC appreciates the bill's directive to promote a geographically balanced distribution of funds, including consideration of direct allocations to local governments. People who record documents in every county in the state will pay the fee imposed by AB 1335. While provisions requiring a "return to source" would be too simplistic of an approach to ensuring geographic equity, we must ensure that communities in every county benefit from the revenues generated by this bill. Discussions on this topic will benefit from the perspectives of the local government and public representatives on the governing board to be convened pursuant to the bill.

For these reasons, CSAC supports AB 1335 if amended and we respectfully request your "AYE" vote on this measure. Please do not hesitate to contact me by phone at 916-327-7500, ext. 566 or email at [kbuss@counties.org](mailto:kbuss@counties.org) with any questions about our position.

Sincerely,



Kiana Buss  
Legislative Representative

cc: The Honorable Toni Atkins, Speaker of the Assembly  
Members and Consultants, Assembly Appropriations Committee  
William Weber, Consultant, Assembly Republican Caucus

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**Attachment Two**  
AB 35 Fact Sheet and CSAC Support Letter



# ASSEMBLY BILL 35

## LOW INCOME HOUSING TAX CREDIT

### ASSEMBLYMEMBER DAVID CHIU AND ASSEMBLY SPEAKER TONI ATKINS

#### SUMMARY

Assembly Bill 35 (Chiu & Atkins) would increase California's Low Income Housing Tax Credit by \$300 million for the construction and rehabilitation of affordable housing units across the state. It will achieve this not only by increasing the amount of California credit, but also by increasing the state credit percentage so that it can more effectively maximize federal tax-exempt bond financing and 4% credits. This state investment and policy change would leverage an estimated additional \$600 million in federal 4% tax credits and federal tax-exempt bond authority.

#### THE ISSUE

California is undergoing a major housing affordability crisis with a shortfall of over 1 million affordable homes. According to a 2014 report by the California Housing Partnership Corporation, median rents in California have increased by over 20%, while the median income has dropped by 8%.

State and Federal divestment in affordable housing has exacerbated this problem. With the elimination of California's redevelopment agencies and the exhaustion of state housing bonds, California has reduced its funding for the development and preservation of affordable homes by 79% - from approximately \$1.7 billion a year to nearly nothing. There is currently no permanent source of funding to compensate for this loss.

The housing crisis has contributed to a growing homeless population, increased pressure on local social safety nets, an unstable development and construction marketplace and the departure of tens of thousands of long-time California residents.

#### BACKGROUND

The Low Income Housing Tax Credit Program was enacted by Congress in 1986 to provide the private market with an incentive to invest in more affordable housing through federal tax credits. The California Tax Credit Allocation Committee was directed to award these credits to developers of qualified projects in the state. Developers sell these credits to investors to raise capital for their projects, reducing the debt that the developer would otherwise have to borrow. As a result, property owners are able to offer lower, more affordable pricing. In response to the high cost of developing housing in California, the state legislature in 1987 authorized a state low-

income housing tax credit program to leverage the federal credit program. Existing law limits the total amount of low-income housing tax credits the state may allocate to \$70 million per year, indexed for inflation. But due to increased demand for housing development, much of the tax credit program has been oversubscribed - leaving many high quality developments without a secure source of funding.

However, there is an untapped federal low-income housing tax credit that the state can still access—the 4% Federal Tax Credit. These 4% federal credits are unlimited and remain unused by the state. This is largely due to the fact that the 4% credits require additional state resources to make the development viable - resources that have been lacking under existing law.

AB 35 would substantially bolster the existing low-income housing tax credit program, making the state better able to leverage an estimated \$200 million more in 4% Federal Tax Credits. Additionally, the expanded state credits under AB 35 would allow the state to more effectively leverage an additional \$400 million in federal tax exempt bond authority.

#### AB 35

As a part of Speaker Toni Atkin's 2015 Affordable Housing Legislative Package, AB 35 would increase the aggregate housing state credit dollar amount that may be allocated among low-income housing developments by \$300 million and allow the state to more effectively leverage federal tax-exempt bond financing and 4% credits.

#### SUPPORT

California Housing Partnership (Co-Sponsor) | California Housing Consortium (Co-Sponsor) | Non-Profit Housing Association of Northern CA (Co-Sponsor) | California Treasurer John Chiang | San Francisco Mayor Edwin M. Lee | Los Angeles Mayor Eric Garcetti | Oakland Mayor Libby Schaaf | San Diego Mayor Kevin L. Faulconer | CORE Affordable Housing | Housing California | Larkin Street Youth Services | Women Organizing Resources, Knowledge and Services | Northern CA Community Loan Fund | Community Housing Opportunities | Shelter Partnership | HIP Housing | San Francisco Housing Action Coalition | California Center for Cooperative Development | Hudson Housing Capital | Jamboree | Satellite Affordable Housing Associates | Highridge Costa Housing Partners LLC | HKIT Architects

*\* Partial List*

For more information, contact: Samantha Roxas, Legislative Aide; Office of Assemblymember David Chiu  
[Samantha.roxas@asm.ca.gov](mailto:Samantha.roxas@asm.ca.gov) | (916)319-2017 | Updated March 3, 2015



May 1, 2015

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The Honorable Philip Ting  
Chair, Assembly Revenue & Taxation Committee  
State Capitol, Room 3123  
Sacramento, CA 95814

**Re: AB 35 (Chiu): Income Tax Credits: Low-Income Housing: Allocation Increase  
As Amended on April 16, 2015 - SUPPORT  
Set to be heard May 11, 2015 - Assembly Revenue & Taxation Committee**

Dear Assembly Member Ting:

The California State Association of Counties (CSAC) is pleased to support Assembly Bill 35 by Assembly Member David Chiu, which would increase the amount of state Low-Income Housing Tax Credit (LIHTC) allocations by an additional \$300 million annually.

The Legislative Analyst's Office recently reported that housing prices in California continue to far exceed prices in the rest of the country. The average price of a home in the state is two-and-a-half times the average national price and rents are fifty percent higher than the rest of the country. The housing affordability crisis is in part due to the demand to live in California and the high costs of both land and construction in the state. California's 58 counties support efforts to build more affordable housing in the state.

The state's LIHTC program was created to augment the federal low-income housing tax credit program, which enables affordable housing developers to raise private capital through the sale of tax credits to investors. The federal program offers two types of tax credits, commonly referred to as 4% and 9% credits. California receives an annual ceiling of federal 4% and 9% tax credits. While the state is able to access all of the 9% credits, the state has been unable to maximize the 4% credit ceiling. AB 35, by increasing the state tax credit allocations, will allow California to maximize all federal tax credits. In total, the investment of state funds will allow us to access \$200 million in federal 4% credits and at least another \$400 million in federal tax-exempt bond authority.

AB 35 will result in the development of additional and much needed affordable housing across the state. For these reasons, CSAC supports AB 35 and respectfully requests your "AYE" vote. Should you have any questions regarding our position, please do not hesitate to contact me at 916-327-7500, ext. 566, or [kbuss@counties.org](mailto:kbuss@counties.org).

Sincerely,

A handwritten signature in blue ink that reads "Kiana Buss".

Kiana Buss  
Legislative Representative

cc: The Honorable David Chiu, California State Assembly  
Members and Consultant, Assembly Revenue & Taxation Committee  
William Weber, Consultant, Assembly Republican Caucus

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**Attachment Three**  
CSAC Fee-to-Trust Reform Testimony



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**WRITTEN STATEMENT FOR THE RECORD**

**THE HONORABLE DAVID RABBITT  
SUPERVISOR, SONOMA COUNTY, CALIFORNIA**

**ON BEHALF OF THE  
CALIFORNIA STATE ASSOCIATION OF COUNTIES**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON INDIAN, INSULAR, AND ALASKA NATIVE AFFAIRS**

**IN THE MATTER OF: *"INADEQUATE STANDARDS FOR TRUST LAND  
ACQUISITION IN THE INDIAN REORGANIZATION ACT OF 1934"***

**MAY 14, 2015**

Thank you Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee for the opportunity to testify today. My name is David Rabbitt, and I am a County Supervisor in Sonoma County, California and am actively involved in the California State Association of Counties (CSAC). This testimony is submitted on behalf of CSAC, which has been a leader in pursuing federal laws and regulations that provide the framework for constructive government-to-government relationships between counties and tribes.

CSAC, which was founded in 1895, is the unified voice on behalf of all 58 of California's counties. The primary purpose of the association is to represent county government before the California Legislature, administrative agencies, and the federal government. CSAC places a strong emphasis on educating the public about the value and need for county programs and services.

The intent of our testimony is to provide a perspective from California's counties regarding the significance of the Supreme Court's ruling in *Carcieri v. Salazar* and to recommend measures for the Subcommittee to consider as it seeks to address the implications of the decision. The views presented herein also reflect policy positions of many State Attorneys General who are committed to the creation of a fee-to-trust process in which tribal interests can be met and legitimate state and local interests are properly considered.

I also would like to take this opportunity to reaffirm CSAC's absolute respect for the authority of federally recognized Indian tribes. We reaffirm our support for the right of tribes to self-governance and recognize the need for tribes to preserve their heritage and to pursue economic self-reliance. In addition, I would like to dispel any potential misconception that counties are somehow not interested in seeing Congress address the implications of the *Carcieri* decision. On the contrary, CSAC recognizes the disparity and inequity caused by the Court's action and believes that it is the responsibility of Congress to pass legislation that would put federally recognized tribes on equal footing relative to the opportunity to have land taken into trust.

At the same time, it is absolutely essential that Congress fix the longstanding, systemic defects in the Department of the Interior's broken fee-to-trust process. To be crystal clear, we believe that any *Carcieri* fix – that is, any legislation that would restore the Interior Secretary's authority to take land into trust for tribes – must be coupled with much-needed, long overdue reforms in the Federal Government's deeply flawed trust land decision-making process. Unfortunately, a so called "clean *Carcieri* fix" would do nothing to repair the underlying problems in the trust-land system and would only serve to perpetuate the inherent conflict of the current process – a process, incidentally, that is broken for all parties, tribes and local governments.

#### ***The Deficiencies of the Current Trust-Land Process***

The fundamental problem with the trust acquisition process is that Congress has not established objective standards under which any delegated trust-land authority would be applied by the Bureau of Indian Affairs (BIA). The relevant section of federal law, Section 5 of the *Indian Reorganization Act of 1934* (IRA), reads as follows: "The Secretary of the Interior is hereby authorized in his discretion, to acquire [by various means] any interest in lands, water rights, or surface rights to lands, within or without reservations ... for the purpose of providing land to Indians." 25 U.S.C. §465.

This general and undefined congressional guidance has resulted in a trust-land process that fails to meaningfully include legitimate interests, provide adequate transparency to the public, or demonstrate

fundamental balance in trust-land decisions. The unsatisfactory process, which is governed by the Department of the Interior's Part 151 regulations, has created significant controversy, serious conflicts between tribes and states, counties and local governments – including litigation costly to all parties – and broad distrust of the fairness of the system.

In California, our unique cultural history and geography, and the fact that there are over 100 federally-recognized tribes in the state, contributes to the fact that no two fee-to-trust applications are alike. The diversity of applications and circumstances in California reinforce the need for both clear, objective standards in the fee-to-trust process and the importance of local intergovernmental agreements to address particular concerns.

Notably, many California tribes are located on "Rancherias," which were originally federal property on which landless Indians were placed. No "recognition" was extended to most of these tribes at that time. Any *Carcieri*-related legislation should therefore address the significant issues raised in states like California, which did not generally have a "reservation" system and that are now faced with small Bands of tribal people who are recognized by the federal government as tribes and who may be anxious to establish large commercial casinos. In particular, legislation must ensure improved notice to counties and define the standards by which property can be removed from local jurisdiction. Moreover, requirements must be established to ensure that the significant off-reservation impacts of tribal projects are fully mitigated.

It should be noted that many of the deficiencies in the trust-land process were reaffirmed in a quantitative analysis of all 111 fee-to-trust decisions by the Pacific Region BIA Office between 2001 and 2011.<sup>1</sup> The analysis found that BIA granted 100 percent of the proposed acquisition requests and in no case did any Section 151 factor weigh against approval of an application.<sup>2</sup> The analysis further found that because of the lack of clear guidance and objective criteria, Pacific Region BIA decisions avoid substantive analysis in favor of filler considerations and boilerplate language.<sup>3</sup>

These same conclusions were reached in a 2006 Government Accounting Office Report to Congress on the fee-to-trust process, which determined that the regulations do not provide a clear, uniform or objective approach. The Report found:

[T]he regulations provide wide discretion to the decision maker because the criteria are not specific, and BIA has not provided clear guidelines for applying them. Given the wide discretion that exists and the increased scrutiny that the land in trust process has come under with the growth of Indian gaming, it is important that the process be as open and transparent as possible.<sup>4</sup>

The BIA agreed with the findings and, despite promises to reform its practices, there has been no meaningful change since the GAO study was issued.

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<sup>1</sup> (Kelsey J. Waples, *Extreme Rubber Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934*, 40 *Pepperdine Law Review* 250 (2013).

<sup>2</sup> *Id.*, pp. 278.

<sup>3</sup> *Id.*, pp. 286, 293, 302.

<sup>4</sup> *Indian Issues: BIA's Efforts to impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*, United States Government Accounting Office, at pp. 36-38 (July 2006).

The result is a broken process in which community concerns are ignored or downplayed, applications are rubber-stamped at a 100 percent acceptance rate, and tribes and local governments are forced into unnecessary and unproductive conflict.<sup>5</sup> The problem appears likely to worsen in the near future given statements by the Department trumpeting its desire to "keep that freight train moving" and "keep restoring lands for tribes."<sup>6</sup>

While there are a number of major flaws in BIA's fee-to-trust process, one of CSAC's central concerns is the severely limited role that state and local governments play. The implications of losing jurisdiction over local lands are very significant, including the loss of tax base, loss of planning and zoning authority, and the loss of environmental and other regulatory power. Yet, state, county and local governments are afforded limited, and often late, notice of a pending trust land application, and, under the current regulations, are asked to provide comments on two narrow issues only: 1) potential jurisdictional conflicts; and, 2) loss of tax revenues.

Moreover, the notice that local governments receive typically does not include the actual fee-to-trust application and often does not indicate how the applicant tribe intends to use the land. Further, in some cases, tribes have proposed a trust acquisition without identifying a use for the land; in other cases, tribes have identified a non-intensive, mundane use, only to change the use to heavy economic development, such as gaming or energy projects, soon after the land is acquired in trust.

One measure of the severe dysfunction is that local governments are often forced to resort to Freedom of Information Act (FOIA) requests to ascertain if a trust application or a petition for an Indian lands determination – a key step in the process for a parcel of land to qualify for gaming – has been filed with the BIA. Again, despite the significant impact on counties, and the relevant information they hold, local governments do not receive notice of the filing of either a trust application or Indian Lands determination. Although trust applications are often deemed incomplete by the BIA, it is during this time that counties and tribes are best positioned to collaboratively address any concerns before receiving formal notice of a complete application and be given 30 days to decide whether to support or oppose the project. The lack of consultation is even worse with Indian lands determinations, as counties are not notified of the requests and are not allowed to comment or otherwise invited to participate in the process. These processes must include local participation in order to ensure that there is a complete factual basis upon which objective decisions can be made.

While the Department of the Interior understands the increased impacts and conflicts inherent in recent trust-land decisions, it has not crafted regulations that strike a reasonable balance between tribes seeking new trust lands and the states and local governments experiencing unacceptable impacts. Indeed, the current notification process embodied in the Part 151 regulations is, in practice, insufficient and falls far short of providing local governments with the level of detail needed to adequately respond to proposed trust-land acquisitions. This point was included as a "Recommendation for Executive Action" in the GAO Report, as the Interior Secretary was recommended to direct BIA to revise trust regulations and "guidelines for providing state and local governments more information on the

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<sup>5</sup> Id., pp. 292, 295, 297.

<sup>6</sup> See "Washburn Announces Plan of Attack for Patchak Plan," <http://indiancountrytodaymedianetwork.com/2013/05/24/washburn-announces-plan-attack-patchak-patch-149514>.

applications and a longer period to provide meaningful comments on the applications[.]”<sup>7</sup> Accordingly, a legislative effort is needed to meet the fundamental interests of both tribes and local governments.

### ***Carcieri v. Salazar - An Historic Opportunity***

On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. The Court held that the Secretary of the Interior lacks authority to take land into trust on behalf of Indian tribes that were not under the jurisdiction of the federal government upon enactment of the IRA in 1934.

Because the *Carcieri* decision has definitively confirmed the Secretary's lack of authority to take land into trust for post-1934 tribes, Congress has the opportunity not just to address the issue of the Secretary's authority under the current failed fee-to-trust system, but to reassert its primary authority for these decisions by setting specific standards for taking land into trust that address the main shortcomings of the trust land-process.

In the wake of this significant court decision, varied proposals for reversing the *Carcieri* decision have been generated, some proposing administrative action and others favoring a congressional approach. Today's hearing, like several hearings before it, is recognition of the significance of the *Carcieri* decision and the need to consider legislative action.

We believe that the responsibility to address the implications of *Carcieri* clearly rests with Congress and that a decision to do so in isolation of the larger problems of the fee-to-trust system would represent an historic missed opportunity. Indeed, a legislative resolution that returns the trust-land system to its status before *Carcieri* will be regarded as unsatisfactory to counties, local governments, and the people we serve. Rather than a "fix," such a result would only perpetuate a broken system, where the non-tribal entities most affected by the trust acquisition process are without a meaningful role. Ultimately, this would undermine the respectful government-to-government relationship that is necessary for both tribes and neighboring governments to fully develop, thrive, and serve the people dependent upon them for their well being.

Our primary recommendation to the Subcommittee and Congress is this: Do not advance a congressional response to *Carcieri* that allows the Secretary of the Interior to return to the flawed fee-to-trust process. Rather, Congress should make meaningful, comprehensive reforms to the trust-land system. Legislation should include provisions that ensure local governments and impacted parties are able to file a challenge to a trust acquisition decision *before* title to the land is transferred. Such a change is necessary in light of the Department of the Interior's recent decision – discussed in further detail below – to eliminate the waiting period in which the Secretary was required to publish a notice of a trust decision 30 days before actually acquiring title to the land.

CSAC believes that the *Carcieri* decision presents Congress with an opportunity to carefully exercise its constitutional authority for fee-to-trust acquisitions and to define the respective roles of Congress and the Executive Branch in trust-land decisions. Additionally, it affords Congress with the opportunity to establish clear and specific congressional standards and processes to guide trust-land decisions in the future. A clear definition of roles is acutely needed regardless of whether trust and recognition

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<sup>7</sup> GAO Report, *supra*. at p. 37.



decisions are ultimately made by Congress, as provided in the Constitution, or the Executive Branch under a congressional grant of authority.

It should be noted that Congress has the power to *not* provide new standard-less authority to the Executive Branch for trust land decisions and instead retain its own authority to make these decisions on a case-by-case basis as it has done in the past, although decreasingly in recent years. Whether or not Congress chooses to retain its authority or to delegate it in some way, it owes it to tribes and to states, counties, local governments and communities, to provide clear direction to the Secretary of the Interior to make trust land decisions according to specific congressional standards and to eliminate much of the conflict inherent in such decisions under present practice.

Looking ahead, we respectfully urge Members of this Subcommittee to consider a comprehensive approach to the problem in any legislation seeking to address the trust land process post-*Carcieri*, namely: 1) the absence of authority to acquire trust lands, which affects post-1934 tribes, and 2) the lack of meaningful standards and a fair and open process, which affects states, local governments, businesses and non-tribal communities. As Congress considers the trust land issue, it should undertake reform that is in the interests of all affected parties.

Some of the more important new standards, which are embodied in CSAC's comprehensive fee-to-trust reform proposal (attachment 1) should be as follows:

**Notice and Transparency**

**1) *Require Full Disclosure and Fair Notice and Transparency from the BIA on Trust Land Applications and Other Indian Land Decisions.*** The Part 151 regulations are not specific and do not require sufficient information to be furnished to affected parties regarding tribal plans to use the land proposed for trust status. As a result, it is very difficult for those parties (local and state governments, and the public) to determine the nature of the tribal proposal, evaluate the impacts, and provide meaningful comments.

Federal law should require BIA to ensure that tribes provide reasonably detailed information about the intended uses of proposed trust land, not unlike the public information required for planning, zoning and permitting on the local level. This assumes even greater importance since local planning, zoning and permitting are being preempted by the trust land decision; accordingly, information about intended uses is reasonable and fair to require.

Legislative and regulatory changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications and petitions for Indian land determinations in their jurisdiction and have adequate time to provide meaningful input. Indian lands determinations, a critical step for a tribe to take land into trust for gaming purposes, is conducted in secret without notice to affected counties or any real opportunity for input. As previously indicated, counties are often forced to file a FOIA request to even determine if an application was filed and the basis for the petition.

Notice for trust and other land actions for tribes that go to counties and other governments is not only very limited in coverage, the opportunity to comment is minimal; this must change. A new paradigm is needed where counties are considered meaningful and constructive stakeholders in Indian land-related determinations. For too long, counties have been excluded from providing input in critical Department of Interior decisions and policy formation that directly affects their communities. This remains true today as evidenced by new policies being announced by the Administration without input from or consultation with local government organizations.

The corollary is that consultation with counties and local governments must be substantive, include all affected communities, and provide an opportunity for public comment. Under Part 151, BIA does not invite comment by third parties even though they may experience major negative impacts, although it will accept and review such comments. BIA accepts comments only from the affected state and the local government with legal jurisdiction over the land and, from those parties, only on the narrow question of tax revenue loss, government services currently provided to the subject parcels, and zoning conflicts. As a result, under current BIA practice, trust acquisition requests are reviewed under a very one-sided and incomplete record that does not provide real consultation or an adequate representation of the consequences of the decision. Broad notice of trust applications should be required with at least 90 days to respond.

#### **Define Tribal Need**

**2) *The BIA Should Define "Tribal Need" and Require Specific Information about Need from the Tribes.*** The BIA regulations provide inadequate guidance as to what constitutes legitimate tribal need for a trust land acquisition. There are no standards other than the stipulation that the land is necessary to facilitate tribal self-determination, economic development or Indian housing. These standards can be met by virtually any trust land request, regardless of how successful the tribe is or how much land it already owns. As a result, there are numerous examples of BIA taking additional land into trust for economically and governmentally self-sufficient tribes already having wealth and large land bases.

Congress should consider developing standards requiring justification of the need and purpose for acquisition of additional trust lands so that the acquisition process does not continue to be a "blank check" for removing land from state and local jurisdiction. Notably, CSAC supports a lower threshold for acquisition of trust land that will be used only for non-gaming or non-intensive economic purposes, including governmental uses and housing projects.

#### **Changes in Use of Land**

**3) *Applications Should Require Specific Representations of Intended Uses.*** Changes in use should not be permitted without further reviews, including environmental impacts, and application of relevant procedures and limitations. Such further review should have the same notice, comment, and consultation as the initial application. The law also should be changed to explicitly authorize restrictions and conditions to be placed on land going into trust that further the interests of both affected tribes and other affected governments.

#### **Intergovernmental Agreements**

**4) *Tribes that Reach Local Intergovernmental Agreements to Address Jurisdiction and Environmental Impacts Should Have a Streamlined Process.*** The legal framework should encourage tribes to reach intergovernmental agreements to address off-reservation project impacts by reducing the threshold for demonstrating need when such agreements are in place. Tribes, states, and counties need a process that is less costly and more efficient. The virtually unfettered discretion contained in the current process, due to the lack of clear standards, almost inevitably creates conflict and burdens the system. A process that encourages cooperation and communication provides a basis to expedite decisions and reduce costs and frustration for all involved.

It should be noted that an approach that encourages intergovernmental agreements between a tribe and local government affected by fee-to-trust applications is required and working well under recent California State gaming compacts. Not only does such an approach offer the opportunity to streamline

the application process, it can also help to ensure the success of the tribal project within the local community. The establishment of a trust-land system that incentivizes intergovernmental agreements between tribes and local governments is at the heart of CSAC's fee-to-trust reform recommendations and should be a top priority for Congress.

#### **Clear and Objective Standards**

**5) Establish Clear and Objective Standards for Agency Exercise of Discretion in Making Fee-to-Trust Decisions.** The lack of meaningful standards or *any* objective criteria in fee-to-trust decisions made by the BIA have been long criticized by the U.S. Government Accountability Office and local governments. For example, BIA requests only minimal information about the impacts of such acquisitions on local communities and trust land decisions are not governed by a requirement to balance the benefit to the tribe against the impact to the local community. As a result, there are well-known and significant impacts of trust land decisions on communities and states, with consequent controversy and delay and distrust of the process.

Furthermore, the BIA has the specific mission to serve Indians and tribes and is granted broad discretion to decide in favor of tribes. In order to reasonably balance the interests of tribes and local governments, the Executive Branch should be given clear direction from Congress regarding considerations of need and mitigation of impacts to approve a trust land acquisition. However any delegation of authority is resolved, Congress must specifically direct clear and balanced standards that ensure that trust land requests cannot be approved where the negative impacts to other parties outweigh the benefit to the tribe.

#### **Pending Legislation**

As stated above, congressional action must address the critical repairs needed in the fee-to-trust process. Unfortunately, legislation currently pending in the House (HR 249 and HR 407) fails to set clear standards for taking land into trust, to properly balance the roles and interests of tribes, state, local and federal governments in these decisions, and to clearly address the apparent usurpation of authority by the Executive Branch over Congress' constitutional authority over tribal recognition.

HR 249, in particular, serves to expand the undelegated power of the Department of the Interior by expanding the definition of an Indian tribe under the IRA to any community the Secretary "*acknowledges* to exist as an Indian Tribe [emphasis added]." In doing so, the effect of the bill is to facilitate off-reservation activities by tribes and perpetuate the inconsistent standards that have been used to create tribal entities. Such a "solution" causes controversy and conflict rather than an open process which, particularly in states such as California, is needed to address the varied circumstances of local governments and tribes.

#### **Appeals of Land Acquisition Decisions**

In November of 2013, the Department of the Interior finalized a new rule governing decisions by the Secretary to approve or deny applications to acquire land in trust. CSAC believes that the final rule, which amends the Department's 151 regulations, expedites trust approvals to the detriment of all interested parties, and to the administrative process itself.

The rule (found at *25 CFR Part 151, BIA-2013-0005, RIN 1076-AF15*) effectively repeals the Department's "self-stay" policy, which required the Secretary to publish a notice of a trust decision 30 days before

actually transferring title. The now-eliminated waiting period was intended to ensure that interested parties had the opportunity to seek judicial review under the Administrative Procedure Act (APA) before the Secretary acquired title to land in trust. In virtually all past cases, if a challenger filed suit within the 30-day window, the Secretary agreed to "self-stay" the trust transfer during court proceedings, thus allowing for the orderly resolution of the challenge.

It should be noted that the Department's new rule incorrectly asserts that because of the Supreme Court's 2012 decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, eliminating the current 30-day wait period will not effect a change in the law or affect any parties' rights under current law. In *Patchak*, the Court determined that the Quiet Title Act did not bar APA challenges to trust decisions after title transfer to the United States. However, as described below, the final rule puts local governments in a far worse position by dramatically altering the balance of equities and eliminating their ability to obtain emergency relief after a decision to accept the land in trust, but before the land achieves trust status.

The rule fails to recognize that the facts on the ground and balance of equities changes when land achieves trust status and development commences. The rule directs the Secretary or other BIA official to "immediately acquire the land in trust" after a decision becomes final, and the BIA is encouraging tribes to begin development immediately upon acceptance of land into trust. Both of these steps appear intended to foreclose concerned parties from obtaining emergency relief, even with regard to trust decisions that are clearly inappropriate and arbitrary. Courts are less likely to order emergency relief if a tribe and its development partners have invested resources and substantially implemented a gaming or other development project. Indeed, courts may be unable to grant relief at all if tribes decline to participate in the action and claim sovereign immunity.

The rule also contravenes protections in the APA for parties seeking emergency relief from administrative decisions. In particular, Section 705 of the APA authorizes federal courts to postpone the effective date of an agency action and to preserve status or rights pending conclusion of the review proceedings. The rule circumvents Section 705 by pushing land transfers before an affected party can seek judicial review and allow the courts to exercise their authority to review trust transfers. Communities and local governments will be harmed because, even if successful in the litigation, their success likely will not bring back the tax revenue and other fees lost when the land went into trust, nor remove the incompatible developments that are not permitted under comprehensive local land use plans, now possible without the rule.

The Department's push for immediate project implementation also appears intended to impede a court's ability to award complete relief. Litigation can take years to reach a final decision, which raises strong concerns regarding the Department's practical ability to unwind a trust decision and remove land from trust. The rule ignores these concerns, and includes no procedure for undoing a trust decision in a transparent and orderly manner.

The Department is amiss in asserting that these harms are balanced by the rule's requirements regarding the notification of decisions and administrative appeal rights. These changes are equally flawed, as the rule requires communities and local governments to make themselves known to BIA officials at every decision-making level to receive written notice of a trust land acquisition. It will be extremely difficult for anyone to sort through local and national BIA organizational charts to try to determine how, when, and by whom a particular application will be processed. BIA decision-making is

far from transparent today, and the rule will make the process even more opaque and participation more difficult in the future.

In light of the Department's new rule, we believe that Congress should seek legislative changes that would entitle a party, upon timely request, to an automatic 30 day stay of a decision approving a trust application. A stay of decision should hold true whether a party has appealed a trust decision to the Interior Board of Indian Appeals, or has appeared before the Assistant Secretary – Indian Affairs. This would enable the party to preserve its rights by seeking a judicial order staying the effectiveness of any Departmental approval pending the court's review of the validity of that decision.

Additional provisions requiring BIA to publish trust applications on its website, provide regular updates as to the status of its review, identify the decision-makers responsible for an application, and provide contact information to allow parties to identify themselves as interested parties also should be required. Parties should be exempt from exhaustion requirements in the absence of substantial compliance with these provisions.

### ***Conclusion***

We ask Members of the Subcommittee to incorporate the aforementioned requests into any Congressional actions that may emerge regarding the *Carcieri* decision. Congress must take the lead in any legal repair for inequities caused by the Supreme Court's action, but absolutely should not do so without addressing these reforms. CSAC's proposals are common-sense reforms, based upon a broad national base of experience on these issues that, if enacted, will eliminate some of the most controversial and problematic elements of the current trust land acquisition process. The result would help states, local governments and non-tribal stakeholders. It also would assist trust land applicants by guiding their requests towards a collaborative process and, in doing so, reduce the delay and controversy that now routinely accompany acquisition requests.

We also urge Members to reject any "one-size-fits-all" solution to these issues. In our view, the *Indian Gaming Regulatory Act* has often represented such an approach, and as a result has caused many problems throughout the nation where the sheer number of tribal entities and the great disparity among them requires a thoughtful case-by-case analysis of each tribal land acquisition decision.

Thank you for considering these views. Should you have questions regarding our testimony or if CSAC can be of further assistance, please contact Kiana Buss, CSAC Legislative Representative, at (916) 327-7500 ext. 566, [kbuss@counties.org](mailto:kbuss@counties.org), or Joe Krahn, CSAC Washington Representative, at (202) 898-1444, [jk@wafed.com](mailto:jk@wafed.com).

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**Attachment Four**  
Summary of Jackson Rancheria Band of Miwuk Indians Compact

***Summary of Tribal State Gaming Compact between  
State of California and Jackson Rancheria Band of Miwuk Indians***

- ✓ Authorizes up to 1,800 slot machines as well as banking and percentage card games.
- ✓ The Tribe contributes its pro rata share of the State's regulatory costs which include programs that provide counseling and treatment for problem gamblers.
- ✓ The Tribe contributes approximately 8% of its "net win" from gaming devices to the Revenue Sharing Trust Fund/Tribal Nation Grant Fund (funds which benefit non-gaming or limited gaming tribes in California).
- ✓ The Tribe may take credits for up to 40% of its payments to the Revenue Sharing Trust Fund/Tribal Nation Grant Fund for the following:
  - Payments to Amador County and local jurisdictions for purposes of improved fire, law enforcement, public transit, education, tourism, and other services and infrastructure improvements intended to serve off-reservation needs of County residents;
  - Payments to reimburse Amador County for any loss of specified sales tax revenues to the County that would otherwise be due if the gaming facility and hotel were not located on Indian lands;
  - Non-gaming related capital investments and economic development projects by the Tribe on tribal trust lands that provide mutual benefits to the Tribe and the State because, for instance, they have cultural, social, or environmental value or diversify the sources of revenue for the Tribe's general fund;
  - Investments in renewable energy projects.
  - Payments to support capital improvements or operating expenses for facilities that provide health care services to tribal members and other members of the community.
- ✓ The licensing process established by the Compact involves cooperation between tribal and state regulators and mandates that gaming employees, and any other person having a significant influence over the gaming operation be licensed by the Tribe and receive a finding of suitability from the State.
- ✓ In order to assure mitigation of off-reservation impacts of gaming related projects, the Tribe will engage in a process that identifies impacts and produces a binding agreement with Amador County on specific mitigation measures.
- ✓ To protect the health and safety of patrons, guests, and employees, the gaming facility must meet pertinent provisions of the California Building Code and the California Public Safety Code.
- ✓ The Tribe shall conduct its gaming activities pursuant to an internal control system that implements minimum internal controls that are no less stringent than those in federal regulations.
- ✓ Patron disputes, if not resolved by the Tribal Gaming Agency, will be subject to resolution within a tribal court system or by JAMS Streamlined Arbitration rules.
- ✓ Tribal ordinances governing claims of harassment, retaliation, or employment discrimination arising out of employment, or patron tort claims, provide that California law governs and that disputes shall be resolved through binding arbitration.
- ✓ The Tribe will participate in the State's program for unemployment compensation benefits and can elect either to participate in the State's worker's compensation benefit program or one that is substantially equivalent.
- ✓ Once effective, the Compact shall remain in effect for 20 years.

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**Attachment Five**  
CTC Stakeholder Letter and Road Charge Fact Sheet



LUCETTA DUNN, Chair  
BOB ALVARADO, Vice Chair  
DARIUS ASSEMI  
YVONNE B. BURKE  
JAMES EARP  
DARIO FROMMER  
JAMES C. GHIEMMETTI  
CARL GUARDINO  
FRAN INMAN  
JAMES MADAFFER  
JOSEPH TAVAGLIONE

STATE OF CALIFORNIA

EDMUND G. BROWN Jr., Governor



SENATOR JIM BEALL, Ex Officio  
ASSEMBLY MEMBER JIM FRAZIER, Ex Officio  
WILL KEMPTON, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, MS-52  
SACRAMENTO, CA 95814  
P. O. BOX 942873  
SACRAMENTO, CA 94273-0001  
FAX (916) 653-2134  
(916) 654-4245  
<http://www.catc.ca.gov>

May 5, 2015

Dear Stakeholder:

On behalf of the California Road Charge Technical Advisory Committee, we invite you to participate in our effort to explore road charging as an alternative to the gas tax.

California is in the middle of a serious transportation funding crisis. Our infrastructure is deteriorating and most of our major roadways are over 40 years old and have reached or exceeded their design life. Yet the amount we spend to fund road maintenance and repairs is lagging by billions of dollars. Until we replace our outdated funding model—revenue from the gas tax—with a more sustainable and equitable source of funding, we will continue to shortchange California of the funds it needs to support critical road maintenance and repairs.

Last year, Senate Bill 1077 (SB 1077) created the 15-member Road Charge Technical Advisory Committee (TAC) to study the feasibility of road charging as a potential alternative to the gas tax. The TAC is charged with developing recommendations for the design of a Road Charge Pilot Program. As part of our process, the TAC is reaching out and gathering public comment and stakeholder input on issues and concerns related to the launch of the pilot program.

That is why we are asking for your organization's input as we explore road charging. Over the next few months, the TAC will reach out across the state to seek input from diverse groups of stakeholders and the general public. As an organization that represents an important constituency in California, we have provided a number of ways in which you, your members and colleagues may offer feedback. We invite you to visit our website at [www.CaliforniaRoadChargePilot.com](http://www.CaliforniaRoadChargePilot.com) and share your comments or questions. All comments received by August 14, 2015 will be used to inform the TAC as they prepare their final recommendations for the design of a Road Charge Pilot Program. Another way to participate is to attend one of our upcoming TAC meetings or join our interest list. We ask you to share the attached fact sheet with your members and colleagues.

We hope you will join us in helping to engage stakeholders and will take a moment to share your thoughts with us. To learn more about the TAC and road charging, click here. If you have any

questions or would like more information about this project, please do not hesitate to contact Carrie Pourvahidi at (916) 653-3148 or [carrie.pourvahidi@dot.ca.gov](mailto:carrie.pourvahidi@dot.ca.gov). Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Jim Madaffer".

Jim Madaffer, Chair  
California Road Charge Technical Advisory Committee

## **Exploring a Road Charge for California**

### ***Gas Tax Alternative to Fund Road Maintenance and Improvements***

- WHO:** In 2014 the Legislature passed Senate Bill 1077 (SB 1077) directing California to conduct a pilot program to study the feasibility of a road charge as a replacement for the gas tax to pay for road maintenance and repairs. A 15-member [technical advisory committee](#) (TAC), composed of representatives from diverse interests, is now working to study the potential for a road charge and outline the parameters of the pilot program.
- WHAT:** Road charging means drivers pay to help maintain the roads based on the distance they travel or a period of time they use the roads, rather than the amount of gasoline they consume. The experience of other states demonstrates that such usage-based charges can be implemented in a way that ensures data security and maximum privacy protection for drivers.
- WHY:** The revenues currently available for highways and local roads are inadequate to preserve and maintain existing roadway infrastructure, reduce congestion and improve service. The gas tax is an ineffective mechanism for meeting California's long-term transportation needs because it will steadily generate less revenue as cars become more fuel efficient. By 2030 as much as half of the revenue that could have been collected from the gas tax will be lost to fuel efficiency.
- WHEN:** The TAC will craft the parameters of the road charge pilot program by the end of 2015. Beginning no later than January 1, 2017, thousands of California drivers will make history by volunteering to participate in the road charge pilot program to test new approaches. The pilot program will be implemented by the California State Transportation Agency. The outcomes of the road charge pilot program will be reported back to the TAC, the California Transportation Commission (CTC), and the Legislature no later than June 30, 2018. The CTC will provide recommendations on the pilot program to the Legislature in December 2018. The Legislature will then decide whether and how to enact a full-scale permanent road charge program.
- HOW:** The TAC will meet monthly throughout 2015 and will solicit widespread public and stakeholder input through a variety of means to help shape the design of the road charge pilot program. These efforts include:
- Providing a readily accessible feedback mechanism in the form of a website ([www.CaliforniaRoadChargePilot.com](http://www.CaliforniaRoadChargePilot.com)) that is setup to receive emails and comments. All public input submitted by August 14, 2015 will be used to inform the TAC as they prepare their final recommendations for the design of a road charge pilot program.
  - Reaching out to hundreds of stakeholder groups, state and local elected officials and community leaders.
  - Conducting public surveys and focus groups to substantively probe public attitudes and response.
  - Consulting with members of a Work Group assembled to provide expertise and input from key stakeholders and public interests.
  - Dedicating time for public comment at the monthly TAC meetings and providing webcast of meetings on the California Road Charge Pilot website.

### **We would like your input!**

Please weigh in and provide your input as we explore road charging. We invite you to visit our website ([www.CaliforniaRoadChargePilot.com](http://www.CaliforniaRoadChargePilot.com)) and share your feedback. All comments received by August 14, 2015 will be used to inform the TAC. We also invite you to attend one of our [upcoming TAC meetings](#).

[www.CaliforniaRoadChargePilot.com](http://www.CaliforniaRoadChargePilot.com)

5/5/2015

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**Attachment Six**  
Feinstein and Denham Letters on Local Bridges



## United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

April 22, 2015

The Honorable James Inhofe  
Chairman  
Environment and Public Works  
205 Russell Senate Office Building  
Washington, DC 20510

The Honorable Barbara Boxer  
Ranking Member  
Environment and Public Works  
112 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Inhofe and Ranking Member Boxer:

As the Committee on Environment and Public Works continues to craft a MAP-21 reauthorization bill, I urge you to ensure adequate funding for all bridges on Federal-aid highways. Changes under MAP-21 to eliminate the Highway Bridge Program in favor of performance-based funding were well-intentioned but have unfortunately left one category of bridges—locally-owned bridges that are on the Federal Aid Highway system—without a dedicated funding source.

As you know, bridges are a unique component of our nation's transportation system. Unlike a variety of road and pavement projects, many bridge projects entail complex design processes, necessitate long-term planning and procurement, and present unique construction challenges. Moreover, there is little room for error when it comes to bridge safety, as they must remain structurally sound in order to ensure that vehicles and motorists are secure.

Prior to MAP-21, all bridges were eligible for funding under the Highway Bridge Program. The 2012 Act eliminated the program, however, and shifted a majority of its funding to the National Highway Performance Program (NHPP). As a result, just 23 percent of the nation's bridges are eligible for assistance under the NHPP, as the program only supports bridge projects that are a part of the National Highway System. The remaining 77 percent of the nation's bridges, which includes both on- and off-system bridges that are owned by local

agencies, must rely on funding from the Surface Transportation Program (STP). Notably, STP receives less than half of the funding allocation of the NHPP, meaning local bridge projects must compete with other eligible projects for very limited funding.

In California, nearly 28 percent of local bridges are either structurally deficient or functionally obsolete, meaning these structures are in poor condition due to deterioration and damage or were built to standards that are not used today. In some counties, the percentage of local bridges that are in need of rehabilitation or replacement exceeds 50 percent. It is in the national interest to resolve this backlog and maintain these bridges in a state of good repair moving forward. While the State of California and its local governments have placed an emphasis on financing these projects, there is an estimated shortfall of \$1.3 billion to maintain the safety and integrity of the bridge infrastructure.

Moreover, over half of California's local bridges are located on Federal-aid highways. Unlike off-system bridges, which receive a special funding set-aside under MAP-21, on-system bridges do not have a dedicated federal funding source. These projects, therefore, must compete for limited dollars, meaning many essential on-system bridge projects are left shortchanged.

I encourage the Committee to find a solution for this disparity, either by setting aside funding for locally-owned on-system bridges, as has been done for off-system bridges, or better yet by significantly increasing the funding made available through the Surface Transportation Program.

Thank you for your consideration of this request. I look forward to continuing to work with you on this and other important issues as the Committee considers options for a new transportation bill.

Sincerely,



Dianne Feinstein  
United States Senator

**Congress of the United States**  
**Washington, DC 20515**

April 21, 2015

The Honorable Bill Shuster  
Chairman  
House Committee on Transportation  
and Infrastructure  
2165 Rayburn House Office Building  
Washington, DC 20515

The Honorable Peter DeFazio  
Ranking Member  
House Committee on Transportation  
and Infrastructure  
2165 Rayburn House Office Building  
Washington, DC 20515

The Honorable Sam Graves  
Chairman  
Subcommittee on Highways and Transit  
B-376 Rayburn House Office Building  
Washington, DC 20515

The Honorable Eleanor Holmes Norton  
Ranking Member  
Subcommittee on Highways and Transit  
B-376 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Shuster, Ranking Member DeFazio, Chairman Graves, and Ranking Member Holmes Norton:

As the Committee on Transportation & Infrastructure prepares to craft a MAP-21 reauthorization bill, we write to urge you to make funding for the nation's crumbling bridges a top priority. Without adequate investment in bridges, these vital components of our nation's transportation network will continue to deteriorate, threatening the safety and well being of the traveling public. There is little room for error when it comes to bridge safety, as they must remain structurally sound in order to ensure that vehicles and motorists are secure.

According to the most recent data from the American Society of Civil Engineers, one in nine bridges are structurally deficient, requiring significant maintenance, rehabilitation, or replacement. The Federal Highway Administration estimates that to eliminate the nation's deficient bridge backlog by 2028, we would need to invest \$20.5 billion annually - though only \$12.8 billion is currently being spent. As Congress prepares to reauthorize MAP-21, it is critically important that we commit adequate federal resources to address this significant need.

In California, roughly 12 percent of our state's nearly 25,000 bridges are structurally deficient. While the State and its local governments have placed an emphasis on financing essential bridge safety projects, critical needs are not being met. For local agency bridges alone, there is an estimated funding shortfall of \$1.3 billion over the next ten years.

Moreover, unlike most other states throughout the country, many locally-owned bridges in California (over 52 percent) are located *on* the Federal-Aid Highway System. While local off-system bridges receive a special funding set-aside under MAP-21, on-system bridges do *not* have a dedicated funding source. These projects, therefore, must compete for limited dollars, meaning many essential on-system bridge projects in our state are left shortchanged. This lack of parity among bridge projects creates an undue burden and hardship on local governments and

ultimately endangers our constituents as they use bridges that are ill equipped to handle sustained deterioration. We believe it is essential for Congress provide a funding stream for local on-system bridges that adequately addresses the funding backlog currently leading to the continued deterioration of our nation's infrastructure. The current funding system simply does not do enough to end the backlog.

Thank you for your consideration of our views. We look forward to continuing to work with you on this and other important issues as the Committee considers options for a new transportation bill.

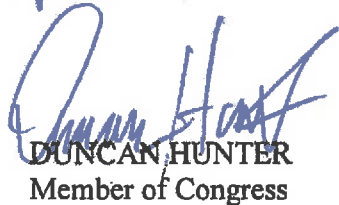
Sincerely,



JEFF DENHAM  
Member of Congress



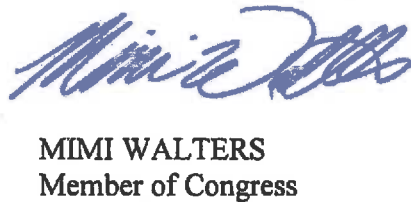
GRACE NAPOLITANO  
Member of Congress



DUNCAN HUNTER  
Member of Congress



JULIA BROWNLEY  
Member of Congress



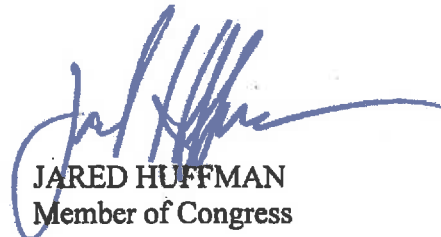
MIMI WALTERS  
Member of Congress



JANICE HAHN  
Member of Congress



DEVIN NUNES  
Member of Congress



JARED HUFFMAN  
Member of Congress



DAVID VALADAO  
Member of Congress



JOHN GARAMENDI  
Member of Congress





DOUG LAMALFA  
Member of Congress



MIKE THOMPSON  
Member of Congress



PAUL COOK  
Member of Congress



TED LIEU  
Member of Congress



STEVE KNIGHT  
Member of Congress



LOIS CAPPS  
Member of Congress



KEN CALVERT  
Member of Congress



MARK TAKANO  
Member of Congress



JIM COSTA  
Member of Congress



JUAN VARGAS  
Member of Congress



JERRY MCNERNEY  
Member of Congress



AMI BERA  
Member of Congress



JUDY CHU  
Member of Congress





ALAN LOWENTHAL  
Member of Congress


  
NORMA TORRES  
Member of Congress


  
MIKE HONDA  
Member of Congress

  
MARK DeSAULNIER  
Member of Congress

  
LUCILLE ROYBAL-ALLARD  
Member of Congress

  
ADAM SCHIFF  
Member of Congress

  
ERIC SWALWELL  
Member of Congress

  
RAUL RUIZ  
Member of Congress

  
PETER AGUILAR  
Member of Congress

  
TONY CARDENAS  
Member of Congress

  
ANNA ESHOO  
Member of Congress

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**Attachment Seven**  
Denham Legislation on NEPA Reciprocity

**[DISCUSSION DRAFT]**114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R.** \_\_\_\_\_

To direct the Secretary of Transportation to establish a program to eliminate duplicative environmental reviews and approvals under State and Federal law of rail and highway projects, and for other purposes.

---

**IN THE HOUSE OF REPRESENTATIVES**

Mr. DENHAM introduced the following bill; which was referred to the Committee on \_\_\_\_\_

---

**A BILL**

To direct the Secretary of Transportation to establish a program to eliminate duplicative environmental reviews and approvals under State and Federal law of rail and highway projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “\_\_\_\_\_ Act”.

1 **SEC. 2. USE OF ALTERNATIVE ENVIRONMENTAL REVIEW**  
2 **AND APPROVAL PROCEDURES UNDER STATE**  
3 **LAWS FOR RAIL AND HIGHWAY PROJECTS.**

4 (a) ESTABLISHMENT.—

5 (1) IN GENERAL.—The Secretary shall establish  
6 a program to eliminate duplicative environmental re-  
7 views and approvals under State and Federal law of  
8 projects. Under this program, a State may use State  
9 laws and procedures to conduct reviews and make  
10 approvals in lieu of Federal environmental laws and  
11 regulations, consistent with the provisions of this  
12 section.

13 (2) PARTICIPATING STATES.—All States are eli-  
14 gible to participate in the program.

15 (3) SCOPE OF ALTERNATIVE REVIEW AND AP-  
16 PROVAL PROCEDURES.—For purposes of this sec-  
17 tion, alternative environmental review and approval  
18 procedures may include one or more of the following:

19 (A) Substitution of one or more State envi-  
20 ronmental laws for one or more Federal envi-  
21 ronmental laws, if the Secretary determines in  
22 accordance with this section that the State envi-  
23 ronmental laws provide environmental protec-  
24 tion and opportunities for public involvement  
25 that are substantially equivalent to the applica-  
26 ble Federal environmental laws.

1 (B) Substitution of one or more State reg-  
2 ulations for Federal regulations implementing  
3 one or more Federal environmental laws, if the  
4 Secretary determines in accordance with this  
5 section that the State regulations provide envi-  
6 ronmental protection and opportunities for pub-  
7 lic involvement that are substantially equivalent  
8 to the Federal regulations.

9 (b) APPLICATION.—To participate in the program, a  
10 State shall submit to the Secretary an application con-  
11 taining such information as the Secretary may require, in-  
12 cluding—

13 (1) a full and complete description of the pro-  
14 posed alternative environmental review and approval  
15 procedures of the State;

16 (2) for each State law or regulation included in  
17 the proposed alternative environmental review and  
18 approval procedures of the State, an explanation of  
19 the basis for concluding that the law or regulation  
20 meets the requirements under subsection (a)(3); and

21 (3) evidence of having sought, received, and ad-  
22 dressed comments on the proposed application from  
23 the public and appropriate Federal environmental  
24 resource agencies.

1 (c) REVIEW OF APPLICATION.—The Secretary  
2 shall—

3 (1) review an application submitted under sub-  
4 section (b);

5 (2) approve or disapprove the application in ac-  
6 cordance with subsection (d) not later than 90 days  
7 after the date of the receipt of the application; and

8 (3) transmit to the State notice of the approval  
9 or disapproval, together with a statement of the rea-  
10 sons for the approval or disapproval.

11 (d) APPROVAL OF STATE PROGRAMS.—

12 (1) IN GENERAL.—The Secretary shall approve  
13 each such application if the Secretary finds that the  
14 proposed alternative environmental review and ap-  
15 proval procedures of the State are substantially  
16 equivalent to the applicable Federal environmental  
17 laws and Federal regulations.

18 (2) EXCLUSION.—The National Environmental  
19 Policy Act of 1969 and the Endangered Species Act  
20 of 1973 (16 U.S.C. 1531 et seq.) shall not apply to  
21 any decision by the Secretary to approve or dis-  
22 approve any application submitted pursuant to this  
23 section.

24 (e) COMPLIANCE WITH PERMITS.—Compliance with  
25 a permit or other approval of a project issued pursuant

1 to a program approved by the Secretary under this section  
2 shall be considered compliance with the Federal laws and  
3 regulations identified in the program approved by the Sec-  
4 retary pursuant to this section.

5 (f) REVIEW AND TERMINATION.—

6 (1) REVIEW.—All State alternative environ-  
7 mental review and approval procedures approved  
8 under this section shall be reviewed by the Secretary  
9 not less than once every 5 years.

10 (2) PUBLIC NOTICE AND COMMENT.—In con-  
11 ducting the review process under paragraph (1), the  
12 Secretary shall provide notice and an opportunity for  
13 public comment.

14 (3) EXTENSIONS AND TERMINATIONS.—At the  
15 conclusion of the review process, the Secretary may  
16 extend the State alternative environmental review  
17 and approval procedures for an additional 5-year pe-  
18 riod or terminate the State program.

19 (g) REPORT TO CONGRESS.—Not later than 2 years  
20 after the date of enactment of this section, and annually  
21 thereafter, the Secretary shall submit to Congress a report  
22 that describes the administration of the program.

23 (h) DEFINITIONS.—For purposes of this section:

24 (1) ENVIRONMENTAL LAW.—The term “envi-  
25 ronmental law” includes any law that provides pro-



1 cedural or substantive protection, as applicable, for  
2 the natural or built environment with regard to the  
3 construction and operation of projects.

4 (2) FEDERAL ENVIRONMENTAL LAWS.—The  
5 term “Federal environmental laws” means laws gov-  
6 erning the review of environmental impacts of, and  
7 issuance of permits and other approvals for, the con-  
8 struction and operation of projects, including section  
9 102(2)(C) of the National Environmental Policy Act  
10 of 1969 (42 U.S.C. 4332(2)(C)), section 404 of the  
11 Federal Water Pollution Control Act (33 U.S.C.  
12 1344), section 106 of the National Historic Preser-  
13 vation Act (16 U.S.C. 470f), and sections 7(a)(2),  
14 9(a)(1)(B), and 10(a)(1)(B) of the Endangered Spe-  
15 cies Act of 1973 (16 U.S.C. 1536(a)(2),  
16 1538(a)(1)(B), 1539(a)(1)(B)).

17 (3) PROJECT.—The term “project” means any  
18 project eligible for federal assistance under title 23,  
19 subtitle V of title 49, or chapter 53 of title 49 of the  
20 United States Code, or involves the participation of  
21 more than one Department of Transportation modal  
22 administration or secretarial office.

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**Attachment Eight**  
Opposition Letter – AB 1347 (Chiu): Public contracts: claims



April 23, 2015

The Honorable Rudy Salas  
Chair, Assembly Accountability and Administrative Review Committee  
State Capitol, Room 2188  
Sacramento, CA 95814

**Re: AB 1347 (Chiu): Public Contracts: Claims Resolution Process  
As amended on April 21, 2015 – OPPOSE  
Set for hearing on April 29, 2015 – Assembly Accountability and Administrative Review  
Committee**

Dear Assembly Member Salas:

We represent a broad group of local public agencies and organizations that plan, approve, construct, and maintain a broad range of important public infrastructure from local streets and roads to water and wastewater facilities to public school buildings and university and school campuses. We are opposed to Assembly Bill 1347 as amended, by Assembly Member David Chiu, related to claims resolution for public contracts. AB 1347 would mandate a new claims resolution process that requires non-binding mediation before lesser expensive and often effective meet and confer opportunities to resolve disputes on all public contracts with unfeasible timelines, disproportionate requirements and remedies, and is duplicative of existing processes.

As public agencies, our members have a fiduciary responsibility to taxpayers and to make sure projects are built to an acceptable standard of quality at a reasonable cost. This obligation demands a public contracting process that provides public agencies sufficient time and control to ensure a thorough understanding of claims for work performed under a public contract or change order prior to payment to a contractor. Our organizations support a public contracting process that is also timely and we understand that contractors must be paid for work promptly so that they can meet their own financial and other obligations. However, rapidity cannot come at the cost of the taxpayers and their investment in public infrastructure.

**Redundant.** Public agencies already include a clearly defined claims resolution process in public contracts. For instance, the Local Agency Public Construction Act (Public Contract Code §20100-20929) requires local agencies to include specific claims resolutions provisions within their public contracts. These provisions include a process for, and a timeframe, in which local agencies must respond to contractors based on the amount of the claim. For claims less than \$50,000, local agencies shall respond in writing to a claim within 45-days of receipt of the claim, or request additional information within 30-days of receipt of the claim. For claims over \$50,000 but less than or equal to \$375,000, the agency has 60-days to respond to a contractor upon receipt of a claim or 30-days to request more information. The existing statute further stipulates that if a contractor disputes a public agency’s response, or the public agency fails to respond within the proscribed timeframe, a contractor can demand an informal conference to meet and confer for settlement, which must occur within 30-days. If after the informal meet and confer the contractor still disputes any portion of the claim the contractor may file a claim pursuant to Government Code §900, which requires further non-binding mediation prior to submitting to judicial arbitration for a final and binding decision.

**One-Sided and Unfeasible Timelines.** Unlike existing law which provides timeframes for action based on the cost of a claim which can be a proxy for size, scope and complexity, AB 1347 treats all claims the

same. The measure would require public agencies to complete certain actions within unworkably rigid timelines without imposing similar burdens on contractors. Moreover, existing law requires contractors to respond to public agencies to move the claims resolution process along. If a local agency under the aforementioned Act requests additional information from a contractor and the contractor fails to provide the information the process is stalled. Local agencies often receive claims with very little—sometimes no— supporting data at all. At the very least, the timelines in AB 1347 should only start once the agency receives sufficient supporting data to ascertain the veracity of a claim.

**Usurious Interest Rate.** If a public agency failed to respond to a written demand, AB 1347 would apply a 10 percent per annum interest rate. This rate is inflated above current rates than can be obtained in interest-bearing accounts, especially considering the well-warranted limitations on types of accounts in which county treasurers may deposit public funds.

**Deemed Approved.** Especially given the aforementioned concerns with the timelines proscribed in the bill, deeming a contract approved in its entirety is a significant overreach. However, even with more appropriate timelines, deeming a contract approved just because of a missed deadline, puts the public agency, at ultimately the tax payers, at financial risk.

**Nonbinding Mediation.** Public agencies appreciate efforts to find resolution of disputes outside of the court system. Existing law (Public Contract Code §20104.2) already requires public agencies and contractors to meet and confer on disputed claims. However, this process, and mediation, is nonbinding. One party can always object to the outcome if the proceedings go badly from their perspective. Intractable disputes even under mediation would yield the same outcome: a final decision being made in court.

Overall, we are very concerned with the new claims resolution process envisioned by AB 1347 as it will only add time and squander taxpayer funding by usurping a process which works well a significant majority of the time. While we certainly appreciate the author's willingness to consider our concerns, we have yet to be convinced that a problem exists of such magnitude to proscribe additional redundant processes on all of California's public agencies.

For these reasons, we must oppose AB 1347 and respectfully request your "NO" vote in committee. Please do not hesitate to contact us to discuss our position on this measure.

Sincerely,




Kiana Buss  
Legislative Representative  
California State Association of Counties



Jessica Gauger  
Legislative Advocate  
California Association of Sanitation Agencies



Thomas Duffy  
Legislative Advocate  
Coalition for Adequate School Housing



Rebekah Cearley  
Legislative Advocate  
Community College Facility Coalition &  
County School Facilities Consortium

Jolena Voorhis  
Executive Director  
Urban Counties Caucus

Richard Hansen  
General Manager  
Three Valleys MWD

Jennifer Whiting  
Assistant Legislative Director  
League of California Cities

David K. Luker  
General Manager/Chief Engineer  
Desert Water Agency

Jim Abercrombie  
General Manager  
El Dorado Irrigation District

Enrique Ruacho  
Legislative Advocate  
California Association of School Business Officials

Jimmy MacDonald  
Associate Legislative Representative  
California Special Districts Association

Wess Larson  
Senior Legislative Director  
The California State University

Paul A. Smith  
Senior Legislative Advocate  
Rural County Representatives of California

Robert Hunter  
General Manager  
Municipal Water District of Orange County

Laura Preston  
Legislative Advocate  
Association of California School  
Administrators

Amber King  
Senior Legislative Advocate  
Association of California Healthcare Districts

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**Attachment Nine**  
Opposition Letter – AB 57 (Quirk): Wireless permitting



American Planning Association  
**California Chapter**

*Making Great Communities Happen*



May 6, 2015

The Honorable Bill Quirk  
Member, California State Assembly  
State Capitol, Room 2163  
Sacramento, CA 95814

**RE: AB 57 (Quirk): Wireless Telecommunications Facilities  
As amended on April 6, 2015 – OPPOSE  
Set for hearing on May 13, 2015 – Assembly Local Government Committee**

Dear Assembly Member Quirk:

The California State Association of Counties (CSAC), the American Planning Association, California Chapter (APA California) and the Urban Counties Caucus (UCC) regrets to inform you of our opposition to your Assembly Bill 57 regarding the colocation or siting of wireless telecommunications facilities. AB 57 goes beyond the requirements of federal law and regulations by deeming approved any application for colocation or siting of a new wireless telecommunications facility if a city or county fails to approve or disapprove the application within time periods that the Federal Communications Commission (FCC) established for a different purpose. CSAC, APA California and UCC fundamentally believe that federal law and regulations are sufficient on the matter and moreover that the state should not enact statute that expands the rights of wireless carriers beyond what is provided by federal law.

Deemed Approved Rule

Wireless telecommunications companies are generally required to obtain various state and local zoning approvals before building a new wireless facility or collocating equipment at an existing wireless facility. In 2009, the FCC issued a declaratory ruling that is intended to promote the deployment of broadband and other wireless services by reducing "unnecessary review, thus reducing the costs and delays associated with facilities siting and construction". In its ruling, the FCC construed 47 U.S. C. § 332(c)(7)(B)(3) to require cities and counties to take action on colocation or new siting applications for wireless telecommunications within certain specific timelines. The FCC determined that "a reasonable period of time" under Section 332(c)(7)(B)(3) means different things depending on the type of application. For colocations, local agencies are required to respond in 90-days and for new siting applications, cities and counties have 150-days. The FCC's 90/150-day rule only provided wireless telecommunications carriers with a

rebuttable presumption to be used if court of a local agency failed to act in a timely manner. **The FCC refused to adopt the industry's request to issue a deemed approved rule.**

In 2014, the FCC determined that under a new federal law (47 U.S.C. § 1455(a)), applications for modifications to wireless facilities would be "deemed approved" in 60-days provided those modifications would not substantially "change the physical dimensions" of the existing wireless facility. The FCC's "deemed approved" requirement doesn't apply to new wireless siting applications, which require more time for important environmental and esthetical review and permit processing, nor does it apply to colocations that involve substantial increases in the size of the permitted facility. In AB 57, however, the state would apply this remedy to both new applications and all colocation applications.

Local jurisdictions want to work with wireless carriers to promote broadband deployment, but must be allowed sufficient time and authority to work to ensure viable designs that are both beneficial and acceptable to the community. To be clear, adding a "deemed approved" rule to state law where none presently exists, as proposed under AB 57, could incentivize local jurisdictions to deny new siting or colocation applications in order to avoid allowing the shot-clock to run out before the local agency has been able to effectively negotiate on environmental and aesthetic matters that are at the heart of community concerns. In this way, AB 57 could promote litigation rather than successful deployment of new or improved wireless infrastructure.

#### Matters of Municipal Concern

Additionally, CSAC, APA, California and UCC firmly believe that the colocation and siting of wireless telecommunications facilities are matters best addressed by local governments, even if the development of robust wireless broadband communications networks is also matter of statewide importance. We are concerned that the language found on page 3, line 15 could be interpreted in a variety of ways and will very likely be litigated for years to come. What is the intent of this language? Is the state legislating that local governments should have no input into the placement and physical characteristics of wireless telecommunications facilities? Is it the intent of language to preempt all local authority to require a conditional use permit for a wireless facility or to allow any carrier the right to site or colocate a facility anywhere in the local jurisdiction? The legislation does not make any of this clear.

#### Local Governments Support Access to Broadband Services

CSAC, APA California and UCC fully support greater access to broadband services. Our associations are "technology neutral" with respect to broadband deployment and wireless infrastructure is a good way to fill in service gaps. However, we are concerned that this measure would provide wireless telecommunications facilities a higher priority under state law than other broadband providers using different technologies. It also assumes priority over many other permitting areas where we are already asked to expedite, such as rooftop solar and potentially electric vehicle charging stations (AB 1236, Chiu).

Again, AB 57 is more stringent than federal law and it would unnecessarily place additional constraints on local planning departments that are already under significant pressure to

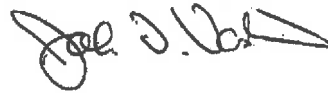


prioritize wireless applications over all other approvals. This bill would impose timeframes that are difficult to meet, especially considering requirements for CEQA review and the necessary public participation process used with a discretionary permit. For these reasons, we must regretfully oppose AB 57. Should you have any questions on our position, please do not hesitate to contact us.

Sincerely,



Kiana Buss  
California State Association of Counties



Jolena Voorhis  
Urban Counties Caucus

Lauren De Valencia

Lauren De Valencia  
American Planning Association, California Chapter

cc: The Honorable Brian Maienschein, Chair, Assembly Local Government Committee  
Members and Consultants, Assembly Local Government Committee  
William Weber, Consultant, Assembly Republican Caucus

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**Attachment Ten**

Opposition Letter – AB 1236 (Chiu): EV charging stations



**California State Association of Counties**  
1100 K Street, Suite 101  
Sacramento, CA 95814  
916/327-7500



**Urban Counties Caucus**  
1100 K Street, Suite 101  
Sacramento, CA 95814  
916/327-7531

May 15, 2015

The Honorable David Chiu  
Member, California State Assembly  
State Capitol, Room 2196  
Sacramento, CA 95814

**RE: AB 1236 (Chiu) – Electric Vehicle Charging Stations  
As Amended on April 20, 2015 – OPPOSE**

Dear Assemblymember Chiu:

On behalf of the California State Association of Counties (CSAC) and the Urban Counties Caucus (UCC), we regretfully write in opposition to AB 1236. This bill would mandate all 58 counties and 482 cities adopt an ordinance to create a new expedited permitting and inspection process for electric vehicle (EV) charging stations.

Specifically, this bill would require every city and county to adopt an ordinance by September 30, 2016 that creates an expedited and streamlined permitting process for EV charging stations that also includes a checklist of all requirements with which EV charging stations shall comply to be eligible for expedited review. Further, AB 1236 would require every city and county to approve the installation of EV charging stations unless the city or county makes written findings, based on substantial evidence in the record, that the proposed installation would have an adverse impact upon the public health or safety and that those impacts cannot be mitigated.

California's counties agree that EV charging stations are an important part of our transportation infrastructure as electric vehicles make up an increasing share of the fleet. EVs are a critical tool to meet the state's greenhouse gas emissions reductions and energy goals. We are not convinced, however, that reasonable local permitting requirements that differ based on varying local circumstances are the reason that EV charging stations have not been more widely deployed across the state. Nor do we think that the solution to encouraging the proliferation of EV charging stations is a unilateral requirement that cities and counties adopt a uniform expedited permitting process, through a costly and unnecessarily time-consuming local ordinance process.

The bill would remove necessary discretion for local agencies to appropriately review these projects. Given the bill's broad applicability to "any level of electric vehicle supply equipment station that is designed and built in compliance with... the California Electrical Code, ... and [which] delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle," the bill would implement a one-size fits all approach mandating cities and counties approve applications for EV

charging stations in an “over the counter” fashion, without recognizing the potential complexity of multiple EV charging stations proposed in a group, nor considering the various contexts, both public and private, where the measure would apply. We argue that such finer contextual points and considerations are best considered by policymakers and planners at the local level; while some applications could perhaps be dealt with in an expedited manner, local agencies need broader discretion to determine which applications require further review.

While this bill is based upon the framework of recent legislation related to small, residential rooftop solar energy systems, there are other factors that must be considered during the installation of EV charging stations. Counties that have worked to expedite the deployment of EV charging stations as part of local climate action plans have discovered that uncertainty regarding current accessibility standards pursuant to the Americans with Disabilities Act has created unexpected complications. Accessibility issues are currently far too complex to streamline the process as outlined in this bill. At least one county has already been working with the California Department of General Services, Office of the State Architect on the Electric Vehicle Charging Station Working Group to update the building code to standardize requirements for installations for over three years. CSAC understands that 2017 would be the soonest that code language is anticipated to be approved. While systems based in single-family homes may not have to address these issues, AB 1236 would also apply to EV charging stations that would qualify as public accommodations or be incorporated into commercial facilities. Moreover, as currently drafted, AB 1236 would make it challenging for a local agency to deny a permit for an EV charging station on the basis of accessibility issues.

A streamlined process would be difficult to implement based on other complexities. For example, if five charging stations were installed in a commercial parking lot and all five spaces have to meet ADA van accessibility standards, the spaces would take up approximately ten conventional parking spaces which could cause the location to be out of compliance with parking requirements for that location. Larger installations may also require changes to existing infrastructure by the local electrical utility, which could include modifications to the building, electrical panel upgrades, and other changes. Trying to implement all of these complications on an expedited basis would pose many logistical challenges for local planning departments.

Moreover, while the lack of a robust network of charging stations and the resulting “range anxiety” may indeed hamper the widespread adoption of electric vehicles, AB 1236’s statewide approach does not consider that some jurisdictions, especially more remote cities and counties, may not have an influx of EV charging station applications. In these communities, it would be an unnecessary use of taxpayers’ time and resources to pass a local ordinance setting up a streamlined and expedited process. In cities and counties where there is a high demand for EV infrastructure, we have found many local jurisdictions have already developed streamlined processes that work in their jurisdiction, making AB 1236 redundant.

Finally, counties are concerned that AB 1236 continues a troubling precedent enacted last year through AB 2188 (Chapter No. 521, Statutes of 2014). AB 2188 established a similar process for solar panel projects and placed them at the front of the line for permit review and approval. The Legislature is also currently considering a measure that would require local agency action within proscribed timelines for wireless telecommunications facilities or applications are deemed approved (AB 57, Quirk). These measures establish special treatment for some industries over others and at a certain point, these legislative mandates become meaningless if too many industries gain special

treatment. Given finite local resources in planning departments, there will be a diminishing marginal return in terms of time saved by applicants as the state enacts each additional statutory requirement to expedite a specific type of permit over others.

For these reasons, CSAC and UCC are opposed to AB 1236. Should you have any questions on our position, please do not hesitate to contact us.

Sincerely,



Kiana Buss  
Legislative Representative  
CSAC



Jolena Voorhis  
Executive Director  
UCC

cc: The Honorable Jimmy Gomez, Chair, Assembly Appropriations Committee  
Members and Consultants, Assembly Appropriations Committee  
Daniel Ballon, Consultant, Assembly Republican Caucus

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**Attachment Eleven**  
Support Letter – SB 321 (Beall): Motor vehicle fuel excise taxes



April 9, 2015

The Honorable Robert M. Hertzberg  
Chair, Senate Governance and Finance Committee  
State Capitol, Room 4038  
Sacramento, CA 95814



**RE: SB 321 (Beall): Motor vehicle fuel taxes: rates: adjustment  
As amended March 26, 2015 - SUPPORT  
Set for hearing on April 15, 2015 - Senate Governance and Finance  
Committee**



Dear Senator Hertzberg:



We represent a broad group of agencies and organizations that plan, approve, construct, and maintain California's transportation infrastructure, all of whom support Senate Bill 321 by Senator Jim Beall. This important measure will make a much-needed technical fix to the complex process for setting the gasoline excise tax rate under the gas tax swap, while maintaining revenue neutrality with the former sales tax on gasoline.



While the former sales tax revenues naturally adjusted to real-time changes in the price of gasoline, the new excise rate is only adjusted annually. Accordingly, when there are significant fluctuations in gas prices during a single year, the excise rate must be significantly raised or lowered in one large adjustment. SB 321 will help remedy the potentially jarring increases or decreases of the excise tax by incorporating recent historical price data into the rate-setting calculation and allowing a semi-annual adjustment if actual prices vary drastically from prior estimates. The increased stability of this framework is beneficial to both consumers paying the tax and the state and local agencies that rely on the revenues to build and maintain California's transportation infrastructure.



ASSOCIATED GENERAL CONTRACTORS (AGC)



SB 321 will be helpful for planning and budgeting for transportation projects—especially for smaller agencies that have limited capacity to weather drastic changes in funding—but it is simply a revenue-neutral, technical fix to the gas tax swap. While it's important that we expeditiously address the excessive volatility of existing revenue sources, we must also turn our attention to addressing the significant transportation funding needs at the state and local level. We look forward to working with the Legislature as it considers other proposals that go beyond technical adjustments and instead address the fundamental issues of California's unmet transportation infrastructure needs.



Thank you for your consideration of our position. Please do not hesitate to contact any of us if you have any questions.

Sincerely,



David Ackerman  
Associated General Contractors



Kiana Buss  
California State Association of Counties



Keith Dunn  
Self-Help Counties Coalition



Bill Higgins  
California Association of Councils of Government

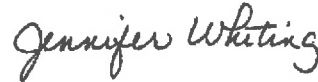


Jose Mejia  
California State Council of Laborers

CC: The Honorable Jim Beall, California State Senate  
Members and Consultant, Senate Governance and Finance Committee  
Scott Chavez, Senate Republican Consultant



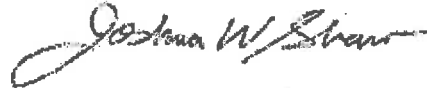
James Earp  
California Alliance for Jobs



Jennifer Whiting  
League of California Cities



Mark Watts  
Transportation California



Joshua Shaw  
California Transit Association



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**Attachment Twelve**  
Support Letter – SB 16 (Beall): Transportation funding



May 1, 2015

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

The Honorable Bob Hertzberg  
Chair, Senate Governance & Finance Committee  
State Capitol, Room 4038  
Sacramento, CA 95814

**Re: SB 16 (Beall): Transportation Funding  
As Amended on April 15, 2015 – SUPPORT  
Set for hearing on May 6, 2015 – Senate Governance & Finance Committee**

Dear Senator Hertzberg:

On behalf of the California State Association of Counties (CSAC), I'm pleased to convey our strong support for Senate Bill 16 by Senator Jim Beall, which would inject much-needed new revenues into the statewide transportation network to address maintenance backlogs on local streets and roads and state highways. Specifically, we find that the bill's combination of ensuring that existing transportation revenues fund transportation projects and its targeted tax and fee increases strikes the right policy and fiscal balance needed to address this momentous challenge. Considering that there are unmet needs of \$79 billion on the local streets and roads system and a \$59 billion in deferred maintenance on the state highway system, there is no single solution to this problem. It is clear, however, that now is the time to act on these pressing needs. Research by CSAC and the League of California Cities shows that failure to invest additional funds toward local system maintenance now will only increase maintenance needs in the future. Decisive action to address these funding shortfalls now, as proposed by SB 16, will reduce future burdens on taxpayers.

California's 58 counties believe that before the state can increase taxes or fees for transportation, all existing transportation fund loans should be repaid and diversions of transportation funds should be eliminated. SB 16 requires transportation loan repayment within three fiscal years, with the first repayment due on or before June 30, 2016. The measure would also return truck weight fees back to transportation projects and provide a backfill for transportation related bond debt service.

CSAC also recommends that SB 16 be amended to eliminate an ongoing diversion to the state general fund of price-based gas tax revenues related to fuel sales for off-highway vehicles and other vehicles that do not use roadways. Although the annual diversion is relatively small, the state will have diverted approximately \$626 million away from transportation by the end of FY 2014-15. The tax swap is required to be revenue neutral with what the sales tax on gasoline would have otherwise generated. Sales tax revenues never supported these funds for vehicles that do not use highways; as long as the state is diverting these revenues away from cities, counties and state highways, the state is not fully meeting the commitment it made within the 2010 transportation tax swap.

CSAC understands that robust focus group efforts conducted by the California Alliance for Jobs and Transportation California show that taxpayers and users of the transportation system support spreading any

potential tax or fee increases across a range of options rather than generating significant revenue from just one source. By levying small increases of the gasoline and diesel excise taxes and vehicle registration and license fees, SB 16 takes a balanced approach that has proven to be palatable in statewide outreach efforts.

We also support the five-year sunset included in SB 16. It is well-known that traditional sources of funding for transportation infrastructure are no longer adequate. The purchasing power of the gas tax has significantly eroded over time due to inflation, increases in real construction and materials costs, and increases in vehicle fuel efficiency. Moreover, the trend towards alternative fuel and electric power vehicles means that there are cars on the road today that pay nothing toward the preservation and maintenance of streets and highway, while still putting the same wear and tear on the system as traditional motor vehicles. A technical advisory committee has been convened by California Transportation Commission (CTC) to develop recommendations to the Secretary of the California Transportation Agency to pilot a potential road charge that could replace the antiquated gas tax system. The CTC expects to finalize their recommendations by the end of 2015 and the start of a pilot program in 2016 is plausible. As such, SB 16's short-term approach allows California to address pressing and well-documented immediate needs while still focusing our long-term efforts on more sustainable funding practices.

Finally, while no one likes to pay taxes and we recognize increasing taxes is a difficult decision, SB 16 will save taxpayers money in the long run. As roads deteriorate, they become increasingly expensive to repair. In fact, rebuilding a road from scratch can cost as much as twenty times more than routine maintenance to extend the service life of our roadway infrastructure. Investing in our roads and highway through targeted and balanced increases in revenue as proposed by SB 16 will improve California's roadways today while saving taxpayers money tomorrow.

For all of these reasons, CSAC supports SB 16 and respectfully requests your "AYE" vote. For more information on our position, please do not hesitate contact me at 916.650.8185 or [kbuss@counties.org](mailto:kbuss@counties.org).

Sincerely,



Kiana Buss  
Legislative Representative

cc: The Honorable Jim Beall, California State Senate  
Members and Consultants, Senate Governance & Finance Committee  
Ted Morley, Consultant, Senate Republican Caucus