Mitigation Measures

Implementation of mitigation measure MM 4.2.3 would reduce the project's contribution to cumulative population, housing and employment impacts; therefore, the cumulative impact is considered **less than significant.**

REFERENCES

EDAW. August 4, 2003. *Highlands Project PEA. Volume 1.* Prepared for East West Partners, Truckee, CA.

Nevada County. 1995. *Nevada County General Plan, Volume I.* Nevada County Planning Department, Nevada City, CA.

Placer County. 1975a. *Martis Valley General Plan.* Auburn, CA.

Placer County. 1975b. *Placer County General Plan and Zoning Ordinance.* Auburn, CA.

Placer County. 1994a (August 16). *Placer County General Plan Update—Countywide General Plan Policy Document.* Auburn, CA.

Placer County. 1994b (July and August). *Countywide General Plan Final Environmental Impact Report.* Auburn, CA.

Placer County. 1995. *Placer County General Plan and Zoning Ordinance.* Auburn, CA.

Placer County. 2003 (July). *Martis Valley Community Plan .* Auburn, CA.

Sacramento Area Council of Governments. 2001. March 2001 SACOG Projections by RAD. http://www.sacog.org.

Town of Mammoth Lakes. 1999. *Mammoth Lakes Employee Housing Mitigation Policy.* Mammoth Lakes, CA.

U.S. Census Bureau. 2000 Census Data - Summary File 1 and Summary File 3. www.census.gov

Lassen County
Dyer Mountain Resort
Draft Environmental Impact Report
(SCH # 2001052122)

Lead Agency:
Lassen County Department of Community Development
707 Nevada St., Suite 5
Susanville, CA 96130
Contact: Joe Bertotti, Assistant Director

Prepared By:
North Fork Associates
110 Maple St., Suite 100
Auburn, CA 95603
(530) 887-8500

April 2005

CHAPTER 5 POPULATION, HOUSING AND EMPLOYMENT

The Dyer Mountain Resort project proposed to construct4,104 new resort residential units including 1,478 single family homes, 2,126 multi-family units, 500 hotel rooms, and a yet-to-be determined amount of employee housing. This project is expected to generate 1,051 seasonal jobs and 825 year-round jobs.

This chapter analyzes the impact that the proposed project would have on the area's population and housing supply, particularly affordable housing, and determines whether any shift in the jobs-housing balance would occur as a result of project construction. To assess these impacts, the analysis 1) describes the current population, employment and housing conditions; 2) identifies housing and employment levels to be generated by the Dyer Mountain Resort project; 3) determines the extent of offsite housing that would be needed to accommodate workers as a result of new job opportunities; and 4) evaluates the jobs/housing balance within the context of the proposed project as defined by the Dyer Mountain Initiative and *Lassen County General Plan 2000*, as amended by passage of this initiative.

Data are taken from several recent sources to analyze the potential impacts on population, employment, and housing – particularly affordable housing. The primary sources are the January 2004 Proponent's Environmental Analysis (PEA) prepared by Jones & Stokes, the *Westwood/Clear Creek Area Plan*, the *Lassen County General Plan 2003 - 2008 Housing Element*, and the 2000 Census of Population and Housing (Census 2000) conducted by the U.S. Census Bureau. provides data for various geographic levels such as countywide, citywide, Census designated place (CDP), and Census county division (CCD). The Census data for this analysis are taken at the Census county division (CCD) level; this subdivision is used for presenting housing and employment data in areas that do not have well-defined political boundaries served by local governments, as is the case with the Westwood, Pinetown, and Clear Creek communities; the Chester, Almanor, Almanor West, Prattville, Canyondam, and Peninsula Village communities; and the Susanville vicinity, including Richmond/Gold Run, Johnstonville, Standish-Litchfield, and Janesville.

5.1 ENVIRONMENTAL SETTING

Population

According to Census 2000, the Westwood/Clear Creek area contains 2,252 households with a total population of 2,900 people. These figures represent a 2 percent increase in the number of households over the 1990 level and a 2 percent decrease in total population, which indicates that the average household size is decreasing. No growth rate projections are yet available from the State of California Department of Finance (DOF) for the Westwood/Clear Creek area.

By comparison, Lassen County's population within the unincorporated County (excluding prison populations and group quarters) has increased slightly more—since 1990 the County grew from an estimated 16,269 to 16,964 in 2003, representing a 4.3 percent increase. The number of households in unincorporated Lassen County is projected to grow from 6,109 in 2000 to 6,996 by 2020, an increase of 14.5 percent (Lassen County 2003).

The average household size for unincorporated Lassen County has decreased from 2.74 persons per household in 1990 to 2.65 in 2000; the number of one- and two-person households showed significant gains over the decade, while the number of four- and five-person households declined during the same period. The Westwood/Clear Creek average household size is even lower, at 2.41 persons per household.

The median household income in the Westwood/Clear Creek area is $29,490 (in 1999 dollars), meaning that half of all households earned more than this amount and half earned less. This represents a 19.4 percent increase over 1990 levels. Despite the increase in median income, 18.2 percent of the residents live at or below the poverty level. Countywide, the median household income is higher - $36,310 (in 1999 dollars). Census 2000 reported that a majority of households in the unincorporated County own their homes (76 percent), while the remaining 24 percent are renters.

Table 5.1 summarizes the population and household income data for Lassen County and the Westwood/Clear Creek area, as provided in Census 2000.

Table 5.1
Demographic Summary

Population	Income
1990 U.S. Census Data	
Westwood/Clear Creek Total population = 2,965 Households = 1,175	Median Household Income = $23,766
Lassen County[1] Total population = 27,598 Households = 8,545	Median Household Income = $26,764
2000 U.S. Census Data	
Westwood/Clear Creek Total population = 2,900 Households = 1,203	Median Household Income = $29,490
Lassen County[1] Total population = 33,828 Households = 9,625	Median Household Income = $36,310

[1] *- includes City of Susanville*
Sources: 1990 U.S. Census, Census 2000 for Westwood CCD.

Employment

According to the U.S. Census, about 50 percent of the local labor force in the Westwood/Clear Creek area is employed. The majority of employment in the vicinity of the project site is confined to these two communities. Businesses that provide jobs to area workers include professional services, personal services, commercial trade, rooming/boarding houses, motels, auto-related services, and transportation services (Lassen County 1999a). On a countywide basis, the major employers in Lassen County represent a range of industries, although the public sector is most heavily represented. The Public Administration sector employs the largest number of workers (25 percent), followed closely by Education, Health and Social Services (22 percent). The next largest industry in the local area and countywide is Retail Trade, which represents about 11 percent of total County employment (Lassen County 2003), and about 12 percent of the Westwood/Clear Creek area's employment (Jones & Stokes 2004). While the largest numerical increase in employees since 1990 was Education, Health and Social Services (556), the industry with the largest percentage increase in employment since 1990 was Arts, Entertainment and Recreation Services, showing a 375 percent gain.

The primary source of employment presently on the project site is timber production, although only around 6 percent of the local work force is reported as being employed in the forestry or agriculture industry. Timber production is the largest manufacturing sector activity within the County, which produces 3 percent of total timber in the State (California DOF 2002, as cited in Jones & Stokes 2004). However, Census 2000 reports a shift over the last decade in the Lassen County economy from basic industries such as agriculture and timber production to more of a services-based economy.

At 10.1 percent, the Westwood/Clear Creek unemployment rate is quite high compared to the County's rate of 4.9 percent (California Employment Development Department 2002, as cited in Jones & Stokes 2004). *Table 5.2* identifies the number of currently unemployed workers that could fill available jobs within the Dyer Mountain Resort project. It shows approximately 1,032 unemployed workers within a 40-minute commute range of the proposed Dyer Mountain Resort.

Table 5.2
Unemployment in Susanville, Chester/Lake Almanor, and Westwood/Clear Creek Areas

Community	Male	Female	Total
Susanville & vicinity[1]	404	275	**679**
Lake Almanor/Chester & vicinity[2]	105	73	**178**
Westwood & vicinity[3]	126	49	**175**
TOTAL	635	397	**1,032**

[1]includes Susanville vicinity, Richmond/Gold Run, Johnstonville, Standish-Litchfield, and Janesville
[2]includes Chester, Almanor, Almanor West, Prattville, Canyondam, and Peninsula Village
[3]includes Westwood/Clear Creek area, and Eagle Lake vicinity
Source: Census 2000 Summary File 1 (SF1)

Housing

Of the 12,000 housing units in Lassen County, there are currently 2,252 housing units in the Westwood/Clear Creek area. Approximately 75 percent of the units are single-family homes, which is slightly more than the overall County, where 68 percent of existing housing units are single-family homes. Mobile homes are the next largest category of housing, comprising 18 percent of Westwood/Clear Creek units as compared with nearly 20 percent countywide. A single housing unit is currently located on the project site – it is an old cabin used during the summer season by a rancher.

About a quarter of the housing units in the area were built in 1939 or earlier, and a nearly equal amount were built between 1980 and 1990. Sixteen percent (16 percent) of the units were built since 1989. A 2001 housing conditions survey of Westwood showed that approximately 67 percent of residential properties exhibited physical deterioration ranging from deferred maintenance to dilapidation; one-third of all homes (33 percent) required substantial repairs or replacement (Parsons and Connerly Associates 2001).

The following are other Census 2000 facts about housing in the Westwood/Clear Creek community:

- In 1999, 81 building permits were obtained for the unincorporated areas of Lassen County. All of these permits were for single-family residential structures;
- The median value of a home in the Westwood/Clear Creek area was $89,200;
- The median monthly homeowner costs (with a mortgage) are $813;
- The median contract rent is $405; and
- The vacancy rate for owner-occupied homes and rental units is 6.1 percent and 17.8 percent, respectively. However, those numbers are reduced to 5.4 percent and 6.9 percent, respectively, after removing the seasonal (vacation) homes from the mix (Note: 72.1 percent of all vacant homes are for seasonal, recreational, or occasional use).

Table 5.3 provides Census 2000 data showing the number of vacant units (non-recreational, non-seasonal, non-farmworker) in and around the Westwood/Clear Creek, Susanville, and Lake Almanor/Chester areas. According to the Census 2000 Factfinder Definitions, these vacant units are identified as being either for sale, for rent, or "other" vacant units being maintained by a caretaker, janitor, or held vacant for personal reasons. Approximately 1,128 dwelling units are available to provide Dyer Mountain employee housing within a 40-minute commute shed.

Table 5.3
Vacant Units in Susanville, Chester/Lake Almanor, and Westwood/Clear Creek Areas

Community	Vacant Rental	Vacant For-Sale	Vacant Other	Vacant Total[1]
Susanville & Vicinity[2]	228	150	201	579
Lake Almanor/Chester & Vicinity[3]	76	80	100	256
Westwood & Vicinity[4]	72	57	164	293
TOTAL	376	287	465	1,128

[1]*excludes: seasonal, recreation, and occasional use homes; migrant worker housing*
[2]*includes Susanville vicinity, Richmond/Gold Run, Johnstonville, Standish-Litchfield, and Janesville*
[3]*includes Chester, Almanor, Almanor West, Prattville, Canyondam, and Peninsula Village*
[4]*includes Westwood/Clear Creek area, and Eagle Lake vicinity*
Source: Census 2000 Summary File 1

Vacant sites and potential units that could provide additional new housing construction in Westwood and Clear Creek for employee households are shown in *Table 5.4* and *Table 5.5* below. The Westwood Community Services District (CSD) presently serves 914 units and has an estimated capacity with current water and sewer facilities to serve an additional 522 units; the Lassen County Housing Element projects approximately 218 units to be built within the 2003-2008 planning period. The Clear Creek CSD currently serves 154 units and has capacity to serve an additional 46 units with its present facilities (Lassen County 2003). While this community's vacant land provides the potential to build up to 68 units (known to have a reliable water supply), the Housing Element projects that approximately 80 units will be built during this same planning period, if the Clear Creek CSD facility capacity is increased to meet the demand.

Table 5.4
Vacant Sites and Potential Units in Westwood

Zoning	Vacant Acres/Parcels		Typical Density (dwelling units per acre)	Potential Units (with available water & sewer)	New Units[1]
R-3	8	12	8.25	66	40
R-2	13	46	6	78	24
R-1	9	54	6	54	54
PUD	81	4	4	324	100

1 - Refers to number of new units reasonably expected within the planning period.
Source: Lassen County 2003-2008 Housing Element

Table 5.5
Vacant Sites and Potential Units in Clear Creek

Zoning	Vacant Acres/Parcels		Typical Density (dwelling units per acre)	Potential Units (with available water & sewer)	New Units[1]
R-3	—	—	—	—	—
R-2	—	—	—	—	—
R-1	17	13	4	68	40
PUD	270	3	4	Unknown[2]	40

1 - Refers to number of new units reasonably expected within the planning period.
2 - Water supply will need to be established with each development proposal.
Source: Lassen County 2003-2008 Housing Element

5.2 REGULATORY FRAMEWORK

No federal or state regulations related to population or housing apply to the proposed project.

Lassen County

The *Lassen County General Plan* Land Use Element indicates that, as Lassen County's population continues to grow, new housing development and employment opportunities "are necessary for the economic well-being of the County and its people." The General Plan, including the 2003-2008 Housing Element, contains goals, policies, and programs that address population growth, employment, and residential development. Although voter approval of the Dyer Mountain Initiative removed the Dyer Mountain Resort project site from the *Westwood/Clear Creek Area Plan* in November 2000, the relevant goals and policies from that plan are listed below to provide a basis for evaluating the effect of the project on the remaining area covered by the plan. Relevant goals, policies and programs are as follows:

Lassen County General Plan 2000

GOAL L-7: Consistent with the Housing Element, maintain an adequate amount of housing and diverse residential opportunities and land uses which are located in consideration of the availability of support services and infrastructure, avoidance of conflicting land uses, and the minimization of development impacts.

LU-17 POLICY: The County shall, after confirmation of the area's appropriateness for such use and consideration of other resource values, designate and zone appropriate areas for residential development.

LU-18 POLICY: Pursuant to the Housing Element, the County will help provide adequate sites to be designated in the General Plan and zoned for residential land use to meet the objectives of the Housing Element, and will help facilitate the expansion of needed water, sewer and fire protection services.

LU-20 POLICY: The County shall refer to the Housing Element for applicable policies pertaining to the development of housing.

2003-2008 Housing Element

GOAL: To provide an adequate supply of sound, affordable housing units in a safe and satisfying environment for the present and future residents of the County, regardless of race, age, religion, sex, marital status, ethnic background, or personal disabilities, and support economic development projects which will provide employment opportunities so that people will be able to afford adequate housing.

POLICY: The following policies will guide the objectives and programs necessary to fulfill the County's housing goal. The County will, within its capabilities:

- Ensure that there is an adequate number of housing units to meet the needs of its citizens.
- Ensure that housing is affordable to all economic segments of the community.
- Facilitate the provision of adequate sites and facilities to support future housing needs.
- Ensure that there are housing units available to serve persons with special housing needs.
- Work diligently towards the rehabilitation of the existing housing stock and strive to replace housing units in need of repair.
- Encourage regular maintenance of housing as a means of conserving existing housing stock.
- Develop strategies and actions to increase home ownership opportunities through economic development, including preservation and creation of employment opportunities.
- Support resource-based employment and lumber production by supporting productive timber management and harvest practices.
- Maintain a healthy jobs-to-housing balance.
- Facilitate the development of infrastructure (sewer, water and access roads) in appropriate locations to better serve housing and job creation opportunities.

- Assist citizens in need of short-term emergency housing.
- Discourage discrimination in housing.
- Provide ample opportunities for citizen participation as part of the housing element preparation and revision process.
- Maintain consistency among all General Plan policies.

Westwood/Clear Creek Area Plan

GOAL L-6: An adequate amount of housing and diversified residential opportunities, including affordable housing, which are located with consideration to the availability of support services and infrastructure, avoidance of conflicting land uses, and the minimization of development impacts.

GOAL L-7: Accommodate modest population growth by filling in existing vacant lots and adding to existing communities.

GOAL L-8: Locate multi-family dwellings and mobile home parks at appropriate sites as needed.

POLICY LU-16: The Area Plan land use maps provide specific residential land use designations for areas in which residential uses of various types and densities should be developed.

Implementation Measure LU-K: The County will refer to the Lassen County 2003-2008 Housing Element for applicable policies pertaining to the development in the planning area.

Implementation Measure LU-L: The County will continue to utilize building and development codes to regulate new residential development projects.

GOAL L-9: Increased community wealth, job opportunities and the provision of needed commercial services through economic growth and diversification by supporting the expansion of existing commercial operations and by encouraging new commercial ventures in appropriate locations.

GOAL L-11: Improvement, expansion and diversification of the planning area's industrial base and generation of related employment opportunities.

GOAL L-14: Multiple economic and social benefits for nearby communities, the county and the region related to development of the proposed Dyer Mountain Resort project adjacent to the Westwood/Clear Creek Planning Area while realizing minimal significant adverse impacts to lands and resources within the area plan planning area.

POLICY LU-28: The County will consider and support appropriate ways by which the economic and social benefits that may be stimulated by development and operation of the Dyer Mountain Resort project can be optimized in communities within the Westwood/Clear Creek Planning Area.

5.3 IMPACTS

Significance Criteria

In general, impacts on a population occur when the distribution or concentration of growth would be altered by the implementation or construction of a project. Adverse impacts on housing occur when a project displaces housing or people and requires the construction of replacement housing for people who have been displaced. If businesses are displaced, business activity may also be affected.

Potentially significant impacts associated with the Development Concept Plan and Phase 1 Development Plan have been evaluated using the following significance criteria. Would the project:

- Concentrate population growth away from areas with available infrastructure and urban services;
- Displace a substantial number of people, necessitating the construction of replacement housing elsewhere;
- Displace a substantial amount of existing housing, necessitating the construction of replacement housing elsewhere;
- Substantially increase the demand for affordable housing; and
- Substantially worsen the jobs/housing balance in the Westwood/Clear Creek area.

The CEQA Guidelines state that the economic and social effects of a project shall not be treated as a significant effect on the environment. CEQA indicates that social and economic effects should be considered in an EIR only to the extent that they would result in secondary or indirect adverse impacts on the physical environment.

Project Impacts

As established in CHAPTER 2 PROJECT DESCRIPTION, this EIR provides two (2) levels of analysis of the proposed project —impacts from the proposed land subdivision and buildout of the Development Concept Plan are assessed at a programmatic level while impacts from construction of the proposed Phase 1 Development Plan are evaluated at a project-specific level.

Impacts Determined to be Less than Significant

Substantial Population Growth. The project applicant has prepared a projection of the numbers and types of residential units that would be built as the Dyer Mountain Resort reaches buildout. The projections are documented in the Impact and Area Tabulations document, which is available for review at the Lassen County Department of Community Development District (LCDCD). This projection includes an estimation of the maximum residential population of the resort, based on typical occupancy patterns at other ski resorts. According to this projection, the maximum population capacity of the resort (i.e., at 100 percent occupancy of each residential unit) would be 17,382.

Generally, 100 percent occupancy conditions are not expected to occur. Occupancy data from similar four-seasons resorts—The Canyons in Park City, Utah; Northstar at Lake Tahoe, California; and Mammoth Lakes, California - indicate that during peak season occupancy of seasonally-occupied units (rental and owner-occupied) averages between 68 to85 percent, annual occupancy rates range from 47 to 68 percent, and midweek/off-season periods experience occupancy rates of 25 to 35 percent. This analysis assumes the most conservative occupancy estimates of 85 percent in peak season, 68 percent annually, and 35 percent midweek and off-season. Therefore, the proposed project is expected to bring approximately 14,775 residents on average during peak season; an average of 11,820 would occupy the resort year-round; and 6,084 would reside there midweek.

The proposed project would require 825 year-round employees and 1,051 seasonal employees at full buildout (by 2035). This analysis assumes these employees would reside in Westwood where the community average household size is 2.41 persons. With a conservative assumption of one (1) Dyer Mountain Resort job per household, the Westwood population could increase by 4,521 additional persons. Based on the Lassen County average of 1.17 workers per household, the resultant population increase in Westwood would be 3,864 persons. It is possible that the actual population increase could be less than this range (from 3,864 to 4,521 persons), because seasonal employees may either commute from nearby recreation communities, be of single marital status, or share housing with other seasonal employees. In addition, a portion of the year-round employees and their families may already reside in the area or commute from other communities. Due to the lack of actual projected employee distribution figures, however, this impact analysis assumes the 4,521 level of population increase in the Westwood/Clear Creek area as a conservative estimate.

With a combined population of 19,296 during peak season (14,775 resort residents plus 4,521 workers and family members), this represents a maximum 680 percent increase in population in and around the Westwood/Clear Creek area, and up to 116 percent increase countywide, depending on the number of resort occupants and worker households that relocate to the area from outside Lassen County.

Population growth alone is not considered an environmental impact unless the growth directly or indirectly causes a separate, physical, environmental impact. Examples of impacts associated with growth include effects on air quality, noise, traffic, utilities, and public services, displacement of individuals, and new housing construction. Impacts related to air quality, noise, traffic, utilities, and public services have all been addressed in other chapters of this EIR. Impacts on the community's jobs/housing balance and on affordable housing are addressed in the housing impact discussions below.

Although the proposed project would allow the growth mentioned above, this increase has been provided for through passage of the Dyer Mountain Initiative and amendment of the *Lassen County General Plan 2000*. It is expected that this planned growth would not create a significant impact on the environment or the human population currently living in the area, except for the potential effects addressed separately below and in other chapters of this EIR. This impact is considered less than significant.

Impact to Regional Employment. This section provides a discussion of the project's effect on area employment, as allowed for under CEQA Guidelines Section 15131. The project's effect on local jobs is not treated as a potentially significant impact because it is not anticipated that the changes in employment will result in any adverse changes to the physical environment (Public

Resources Code Section 21082.2) or result in a substantial adverse effect on the human population (Public Resources Code Section 21083[c]).

The majority of jobs that would be created with the Dyer Mountain Resort project can be classified as commercial non-basic employment. Non-basic jobs support the local population, providing goods and services to area customers, with no national or regional component. This is in contrast to the area's timber harvesting-related jobs, which is considered basic employment exporting product for sale outside of the area to national or regional markets.

The Dyer Mountain Resort project is projected to generate approximately 825 permanent jobs and 1,051 seasonal jobs. It is anticipated that 582 jobs would be created by the development included in the Phase 1 Development Plan; this includes 256 year-round jobs and 326 seasonal jobs (Dyer Mountain Associates 2004). The expected distribution among various job categories is as follows:

	Development Concept Plan	Phase One
Commercial/Retail	461 workers	102 workers
Hotel	255 workers	77 workers
Ski Operations	575 workers	302 workers
Vacation Rental support	586 workers	101 workers

These workers would support approximately 333,800 square feet of commercial and resort support uses included in the Development Concept Plan, of which 52,500 square feet are proposed with the Phase 1 Development Plan. In addition, 131 attached residential units, 274 detached residential units, and 30 lodging units are proposed in the Phase 1 Development Plan.

New employment generated by the proposed project, including Phase 1 Development, is considered a beneficial impact to the community. Other environmental impacts associated with this new employment are discussed elsewhere in this chapter and other chapters of the EIR.

Displacement of Existing Housing in the Project Area. Other than the cabin, which is used only during summer, there is no existing housing on the project site. No existing housing units would be displaced by the proposed development. The influx of new residents to the community may stimulate economic revitalization that could eventually result in the replacement of some of Westwood's housing units categorized as "dilapidated" in the 2001 County study (27 percent of total units) with new dwellings. This impact is considered less than significant.

Increase in Demand for Housing, Particularly Affordable Housing, During Phase 1 Development. It is expected that there will be sufficient housing to accommodate Phase 1 Development Plan's estimated 582 employees. With high unemployment in the Westwood/Clear Creek area, up to 30 percent of new jobs created with Phase 1 Development could be filled by the local labor force (i.e., unemployed workers who already reside in the area—see *Table 5.2*). Another 30 percent could be filled by unemployed workers living in the Lake Almanor/Chester area. The remaining employees could be housed in existing vacant units in the Westwood/Clear Creek area (up to 293 units) or commute from available housing located within a 40-minute radius of the project. The current housing vacancy rate is high enough and rental costs low enough to accommodate the addition of employee households to the Westwood/Clear Creek, Lake Almanor/Chester, and Susanville areas.

Potentially Significant Impacts — Development Concept Plan

Impact 5.1 Potential Effect on the Jobs/Housing Balance in the Area

Significance Before Mitigation:	Potentially Significant
Proposed Mitigation:	Mitigation Measure 5.1a
Significance After Proposed Mitigation:	Potentially Significant
Recommended Mitigation:	Mitigation Measure 5.1b
Significance After Recommended Mitigation:	Less than Significant

While the County has no explicit policies quantifying the desired jobs-to-housing ratio, the 2003-2008 Housing Element does address the jobs-housing balance. The element provides a policy to "facilitate economic development through new business development and job creation" and proposes the use of state and local funding to support economic development activities and job growth.

To minimize adverse environmental impacts associated with commutes, many California communities have made a policy decision to provide an adequate supply of housing within a 15 to 20 minute commute shed for resident workers. A maximum 20-minute commute shed for seasonal workers in ski resorts is typically maintained by a combination of local affordable housing stock and onsite facilities (sources: Northstar, Mammoth Lakes, and Bear Mountain). Affordable housing, both onsite and offsite, must be timed to occur as new job opportunities become available so that there is not an excess of employee housing in a community with few jobs or vice versa.

For the purposes of this jobs-housing balance analysis, a 20-minute commute shed has been established for seasonal employees, and a 40-minute commute shed for year-round employees. *Figure 5.1* illustrates these 20-minute and 40-minute commute sheds for the Dyer Mountain Resort.

Employee Housing Availability. As shown in *Table 5.3*, approximately 1,128 vacant dwelling units are available within a 40-minute commute distance (i.e., Westwood/Clear Creek, Lake Almanor/Chester, and Susanville areas as shown in *Figure 5-1*). These units could potentially accommodate all of the 825 year-round employees and, of those units located within the 20-minute commute shed, a portion of the 1,051 seasonal workers.

If no other affordable housing were to be built, the Westwood/Clear Creek and Lake Almanor/Chester areas could absorb approximately 67 percent of the year-round employee households (assuming one (1) Dyer Mountain Resort employee per household) with 549 available units. Housing the remaining 276 year-round employee households and 1,051 seasonal employees would require 1) workers to commute from Susanville and other areas outside the 20-minute commute shed; 2) new housing construction onsite and in the Westwood/Clear Creek area; or 3) some combination of the two.

Some seasonal employee housing would be provided onsite in the form of efficiency apartments or dormitories for the seasonal employees of the resort at buildout. This measure is a standard practice for ski resorts that allows such employers to attract the reasonably inexpensive labor force needed during the ski season. In addition, multifamily housing products onsite may include manager units and accessory apartments, while second units may be constructed on properties with single-family homes. Seasonal housing could potentially accommodate all of the housing needs for the resort (up to 1,051 employees, which corresponds to a total population of 2,532), but the actual amount constructed will likely be determined by the local supply of labor and housing. By supplementing the supply of offsite housing with seasonal employee housing onsite, the project would substantially meet the demand for local affordable housing.

The project as proposed, assumes that the project would not generate a substantial demand for housing by year-round employees and their families, because the resort would employ workers already residing in the vicinity of Westwood/Clear Creek, Lake Almanor/Chester, and Susanville. While *Table 5-2* shows a total of approximately 1,032 unemployed workers in these areas, the project would employ up to 1,876 workers. Therefore, it is expected that up to 45 percent of the Dyer Mountain Resourt workforce could move into these communities from more distant places. As shown in *Table 5.4* and *Table 5.5*, there is ample vacant land to construct up to 522 new units in Westwood and 108 in Clear Creek, although "it is more realistic to assume 218 units and 80 units, respectively, during the planning period of the Area Plan" (Lassen County 1999b). In either case, these communities could provide sufficient vacant land to meet the demand for employee housing.

Of the 87 percent of Westwood/Clear Creek workers that drive or carpool to work, a majority are commuting an average of 23 minutes to work (Census 2000) because they find housing affordable in the area but most jobs are located elsewhere. Approximately 20 percent of the community's workers are employed in service occupations. Therefore, it is anticipated that among the workers that commute, up to 20 percent could potentially reduce their commute and work closer to home as Dyer Mountain Resort service employees.

There are no data available to estimate the number of Lake Almanor/Chester area and Susanville area residents now working in their own communities who would choose to increase their commute to work at the Dyer Mountain Resort. Jobs filled by unemployed or other-employed workers in more distant communities could also adversely impact the jobs-housing balance. The housing supply and affordability factor will largely determine what choices future employees will make and whether there is an adverse shift in the jobs-housing balance. The shift in jobs-to-housing balance is considered a potentially significant impact.

Mitigation Measures 5.1a and *5.1b*, addressing housing affordability as described below, are recommended to ensure the jobs-housing balance is not adversely affected. To the extent that employees can afford to live in close proximity to their work, other adverse environmental effects can also be mitigated, including traffic and air quality impacts.

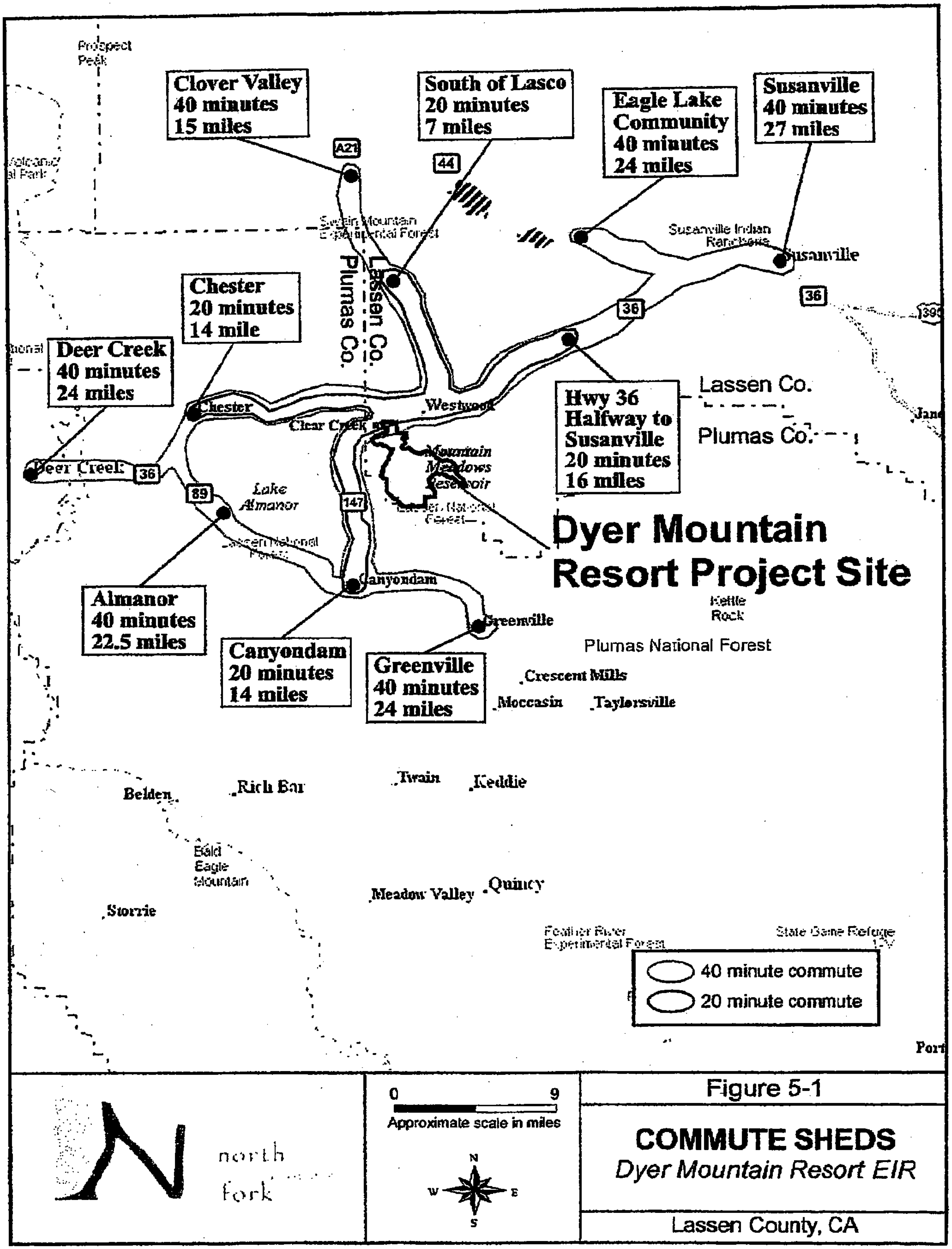


Figure 5-1

COMMUTE SHEDS

Dyer Mountain Resort EIR

Impact 5.2 Increase in Demand for Affordable Housing in the Project Area

Significance Before Mitigation:	Potentially Significant
Proposed Mitigation:	Mitigation Measure 5.2a
Significance After Proposed Mitigation:	Potentially Significant
Recommended Mitigation:	Mitigation Measure 5.2b and 5.2c
Significance After Recommended Mitigation:	Less than Significant

Buildout of the Dyer Mountain Resort project would result in construction of approximately 4,104 dwelling units onsite, with a mix of multifamily and single-family residences. These single-family, multi-family, and town home units are intended to serve visitors and residents of the Dyer Mountain Resort community. Ownership options will include whole-ownership, timeshare, clubs, and other fractional-ownership techniques.

Housing Affordability. Housing affordability for Dyer Mountain Resort employees is summarized in *Table 5.6* below, showing the maximum affordable rent and mortgage payment among various income categories, and the number of households projected for each category. Households earning between 30 and 50 percent of the County median income could afford rent of $334 to $556 per month. Those earning between 50 and 80 percent of the County median income could afford a maximum monthly payment of $556 to $889 (which will support a mortgage of up to $161,900). Households that earn more than 80 percent of median could support monthly payments of $1,334 and a purchase price of around $243,000.

Table 5.6
Dyer Mountain Resort
Employee Households by Affordability Category

Income Category	Annual Household Income[1]	Maximum affordable housing cost (30% of gross income)[2]		Number of Employee Households[4]		
		Rent	Own[3]	Seasonal	Year-round	Total
Extremely Low-30%	Less than $13,350	$334	—	0	0	0
Very Low-50%	$22,250	$556	—	241	190	431
Low-80%	$35,550	$889	$161,900	503	394	897
Moderate-120%	$53,350	$1334	$243,000	307	241	548
TOTAL				1,051	825	1,876
Total less than 80% of median County income				744	584	1,328

1 *For purposes of determining affordability, this analysis uses the 2004 State Income Guidelines for a three-person household, as provided by the State Department of Housing and Community Development (HCD) (www.hcd.ca.gov). Median household income for a three-person household in Lassen County is $44,450. Extremely low represents 30% or less of County median income; very low represents 50% or less of County median income; low represents 80% or less of County median income; and moderate represents 120% or more of County median income.*

2 *HCD defines housing as affordable if it does not cost greater than 30% of gross monthly income.*

3 *Mortgage loan assumes a 30-year term at 5.5% and includes real estate taxes, mortgage and homeowners insurance.*

4 *To determine number of employee households by income category, proportionate generation rates were taken from Figure 3 of "The Canyons" Employee Housing Needs Assessment and Proposed Mitigation Plan. March 1999.*

The number of households in each income category depends on an estimate of household income. All employees are projected to earn more than $13,350 per year (the State minimum wage of $6.75 per hour yields an annual full-time salary of $14,000). *Table 5.6* shows relatively high earnings because of the effect of multiple job holding—resort employees typically hold an average of 1.24 jobs; in addition, the number of workers per household is estimated at 2.4 because staff level employees adapt to a low-wage or high-cost environment by forming larger households (Rosenthal 1999).

The affordable housing demand would be as much as 744 affordable units to accommodate seasonal employees, and 584 affordable units for year-round employee households—that is, 1,328 affordable units would be needed for employee households earning 80 percent or less of Lassen County median income. Some seasonal employees would reside in dormitory-style housing on the project site, while others are expected to commute from nearby communities. As discussed above a maximum 20-minute commute shed is considered the ski resort industry standard. Year-round jobs would be filled by a combination of local residents, commuters from the surrounding communities of Lake Almanor, Chester, and Susanville, and households that relocate to these areas from other communities. Consequently, the demand for affordable housing is expected to be considerably less than 1,328 units.

Currently, year-round housing is relatively affordable in the Westwood/Clear Creek and Lake Almanor/Chester areas. However, once the Dyer Mountain Resort project is approved, it is expected that property values could increase in these areas, with corresponding increases in housing costs. A determination of adequate employee housing must take into account the affordability factor. A lack of affordable housing could force the majority of workers that are not housed onsite to commute from longer distances. For employees that already reside in the Westwood/Clear Creek and Lake Almanor/Chester areas and employee households that desire to move into the community as a result of the new jobs, the potential impact of the project on housing affordability is considered potentially significant.

An Employee Housing Needs Assessment would be required to quantify employee household distribution by geographic location and, by extension, determine the local affordable housing need through project buildout. If housing costs rise substantially, mitigation could include employer-subsidized "below-market" units for households earning 80 percent or less of County median income. New development should offset a proportionate share of total demand in the context of any shortage of affordable housing, particularly for those earning 50 percent or less of County median income. Other mitigation could include "in-lieu" fees to equal the equity required in order to produce a housing unit. These fees would be combined with other state, federal, and local funding sources (e.g., block grants, redevelopment funds, revolving loan funds, etc.) to produce the affordable units. An Employee Housing Needs Assessment update with each phase of development would help to ensure that the actual need of local affordable housing is identified.

Potentially Significant Impacts — Phase 1 Development Plan

Implementation of the Phase 1 Development Plan would contribute to the potential effects on the jobs/housing balance in the area (Impact 5.1) and the demand for affordable housing in the project area (Impact 5.2) but would not result in any additional impacts nor require mitigation measures beyond those discussed above under each impact.

5.4 MITIGATION MEASURES

The County will need to implement some of the General Plan's 2003-2008 Housing Element programs after buildout of the Phase 1 Development Plan in order to facilitate construction of affordable housing for project employees. These programs include:

- Revise zoning ordinance to increase density by right in the R-3, C-T, and mixed use zone districts.
- Use state, federal, and local funding sources to provide assistance with the development of new affordable units and rehabilitation of existing affordable units in need of repair.
- Adopt a density bonus ordinance to provide incentives for increased production of affordable units.
- Adopt a second unit ordinance to facilitate production of affordable second units on single-family home sites.
- Annually monitor vacancy rates and housing costs (including rental and for-sale units).

With implementation of these programs, the following mitigation measures are proposed or recommended to ensure an adequate supply of affordable housing.

<u>Potential Effect on the Jobs/Housing Balance in the Area</u>

Proposed Mitigation

Mitigation Measure 5.1a: The project applicant/developer(s) shall provide an adequate supply of onsite affordable housing for seasonal employees if needed by constructing dormitory or other housing within the resort area that provides affordable units for seasonal employees to offset demand not met within the 20-minute commute shed.

Recommended Mitigation

Mitigation Measure 5.1b: The project applicant/developer(s) shall prepare an Employee Housing Needs Assessment and Proposed Mitigation Plan with periodic updates for each phase of development. The employee Housing Needs Assessment (EHNA)and Proposed Mitigation Plan shall identify the amount and type of housing that will be needed and the timing of construction to ensure that the units are available for employees at each phase of project construction. The EHNA shall be submitted to Lassen County as part of the Project Compliance Program for each development phase.

Increase in Demand for Affordable Housing in the Project Area

Proposed Mitigation

Mitigation Measure 5.2a: The project applicant/developer(s) shall implement *Mitigation Measure 5.1a*, which requires provision of an adequate supply of onsite affordable housing for seasonal employees to offset demand not met within the local community.

Recommended Mitigation

Mitigation Measure 5.2b: The project applicant/developer(s) shall implement *Mitigation Measure 5.1b*, which requires preparation and implementation of an Employee Housing Needs Assessment and Proposed Mitigation Plan. Updates to the assessment shall be required with each phase of project construction.

Mitigation Measure 5.2c: Each new phase of the Dyer Mountain Resort development shall provide its fair share of affordable housing, as needed, through construction and/or payment of in-lieu fees. The Project Compliance Report prepared by the project applicant/developer(s) for each development phase shall demonstrate that an adequate supply of affordable housing is or will be available with each development phase. This would be accomplished with an update of the Employee Housing Needs Assessment, as determined by Lassen County.

Addendum

Medical/Hospital Jobs Housing Nexus Analysis

ADDENDUM

This document is an addendum to the Jobs Housing Nexus Analysis Commercial Linkage Fee Program report, prepared by Keyser Marston Associates, Inc, for the City of Walnut Creek. The full report presents a summary of the relationships between office, retail and hotel development and housing demand in Walnut Creek. After completing the full report, the City requested that KMA conduct an analysis of the affordable housing demand associated with medical/hospital buildings. This addendum presents a summary of medical/hospital development and housing demand in the City.

This document should be read in conjunction with the full report. The major underlying assumptions articulated in report apply to this analysis. In particular, Section I of the full report presents a summary of the linkage or nexus concept and some of the key issues surrounding nexus and Section II provides a "macro economic" overview of the relationships between job growth and housing in the City.

This addendum was prepared a year later than the analysis presented in the full report. As such, the addendum was prepared with updated data sources, including the November 2003 National Industry-Specific Occupational Employment Estimates, which cross references occupations by industry, and California Employment Development Department wage data for the third quarter of 2003.

Addendum Organization

The addendum is divided into two main sections, each of which corresponds with a comparable section of the full report.

- Micro-Economic Jobs Housing Analysis – Building on Section III of the full report, this section summarizes the analysis of jobs and housing relationships associated with hospitals. It concludes with a determination of the number of households at each income level associated with new hospital space.

- Total Housing Linkage Costs – Building on Section IV of the full report, this section applies the affordability gaps to the conclusions of the micro-economic analysis to estimate the total linkage costs for new hospital space.

The appendix tables provide additional support information for the hospital space analysis.

Key Inputs and Definitions

Medical/Hospital Uses

The medical/hospital category includes the following building types: general medical and surgical hospitals, psychiatric and substance abuse hospitals, specialty hospitals, nursing care facilities, and outpatient care centers. Medical office buildings are usually not included in this category; they are part of the "office" category. Addendum Appendix 3 shows the specific industries selected for this analysis. This category is intended to capture all the medical related buildings, hospital related or non-hospital related, profit or non-profit, and in-patient or out-patient, that are developed in Walnut Creek

Employment Density

Employment density, or the number of square feet per employee in a workplace building, is a key input into a jobs-housing nexus analysis. KMA reviewed several sources of employment density information, including environmental impact reports (EIRs) for proposed hospitals and medical centers, published sources regarding average employment densities, and other jobs housing nexus studies. A brief overview of key findings follows:

- EIR for the John Muir Medical Center expansion in Walnut Creek, 1996. Existing medical space translated to 239 square feet per employee. The EIR also used this density for future space.

- EIR for a Palo Alto Medical Foundation proposal in San Carlos, August 2004. The proposed facility would include an ambulatory care clinic, a medical office building, hospital support services, and a 110-bed hospital. The overall employment density was estimated at 353 square feet per employee.

- EIR for Kaiser Modesto Medical Center, March 2004. The employment density for this proposal ranged from 156 square feet per employee to 473 square feet per employee, depending on the phase of the development. With each additional phase, the density increased.

- The Institute for Transportation Engineers estimated employment density for hospitals at 350 square feet per employee and for clinics at 250 square feet per employee.

- The Growth Management Services Department of the Portland Metropolitan Council did an extensive survey of the density of various types of buildings in 1999. They estimated that "Health Services" buildings have an average density of 350 square feet per employee.

- KMA has used a density of 300 square feet per employee for jobs housing nexus analyses in San Francisco, on the Peninsula, and in San Diego.

The density ranges for medical/hospital uses appear to fall within the range of 150 to 450 square feet per employee at the extremes, but most frequently within the 250 to 350 square foot range. For jobs housing nexus purposes, the goal is to derive a suitable average that covers a broad range of components and can be applied to all of them. For the purposes of the Walnut Creek medical/hospital analysis, KMA determined than an employment density of 300 square feet per employee was appropriate. This density factor is an average, and individual uses can be expected to be fairly divergent from the average from time to time.

Micro-Economic Jobs Housing Analysis

This section presents a summary of the analysis of the linkage between new hospital and other medical space and the estimated number of worker households in the income categories that will, on average, be employed in the new buildings. As with the other building types, the analysis approach is to examine the employment associated with the development of a 100,000 square foot building. Through a series of linkages, the number of employees is converted to households and housing units by affordability level. The findings are expressed in terms of number of households related to building area. In the final step, we convert the number of households back to the per square foot level.

Analysis Steps

Tables A-1 through A-4 at the end of this addendum summarize the conclusions of the nexus analysis steps.

Step 1 – Estimate of Total New Employees

The first step in Table A-1 identifies the total number of direct employees who will work at or in the building type being analyzed. Employment density factors are used to make the conversions. As discussed above, the density factor used in this analysis for hospital space is 300 square feet per employee.

Based on 300 square feet per employee, the number of employees in the hypothetical 100,000 square foot hospital building is 333.

Step 2 – Adjustment for Changing Industries

This step adjusts for any declines, changes and shifts within the economy. The analysis adjusts the new employees estimate by 5% to recognize the possibility of future declines and adjustments. (See Section II of the full report for more information.) For demolition of existing structures, an ordinance provision will provide for an offset to any impacts of the proposed construction.

Step 3 – Adjustment from Employees to Employee Households

This step converts the number of employees that will work in the 100,000-hospital prototype to the number of employee households. As in the full report, the County average of 1.65 workers per worker household is used in this analysis. Including the adjustment for changing industries, the 333 employees are reduced to 192 households.

Step 4 – Occupational Distribution of Employees

Using the November 2003 National Industry-Specific Occupational Estimates, a cross-matrix of "industries" and occupations produced by the Bureau of Labor Statistics, we are able to estimate the occupational composition of hospital employees. The occupations that reflect the expected mix of activities in the new hospitals are presented in Addendum Appendix Table 1.

Hospitals employ workers primarily from three occupation categories: healthcare practitioners and technical occupations, healthcare support, and office and administrative support. Together, these occupations represent 76% of all hospital employees. Note that doctors often list their primary place of work as a medical office building even though they may practice at a hospital. Medical office space is included in the office space analysis.

The numbers in Step 4 of Table A-1 indicate both the percentage of total employee households and the number of employee households in the hypothetical 100,000 square foot buildings.

Step 5 – Estimates of Employee Households Meeting the Lower Income Definitions

In this step, occupation is translated to income based on recent Contra Costa County wage and salary information for the occupation associated with hospitals. We first provide a brief overview of the wages and salaries paid to hospital workers in Contra Costa County; analogous data for the other building types is found on page 15 of the full report. A detailed summary of hospital wages and salaries is provided in Addendum Appendix Table 2. The data source is the California Employment Development Department.

2003 Wages for Contra Costa County Hospital Workers

Building Type	**Occupation**	**Average Annual Income**
Hospital	Management	$94,800
	Community and Social Services	$41,200
	Healthcare Practitioners and Technical Occupations	$67,900
	Healthcare Support Occupations	$27,300
	Food Preparation and Serving Related	$20,500
	Buildings and Grounds Cleaning and Maintenance	$22,800
	Office and Administrative Support	$34,800

Step 6 – Estimate of Household Size Distribution

In this step, household size distribution is input into the model in order to estimate the income and households size combinations that meet the income definitions established by HUD and used by that State and the City (see Section II).

Step 7 – Estimate of Households that Meet HUD Size and Income Criteria

For this step, KMA built a matrix of household size and income to establish probability factors for the two criteria in combination. For each occupational group, a probability factor was calculated for each of HUD's income and household size levels. This step is performed for each occupational category and multiplied by the number of households.

Table A-1A shows the results of steps 5, 6, and 7 for households that meet HUD's household size and income criteria for Very Low Income, or 50% of Area Median Income. The methodology is repeated for each income tier and summarized in Table A-2. Of the 192 employee households associated with the 100,000 square foot hospital, 117 households, or 61%, fit into the lower income categories.

Number of Households by Income Level

Income Level	**Number of Households**
Under 50% Median Income	25.18
50% to 80% Median Income	53.24
80% to 120% Median Income	39.00
Total	**117.41**

Adjustment for Commute Relationship

Table A-3 indicates the results of the analysis before and after an adjustment for commute relationships. As discussed in Section II, residents of Walnut Creek hold only 15.1% of the jobs in Walnut Creek. The estimates of households for each income category in a prototypical 100,000 square foot building are adjusted downwards by the commute factor and presented below and in Table A-3.

Number of Households by Income Level After Commute Adjustment

Income Level	**Number of Households**
Under 50% Median Income	3.81
50% to 80% Median Income	8.05
80% to 120% Median Income	5.89
Total	**17.75**

Summary by Square Foot of Building Area

In this step, the conclusions are translated to the per square foot level and expressed as coefficients. These coefficients state the portion of a household, or housing unit, by affordability level with which each square foot of building area is associated. Table A-4 presents these results.

Total Housing Linkage Costs

This section takes the conclusions of the previous section on the number of households in the lower income categories and applies estimates of the total cost of assistance required to make housing affordable to establish the total nexus cost for each income level.

The estimates of the total cost of assistance to make housing affordable, called the "affordability gaps," are presented and described in Section IV of the report. They are as follows:

Affordability Gaps for two bedroom units/three person households
(AMI refers to Area Median Income)

Rental Units	
Core Area	
Very Low Income @ 50% AMI	$193,000
Low Income @ 80% AMI	$111,600
Outside Core Area	
Very Low Income @ 50% AMI	$125,000
Low Income @ 80% AMI	$ 42,700
Ownership Units	
Core Area Condominiums/Townhomes outside the Core	
Moderate Income @ 120 AMI	$184,500

Table A-5 summarizes the analysis. The number of households associated with each building type by income category, indicated on the left side of the table, are drawn from Table A-3, still assuming 100,000 square foot buildings. The affordability gaps are shown above. The "Nexus cost per square foot" shows the results of the calculations: number of units time affordability gaps, divided by 100,000 square feet to bring the conclusion back to the per square foot level. This analysis is performed with and without the commute adjustment.

The figures below summarize the total jobs housing linkage cost per square foot of building area, after the commute adjustment.

Total Linkage Costs, After Commute Adjustment

	Medical/Hospital
Under 50% Median Income	$4.76
50% to 80% Median Income	$3.44
80% to 120% Median Income	$10.88
Total	**$19.07**

These costs express the total linkage costs for new hospital space. These total linkage costs represent the ceiling for any requirements placed on new construction for affordable housing. The totals are not the recommended fee levels; they represent only the maximums established by the analysis, below which fees or other requirements may be set.

Section V of the full report provides materials to assist policy makers in identifying appropriate fee levels for Walnut Creek.

TABLE A-1
NET NEW HOUSEHOLDS AND OCCUPATION DISTRIBUTION BY BUILDING TYPE
JOBS HOUSING NEXUS ANALYSIS
CITY OF WALNUT CREEK, CA

Prototypical 100,000 Sq.Ft. Buildings

	HOSPITAL/MEDICAL
Step 1 - Estimate of Employees per 100,000 Sq.Ft.	
Employee Density Factor (sq.ft./emp.)	300
Number of Employees	333
Step 2 - Adjustment for Changing Industries	317
Replacement Factor (5%)	
Step 3 - Adjustment for Number of Households (1.65)	192
Step 4 - Occupation Distribution [1]	
Management Occupations	3.5%
Business and Financial Operations	1.4%
Computer and Mathematical	0.7%
Architecture and Engineering	0.1%
Life, Physical, and Social Science	0.6%
Community and Social Services	3.2%
Legal	0.0%
Education, Training, and Library	0.5%
Arts, Design, Entertainment, Sports, and Media	0.1%
Healthcare Practitioners and Technical	43.8%
Healthcare Support	19.2%
Protective Service	0.7%
Food Preparation and Serving Related	4.7%
Building and Grounds Cleaning and Maint.	4.4%
Personal Care and Service	1.1%
Sales and Related	0.2%
Office and Administrative Support	13.3%
Farming, Fishing, and Forestry	0.0%
Construction and Extraction	0.2%
Installation, Maintenance, and Repair	1.1%
Production	0.9%
Transportation and Material Moving	0.3%
Totals	**100.0%**
Management Occupations	6.7
Business and Financial Operations	2.7
Computer and Mathematical	1.3
Architecture and Engineering	0.1
Life, Physical, and Social Science	1.1
Community and Social Services	6.2
Legal	0.0
Education, Training, and Library	0.9
Arts, Design, Entertainment, Sports, and Media	0.3
Healthcare Practitioners and Technical	84.1
Healthcare Support	37.0
Protective Service	1.4
Food Preparation and Serving Related	9.0
Building and Grounds Cleaning and Maint.	8.5
Personal Care and Service	2.0
Sales and Related	0.4
Office and Administrative Support	25.5
Farming, Fishing, and Forestry	0.0
Construction and Extraction	0.4
Installation, Maintenance, and Repair	2.1
Production	1.8
Transportation and Material Moving	0.6
Totals	**192**

[1] See Addendum Appendix Table 1 for additional information from which the percentage distributions were derived.

Prepared by: Keyser Marston Associates, Inc.
Filename: 21101.005\WCrk-Main Model_2003; A-1 Households; 12/15/2004; dd

TABLE A-1A
ESTIMATE OF QUALIFYING HOUSEHOLDS BY INCOME LEVEL
JOBS HOUSING NEXUS ANALYSIS
CITY OF WALNUT CREEK, CA

Prototypical 100,000 Sq.Ft. Buildings
Analysis for Households Earning Less than 50% Median

	HOSPITAL/MEDICAL
Step 5, 6, & 7 - Households in Major Occupation Categories Earning Less than 50% Median	
Management	0.00
Business and Financial Operations	0.00
Computer and Mathematical	0.00
Architecture and Engineering	0.00
Life, Physical and Social Science	0.00
Community and Social Services	0.37
Legal	0.00
Education Training and Library	0.00
Arts, Design, Entertainment, Sports, and Media	0.00
Healthcare Practitioners and Technical	0.00
Healthcare Support	8.44
Protective Service	0.00
Food Preparation and Serving Related	6.68
Building Grounds and Maintenance	5.05
Personal Care and Service	0.00
Sales and Related	0.00
Office and Admin	2.67
Farm, Fishing, and Forestry	0.00
Construction and Extraction	0.00
Installation Maintenance and Repair	0.00
Production	0.00
Transportation and Material Moving	0.00
Total HH earning less than 50% Median - Major Occupations	23.20
HH earning less than 50% Median - "all other" occupations	1.98
Total Households Earning Less than 50% of Median	**25.2**

TABLE A-2
WORKER HOUSEHOLDS BY AFFORDABILITY LEVEL
JOBS HOUSING NEXUS ANALYSIS
CITY OF WALNUT CREEK, CA

Analysis for Households Before Commute Adjustment

Household Income Level		HOSPITAL/MEDICAL
Under 50% Median Income		25.18
50% to 80% Median Income		53.24
80% to 120% Median Income		39.00
	Total	**117.41**
Total New Worker Households		192
Under 50% Median Income		13.1%
50% to 80% Median Income		27.7%
80% to 120% Median Income		20.3%
	Total	**61%**

Notes:
[1] Per 100,000 sq. ft. of building area. Before commute adjustment.

TABLE A-3
TOTAL HOUSING NEXUS COST
JOBS HOUSING NEXUS ANALYSIS
CITY OF WALNUT CREEK, CA

PROTOTYPICAL 100,000 SQ. FT. BUILDING
BEFORE COMMUTE ADJUSTMENT

INCOME CATEGORY		Number of Households Hosp./Med
Under 50% of Median Income		25.18
50% to 80% of Median Income		53.24
80% to 120% of Median Income		39.00
	Total	**117.41**

AFTER 15.10% Commute Adjustment

INCOME CATEGORY		Number of Households Hosp./Med
Under 50% of Median Income		3.81
50% to 80% of Median Income		8.05
80% to 120% of Median Income		5.89
	Total	**17.75**

TABLE A-4
HOUSING DEMAND NEXUS FACTORS PER SQ.FT. OF BUILDING AREA
JOBS HOUSING NEXUS ANALYSIS
CITY OF WALNUT CREEK, CA

WITH COMMUTE ADJUSTMENT AT 15.10%

	HOSPITAL/MEDICAL
Under 50% Median Income	0.00003806
50% to 80% Median Income	0.00008048
80% to 120% Median Income	0.00005894
Total	**0.00017748**

[1]Calculated by dividing number of household in bottom left portion of Table A-3 by 100,000 to convert households per 100,000 sq. ft. building to households per 1 sq. ft. of building.

TABLE A-5
TOTAL HOUSING NEXUS COST
JOBS HOUSING NEXUS ANALYSIS
CITY OF WALNUT CREEK, CA

BEFORE COMMUTE ADJUSTMENT

INCOME CATEGORY		Number of Households[1] Hosp./Med	Affordability Gap[2]	Nexus Cost Per Sq. Ft. Hosp./Med
Under 50% of Median Income[3]		25.18	$125,000	$31.47
50% to 80% of Median Income[3]		53.24	$42,700	$22.73
80% to 120% of Median Income[4]		39.00	$184,500	$71.95
	Total	**117.41**		**$126.15**
Total New Worker Households		192		

AFTER 15.10% COMMUTE ADJUSTMENT

INCOME CATEGORY		Number of Households[1] Hosp./Med	Affordability Gap[2]	Nexus Cost Per Sq. Ft. Hosp./Med
Under 50% of Median Income[3]		3.81	$125,000	$4.76
50% to 80% of Median Income[3]		8.05	$42,700	$3.44
80% to 120% of Median Income[4]		5.89	$184,500	$10.88
	Total	**17.75**		**$19.07**

[1] Per 100,000 sq. ft. of building area
[2] Assume two-bedroom unit.
[3] Assumes households are housed in rental units
[4] Assumes households are housed in ownership units.

Prepared by: Keyser Marston Associates, Inc.
Filename: 21101.005\WCrk-Main Model_2003; A-5 Model Summary; 12/15/2004; dd

ADDENDUM APPENDIX 1
2003 NATIONAL MEDICAL WORKER DISTRIBUTION BY OCCUPATION
JOBS HOUSING LINKAGE ANALYSIS
CITY OF WALNUT CREEK, CA

Major Occupations (3% or more)	**2003 National Medical Industry Occupation Distribution**	
Management occupations	249,020	3.5%
Community and social services occupations	232,740	3.2%
Healthcare practitioners and technical occupations	3,135,800	43.8%
Healthcare support occupations	1,378,610	19.2%
Food preparation and serving related occupations	336,940	4.7%
Building and grounds cleaning and maintenance occupations	316,280	4.4%
Office and administrative support occupations	950,440	13.3%
All Other Medical Related Occupations	562,870	7.9%
INDUSTRY TOTAL	7,162,700	100.0%

Source: Bureau of Labor Statistics
Prepared by: Keyser Marston Associates, Inc.
Filename: 21101.005\WC-Medical_2003; Major Occupations Matrix; 12/15/2004; dd

ADDENDUM APPENDIX TABLE 2
AVERAGE ANNUAL COMPENSATION, 2003
MEDICAL WORKER OCCUPATIONS
JOBS HOUSING LINKAGE ANALYSIS
CITY OF WALNUT CREEK, CA

Occupation [3]	2003 Avg. Compensation [1]	% of Total Occupation Group [2]	% of Total Medical Workers
Management occupations			
Chief executives	$165,200	4.0%	0.1%
General and operations managers	$106,700	13.2%	0.5%
Administrative services managers	$74,300	6.5%	0.2%
Financial managers	$103,000	4.8%	0.2%
Medical and health services managers	$94,500	46.2%	1.6%
Social and community service managers	$65,600	4.3%	0.1%
All Other Management Occupations	$84,900	20.9%	0.7%
Weighted Mean Annual Wage	***$94,800***	**100.0%**	**3.5%**
Community and social services occupations			
Substance abuse and behavioral disorder counselors	$33,200	7.9%	0.3%
Mental health counselors	$32,300	12.4%	0.4%
Rehabilitation counselors	$31,100	4.8%	0.2%
Child, family, and school social workers	$32,900	4.9%	0.2%
Medical and public health social workers	$52,300	21.6%	0.7%
Mental health and substance abuse social workers	$46,500	15.2%	0.5%
Health educators	$57,200	5.3%	0.2%
Social and human service assistants	$33,700	14.7%	0.5%
All Other Community and Social Service Occupations (avg all categories)	$38,600	13.1%	0.4%
Weighted Mean Annual Wage	***$41,200***	**100.0%**	**3.2%**
Healthcare practitioners and technical occupations			
Registered nurses	$74,500	49.7%	21.8%
Licensed practical and licensed vocational nurses	$44,800	12.3%	5.4%
All Other Healthcare Practitioner and Technical Occupations (avg all categories)	$66,700	38.0%	16.6%
Weighted Mean Annual Wage	***$67,900***	**100.0%**	**43.8%**
Healthcare support occupations			
Home health aides	$25,200	3.8%	0.7%
Nursing aides, orderlies, and attendants	$26,200	72.1%	13.9%
Medical assistants	$31,700	5.5%	1.1%
All Other Healthcare Support Occupations (avg all categories)	$30,800	18.6%	3.6%
Weighted Mean Annual Wage	***$27,300***	**100.0%**	**19.2%**
Food preparation and serving related occupations			
First-line supervisors/managers of food preparation and serving workers	$28,500	6.8%	0.3%
Cooks, institution and cafeteria	$24,000	24.1%	1.1%
Food preparation workers	$19,600	29.8%	1.4%
Combined food preparation and serving workers, including fast food	$17,200	8.4%	0.4%
Food servers, nonrestaurant	$17,400	17.3%	0.8%
Dining room and cafeteria attendants and bartender helpers	$17,100	3.2%	0.2%
Dishwashers	$17,600	4.1%	0.2%
All Other Food Preparation and Serving Related Occupations (avg all categories)	$19,200	6.2%	0.3%
Weighted Mean Annual Wage	***$20,500***	**100.0%**	**4.7%**

Source: Bureau of Labor Statistics
Prepared by: Keyser Marston Associates, Inc.
Filename: 21101.005\WC-Medical_2003; Compensation; 12/15/2004; dd

Occupation [3]	2003 Avg. Compensation [1]	% of Total Occupation Group [2]	% of Total Medical Workers
Building and grounds cleaning and maintenance occupations			
First-line supervisors/managers of housekeeping and janitorial workers	$39,700	6.6%	0.3%
Janitors and cleaners, except maids and housekeeping cleaners	$24,800	26.0%	1.1%
Maids and housekeeping cleaners	$20,100	64.4%	2.8%
All Other Building and Grounds Occupations (avg all categories)	$26,700	2.9%	0.1%
Weighted Mean Annual Wage	***$22,800***	**100.0%**	**4.4%**
Office and administrative support occupations			
First-line supervisors/managers of office and administrative support workers	$51,000	6.1%	0.8%
Billing and posting clerks and machine operators	$33,000	5.4%	0.7%
Bookkeeping, accounting, and auditing clerks	$37,500	4.6%	0.6%
Interviewers, except eligibility and loan	$33,900	8.4%	1.1%
Receptionists and information clerks	$27,000	7.1%	0.9%
Executive secretaries and administrative assistants	$42,200	5.9%	0.8%
Medical secretaries	$34,800	10.5%	1.4%
Secretaries, except legal, medical, and executive	$36,500	9.1%	1.2%
Office clerks, general	$29,300	15.1%	2.0%
All Other Office and Admin. Support Occupations (avg all categories)	$34,200	27.9%	3.7%
Weighted Mean Annual Wage	***$34,800***	**100.0%**	**13.3%**
			92.1%

[1] The methodology utilized by the California Employment Development Department (EDD) assumes that hourly paid employees are employed full-time. Annual compensation is calculated by EDD by multiplying hourly wages by 40 hours per work week by 52 weeks.

[2] Occupation percentages are based on the 2002 National Industry - Specific Occupational Employment survey compiled by the Bureau of Labor Statistics. Wages are from 3rd Quarter 2003. OES 2003 - Oakland MSA (Contra Costa County).

3 Including Occupations representing 4% or more of the major occupation group

Source: Bureau of Labor Statistics
Prepared by: Keyser Marston Associates, Inc.
Filename: 21101.005\WC-Medical_2003; Compensation; 12/15/2004; dd

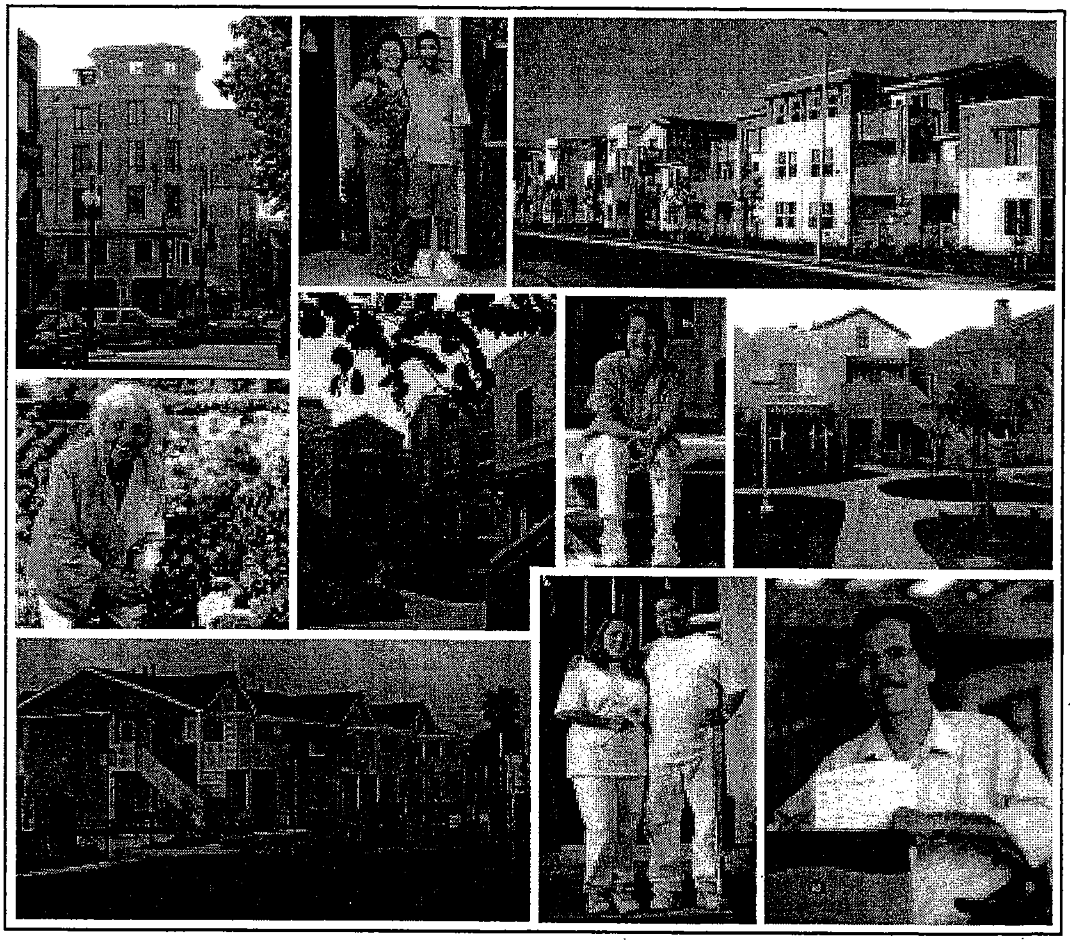
Hospital/Medical

The occupational breakdown of employment by land use for hospitals and medical buildings is based on the 2003 National Industry-Specific Occupational Employment and Wage Estimates for these NAICS codes:

621400 - Outpatient Care Centers
622100 - General Medical and Surgical Hospitals
622200 - Psychiatric and Substance Abuse Hospitals
622300 - Specialty Hospitals
623100 - Nursing Care Facilities

Source: Bureau of Labor Statistics
Prepared by: Keyser Marston Associates, Inc.
Filename: 21101.005\WCrk-Main Model_2003; App 3 SICs; 12/15/2004; dd

CALIFORNIA INCLUSIONARY HOUSING READER



INSTITUTE *for* LOCAL
SELF GOVERNMENT

INSTITUTE *for* LOCAL
SELF GOVERNMENT

The **Institute for Local Self Government** is the nonprofit research arm of the League of California Cities. The Institute was founded in 1955 as an educational organization to promote and strengthen the processes of local self-government. The Institute's mission is to serve as a source of independent research and information that supports and improves the development of public policy on behalf of California's communities and cities. The Institute's work is concentrated in three areas: *land use, fiscal issues* and *public confidence in local government.*

SUPPORT FOR THIS PUBLICATION PROVIDED BY:

MCDONOUGH, HOLLAND & ALLEN
Attorneys at Law

McDonough, Holland & Allen is a full-service law firm.
In addition to affordable housing law, the firm's public law section represents public entities throughout the state in matters of land use, eminent domain, conflicts, contracts, constitutional law, employment, environment, finance, redevelopment, litigation, water and other issues affecting local agencies in California.

www.mhalaw.com

The California Inclusionary Housing Reader

CONTRIBUTORS:

California Budget Project

■

Gary Binger

■

City of Carlsbad

■

Dr. Robert W. Burchell, Catherine C. Galley and Kent Conine
Courtesy of the National Housing Conference

■

PolicyLink

■

California Association of Realtors

■

Michael Pyatok, Pyatok Architects, Inc.

■

Bay Area Economics

■

County of Monterey

■

Alexander Abbe, Roxanne M. Diaz and Robert H. Pittman
Richards, Watson & Gershon

■

David F. Beatty and Seth Merewitz
McDonough, Holland & Allen

■

Institute for Local Self Government

■

Housing Authority of the City of Santa Barbara

Edited by: Bill Higgins

Research: JoAnne Speers and Charles Summerell

All final decisions about the content and formatting of this publication were made by the Institute for Local Self Government.

THE CALIFORNIA INCLUSIONARY HOUSING READER

© 2003 by the INSTITUTE *for* LOCAL SELF GOVERNMENT
1400 K Street, Suite 400
Sacramento, CA 95814
(916) 658-8208
www.ilsg.org

To order additional copies of this publication, please contact CityBooks at (916) 658-8257 or use the order form included at the end of this publication.

THIS PUBLICATION IS NO SUBSTITUTE FOR LEGAL ADVICE

This publication provides an overview of inclusionary housing issues and at times provides summaries of the law. Readers should note that attorneys can, and do, disagree about many of the issues addressed in this CALIFORNIA INCLUSIONARY HOUSING READER. Moreover, proposals to change the land use regulatory process are frequently introduced in the state Legislature and new court decisions can alter the practices a public agency should follow. Accordingly:

- **Public officials** should always consult with agency counsel when confronted with specific situations related to land use laws;
- **Agency counsel** using this publication as a resource should always read and update the authorities cited to ensure that their advice reflects a full examination of the current and relevant authorities; and
- **Members of the public and project proponents** reading this publication should consult with an attorney knowledgeable in the fields of land use and real property development law.

INSTITUTE *for* LOCAL
SELF GOVERNMENT

1400 K Street, Suite 400
Sacramento, CA 95814
(916) 658-8208
www.ilsg.org

Winter 2003

Dear Reader,

Was there something we missed? Or was a piece of information provided in this publication the "difference maker" on a project?

Either way, we want to know. The Institute strives to produce meaningful and helpful publications that can assist local officials in carrying out their duties. Your input and feedback, therefore, is vital! Comments from readers help us understand what you need and expect from Institute publications.

We have provided a feedback form on the following page and would greatly appreciate it if you could take a moment to provide some constructive comments.

Sincerely,

JoAnne Speers
Executive Director

Jerry Patterson
President, Board of Directors

BOARD OF DIRECTORS

PRESIDENT

Jerry Patterson
Member, Board of Trustees
Coast Community College District

VICE PRESIDENT

Rosemary Corbin
Former Mayor
City of Richmond

SECRETARY

Harriet Miller
Former Mayor
Santa Barbara

EXECUTIVE DIRECTOR

JoAnne Speers
Executive Director
Institute for Local Self Government

BOARD MEMBERS

Don Benninghoven
Former Executive Director
Cities, Counties and Schools Partnership

Hal Conklin
Director of Public Affairs
Southern California Edison Company

Henry L. Gardner
Former City Manager
City of Oakland

Mark S. Gaughan
Director of Public Affairs
San Diego Gas and Electric Company

Dan Harrison
Director, Internal Administration
League of California Cities

Patricia Jones
Assistant Executive Director
Association of Bay Area Governments

William Lee
Executive Vice President
Economics Research Associates

Chris McKenzie
Executive Director
League of California Cities

Gordon Paul Smith
Former Director of State Finance
State of California

Art Takahara
President, De Anza Manufacturing
Former Mayor
City of Mountain View

Carol Whiteside
President
Great Valley Center

LEAGUE BOARD LIAISON MEMBERS

Ruth Vreeland
Mayor Pro Tem
City of Monterey

Margaret Finlay
Council Member
City of Duarte

Lee Ann Garcia
Mayor Pro Tem
City of Grand Terrace

FEEDBACK FORM

We are interested in hearing your comments. We would like to know how you used this reader, what you liked about it, and how you believe it could be improved. This is your chance to shape future Institute publications. **You may copy this page and either mail or fax it to:**

Institute for Local Self Government
Attn: California Inclusionary Housing Reader
1400 K Street, Suite 400
Sacramento, CA 95814
Fax: (916) 658-8240
Or comment by e-mail to ilsg@cacities.org. Please put "Inclusionary Housing Reader" in the subject line.

Name: ______________________________ (optional)

Title: ______________________________ (helpful)

Contact Info: Address: ______________________________ (optional)

City: ____________________ State: ____ Zip: __________

WAS THIS *READER* USEFUL TO YOU? ☐ **YES** ☐ **NO**

WHAT ASPECTS WERE MOST USEFUL? LEAST USEFUL?

____

____

____

DID INFORMATION WITHIN THIS *READER* INFLUENCE A POLICY DECISION?

____

____

____

DID YOU FIND ANY ERRORS? IF SO, WHAT WERE THEY?

____

____

____

____

HOW WOULD YOU IMPROVE THIS *READER*? OTHER COMMENTS?

____

____

____

CONTENTS

CONTENTS, CONT.

FORWARD

HOUSING: A CRITICAL CHALLENGE FOR CALIFORNIA

In 2002, the Board of Directors of the League of California Cities identified housing as a priority issue for the League and the cities it serves. This action recognized that affordable housing is an immensely difficult and complex problem in California—not only for the individuals and families who are unable to find decent affordable housing, but also for the state's economic recovery. Economists are identifying challenges with the cost and supply of housing as a limitation on economic growth.

The problem is real and there is no "silver bullet" solution. While the passage of Proposition 46, the Housing and Emergency Shelter Trust Fund Act of 2002, is a helpful step (and one that the League actively supported), experts agree that the measure will only meet a very small portion of the unmet need for affordable housing in California.

INCLUSIONARY HOUSING ORDINANCES AS AN OPTION

As the nonprofit research arm of the League of California Cities, it seems appropriate for the Institute for Local Self Government to offer assistance to local agencies in the area of housing policy options. Accordingly, this publication starts this process by examining one policy tool that some local jurisdictions have used to require the production of additional affordable housing: inclusionary housing ordinances. The Governor's Office of Planning and Research reports that, as of 1996, some 120 local agencies had adopted inclusionary ordinances.

Inclusionary housing ordinances take many forms, but the basic concept is to require that a certain percentage of new development be set aside for occupancy by families of very low-, low- and moderate-income. Nearly all inclusionary housing programs apply to residential development and involve developers including a percentage of affordable housing units in their overall proposal. Some inclusionary housing ordinances also apply to non-residential development on the theory that non-residential development generates additional demand for affordable housing stock.

ANALYZING WHETHER INCLUSIONARY ORDINANCES ARE A GOOD FIT FOR A COMMUNITY

As is typically the case with land use policies, inclusionary housing ordinances may not be for every community. As the "pros and cons" section of the reader illustrates, there are widely diverse perspectives on the pluses and minuses of inclusionary housing ordinances. In fact, in some communities, such requirements can be quite controversial.

Thus, the goal of this reader is to help community leaders evaluate whether inclusionary housing ordinances are for their community. Moreover, since many communities already have inclusionary requirements, the reader also helps communities evaluate and possibly update their existing ordinances to meet current community needs.

The reader pursues these goals by offering local officials analyses of the following:

- Policy considerations
- Case studies
- Implementation and monitoring
- Legal issues
- Links to online resources

For those local agencies interested in adopting or revising inclusionary housing ordinances, the reader offers a sample ordinance annotated with drafting notes. Also included is a sample, one-page description of inclusionary housing ordinances for local agencies to include in any public hearing notices relating to the adoption of inclusionary housing ordinances.

APPRECIATION AND GRATITUDE

The Institute is deeply indebted to those organizations and individuals who gave permission to include their perspectives and analyses in this publication. The final collection comes from a variety of sources, including informal background papers, formal staff reports, articles, book excerpts, legal memoranda and even a calendar for a local housing authority. These resources, taken together, provide a wide variety of perspectives and ideas on the use of inclusionary housing ordinances as a planning tool.

The Institute is also indebted to the law firm of McDonough, Holland and Allen for sharing its expertise in this area and providing funding for this publication. The Institute's parent organization, the League of California Cities, also provided valued financial assistance for this effort.

Part I

INTRODUCTION

THE FACES OF AFFORDABLE HOUSING

Hector and Irma Gonzalez

"Because we had help from the Housing Authority, we had a good home and lived there for seven wonderful years. That gave us the opportunity to save up to buy a house."

Spending seven years in the Bath and Ortega Street Apartments enabled Hector and Irma Gonzales to save for a home of their own. The apartments were developed by Housing Authority of the City of Santa Barbara in 1973 and were remodeled in 1995 to achieve a softer, more compatible look with the neighborhood. Hector and Irma came to California from war torn El Salvador in 1988. They now have a family of five children and operate their own painting business called Gonzalez Painting and Cleaning. Hector's most memorable experience is coming to the United States to find a better life and opportunity for his family. His goals are for their children to graduate from college and to expand his business.

– Housing Authority of the City of Santa Barbara - 2002 Calendar

SELECTION 1

LOCKED OUT: CALIFORNIA'S AFFORDABLE HOUSING CRISIS

*California Budget Project**

EDITOR'S NOTE

The California Budget Project (CBP) is at the forefront of identifying the scope of the housing crisis in California. Over the past three years, CBP has issued three reports on the housing issue in California. This selection summarizes CBP's most recent report published in October 2002, except that the section entitled "impacts of the lack of housing" was included in the May 2000 report. The actual reports include a variety of graphs, tables and detailed statistical information that have been omitted here. All three reports are posted in their entirety on CBP's Web site: www.cbp.org

Awareness of California's affordable housing crisis has increased exponentially in recent years as home prices and rents have skyrocketed, in many cases locking even middle-income families out of the housing market. For low-income families, the implications are even more severe, as families may be forced to forgo basic necessities or live in substandard or overcrowded conditions in order to afford shelter. From a broader perspective, the shortage of affordable housing – or, in some areas, any type of housing – has serious implications for the health of the state economy. Businesses struggle to recruit and retain employees, workers are forced to choose between overcrowded or substandard housing and long commutes, and families have less income to spend on other necessities.

Two previous reports by the *California Budget Project* (CBP) have documented California's housing crisis. These reports found that while renters faced the greatest affordability challenges, high housing costs had pushed homeownership out of reach for many families. As housing costs rose, overcrowding worsened, families struggled to leave welfare for work, and households across a broad array of age groups and ethnic and racial backgrounds faced significant cost burdens. The reports called for an increased federal commitment to affordable housing in California, more effective use of existing resources for affordable housing, and increased state support for housing.

Despite substantial interest among policymakers and voters and a significant infusion of state funds in 2000, little progress has been made in alleviating the state's housing crisis. More recently, the state's fiscal crisis resulted in a reduction in state funds available to expand the supply of affordable housing. [Although] Proposition 46, the Housing and Emergency Shelter Trust Fund Act of 2002, will provide $2.1 billion for housing programs, housing experts and advocates understand that even a large one-time infusion is not enough to solve a crisis that has been over a decade in the making.

**The California Budget Project (CBP) serves as a resource to the media, policymakers, and state and local constituency groups seeking accurate information and analysis of a range of state policy issues. Through independent fiscal and policy analysis, public education, and collaboration with other organizations, CBP works to improve public policies affecting the economic and social well being of low- and middle-income Californians.*

RENTERS FACE THE GREATEST AFFORDABILITY CHALLENGES

Stagnating household incomes have exacerbated the state's affordable housing crisis. While household incomes for owners have increased, the household incomes of renters have failed to keep pace with inflation. The household income of poor renters, those at the 20th percentile, fell 6.6 percent, from $15,844 to $14,800, between 1989 and 2000, after adjusting for inflation. The median household income for renters with children fell 7.8 percent during the same period, from $32,529 to $30,000, after adjusting for inflation.

Among renter households, a little over half (51 percent) pay more than the recommended 30 percent of their income for shelter. Low-income renter households, those with annual household incomes under $18,000, fare even worse – nearly nine out of ten (88 percent) spend more than 30 percent of their income on rent. Low-income homeowners are also hit hard by housing costs, with 61 percent spending more than half their income for shelter. Low-income renter households suffer from an acute shortage of affordable housing, outnumbering low-cost rental units by a ratio of more than 2-to-1, both statewide and in Los Angeles County, translating into a statewide shortfall of 651,000 affordable units.

More than two-thirds (68 percent) of senior renter households, those headed by individuals age 65 or older, pay more than 30 percent of their income toward shelter. The majority (81 percent) of low-income senior renter households pay more than 30 percent of their income toward rent. A significant share (40 percent) of senior homeowner households pay more than 30 percent of their income toward housing costs. In contrast, more than three-quarters (77 percent) of low-income senior owner households pay more than 30 percent of their income for shelter.

MANY LOW-WAGE WORKERS CANNOT AFFORD RENTS

Due to rising rents, many Californians can no longer afford to live where they work. In San Francisco, where housing costs have skyrocketed in recent years, the 2003 Fair Market Rent (FMR) for a two-bedroom apartment is $1,940, a level that is only affordable to families earning at least $77,600 per year – more than the earnings from five full-time minimum wage jobs. Even in areas with lower housing costs, lower incomes often make rents unaffordable.

In the rural counties that constitute the state's most affordable markets, where the FMR for a two bedroom apartment is $522, a full-time worker would need to earn at least $10.87 per hour to afford the rent – 161 percent of California's minimum wage.

An individual earning the minimum wage would be forced to work very long hours in order to afford the one-bedroom FMR in many of California's counties. Even in the more affordable metropolitan areas of the state, such as Fresno and Chico, a worker would have to work substantially more than the standard 40 hours per week.

In many counties, FMRs exceed the monthly payments families receive from welfare. The two-bedroom FMR exceeds the three-person family CalWORKs grant in 31 counties, and equals at least 80 percent of the grant level in every county. The FMR for a studio apartment exceeds the total Supplementary Security Income/State Supplementary Payment (SSI/SSP) grant for an elderly or disabled individual in 12 counties, and equals more than 50 percent of the grant in 39 counties.

CALIFORNIA RANKS FOURTH LOWEST IN NATION IN HOME OWNERSHIP

California's 2001 homeownership rate of 58.2 percent was the fourth lowest in the nation, behind the District of Columbia, New York, and Hawaii. California's 2001 homeownership rate was about ten percentage points below that of the nation. The state's homeownership rates are lower than national ownership rates largely due to the state's high cost of housing. Nationally, 57 percent of households could afford to purchase the median-priced home in 2001, as compared to just 34 percent of households in California.

Homeownership rates vary significantly across different parts of the state. In the Sacramento metropolitan area, two-thirds (66.4 percent) of households are homeowners, while only 48.6 percent of those in the San Francisco metropolitan area own their homes.

Households headed by white Californians are significantly more likely to own their own homes than are households headed by Latinos, African-Americans, or Asian and other ethnic groups. While 65.4 percent of the state's white-headed households were homeowners in 2001, fewer than half (43.8 percent) of the state's Latino-headed households owned their own homes. Over half (56.1 percent) of Asian and other households, and 39.8 percent of African-American-headed households, owned their own homes. In Los Angeles County, all ethnic groups except African-American-headed households have lower homeownership rates than statewide rates.

HOW REALISTIC IS THE DREAM OF OWNERSHIP IN DIFFERENT AREAS OF CALIFORNIA?

Although home prices have continued to rise, households have not necessarily enjoyed a corresponding increase in income. The income needed to purchase a median-priced home in the second quarter of 2002 exceeded the area median income by 15 percent in the Central Valley, 27 percent in Los Angeles, 37 percent in Orange County, 52 percent in San Diego and Northern California, 83 percent in the San Francisco Bay Area, and 113 percent in the Central Coast. Only in Sacramento and the Inland Empire did the median income exceed that needed to buy a median-priced home.

- ***San Francisco Bay Area.*** The median annual wage for a firefighter was approximately \$65,000 in 2001; he or she would need an income of more than \$136,000 in order to buy a median-priced home – a \$71,000 gap. A child care worker, whose median annual wage in 2001 was less than \$19,000, the dream of ownership appears next to impossible.

- ***Central Coast.*** The income needed to purchase a median-priced home exceeds the area median income by nearly \$61,000. A registered nurse earning \$52,000 per year earns less than half of what is needed to purchase a median-priced home.

- ***San Diego.*** The area median income is more than \$31,000 below what is needed to purchase a median-priced home, and is not even sufficient to purchase a median-priced home with a 20 percent down payment. An elementary school teacher making \$51,000 per year earns nearly \$41,000 less than the income needed to purchase a median-priced home.

- ***Orange County.*** The income needed to purchase a median-priced home in Orange County exceeds the area median income by more than \$28,000. A firefighter making \$59,000 per year falls more than \$45,000 short of the income needed to buy a median-priced home.

- ***Northern California.*** The income needed to buy a median-priced home exceeds the area median income by more than \$20,000. A computer support specialist earning \$34,000 per year is more than \$25,000 short of the income needed to achieve homeownership.

- ***Los Angeles.*** The income needed to buy a median-priced home exceeds the area median income by nearly \$15,000. A loan officer making \$49,000 per year earns \$21,000 less than the income needed to achieve homeownership.

- ***Central Valley.*** The income needed to buy a median-priced home exceeds the area median income by a comparatively narrow margin of $6,000. While areas such as Bakersfield have not seen the substantial increases in home prices occurring elsewhere, incomes are generally lower in the Central Valley than in most other areas of the state.

- ***Inland Empire.*** The median income in Riverside and San Bernardino Counties actually exceeds the income necessary to buy a median-priced home by approximately $7,000. A contributing factor to the regions relative affordability is the fact that housing construction has increased at a significant rate in the Inland Empire, as it has become the bedroom community for Orange County and Los Angeles. In Riverside County alone, more than 11,000 new housing units were built between 2000 and 2001, the largest increase of any county in the state.

- ***Sacramento.*** Families in Sacramento also enjoy an affordable housing price-to-income ratio, with the median income exceeding the income needed to buy a median-priced home by approximately $6,000. However, home prices in Sacramento have increased significantly in recent years as families who have been priced out of the Bay Area Market relocate to the Sacramento area, driving up housing demand. Many continue to commute long distances to jobs in the Bay Area in order to afford a home of their own.

REVISITING THE ROOTS OF CALIFORNIA'S AFFORDABLE HOUSING CRISIS

Housing production declined significantly in the 1990s, due in part to changes in several state and federal laws that made investing in rental housing less profitable on an after-tax basis. In addition, California's system of financing local government tends to discourage residential construction in favor of sales tax-generating retail development. Finally, neighborhood opposition, commonly known as NIMBYism (Not In My Back Yard), has blocked or delayed construction of many affordable housing projects in California.

- ***Inadequate Housing Production.*** Lack of supply contributes to California's steadily increasing home prices and rents. According to the state Department of Housing and Community Development, California must build more than 200,000 housing units per year through 2020 simply to keep up with population growth and remain "reasonably affordable." During the 1990s, multifamily housing production in the state fell even lower than in the early 1980s, and single-family construction has not returned to 1980s peak levels. In 2001, multifamily housing was less than one-third of total new construction (41,433 units) – down from a nearly two-thirds share in 1970 (124,348 units). Multifamily housing construction has remained below 30 percent of total units since 1992.

- ***Job Growth is Outpacing Housing Construction.*** Although housing construction has declined in recent years, the state has continued to generate new jobs. A "jobs-housing imbalance" occurs when a region's job growth increases at a faster pace than housing construction. The resulting geographic mismatch often forces families to move outside the community in which they work in order to find affordable housing, leading to increased traffic and commute times. The state as a whole has added 4.0 jobs for each new unit of housing since 1994, more than twice the recommended 1.5-to-1 ratio. Although the state's economy has slowed recently, the jobs-housing imbalance persists. Job growth exceeded new housing units by 2.2-to-1 between 2000 and 2001, still well above the recommended 1.5-to-1 ratio. Although the imbalance is notably smaller compared to the 1994-2001 period, it is due to waning job growth, rather than a construction boom. Jobs grew in the state by only 1.4 percent from 2000 to 2001, compared to a 3.0 percent average annual increase from 1994 to 2001.

- ***Workers Cannot Afford to Live Near Their Jobs.*** As high metropolitan home prices are pushing more families to outlying areas, increasing numbers of workers endure long commute times. Although the majority of California workers commute less than 40 minutes one way to work, longer commutes are becoming more common. Statewide, workers who travel less than ten minutes fell by 14.4 percent between 1990 and 2000, from 12.7 percent to 11.1. percent. Conversely, the share of workers who commute more than 90 minutes, although small, increased by 57.1 percent during the same period, from 2.1 up to 3.3 percent.

- ***Housing Assistance Fails to Meet California's Needs.*** Historically, the federal government has provided the majority of public support for low-income housing programs. However, federal aid has not kept pace with the need for assistance, and state and local governments have not stepped in to fill the gap. Moreover, both federal and state assistance primarily benefits higher income families through tax preferences for homeownership. These preferences provide little or no assistance to low- and middle income Californians, who face the most acute housing problems. Although total federal budget authority increased by two-thirds between 1976 and 2001, from $1.2 trillion to

$2.0 trillion, budget authority for the federal Department of Housing and Urban Development (HUD) declined by 60 percent during the same period. From 1976 through 1981, HUD budget authority ranged between 5 and 8 percent of total budget authority; since 1981, it has only risen above 2 percent twice.

- ***Loss of Existing Federally Subsidized Housing Stocks.*** Over the past three decades, the federal government guaranteed rental payments and low-cost financing to developers of affordable housing in exchange for a commitment that rents would remain affordable. Many of the projects built with federal assistance have reached the expiration dates of their contracts, putting a significant fraction of California's affordable housing stock at risk of conversion to market rate housing. Moreover, in 1996 Congress allowed owners to prepay their HUD-assisted mortgages, giving property owners in areas with rising rents the ability to refinance and convert to market rents. In the past seven years, California has lost more than 24,000 affordable housing units to opt-outs and prepayments, a total of 16 percent of the federally-assisted inventory, with most of the losses occurring in Los Angeles, Orange, Sacramento, San Diego, and Santa Clara Counties.
- ***State Spending Declining From Earlier Levels.*** During the early 1990s, bond proceeds supported a substantial investment in affordable housing. However, as these funds were spent, only minimal state support was allocated to continue the investment. State spending on housing dropped substantially in the 1990s, from 0.5 percent of General Fund spending in 1989-90 to approximately 0.2 percent each fiscal year in the second half of the decade. In 2000-01, public and policymaker interest in housing issues, along with a large state budget surplus, resulted in the largest ever non-bond allocation of state support for housing. Since then, however, the housing budget has been significantly reduced as the state has moved to address a large budget deficit.

IMPACTS OF THE LACK OF HOUSING

California's housing crisis has serious implications for the families affected, for the communities in which they live and for the overall well being of the state's economy. Many of the connections between housing and other issues are frequently overlooked, but they include:

- ***Economic Growth.*** The housing crisis in Silicon Valley, the engine of much of the state's economic growth, has reached epic proportions. Many businesses report problems attracting employees from other parts of the state or the country because of the high cost of housing in that community. In many metropolitan areas, workers who provide basic services - teachers, firefighters, secretaries - cannot afford to live in the communities where they work.

- ***Community Cohesiveness.*** Rising costs are forcing many low income families from communities where they have lived for decades. In the San Francisco Bay Area, gentrification of traditionally low and working class neighborhoods is running rampant. Housing pressures are so intense that long-time residents of neighborhoods, such as San Francisco's Mission District and East Palo Alto, are being forced to move out of the neighborhoods that they have called home for generations, reducing both social and economic diversity in these areas. In addition, the ability to obtain higher rents on the open market is leading many landlords to opt out of federal housing programs. Landlords are pre-paying mortgages and refusing to renew contracts to maintain affordability, eliminating what is frequently the only affordable rental stock, making those communities the exclusive enclaves of higher income households.

- ***Environmental Impacts.*** The problems of unchecked urban sprawl are by now familiar to most policymakers: gridlocked freeways, longer commute times for workers, greater air pollution, and loss of open space. But one major contributing factor to urban sprawl is the search for affordable housing. Families seeking affordable housing are being forced farther from the metropolitan core to find it. In the Bay Area, for example, the number of vehicle miles driven increased 18.6 percent between 1990 and 2000.[4] During the same period, population increased at two-thirds the pace (13.3 percent). Distant suburbs are often the only option for young families seeking to buy their first home. Yet, affordability comes at a cost: reduced time to devote to family and community as a result of lengthy commutes and the loss of prime agricultural land to development.

- ***Human Health and Welfare.*** Studies indicate that children who live in unaffordable or substandard housing are more likely than adequately housed children to suffer a variety of health problems.[5] Without affordable housing, children often lack adequate nutrition and do not arrive at school ready to learn. Also, families with high rent burdens move more frequently than those families with more affordable rents – resulting in frequent school changes for their children. Taken together, it is not surprising to learn that children with poor housing conditions perform less well in school than those with more affordable and stable housing.

- ***Cyclical Poverty.*** Housing plays a critical role in helping welfare recipients make the transition to work. The high cost of housing in the parts of the state where jobs are most plentiful may discourage welfare recipients from relocating from areas where job opportunities are more limited, but housing less costly. Surveys of welfare recipients indicate that housing problems pose substantial barriers to finding and retaining employment. One reason for this may be that after paying for housing, welfare recipients have little extra money left over to pay for child care and other expenses associated with work.

- ***Homelessness.*** The lack of affordable housing contributes to the ongoing tragedy of homelessness throughout the state. While many factors, including substance abuse, mental illness, poor health status, and disabilities, can result in poverty and cause homelessness, affordable housing is at the heart of what is needed to both prevent individuals and families from becoming homeless and address the problems of those who are already living in shelters or on the streets.

CONCLUSION

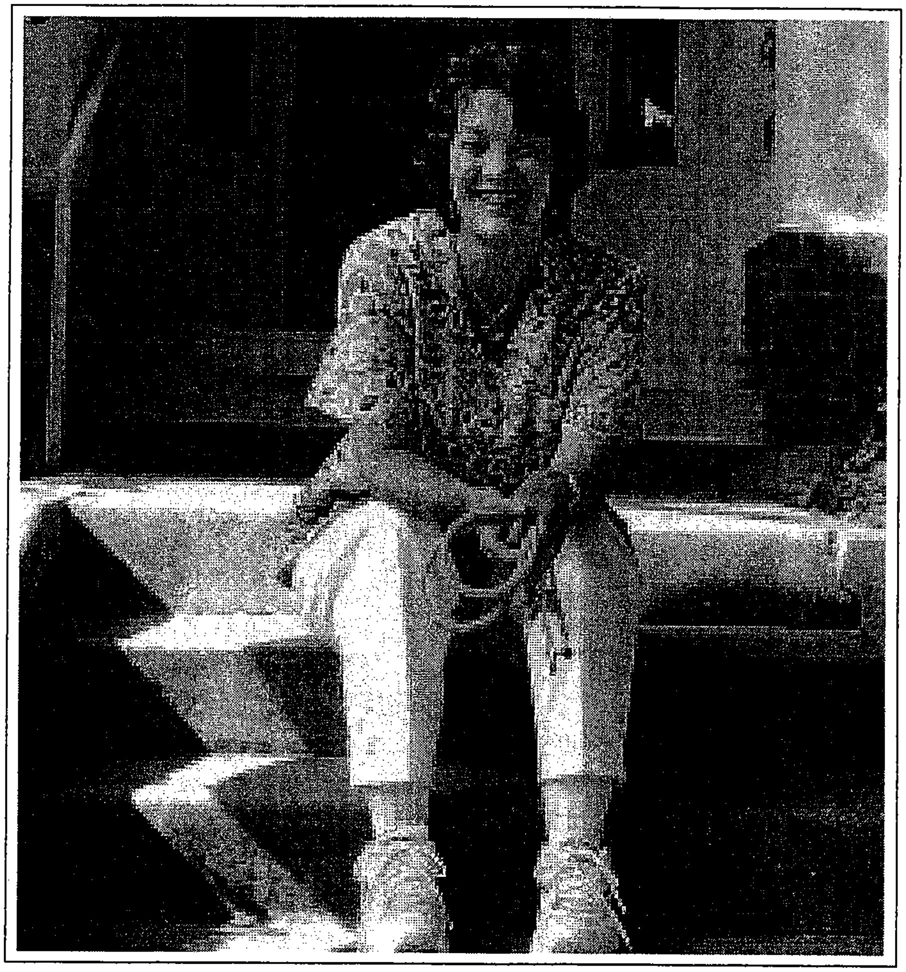
California faces a housing crisis of dramatic proportions. Record numbers of renters are paying far too large a portion of their incomes for rent, and Californians face some of the nation's least affordable homeownership markets. While the poorest households face the most severe housing problems, millions of California's middle-income households also face substantial difficulties in finding shelter they can afford.

The lack of affordable housing has widespread implications for families, communities, and the vitality of the California economy. High housing costs make it difficult for businesses to attract and retain workers. The search for affordable housing is driving many metropolitan area workers farther and farther from their jobs, creating ever greater suburban sprawl and leading to growing traffic congestion and greater air pollution. Rising rents often make it impossible for low-wage workers to live in the communities where they work, forcing many to choose between a long commute and overcrowded and/or substandard housing. When families are forced to spend more of their earnings on shelter, they have less to spend on food, clothing, childcare, and other necessities. In addition, the lack of affordable housing contributes to the stubborn challenge of preventing homelessness and helping those who are already homeless to move off the streets.

Greater efforts at the federal, state, and local levels will be necessary to meet the housing challenges identified in this report. Although the current economic climate increases the difficulty of this challenge, failure to address California's affordable housing crisis could further damage the vitality of the state's economy.

Part II

Inclusionary Housing Explained



The Faces of Affordable Housing

Nancy Mendonca

"As a single parent I don't know how I could have survived in Santa Barbara without affordable housing."

Nancy is a native of California who came to Santa Barbara in 1972 as part of a dance troupe. She stayed to raise her daughter. Her goal is to always engage in work that she enjoys, finds satisfying and enriches the life of others. Nancy has worked as a licensed home health aide for the past seven years, taking care of elderly people in their homes. Nancy lives in De La Vina, a circa 1924 Craftsman style four-unit apartment building purchased by the Housing Authority for the City of Santa Barbara in 1982. Major rehabilitation of the building was undertaken and completed in 1993.

– Housing Authority of the City of Santa Barbara - 2002 Calendar

SELECTION 2

INCLUSIONARY HOUSING POLICY BACKGROUND PAPER

*Gary Binger**

Inclusionary zoning is a citywide or countywide mandatory requirement or voluntary objective that calls for a minimum percentage of lower and moderate income housing to be provided in new residential developments. In California, mandatory inclusionary requirements are usually incorporated in the zoning code or the housing element of the general plan, and obtaining building permits is made contingent on the developer's agreement to provide affordable housing. Jurisdictions often allow developers to pay fees in-lieu of providing the units on-site.

HISTORY

The first inclusionary zoning ordinance was enacted in Fairfax County, Virginia in 1971. Although the Fairfax ordinance was designed in a manner that was eventually ruled unconstitutional (as a taking of property), courts have since allowed other forms of mandatory inclusionary zoning. Perhaps the most successful inclusionary housing program to date is the Moderately Priced Dwelling Unit (MPDU) program in Montgomery County, Maryland, which has accounted for more than 10,000 affordable units since 1973. The Montgomery County ordinance requires that 12 to 15 percent of the units in projects that have more than fifty residential units must be designated as affordable. The inclusionary zoning program has been a significant factor in Montgomery County becoming one of the more racially and economically integrated communities in the nation over the past thirty years.

CALIFORNIA

The affordable housing requirement of the California Coastal Commission, dating back to the 1970s, was one of the first inclusionary policies employed by a state. As housing prices rose dramatically during that period, inclusionary zoning was applied within a growing number of

EDITOR'S NOTE

This selection was prepared by the author as a background piece for a program co-sponsored by the Los Angeles District Council of the Urban Land Institute. We have included it here at the beginning because it provides a fair and straightforward description of inclusionary housing ordinances as a planning tool.

**Gary Binger is a land use planning consultant based in the San Francisco Bay Area. Mr. Binger is the Director of the Urban Land Institute's (ULI) California Smart Growth Initiative, which examines growth and development trends in California, identifies smart growth barriers, and focuses on specific state incentives and regulatory reforms to promote smart growth.*

jurisdictions. The state legislature enacted an inclusionary housing requirement for redevelopment areas and promoted the adoption of a model inclusionary zoning ordinance.

In the early 1990s, a California survey identified more than 50 inclusionary programs in that state which had collectively resulted in the production of 20,000 affordable units. This figure has grown by more than 4,000 new units as of the year 2000. The 1995 *Planner's Book of Lists*, published by the California State Office of Planning and Research, includes 14 counties and 107 cities in the state that have adopted inclusionary zoning.

Inclusionary housing policies also fit into California's broader, statewide housing context. State law requires local governments to have a current housing element in the general plan. One aspect of the housing element involves an explanation of how the "fair share" number of housing units required by the applicable council of governments and/or the State Department of Housing and Community Development will be provided. Inclusionary housing requirements assist local governments in fulfilling the housing provision requirements by reducing the ability of affordable housing opponents to challenge their construction.

COMMON ELEMENTS

Most inclusionary programs contain the following elements:

- Income eligibility criteria for defining affordability
- Pricing criteria for affordable units
- Restrictions on resale and subsequent rental of affordable units
- Provisions for in-lieu fees

In addition, the following lists detail the range of inclusionary incentives and in-lieu options that localities can pursue to mitigate the impact of inclusionary zoning requirements on the private development community.

LOCALLY-BASED INCENTIVES

- waivers of zoning requirements, including density, area, height, open space, use or other provisions;
- local tax abatements;
- waiver of permit fees or land dedication;

- fewer required developer-provided amenities and acquisitions of property, including reduced parking provision requirements;
- "fast track" permitting;
- feasibility findings that lessen the percentage of affordable units required;
- subsidization or provision of infrastructure for the developer by the jurisdiction.

NON-LOCALLY-BASED INCENTIVES

- tax credits;
- HOME grants to build and rehabilitate affordable housing;
- Section 8 vouchers to assist low income household pay rent;
- mortgage revenue bonds;
- Section 202 grants to support housing for the elderly; and/or
- location efficiency mortgages.

IN-LIEU OPTIONS

- payment of a per-unit fee which is pooled in a local affordable housing fund;
- construction of set aside units off-site by the same developer;
- recognition of set aside units as transferable credits that can be exchanged between developers of local residential projects.

APPROACHES TO CONSIDER

In adopting or amending inclusionary zoning strategies, city and county officials should consider the following:

- ***Involve Developers.*** Include both for-profit and non-profit developers in discussions about program design.

- ***Examine the use of In-Lieu Fees.*** In-lieu fees offer an alternative when the actual construction of affordable units may not be feasible. In-lieu fees should not be completely optional for the developer if the desire is to scatter low- and moderate-income units throughout the community. The fee should be sufficient to facilitate the development of the required affordable units at another nearby location.

- ***Consider Land Donation.*** Land donation may be considered as a preferred alternative to in-lieu fees. The developer donates (or sells at a considerably reduced price) a portion of the development site to the locality or a non-profit housing developer. A non-profit developer then develops the donated land, using their expertise and resources for constructing and managing affordable housing.

- ***Consider Increasing Densities.*** Increased densities and other land use changes to enhance residential development capacity may accompany inclusionary zoning. This will help offset the financial impact of inclusionary requirements to the developer.

- ***Set Reasonable Requirements.*** Affordable housing requirements should be relatively modest (10-15 percent of the total number of units), if there are no development incentives such as density bonuses and fee waivers.

- ***Establish Appropriate Fee Level.*** In-lieu fees, if too low, may not generate enough funding to construct housing units. Also, low in-lieu fees are a major disincentive to construct the affordable housing on-site.

- ***Vary Requirements by Area.*** Inclusionary requirements may vary by district. For example, infill housing in downtown areas may have a lower inclusionary requirement because infill housing is desired and/ or significant affordable housing may already exist downtown.

- ***Establish Design Guidelines.*** Ensure that inclusionary units are integrated within the development so as not to be distinguishable from the market-rate units.

- ***Establish Criteria for Future Residents.*** Criteria need to be established to screen the applicants for the low-cost units because the demand from eligible buyers and renters is sure to exceed the supply.

- ***Establish Resale Controls.*** Resale controls assure that the units remain affordable after the unit is sold or rented to new occupants. This requires on-going management and administration. Some cities and counties have contracted with local housing authorities to run this staff-intensive activity.

SELECTION 3

A DEVELOPER'S GUIDE TO THE CARLSBAD INCLUSIONARY HOUSING ORDINANCE

*City of Carlsbad**

EDITOR'S NOTE

Staff at the City of Carlsbad developed this simple overview of the city's inclusionary housing ordinance to assist developers. The Guide does an excellent job of explaining its requirements in a plain, easy-to-understand style. We include it here as an example of a typical inclusionary program. This selection also works as a useful template for other local agencies to explain to various groups – such as developers, landlords, homebuyers and tenants – how their inclusionary housing programs work.

I. INTRODUCTION

This document is intended to provide an overview of the City of Carlsbad's Inclusionary Housing Ordinance.

WHAT IS THE INCLUSIONARY HOUSING ORDINANCE?

The City of Carlsbad adopted the Inclusionary Housing Program to assist the City in reaching its lower-income housing goals. The ordinance requires that 15 percent of all residential units in any master plan, specific plan, or residential subdivision be set aside for occupancy by, and be affordable to, lower-income households. Additionally, for those developments that are required to provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units must have three or more bedrooms.

WHAT IS THE PURPOSE OF THE INCLUSIONARY HOUSING ORDINANCE?

The Housing Element of the City of Carlsbad's General Plan concludes that there exists a considerable demand for, yet an inadequate supply of, housing within the City which is affordable to lower-income households. The City Council adopted the Inclusionary Housing Ordinance in an effort to meet the housing needs of lower-income households. In effect, the Inclusionary Housing Ordinance brings the private sector of the economy into the business of providing affordable housing, making it a fact of the marketplace within Carlsbad.

**Planning Department, City of Carlsbad*

WHAT IS A LOWER-INCOME HOUSEHOLD?

"Lower-income Household" refers to low-, very low- and extremely low-income households. The City's Inclusionary Housing Ordinance defines lower-income households as follows:

- ***Extremely Low:*** A household whose gross annual income is equal to or less than 30 percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development (HUD).
- ***Very Low:*** A household whose gross annual income is more than 30 percent but does not exceed 50 percent of the median income for San Diego County as determined annually by HUD.
- ***Low (rental):*** A household whose gross annual income is more than 50 percent but does not exceed 70 percent of the median income for San Diego County as determined annually by HUD.
- ***Low (for-sale units):*** A household whose gross income is more than 50 percent but does not exceed 80 percent of the median income for San Diego County as determined annually by HUD.

WHAT IS AN AFFORDABLE HOUSING COST?

In order for housing costs to be considered affordable, these costs may not exceed 30 percent of the gross annual household income of any given income group. For example, under current standards (year 2000), a low-income family of four with a gross annual income of $40,600 should pay no more than $1,015 per month for housing. For a rental unit, total housing costs include the monthly rent payment as well as a utility allowance. With for-sale units, total housing costs include the mortgage payment (principal and interest), homeowners association dues, taxes, mortgage insurance and any other related assessments.

The U.S. Department of Housing and Urban Development provides income charts that identify the annual and monthly maximum incomes for lower-income households as well as the monthly housing expenditure that lower-income households within San Diego County can afford to pay. These income and related rent charts are available at the Carlsbad Housing and Redevelopment Department.

II. REQUIREMENTS

RESIDENTIAL UNITS SUBJECT TO THE INCLUSIONARY HOUSING REQUIREMENTS

All residential market rate dwelling units resulting from new construction or conversion are subject to one of the City's Inclusionary Housing Requirements as follows:

Six or Fewer Units

An Inclusionary Housing In-Lieu Fee applies to residential projects of six or fewer dwelling units. The In-Lieu Fee amount is currently $4,515 (year 2000) per market-rate dwelling unit. The fee is subject to change by resolution of the City Council. The fee is paid at the time of building permit issuance, or for conversion of existing apartments to condominiums, prior to the recordation of a final map and/or issuance of a certificate of compliance.

An Inclusionary Housing Impact Fee applies to any residential project for which the application for discretionary approval was deemed complete prior to May 21, 1993 (the effective date of the ordinance). The Housing Impact Fee amount is currently $2,925 (year 2000) per market-rate dwelling unit. The fee is subject to change by resolution of the City Council. The fee is paid at the time of building permit issuance, or for conversion of existing apartments to condominiums prior to the recordation of a final map and/or issuance of a certificate of compliance.

Seven Units or Larger

The construction of new inclusionary housing units applies to all residential projects of seven or more units. Subject to adjustments for incentives, the required number of lower-income inclusionary units shall be 15 percent of the total residential units, approved by the final decision-making authority of the City. If the inclusionary units are to be provided within an offsite, combined or other project, the required number of lower-income inclusionary units is 15 percent of the total residential units to be provided both onsite and/or offsite.

Subject to the maximum density allowed per the growth management control point or per specific authorization granted by the Planning Commission or City Council, fractional units for both market rate and inclusionary units of .5 will be rounded up to a whole unit. If the rounding calculation results in a total residential unit count which exceeds the maximum allowed, neither the market rate nor the inclusionary unit count will be increased to the next whole number.

- *Example 1:* If the final decision making authority approves 100 total residential units, then the inclusionary requirement equals 15 percent of the "Total" or 15 units (100 X .15 = 15). The allowable market rate units would be 85 percent of the "Total" or 85 units.

- *Example 2:* If the inclusionary units are to be provided offsite, the total number of inclusionary units is calculated according to the total number of market rate units approved by the final decision-making authority. If 100 market rate units are approved, then this total is divided by .85, which provides a total residential unit count (100 √ .85 = 117). The 15 percent requirement is applied to this "Total" (117 units), which equals the inclusionary unit requirement (117 X .15 = 17.6 units).

An Affordable Housing Agreement (see below) must be executed, and a Site Development Plan (SDP) must be approved to outline the manner in which a developer will meet an obligation to construct new inclusionary housing units. A developer will not be allowed to proceed with development of market-rate units within any given housing project until the City approves the Affordable Housing Agreement and related SDP.

III. STANDARDS

LOCATION, DESIGN & DURATION

Whenever reasonably possible, inclusionary units shall be built within the residential development project (on site) and be constructed concurrently with market-rate units. The actual construction phasing of the inclusionary (affordable) units shall be set forth in the approved affordable housing agreement. Every effort should be made to locate the inclusionary units on sites that are in close proximity to, or will provide access to, employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and are compatible with adjacent land uses.

The design of the inclusionary units must be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality. Inclusionary projects must provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the City.

Inclusionary rental units must remain restricted and affordable to the designated income group for not less than 55 years. With regards to mixed income rental projects, inclusionary units may not be rented for an amount that exceeds 90 percent of the actual rent charged for a comparable market-rate unit in the same development.

After their initial sale inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of 30 years. As an alternative, for-sale units may be sold at a market price to other than targeted households provided that the sale results in the recapture by the City or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the City must be used to assist other eligible households with home purchases at affordable prices at other locations within the City. To the extent possible, projects using for-sale units to satisfy inclusionary requirements must be designed to be compatible with conventional mortgage financing programs, including secondary market requirements.

IV. INCENTIVES/ALTERNATIVES

Certain types of affordable housing are more likely to satisfy the City's Housing Element goals, objectives and policies. As an incentive to assist the City in providing this housing, developers may receive credit for providing more desirable units, thereby reducing the total inclusionary housing requirement to less than 15 percent of all residential units approved. A schedule of inclusionary housing incentive credits specifying how credit may be earned has been adopted by the City Council, but is subject to periodic change.

The City Council also has the discretion to determine that an alternative to the construction of new inclusionary units is acceptable. The City Council may approve alternatives to the construction of new inclusionary units where the proposed alternative supports specific Housing Element policies and goals and assists the City in meeting its state housing requirements. Such determination is based on findings that new construction would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, developer capability, and financial subsidies available. Alternatives may include, but are not limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of special needs housing projects or programs (for example, shelters or transitional housing), and the construction of second dwelling units (with the income and rent limitations).

V. HOUSING AGREEMENTS

An Affordable Housing Agreement is a legally binding agreement between a developer and the City to ensure that the inclusionary requirements of a particular residential development are satisfied. The agreement establishes, among other things, the number of required inclusionary units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule.

Agreements that do not involve requests for offsets and/or incentives shall be reviewed by the Affordable Housing Policy Team and approved by the Community Development Director. Agreements that involve requests for offsets and/or incentives shall require the recommendation of the Housing Commission and action by the City Council as the final decision-maker. Following the approval and execution by all parties, the affordable housing agreement is recorded against the entire development, including market-rate lots/units and the relevant terms and conditions filed and subsequently recorded as a separate deed restriction or regulatory agreement on the affordable project individual lots or units of property which are designated for the location of affordable units.

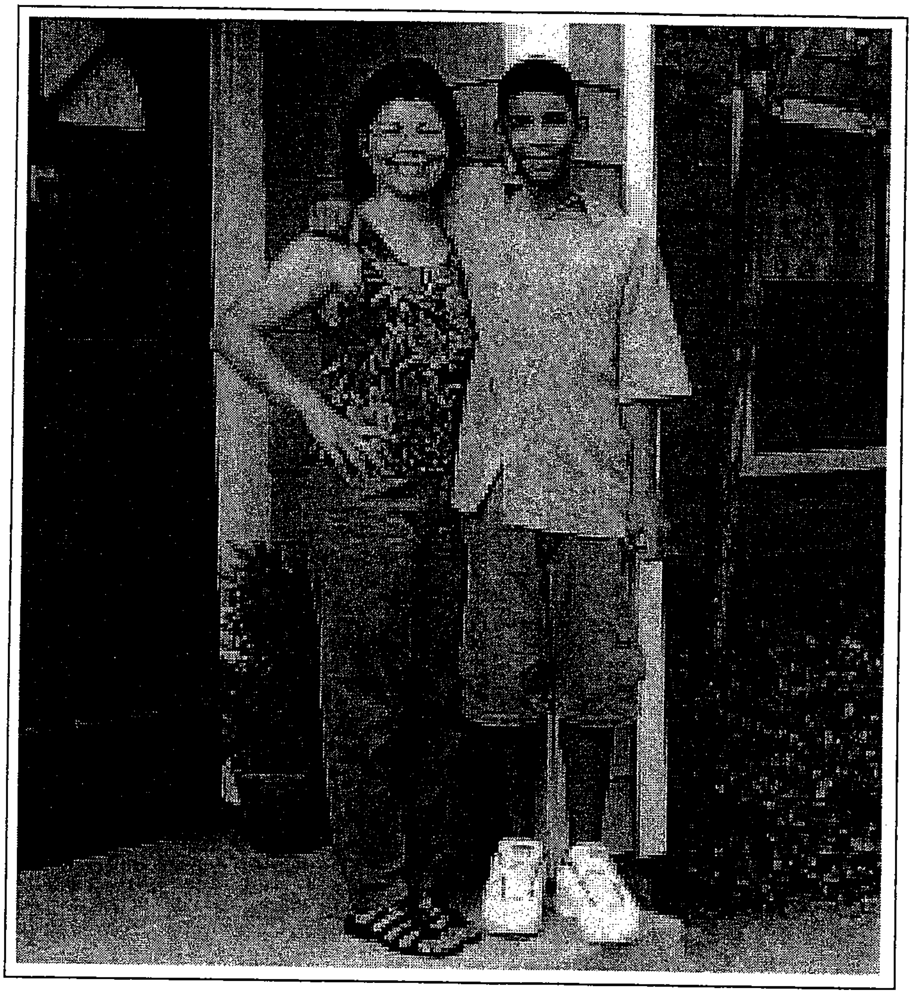
VI. PRELIMINARY REVIEW

Prior to the formal submission of an application for an affordable housing project, it is strongly recommended that the project proponent use the preliminary project review process. Preliminary review is an early, informal review of a project by the Housing and Redevelopment, Planning and Engineering Departments. Preliminary review allows a project developer to obtain early project direction, reduce development costs, shorten processing time and alleviate costly redesigns. Preliminary review applications may be submitted to the Housing and Redevelopment or Planning Departments.

Within 30 days of receipt of the preliminary application, City staff will provide a letter that identifies project issues of concern, the offsets and incentive adjustments that the Community Development Director can support when making a recommendation to the final decision-making authority, and the procedures for compliance.

Part III

Pros & Cons



The Faces of Affordable Housing

Margaret Vasquez

"I am fortunate – the area I live in is quiet, peaceful and safe. My son and I can enjoy the weather, the beaches and the many sports activities for kids."

Margaret works as a medical billing clerk at a busy local clinic. She was born and grew up in Santa Barbara and is now raising her 12-year-old son there. Her goals are for her son to become a productive and respectful young man and to one day own her own home. She lives at Via Diego, a 24 unit family complex that was developed by the Housing Authority in 1989. It is part of a larger master planned and mixed income housing development known as La Colina Village. There are 22 townhomes and 2 single story, fully accessible units for the disabled. All are two-bedroom units.

– Housing Authority of the City of Santa Barbara - 2002 Calendar

SELECTION 4

INCLUSIONARY ZONING: PROS AND CONS

*Dr. Robert W Burchell and Catherine C. Galley**

The fundamental purpose of inclusionary zoning programs are to allow affordable housing to become an integral part of other development taking place in a community. At the local level, this is usually accomplished by a zoning ordinance, mandatory conditions or voluntary objectives for the inclusion of below-market housing in market-level developments. Incentives designed to facilitate the achievement of these conditions or objectives are often included.

A typical ordinance sets forth that a minimum percentage of units within a residential development be affordable to households at a particular income level, generally defined as a percentage of the median income of the area. The share of units allocated to such households is termed a "mandatory set-aside." The goal is to establish a relatively permanent stock of affordable housing units provided by the private market. This stock of affordable housing units is often maintained for 10 to 20 years or longer through a variety of "affordability controls." Often these are ownership units that do not require a great deal of community administration, except for the qualification of successive occupants.

In many ordinances, some form of incentive is provided to the developer in return for the provision of affordable housing. These incentives can take the form of waivers of zoning requirements, including density, area, height, open space, use or other provisions; local tax abatements; waiver of permit fees or land dedication; fewer required developer-provided amenities and acquisitions of property; "fast track" permitting; and/or the subsidization or provision of infrastructure for the developer by the jurisdiction.

**Dr. Robert W Burchell is a professor at the Center for Urban Policy Research, Rutgers University and an expert on land-use regulation, development impact analysis and housing policy. Dr. Burchell's recent research includes lead authorship of* "The Costs of Sprawl – Revisited" *published by National Academy Press for the Transportation Research Board. Ms. Catherine Galley is a Research Associate at the Center for Urban Policy Research, Rutgers University where she is a doctoral candidate in the Department of Urban Planning and Policy Development. Ms. Galley specializes in the analysis of cultural resources and their economic contributions, both nationally and internationally.*

Reprinted with the permission of the National Housing Conference

EDITOR'S NOTE

This selection provides a good starting point to examine the pros and cons of inclusionary housing. No planning device is perfect, and a good understanding of the strengths and weaknesses of any planning tool is helpful. This particular selection is the first of two excerpts selected from INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? *(October 2000), published by the Center for Housing Policy as part of its New Century Housing series. The Center for Housing Policy is the research affiliate of the National Housing Conference (www.nhc.org) and brings together practitioners, policy analysts and research professionals to examine core problems of the housing issue.*

POSITIVE FEATURES AND OUTCOMES

AFFORDABLE UNITS AT LITTLE OR NO COST TO LOCAL GOVERNMENTS

Advocates of inclusionary zoning argue that this regulatory tool creates economically diverse communities and allows local governments to create more heterogeneous communities at little or no direct financial cost. Generally, the provision of affordable housing units as part of an inclusionary program does not require significant expenditure of public funds. Inclusionary units are delivered in step with market units through incentives such as density bonuses, fee waivers and/or local tax abatements offered by the local jurisdiction.

Inclusionary zoning relies on a strong residential market to create below-market units. This type of program reached its zenith in the 10-year period from 1975 to 1985. During this time (except for the 1980-82 recession), market housing was built in record numbers, and a share of this housing was allocated to lower-income households.

CREATING INCOME-INTEGRATED COMMUNITIES

The affordable housing enabled by inclusionary programs is not produced as an "island" of the poor but rather is integrated into the development of the overall community in lockstep with market-rate units. The integration of a percentage of low- and moderate-income housing units into market-rate housing developments avoids the problems of over-concentration, ghettoization and stigmatization generally associated with solely provided and isolated affordable housing efforts. Inclusionary programs make possible the integration of populations that traditional zoning segregates – young families, retired and elderly households, single adults, female/male heads of households, minority persons and households of all types.

Suburban and exurban employers further benefit from the presence of this proximate low- and moderate-income work force. Inclusionary zoning significantly reduces the oft-cited spatial mismatch between available suburban jobs and employment-seeking urban households.

LESS SPRAWL

Findings from the County Council of Montgomery County, Maryland, indicate that the inadequate supply of housing for persons of low- and moderate-income results in large-scale commuting from outside the

County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County. Yet another argument advanced by the proponents of inclusionary zoning is that it provides the critical mass necessary to create a town center and reduce the proliferation of sprawled bedroom subdivisions.

From a regional perspective, density bonuses often make possible residential environments of a variety of housing types. They enable developments to be built more densely than those of primarily single-family zones, which helps to reduce the sprawl that would otherwise be created by single-purpose residential zones. A large development containing inclusionary zoning often allows for mixed-use and transit-oriented development, while protecting surrounding open spaces.

NEGATIVE FEATURES AND OUTCOMES

THE SHIFT OF THE COST OF PROVIDING AFFORDABLE HOUSING TO OTHER GROUPS IN SOCIETY

Critics claim that inclusionary zoning changes the financial characteristics of real estate developments and reduces the saleable value of the development upon completion. They equate inclusionary zoning mandates with a tax on new development – especially when there are no compensating benefits provided to developers to cover the full cost of providing affordable housing. Opponents of inclusionary programs assert that developers cannot make money on affordable housing and thus are saddled with the burden of economically integrating neighborhoods that have been demographically homogeneous for decades. Developers become scapegoats for problems beyond their control but quickly pass this burden onto the new occupants of the housing that they develop.

Who pays for inclusionary zoning? The requirement of subsidized housing has the same effect as a development tax. The developer makes zero economic profit with or without inclusionary zoning, so the implicit tax is passed on to consumers (housing price increases) and landowners (the price of vacant land decreases). In other words, housing consumers and landowners pay for inclusionary zoning.

Another deficiency of the inclusionary zoning strategy is that it is based on a market-supply equation that relies primarily upon a developer's ability to sell market-level units – as an example, eight market units for every two affordable units produced. This reliance on the private sector to finance affordable housing based on the sale of market units is not necessarily a major issue when the economy flourishes, but it is a very serious one when the economy falters.

Finally, "shift" criticisms of inclusionary zoning have become focused on the very structure of the inclusionary zoning technique. Inclusionary programs that are mandated without compensation were challenged constitutionally in the 1990s as a taking.

BREAKING UP POCKETS OF THE POOR

A lingering criticism of inclusionary zoning is that it "distills" the most upwardly mobile poor from central neighborhoods and artificially transports the citizens who could do the most for reviving central city neighborhoods to the suburbs. The "best" of the poor are enticed outward by a write-down on the cost of housing there. While this is certainly a valid concern, and the more economically mobile residents may move out, leaving the less mobile behind, such is the nature of residential choice; it has existed in housing markets since time immemorial.

Similarly, in-kind housing subsidies are nontransportable devices that may not significantly improve the welfare of recipient families. These programs may provide individual economic benefits that are difficult to "cash out." For example, affordable housing units usually carry with them affordability controls that typically limit the sales price increase on such housing to a small multiple of the rate of inflation.

MORE DEVELOPMENT/INDUCED GROWTH

In instances where density bonuses are provided as part of the inclusionary solution, criticisms about "massing" have emerged. Some argue that increased density represents an unwanted and unplanned-for glut of development that burdens both the overall environment and the public service capacity of local governments.

CONCLUSIONS AND FUTURE DIRECTIONS

Inclusionary zoning is simple to understand and apply, and coupled with density bonuses and other incentives, allows higher-income communities to achieve a balanced economic composition. Inclusionary zoning also helps limit sprawl by concentrating more development in a single location.

Inclusionary zoning works best when combined with developer incentives. It has delivered the greatest numbers of units when the populations "included" are closest to median income. Inclusionary zoning is the by-product of expensive housing markets that have been spawned by either raw demand or exclusionary zoning controls. Typically, these have been in northeastern and western United States housing markets and today are likely to extend to specific locations in southeastern and southwestern U.S. housing markets.

Inclusionary zoning has been criticized for shifting the burden of affordable housing provision to other groups, for distilling the upwardly mobile poor from the remainder of central city residents and for causing undue growth in locations that would not otherwise experience it. These criticisms, while warranted and substantive, pale by comparison to the roster of benefits attributable to inclusionary housing programs.

Inclusionary zoning will continue to be sought in tight and expensive housing markets where there is socially responsible interest in providing both housing opportunity and economic balance. The technique must be implemented cautiously, however, with sensitivity to the locality paying for it and the population benefiting from it.

SELECTION 5

INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? A HOME BUILDER'S POLICY VIEW ON INCLUSIONARY ZONING

*Kent Conine**

Home builders are justifiably proud of the part they have played in our nation's strong economy and the recent achievement of the highest homeownership rate in modern American history. But we recognize that not all households have benefited from the current wave of prosperity; in fact, many families may be experiencing a housing affordability gap as the housing industry needs to maintain a sharp focus on providing housing that is affordable for those at the lower end of the income distribution.

Homeownership has proven to be an important step for building equity and creating family wealth that can be passed to the next generation and lift a family to the middle class. While not everyone may be in an economic position to become a homeowner, it is in the public interest to expand homeownership opportunities to moderate- and low-income families.

Since the 1970s, a few local governments have fostered affordable homeownership through the imposition of inclusionary zoning, which mandates that builders construct a certain percent of affordable homes in a new development. Some of these programs provide density bonuses as a way to compensate builders for complying with inclusionary requirements.

These programs have two laudable goals: to create more affordable homeownership opportunities and to integrate affordable units throughout a jurisdiction. Where inclusionary zoning requirements have been

EDITOR'S NOTE

In this selection, author Kent Conine begins to lay out some of the concerns that developers and others have with inclusionary housing programs. Mr. Conine concludes that although there may be a role for inclusionary housing as a planning tool, it should not be relied upon to the exclusion of other programs that may be more effective at increasing levels of homeownership. This is the second selection from INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? (see Selection 4).

**Kent Conine is the Vice President and Secretary of the National Association of Home Builders. He is also President of Conine Residential Group, Inc., which specializes in multifamily development, single family homebuilding and single family subdivision development. Since 1981, he has been responsible for the building, management and development of over 3,000 apartment units as well as the development of several residential communities consisting of over 1,000 single family lots. Prior to the establishment of the Conine Residential Group, Mr. Conine was involved in the development and management of multifamily projects in the Dallas area as Vice President of Metroplex Associates.*

Reprinted with the permission of the National Housing Conference

imposed, they have resulted in the construction of significant amounts of affordable housing without any government subsidy. In a 1992 report, the San Diego Housing Commission found more than 20,000 affordable dwellings had been built in California in the previous ten years without government subsidy.

Home builders have reacted in a variety of ways to the inclusionary mandates. Some view the mandates as the cost of doing business in a profitable, high-cost area. Some believe that if density bonuses are provided, the builder can break even on the affordable units or even realize a profit. Other builders maintain that the requirements impose significant costs and regulatory burdens on the building industry and further increase the cost of market-rate housing in already costly areas, thereby making housing even less affordable for many families who are not eligible for the units built under the requirements.

Whatever builders may think, inclusionary housing requirements raise some important public policy questions: Do programs impose a cost, and if so, who bears that cost – the builder or the purchaser of the market-rate homes? If there is a cost to the builder (even if only in more work or regulatory complications), is it fair for the builder to shoulder the cost of providing a needed social good? If there is a cost to the purchaser of the market-rate units, is it sensible housing policy to use a technique that further raises home prices in already high-cost areas? Are housing prices for the majority of homebuyers made higher in return for lower prices for a few?

Some of these questions may be difficult to answer without significant research. The more important and more immediate policy question is whether inclusionary zoning is the best method of government intervention to achieve the goals of affordability and inclusion for the largest number of people. A legitimate criticism of inclusionary zoning programs is that, in spite of the amount of affordable homes built over two decades, the number of households that benefit from the programs is relatively small compared to the need. In most instances, applicants so outnumber available units that lotteries are used to select homebuyers. And several observers have noted that the programs have been of greatest benefit to the children of the middle class rather than helping families from low-income backgrounds attain middle-class status. Perhaps a different approach - one that addresses the larger issue of how growth occurs and is regulated - could bring benefits to a greater number of families.

Of course, most states can already point to proven models of the government-sponsored low-rate mortgages for low- and moderate-income purchasers (funded by mortgage revenue bonds). Other programs provide down payment assistance to buyers. These approaches benefit those at the margins of achieving homeownership, but the impact of such assistance is limited and does not address the issue of the high cost of homes.

To increase homeownership significantly among lower-income households, a more comprehensive approach is called for. The Smart Growth policy adopted by the National Association of Home Builders supports such a comprehensive approach. Elements include planning adequately for growth; providing the infrastructure needed to accommodate growth; and providing revitalization of central cities and older suburbs with a strong housing component.

1. ***Planning for growth.*** Each jurisdiction should plan for growth by making available an ample supply of land for all types of residential uses, in addition to planning for commercial and industrial development and open space. Land costs are an especially large part of the cost of housing in high-income areas, and any regulations that restrict the developable land supply contribute greatly to the housing affordability problem. Zoning should permit reasonably high densities in appropriate places, and zoning districts should be flexible enough so that they do not restrict development to one particular type of housing. If zoning allows different housing types and lot sizes in each neighborhood, builders will more likely respond with a wider range of housing products and prices.

2. ***Planning and constructing infrastructure.*** Communities need to find fair and broad-based sources of funding to pay for needed roads, schools, and utilities. When new infrastructure is not available for an adequate amount of new development, land already served by infrastructure escalates in price, making housing less affordable.

3. ***Urban revitalization.*** Builders and local governments should work together to revitalize inner-city and older suburban areas. Incentives provided by cities can be tailored to support the building of affordable infill housing. For example, several cities make vacant city-owned land available to builders at low or no cost in return for building affordable homes.

It cannot be denied that in the few places where it has been adopted, inclusionary zoning has succeeded in producing affordable housing and provided homeownership for those who otherwise may not have achieved it. However, the small number of places that have adopted these requirements suggests that much of the public is concerned with the troublesome policy questions these requirements raise. Rather than rely on the particular tool of inclusionary zoning to bring affordable homeownership to more Americans, we should be rethinking the planning, zoning and housing policies that have the greatest impact on the price of housing. As communities throughout the country focus on Smart Growth, they should develop policies and tools that comprehensively foster greater homeownership opportunities for all Americans.

BENEFITS OF INCLUSIONARY HOUSING

*PolicyLink**

Inclusionary housing requires or encourages that a percentage of housing units in new residential developments be made available for low and moderate income households. The fundamental purpose of inclusionary housing is to tie the creation of affordable housing to the larger residential development process, and foster mixed-income communities – diverse, stable, and supportive.

Inclusionary housing can take many forms. Some inclusionary housing programs are mandatory, while others are voluntary or incentive-driven. Some jurisdictions require developers to construct affordable units within the development, while others allow affordable units to be constructed in another location. Some require developers to build the units, while other communities allow developers to contribute to an affordable housing fund.

While approaches differ, inclusionary housing policies share a common thread. Inclusionary housing requires and/or encourages developers to contribute to affordable housing stock in exchange for benefits, such as zoning variances, development rights and other permits. Inclusionary housing is a flexible strategy with a proven track record of meeting a community's affordable housing needs while allowing builders to profit from housing developments. To date, inclusionary housing policies have been most effective in areas that are experiencing growth, since the creation of affordable units is a function of residential development that is occurring in the community.

This tool provides an overview of inclusionary housing and considers the key issues related to implementing inclusionary housing. While the focus of this tool is inclusionary housing, inclusionary housing programs will also be referenced and discussed.

EDITOR'S NOTE

This selection answers the question of "why inclusionary housing?" by describing the policy goals and benefits provided by such programs. Perhaps most convincingly, PolicyLink identifies that inclusionary housing programs are "doable" for most local agencies because they can easily be blended with existing programs. This selection also helps to make the point that many nonprofit organizations are creating resources that can be helpful in designing inclusionary housing programs and drafting findings in support of such programs.

**PolicyLink is a nonprofit research and advocacy organization based in Oakland that works to achieve social equity by connecting diverse methods and constituencies to create lasting results and system change. Policylink's Web site (www.policylink.org) offers an equitable development tool kit from which selection is taken. In addition to addressing the affordable housing issue, the Web site also offers useful resources on a number of related subjects, including code enforcement, rent control and retaining subsidized housing.*

THE MARYLAND EXPERIENCE

Passed in 1974, Montgomery County's (Maryland) inclusionary housing program requires 12.5 to 15 percent of new housing developments of 50 or more units be households in the lowest one-third of the county's income bracket. Between 1976 and 2001, 13,000 affordable housing units have been developed throughout the county.

WHY USE INCLUSIONARY HOUSING?

For decades, various land use policies have contributed to urban sprawl, concentrated poverty, lack of affordable housing, and gentrification with its attendant displacement. Inclusionary housing is a regulatory strategy that strives to insert equity into land use policies by integrating the creation of affordable housing with the larger development process.

As such, inclusionary housing policies are an effective tool for maintaining affordability in housing markets. In communities facing displacement or experiencing significant new investment, the housing market is often the most acutely impacted. As higher income individuals move into a neighborhood, housing prices rise, displacing low- to moderate-income residents. Furthermore, in areas where new housing development consists of "market-rate" or "higher end" units, affordability is further compromised. In communities planning for new investment or already experiencing this pattern of displacement, inclusionary housing policies promote balanced housing development by ensuring that some portion of new housing development is affordable. When coupled with other mechanisms to preserve and increase the stock of affordable housing, inclusionary housing policies are an effective component of an equitable development strategy. In redevelopment efforts, inclusionary housing is an effective mechanism to promote a balanced housing supply, one in which affordable units are created in concert with higher end residential units.

Inclusionary housing has most often been used in communities with high-cost or escalating housing markets, in areas where communities want to preserve open space, or where exclusionary zoning is visibly evident (for example, Washington, D.C., New York metropolitan areas, and California). Inclusionary housing draws upon municipal authority over land use to require developers to dedicate a percentage of units for moderate-, low-, very low-, or extremely low-income families. Innovative communities use inclusionary housing to ensure mixed-income housing and housing near jobs, and to counter declining public-sector investment in affordable housing.

BENEFITS OF INCLUSIONARY HOUSING

- ***Creation of Mixed Income, Diverse, Integrated Communities.*** Inclusionary housing policies contribute to the development of economically and racially integrated communities. In order to achieve this goal, inclusionary housing policies must require developers to build the affordable housing units within the larger development, as opposed to developing the units elsewhere. The benefits of mixed income communities are manifold. For example, studies have shown that low-income children who live in mixed-income communities have higher test scores and improved educational achievement over students of similar economic status in schools with concentrated poverty.

- ***Deconcentration of Poverty.*** Communities of color are the most likely to live in concentrated poverty. In his book, *The Inside/Outside Game*, (Brookings Institution Press, 1999) David Rusk notes that only one of four poor whites live in neighborhoods characterized by concentrated poverty, compared to three of four poor blacks. Inclusionary housing can lessen the concentration of poverty in communities of color and create greater access to education and job opportunities in the larger region. In order to achieve the goal of poverty deconcentration, inclusionary housing policies must focus on reaching very low-income families and require affordable units be built into the larger development. This goal of deconcentration of poverty is best achieved if all jurisdictions in a region adopt commensurate policies.

- ***Smart Growth, Less Sprawl, Preservation of Open Space.*** Many inclusionary housing policies offer developers density bonuses in exchange for the creation of affordable housing units. Optimal density can be an important element of a region's smart growth strategy. Inclusionary housing is a strategy that simultaneously meets the goals of housing advocates, environmentalists and smart growth proponents.

- ***Housing for a Diverse Labor Force.*** A healthy community requires a diverse labor pool, including professionals, service sector employees, public servants, and others. In escalating housing markets, lower-paid employees are the first to be driven out. Inclusionary housing helps build a diverse housing market, ensuring that lower income individuals, whose housing needs are not met through the market, can live in the community where they work.

- ***Satisfaction of Fair Share Requirements.*** Fair share requirements hold jurisdictions accountable for producing their "fair share" of affordable housing. Inclusionary housing is one strategy to satisfy these requirements. In 1979, Orange County, California implemented a mandatory inclusionary housing requirement after a lawsuit challenged the county's housing element for lack of compliance with state fair share requirements. Through their inclusionary housing policy, Orange County today has produced the required number of affordable units, bringing them into compliance.

INCLUSIONARY HOUSING HELPS PREVENT GENTRIFICATION

When coupled with other mechanisms to preserve and increase the stock of affordable housing, inclusionary policies are an effective component of an anti-displacement strategy.

In Montgomery County, Maryland, inclusionary housing has been an important mechanism for distributing below market-rate housing throughout the county. Since the adoption of their Moderately Priced Dwelling Units (MPDU) program, the distribution of affordable housing units reflects the county's growth patterns. For example, Germantown has experienced a lot of residential development in the last 20 years and also has the highest percentage of MPDU units.

- ***Doable Strategy.*** Creating inclusionary housing does not require a massive overhaul of existing land use law. Since it was first adopted in 1974 by Montgomery County, many jurisdictions nationally have successfully implemented inclusionary housing to increase the stock of affordable housing. Feasibility, however, should not be equated with ease – getting an inclusionary housing ordinance adopted may require a vigorous campaign to demonstrate community support to elected officials.

INCLUSIONARY ZONING ISSUES BRIEFING PAPER

California Association of REALTORS® (Unofficial) *

With more pressure from the state to provide affordable housing, and fewer government dollars to subsidize such housing, more local governments have turned to inclusionary zoning programs that place the primary burden for affordable housing on the private development community. In its most recent list, compiled in 1996, the Governor's Office of Planning and Research identified over 120 cities and counties with some form of inclusionary housing policy. This number represents a steady increase over the previous decade. Although C.A.R. has been historically opposed to inclusionary zoning, some local Associations have made a departure from this position and supported inclusionary policies in their area.

FORMS OF INCLUSIONARY ZONING

Inclusionary ordinances can vary in a number of ways. However, they typically contain some or all of the following features:

- an inclusionary set-aside, usually ranging from 10 to 25 percent of the project's units;
- an exemption from inclusionary zoning requirements for small projects, most often for projects of less than five or ten units;
- affordability criteria based on a percentage of median income and/or median home prices;
- provisions for in-lieu fees which allow the developer to pay a fee to the locality instead of building the units;
- restrictions on the resale of affordable units
- ordinances may be either voluntary or mandatory.

This selection was posted on the Web site of the California Association of REALTORS®. It does NOT represent an official policy position (See Editor's Note). For additional information, please contact C.A.R.'s Public Policy Division at (213) 739-8375, or send an e-mail to Rick Laezman at richard_laezman@car.org.

EDITOR'S NOTE

The following selection is from a background discussion paper that was written for the California Association of REALTORS® (CAR) and posted on the CAR Web site. It does NOT represent CAR's official policy. Indeed, this paper has NOT been considered by any of the committees that would need to approve it before it became policy, including CAR's Local Governmental Relations Committee, the Housing Affordability Committee, the Land Use and Environmental Committee, the Executive Committee or the Board of Directors. Despite this selection's unofficial status, we include it in this collection because it describes many of the drawbacks associated with inclusionary housing policies and outlines issues that should be reviewed when considering whether or not to adopt an inclusionary housing program. Indeed, there is value in fully understanding all the drawbacks associated with an option before adopting it.

MANDATORY INCLUSIONARY PROGRAMS

Ordinances that require a specified percentage of affordable units in all new construction projects constitute the majority of inclusionary programs. Almost all mandatory ordinances contain a threshold at which the inclusionary requirement kicks in. A few cities have a very low or no threshold, in order to discourage developers from downsizing their projects to avoid the inclusionary requirements. Some cities also have a low threshold because a lack of developable land has resulted in a majority of construction permits being issued to small projects.

Most inclusionary zoning ordinances apply to projects of five or more units, and may have a threshold of ten. Cities usually target the larger projects because they are seen as being strong enough financially to be able to sustain the lower profit margin that results from including the below market-rate units.

Mandatory inclusionary ordinances also require a specified number of affordable units to be built in the project. This requirement is a percentage of the total number of units being built. The percentage can be as low as 10 percent, or as high as 30 percent in new multi-family projects. The percentage sometimes reflects an overall goal for affordable housing which the local government wants to reach.

VOLUNTARY PROGRAMS

Some local governments do not require developers to build affordable units, but they offer builders the option of receiving one or more concessions in exchange for setting aside affordable units on their own volition. These concessions may be given in the form of an increase in the number of units provided or lower parking lot requirements, for example, which can lower the developer's costs and may make the project more profitable. In many cases, units provided under voluntary inclusionary programs must also be placed under resale restrictions.

INCLUSIONARY EXACTIONS ON COMMERCIAL DEVELOPMENTS - LINKAGE PROGRAMS

Most inclusionary programs apply strictly to residential projects. However, some cities also require exactions from commercial and/or industrial developers. These exactions are usually for an in-lieu fee that is placed in an affordable housing fund to help finance future projects. These requirements are often referred to as linkage programs because they assume that a link exists between the construction of a new commercial or industrial project and an increase in affordable housing needs in the community, presumably from the new workers that the project brings.

INCLUSIONARY ZONING AND GROWTH CONTROL

In order to counter allegations that growth controls exclude low- and moderate-income buyers from a community's housing market, many cities that have such ordinances have incorporated an inclusionary component.

OPPOSITION TO INCLUSIONARY ZONING ORDINANCES

- ***Unfair Burden on Developers.*** It is unfair to place the burden of providing affordable housing solely on developers. The lack of affordable housing is a societal problem, and as such, all of society should share the responsibility for addressing it.
- ***Does Not Address Factors That Cause High Housing Costs.*** Inclusionary zoning does not address the factors – such as high land costs, lack of available sites, developer fees and exactions and cumbersome permitting processes – that contribute to the high cost of market-rate housing. Moreover, inclusionary zoning adds new costs to the development of market-rate housing.
- ***Inclusionary Zoning Places Financial Hardships on Developers.*** Ultimately, developers will no longer be able to provide housing in the community because the costs are too high, or they will pass the costs on to market-rate buyers, thus making homes more expensive.
- ***Resale Controls are Economically Inefficient.*** Resale price controls eliminate homeowners' ability to realize a reasonable profit on the resale of their homes. It also acts as a disincentive to maintain the home and property. This makes it harder to resell inclusionary units, which hurts the real estate market.
- ***High Implementation Cost.*** The cost of implementing an inclusionary zoning ordinance for a local government entity is significantly high. Most local governments cannot afford the staff resources and experience necessary to implement and administer an effective program.
- ***More Effective Alternatives Available.*** Local government can best provide housing that is affordable for its constituents at all income levels by making it easier for developers to build such housing. Incentives such as reduced land costs and land restrictions, increased availability of housing sites, and reduced fees make the development process less costly and time consuming.
- ***Tax on Homeowners.*** Because market-rate homeowners and renters ultimately bear the cost of in-lieu fees, implementing such fees constitutes a tax on homeowners and renters.
- ***In Lieu Fee Programs Not Effective.*** Many jurisdictions collect in-lieu fees, but do not leverage the revenues to build more affordable housing. Instead, in some cases, the money is not spent to produce new affordable housing.

A CRITICAL LOOK AT THE BASICS OF INCLUSIONARY ZONING

This section examines these features and reveals some fundamental weaknesses in the concept of inclusionary zoning based on common problems that have occurred in the cases that were chosen for this study.

RESALE CONTROLS

In order to ensure that inclusionary units remain affordable, most inclusionary ordinances contain resale restrictions for ownership units. These provisions, which typically come in the form of a deed restriction, require ownership units to be sold to another qualified low- or moderate-income buyer at a restricted price. The restriction applies to units that are sold within a certain time frame, usually 30 years.

Resale restrictions include various enforcement mechanisms. Several cities and counties, for example, have the right of first refusal when an inclusionary unit is resold. In this case, a city may have 60 days to buy the unit after an owner decides to put the unit up for sale. The city will purchase the unit at its appraised value or a value based on the original purchase price plus an amount tied to the increase in the Consumer Price Index (CPI) during the time the seller owned the unit, whichever is less.

In other localities, affordable units can only be resold to someone who falls into the same low- or moderate-income category as the original buyer. If after one year the owner cannot find a buyer in his/her income category, the local government may allow the home to be sold to someone at a higher income level.

A city may also buy back units when owners cannot find buyers who qualify under low-and moderate-income guidelines. Since sellers do not want to go through the trouble to find buyers who qualify under the city's guidelines, the city may use money from in-lieu fees to purchase the units. Other cities require an equity recapture as opposed to resale controls.

IN-LIEU FEES

As stated earlier, most mandatory programs also have an option to pay in-lieu fees instead of building the required number of affordable units. While average housing prices in California certainly vary from region to region, the amount charged for in-lieu fees varies more dramatically.

Fees may be based on a percentage of the cost of land in the city, or they may be calculated from a formula that is based on the difference between the cost of producing the units and the price at which median-income families can afford to buy them. Other formulas include: a percent of the gross sales value of the total number of units, or simply a flat rate per unit.

Many jurisdictions prefer that developers build the required number of units under the inclusionary ordinance as opposed to paying the fee. However, because paying the fees is less expensive for developers than building, if given the choice, developers will often opt to pay the fee. To prevent this, many jurisdictions have adopted strict guidelines as to when the in-lieu fee option can be used. Several cities do not allow in-lieu fees. Others only allow certain projects to pay fees.

DENSITY BONUSES AND OTHER INCENTIVES

Because developers sustain a loss of profit when building below market-rate units, cities and counties that have inclusionary zoning ordinances provide incentives to encourage developers to participate. A common incentive is the density bonus. The density bonus allows the developer who builds a certain percentage of affordable units to include a certain percentage of market-rate units in addition to what would otherwise be permitted under the zoning restrictions for that particular planning area. This provides the builder with an opportunity to recoup the loss he takes by participating in the inclusionary program. One problem that local governments experience with the density bonus is neighborhood opposition.

The state requires all local governments to provide a density bonus to developers who provide a certain percentage of affordable units. The state requires all cities and counties to provide a 25 percent density bonus to any developer whose project includes 20 percent low-income units, 10 percent very low-income units, or 50 percent senior units.

ADMINISTRATIVE COSTS

Perhaps the most significant drawback to inclusionary zoning programs is the administrative liability. Inclusionary zoning ordinances require a great deal of staff supervision in order to make them effective. As one county official explained, "inclusionary zoning programs are not self-administering."

The greatest demand for program supervision probably comes from resale controls and other mechanisms for ensuring long-term affordability. Resale controls involve many complicated legal and title issues, and they require enforcement.

CONCLUSION

After examining all of the above examples, several observations can be made about inclusionary zoning programs. While these programs are designed to address communities' affordable housing needs, they present many problems as well. Localities frequently cite problems with such provisions as threshold requirements, fees, qualifying buyers, meeting all of the affordable housing needs of the community, legal and technical issues with resale controls, enforcement, and administrative time.

Cities and counties that are considering adopting an inclusionary zoning ordinance must ask themselves if the proposed ordinance will produce enough affordable housing units and meet enough of the affordable housing needs of the community to justify their existence. REALTORS® who are involved in discussions of this issue must consider all of the above when determining their own position and when confronting local officials on the matter.

Should REALTORS® choose to oppose an inclusionary zoning proposal in their community, they must be prepared to offer alternatives for meeting the local population's affordable housing needs. Their suggestions should reflect the specific circumstances of the local community.

SELECTION 8

INCLUSIONARY HOUSING: SOME DOUBTS

*Michael Pyatok**

EDITOR'S NOTE

This selection provides a unique critique of the use of inclusionary housing as a planning tool. Mr. Pyatok makes the point that while the goal of creating economically integrated communities may be laudable, in some instances it may have the effect of breaking up traditional ethnic communities. The article was published in August 2000 issue of Designer-Builder *magazine, a bi-monthly publication that is dedicated to social justice as an underlying principle of architecture and the built environment (www.designerbuilder magazine.com).*

As an architect I have worked with many nonprofit corporations, some community-based, some working citywide, some regional in scale. As I assembled the book *Good Neighbors*, I had a chance to touch base with hundreds of other affordable housing projects nationwide that had been executed by nonprofits, for-profits, and public housing authorities. Obviously, there are many strategies for achieving results and each has its place. But I want to make it clear why "inclusionary housing," while it has a place in some circumstances, is harmful in others.

It arose as a strategy in suburban communities and small towns where there has been a long history of de facto segregation by class and race, and where there was no network of nonprofit affordable housing producers, except for maybe a local housing authority. Forcing private developers to do it seemed like a good way to get communities to "bear their fair share." But when applied to communities where there is a long tradition of racially and culturally cohesive lower income neighborhoods with their own community-based development corporation, it can be very inappropriate. Let me explain through a series of actual case studies.

FIRST EXAMPLE

In a predominantly white upper-middle-class town in southern California, a Latino neighborhood, with help of an attorney, sued the city for not producing its fair share of affordable housing. The city offered inclusionary housing as one idea. But the Latino community said absolutely not for the following reasons:

a) they wanted their people to live together in a cohesive community in which they can maintain their cultural tradition;

**Mr. Pyatok is principal of Pyatok Architects, Inc., located in downtown Oakland. The firm has designed high density and mixed-use housing developments, many of which have won local and national design awards. His firm's design proposals recently won the competition for two of four sites sponsored by the City of Oakland for Mayor Brown's downtown housing efforts. His firm was also co-designer of Oakland's new City Hall Plaza and a newly opened mixed-use and mixed-income development in downtown Oakland called Swan's Market. A graduate of Harvard University and Pratt Institute, he has been a Fulbright scholar in Finland, a Loeb Fellow at Harvard, and a recipient of a National Endowment for the Arts grant which allowed him to co-author a book about affordable Housing called* GOOD NEIGHBORS: AFFORDABLE FAMILY HOUSING.

b) they wanted the political clout in town that they could have by remaining geographically cohesive; and

c) they wanted to form their own development corporation and develop their own housing themselves so they could build their own economic capacity and development savvy.

In short, they wanted to determine their own destinies. None of this was possible if private developers did it all for them. In the end, they would merely be a 20 percent minority presence in someone else's culture and economy.

Within less than three years after getting the money from the city and hiring a consultant and myself, they had a mixed-use housing development with almost 100 units. Since then they have gone on to produce hundreds more affordable units, a teen recreation center and child care. All of this never would have been possible under the inclusionary model.

SECOND EXAMPLE

In a town in western Washington, four different language groups of southeast Asian immigrants were organized by a nonprofit corporation to get affordable housing to meet their needs. They were offered an inclusionary opportunity within a suburban subdivision and they agreed on one condition: they would co-exist within the predominantly white suburb only if their housing were developed exclusively by a nonprofit organization that serves Asian immigrant needs and not by the developer of the rest of the subdivision. They wanted this for several reasons:

a) the codes, covenants and restrictions that accompanied the larger white middle-class subdivision disallowed many behaviors that typify the cultures of the four language groups – no exposed laundry drying in the sun, no hanging food stuffs from porches to dry in the sun, no large unkempt community vegetable gardens in public view, no religious rituals in open public spaces, no combining of houses for large family clans;

b) they wanted the architectural character to reflect their cultural tradition, not at all like the typical suburban subdivision that surrounded them;

c) they wanted their nonprofit to gain the expertise in developing this type of housing.

They now have a fifty-three-unit development with a 6,000-square-foot vegetable garden, front and back porches designed to allow for hanging clothes and food, and a pig-roasting area. The housing is designed so that these activities do not face the surrounding white suburb, and the surrounding community exerted control only over the colors of the buildings.

THIRD EXAMPLE

In a city in Washington, a group of African-Americans, either recent or descendant from West African immigrants of several nationalities, wants affordable housing for families like themselves in the Pacific Northwest. These are very large families of eight to twelve people, with proud cultural and religious traditions, and no developers are providing them with what they need, either in price, size, or freedom from regulation controlling their behavior.

They have said that inclusionary housing is simply out of the question for them: they want to maintain their traditions and build their economic strength as a minority within the larger community, but not as unequal minorities living in someone else's housing, passive residents under house rules made by others. They want to run their own home-based industries, which are messy, and no condo or homeowners' association or developer-owned rental development will ever allow such enterprises to flower on site. So they are now well on their way as a nonprofit, with the use of various local and federal subsidies, to developing their own community within a suburb of Seattle (where the land is cheaper).

CONCLUSIONS

I have many more such stories about how the absence or avoidance of inclusionary housing helped to spawn local self-determination. I am particularly sensitive to this argument about the value of "mixed-income" housing because I see how it is being used to actually reduce the amount of housing affordable to very-low-income households.

Personally, I was born into a single-parent family that started on welfare, and I attended public school in Brooklyn. I had a scholarship opportunity to attend a private junior high in a middle-income neighborhood about a mile away. There, I encountered shocking displays by my peers of arrogance, disrespect for authority, spoiled and self-centered attitudes and a flaunting of their economic rank. I considered myself lucky when I could walk back into the tenements among the factories where I was living with "real people" - so much for mixing the children of welfare with the children of doctors, dentists, and lawyers. Maybe this is why to this day I still feel more comfortable living in a lower-income neighborhood of East Oakland rather than the wealthier North Oakland or Berkeley.

Oakland is a city of very proud and capable minority and lower-income communities. Up to now, the available subsidies have spawned a network of neighborhood and citywide nonprofit organizations. They are not perfect, but they have been responsible for nearly all of the affordable housing and other neighborhood-related projects produced in Oakland in the last twenty years, many receiving national attention for the quality of their programs and designs. It is this local self-determination that gets undermined when the limited supply of subsides gets funneled into the hands of for-profit developers. Except for a very few, for profit developers working in Oakland merely produce units as a measure of success, while the nonprofits work to rebuild communities and revitalize neighborhoods. The for-profit development community in Oakland consistently fought to undermine these local grassroots efforts. They fought against producing housing in the downtown when office buildings were all the craze. They fought against the introduction of rent control, even though new construction was exempt.

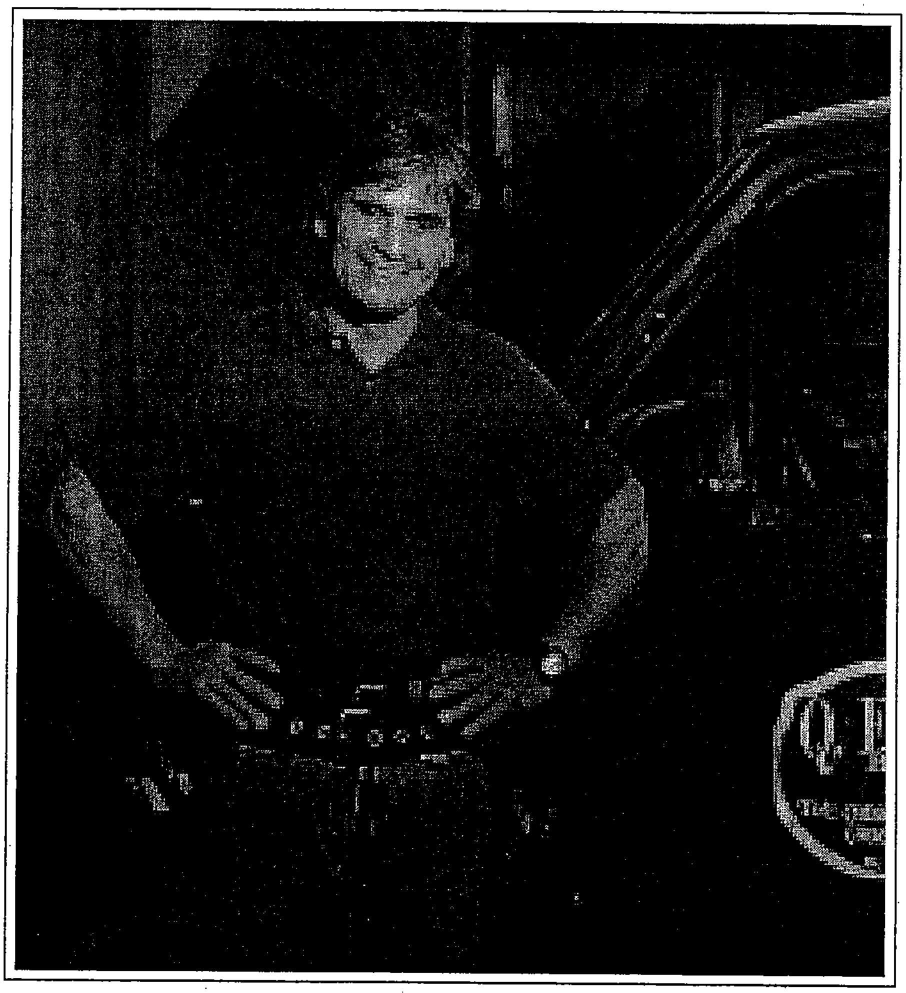
This fuel for self-determination in the neighborhood and capacity-building in the nonprofit sector should not be siphoned off to assist the for-profit sector. If there is to be inclusionary housing, it should be funded from developer profits. The for-profit developers are not silver bullets who will slay the dragon of unaffordable housing. They take as much time, if not longer, to produce their housing because they and their investors fear even the slightest of risks.

We have to be very honest about whom we are going to bed with here: to get inclusionary housing it must be buried within risk-free market-rate housing, and to get the risk-free market-rate housing, we will watch these same developers conspire to shut down single resident occupancy buildings and remove the homeless shelters. The limited subsidies needed for such populations should be reserved primarily for nonprofit developers; let the private developers bear their fair share from their profits.

I think that affordable housing advocates should be using their energy and political capital to work with others to raise those subsidies that will be needed by nonprofit developers. Without their ample availability, neither the private nor the nonprofit sector will be productive, because without them, affordable housing advocates will continue to beat up the private developers, slowing them down or chasing them away. To waste time and energy on inclusionary zoning ordinances only hurts the overall effort to get more affordable housing. Instead, efforts should be focused on working in concert to increase the overall subsidy pool that will be needed by all developers to meet the need.

Part IV

IMPLEMENTATION ISSUES



THE FACES OF AFFORDABLE HOUSING

Luis Quezada

"My family and I have been enjoying every aspect of our new home. Affordable housing and self sufficiency motivation helped me get ahead with my education, my career and most importantly, my family."

Luis lives in the Meigs Road Apartments, an 18 unit family complex with a mixture of two, three and four bedroom units. This complex was developed by the Housing Authority in 1974 and is well located in the beautiful Mesa area of Santa Barbara. Luis is married and has five sons ages 9 to 16. Luis worked hard to become a licensed electrical contractor. He studied math and electrical classes and Santa Barbara Community College, served a five-year apprenticeship and graduated as an industrial electrician in 1995. His goals are to see his sons attain a higher education than his own and to stay close to family and loved ones. The Quezadas have just bought their own home in the Ventura area and are pleased that another family can now benefit from the affordable housing they recently vacated.

– Housing Authority of the City of Santa Barbara - 2002 Calendar

THREE BAY AREA CASE STUDIES

*Bay Area Economics**

As of 1998, 30 municipalities and one county employed inclusionary housing programs in the nine-county Bay Area. The rapidly expanding cities of Livermore and Pleasanton, for example, successfully leverage their growth control ordinances and the demand for development to create affordable units. Livermore developers willingly provide inclusionary units – and occasionally go beyond required levels – to receive project approval from city council. As a result, Livermore has produced approximately 1,140 units since 1978.

The City of Pleasanton maintains a voluntary program that has produced more than 930 units since the mid-1980s. The program has undergone changes over the years, and currently allows an additional 100 units above the annual growth cap to be constructed in projects with 25 percent of units set aside for low and very low-income households. In addition to the voluntary program, the city added a requirement for all residential projects with 15 or more units to reserve at least 20 percent of units for very low, low, and/or moderate income households.

Cities experiencing slower growth have also developed successful programs. The City of Petaluma had produced over 520 affordable units since 1984, with no affordability term limits on multifamily projects. San Leandro has produced over 375 units since 1983. Approximately 53 percent of these units serve very low-income households.

The following case studies provide a more detailed description of the inclusionary programs in three Bay Area cities: Sunnyvale, Palo Alto and San Francisco.

SUNNYVALE

Sunnyvale adopted its inclusionary housing program in 1980 and updated it in 1991. The program has led to the development of approximately 818 affordable units as of January 2001 (622 rental and 196 ownership units), an average of 39.0 units per year. These figures exclude any units developed with in-lieu fees.

**Bay Area Economics (BAE) provides comprehensive real estate economic analysis and urban development services to public, private, non-profit, and institutional clients throughout the U.S. BAE is headquartered in Berkeley, California, with additional offices in San Francisco, Washington D.C., and the Sacramento region. For more information, see www.bayareaeconomics.com.*

EDITOR'S NOTE

These three case studies come from an inclusionary housing study prepared by the real estate consulting firm Bay Area Economics for the City of San José Housing Department in February 2002. It has a useful analysis and comparison of three different applications of the inclusionary requirement. The complete report can be found at the Web site of the San Jose Housing Authority (www.sjhousing.org) under the "Reports" heading.

PROGRAM STRUCTURE

The ordinance requires residential developments of 10 or more units to maintain at least 10 percent of the units as affordable to moderate income households. The inclusionary housing ordinance applies only to developments outside of low-density single-family residential zones, and excludes assisted living and special needs housing projects. Inclusionary units must have similar exteriors to market rate units.

Developers may request payment of an in-lieu fee for projects fewer than 20 units. In-lieu fees associated with for-sale projects are calculated as the difference between the fair market value of a unit and the below-market rate price as established in the program's price guidelines. In-lieu fees for rental projects are the difference between the market rent for the units and the established below-market rent capitalized over 20 years.

For-sale inclusionary units carry a 20-year affordable term. The term "resets" if the unit is resold prior to the completion of 20 years, with the City or its designee maintaining first right of refusal. Sale price is limited to the original purchase price plus the percentage increase of the housing component of the San Francisco Bay Area Consumer Price Index and any major capital improvements. No sales restrictions apply after completion of the 20 year term, or if the City or its designee do not accept the offer of sale at any point.

Rental units must be rented to very low and low income households, and remain affordable for a flat twenty years, regardless of a change in tenants. The City indexes inclusionary rents to the annual percentage increase in the Santa Clara County median income.

INCENTIVES

To help offset any additional costs the inclusionary units may present to developers, the City offers developers a density bonus of 15 percent of the maximum units allowed in any given area. Projects with 10 to 19 units may add an additional unit. Developers also receive fast track permit processing, technical assistance from City staff, and occasionally, Community Development Block Grants to support off-site improvements. In addition, projects with 20 percent low income or 10 percent very low-income units receive a 20 percent density bonus. However, according to City staff, few market rate developers have taken advantage of this option for a number of reasons, including small sites that limit the attractiveness of a density bonus.

ADMINISTRATION

The Housing Division of Sunnyvale's Community Development Department administers the program. It maintains a list of all inclusionary units in the City, conducts annual audits of the inclusionary rental units, establishes current inclusionary rent levels, certifies occupancy and eligibility of ownership units, and conducts title searches to supervise the sale of inclusionary units. In addition, the City contracts with the Santa Clara County Housing Authority to qualify households for ownership units. The Housing Authority reports a four-year waiting list for these units. According to City staff, administration and monitoring of the program requires at least one full-time staff person, plus the Housing Authority contract and additional hours spent by supervisory City staff. Estimated annual cost of administering the Sunnyvale inclusionary program is approximately $90,000 to $110,000.

COMMUNITY REACTION

Sunnyvale Planning staff indicates that developers have grown familiar with the program and generally accept its requirements. Since the ordinance is clearly defined in the municipal code, developers have little room to negotiate or request exemptions.

FUTURE

Planning Commission and staff are considering making a number of changes to the inclusionary housing ordinance. For example, in cases where 10 percent of a project leads to a fraction of an inclusionary unit (e.g., 3.2 units for a 32 unit complex), in-lieu fees may be required for that fraction. The City is also considering extension of the affordability term beyond 20 years, as they have determined that 20 years is an insufficient term to assure a steady stock of below-market rate units. As a result, the City has had to purchase a number of units approaching the end of their affordability terms. The City also intends to conduct regular workshops for potential owners and renters under the program, as it handles approximately 30 phone calls a week requesting program details. The City has also considered amending the ordinance to include single-family zones, and require developers to make the interiors of inclusionary units identical to market rate units.

PALO ALTO

The City of Palo Alto's inclusionary housing program is one of the oldest in the state. The program has produced 152 for-sale units and 101 rental units since 1974, at an average of 9.4 units per year. These figures exclude units developed through in-lieu fees.

PROGRAM STRUCTURE

Palo Alto does not have an inclusionary housing ordinance per se, but rather incorporates the "Below-Market Rate Program" into the City's Comprehensive Plan. As such, Palo Alto's program is less prescribed, and while certain baseline requirements generally apply to residential developments, City staff can negotiate with developers on a case-by-case basis.

The program requires that, in for-sale projects of three or more units and rental projects of five or more units, at least 10 percent of the units be provided at housing costs that are affordable to low and moderate income households. Developments on sites greater than five acres must include a 15 percent affordable component. For ownership projects, the City sets unit prices at levels affordable to households at 80 to 100 percent of the Santa Clara County Area Median Income. Inclusionary rents are affordable to households at 50 to 80 percent of median income.

The program also requires inclusionary units to have identical exteriors to the market rate units, though for interiors of ownership projects, developers may request City approval to substitute more standard finishings, appliances, or fixtures for luxury items. Inclusionary units should be located throughout the development, and should be provided proportionately in the same unit type mix as the market rate units. Since the greatest demand exists for two- and three-bedroom units, however, the City may negotiate a waiver of the in-lieu fee on any fractional unit in return for the provision of these larger units.

While it is City policy to encourage developers to include the inclusionary units within the project, the City does occasionally allow them to be built off-site. As a third option, the program allows the payment of an in-lieu fee. In-lieu fees also apply to developments that have fewer than 10 units. In addition, developers must pay in-lieu fees for fractions of required inclusionary units. For ownership projects, the in-lieu payment equals five percent of the actual sales price or the fair market value of each unit sold, whichever is greater. For rental projects, developers may opt between an annual payment based on the difference between the initial Section 8 Fair Market Rent and the market rate rents of the units, or a one-time fee based on five percent of the appraised value of the rental portion of the project.

The City directs in-lieu fees to Palo Alto's Housing Development Fund, which supports the activities of non-profit affordable housing developers and covers a portion of the Below-Market Rate Program's administrative costs. Palo Alto's program requires an affordability term of 59 years for both ownership and rental housing, a much longer period than most California programs. For ownership units, the term resets and the City retains first right of refusal on the unit if sale occurs prior to the end of the 59-year term. Resale price is based on the percentage increase in the San Francisco Bay Area Consumer Price Index housing component during the period of ownership. Currently, one-third of the percentage increase in the Consumer Price Index is applied to the original purchase price to determine the resale price. Rental properties have a flat 59-year affordability term, with rents increasing according to one-third of the percent change in the local Consumer Price Index as well.

INCENTIVES

Palo Alto's Below-Market Rate Program includes a density bonus that allows construction of up to three additional market rate units for each inclusionary unit above that normally required, up to a maximum zoning increase of 25 percent in density. The program also allows an equivalent increase in Floor Area Ratio for projects that meet this requirement. However, City staff report that developers seldom use the density bonus, since they would prefer to build fewer larger units.

ADMINISTRATION

The City of Palo Alto contracts with the Palo Alto Housing Corporation, a nonprofit affordable housing developer, to monitor and provide day-to-day administration of the Below-Market Rate Program. PAHC maintains the list of inclusionary units, screens and records eligible households, works with lenders, and monitors the affordability of the inclusionary rents and sale prices. The contract ranges from $40,000 to $60,000 annually, and pays for a near full-time employee to administer the program. The high cost reflects the fact that Palo Alto's program dates back to 1974, and therefore has numerous resales of inclusionary units. The resale process requires significant supervision, and staff feel that a newer program, with fewer units and resales, may entail less oversight at first.

The Below-Market Rate Program also addresses vacant land. Under the program, sellers of vacant land subdivided into three or more lots and sold without construction of housing must provide a buildable parcel(s) equivalent to at least 10 percent of the vacant acreage to the City or the City's designee. The City may then use the land for the development of affordable housing, or sell the property and place the funds in the City Housing Development Fund. The City and developer may also agree to a comparable in-lieu fee based on a least five percent of the greater of the actual sales price or fair market value of the improved lots.

SAN FRANCISCO

San Francisco's inclusionary housing program exists as a policy in the City's General Plan Residence Element. Since the policy began in 1991, it has led to the development of 182 inclusionary ownership units and 68 rental units, or 24.9 units a year.

PROGRAM STRUCTURE

The policy states that residential projects containing 10 or more units which seek Planning Commission approval as a conditional use or a planned unit development should provide a 10 percent affordable component. Staff estimates that half of the residential projects in San Francisco meet these criteria (however, actual production of inclusionary units appears to be substantially below this level). Inclusionary ownership units target first-time homebuyer households with incomes from 60 percent to 100 percent of median income. Affordable rental units should target households earning up to 60 percent of median income.

Units must remain affordable for a 50-year term. To allow monitoring of inclusionary rental units, the policy requires developers to maintain records certifying the tenants' income levels. The Mayor's Office of Housing may request this data on an annual basis, along with an administrative fee. The Office of Housing also monitors resale of ownership units, and may take the necessary steps to verify that an inclusionary unit is owner-occupied or being rented by an income-eligible household.

San Francisco's inclusionary policy provides developers with a great deal of flexibility, and as in Palo Alto, developers may negotiate with staff and the Planning Commission on the exact number of units as well as the affordability levels. The policy guidelines specifically state that the affordable housing requirement may be modified as necessary, taking into account increased project costs due to adaptive reuse of an historically significant building, increased carrying costs due to excessive delay in permit processing, and the provision of other elements in the project which serve a demonstrable community need.

While the policy encourages developers to provide the affordable units on-site, the Planning Commission may approve off-site alternatives if the developer provides more affordable and/or a greater number of affordable units. Linked off-site housing should be ready for occupancy within the same general time frame as the market rate units, and should be in close proximity to the proposed project, in a high need area as identified by the Office of Housing, or in a project type identified as a high priority in the Residence Element or the Affordable Housing Action Plan. Developers may also pay an in-lieu fee to the City's Affordable Housing Fund, based on the amount of subsidy determined by the Office of Housing that is required to produce a unit meeting the affordability levels.

FUTURE

The San Francisco Board of Supervisors is currently considering adoption of an inclusionary housing ordinance to formalize and standardize the process. Although an ordinance may limit the program's flexibility, staff feels that it would allow a more aggressive approach to inclusionary unit production. Administrative costs of this inclusionary program were unavailable.

THREE BAY AREA CITIES: HOUSING MARKET SNAPSHOT, 2001

	Sunnyvale	Palo Alto	San Francisco
Median Sales Price: Single Home	$605,000	$800,250	$516,000
Median Sales Price: Condominium	$394,000	$450,000	$499,000
Average Rent	$1,773	$2,211	$2,157
Vacancy Rate	5.9%	3.8%	5.2%
New Single Family Units Permitted	9	70	–
New Multifamily Units Permitted	168	3	861

LESSONS LEARNED

The success of an inclusionary housing program lies in a number of factors, and does not depend solely on market rate housing production. The case studies suggest that the manner in which the inclusionary requirement is applied has a greater impact on the production of inclusionary units. For example, while Sunnyvale sees far less residential development than San Francisco, it has managed to produce over 14 more inclusionary units a year. Palo Alto has a comparable rate of residential development as Sunnyvale, but produces far fewer inclusionary units annually. Therefore, a well-applied inclusionary program is more likely produce a significant number of affordable units.

RELATIONSHIP TO GENERAL HOUSING COST

While a high-priced housing market may allow developers to recoup some of the costs of inclusionary units, it does not necessarily lead to greater inclusionary unit production. Sunnyvale's program has produced more affordable units than either Palo Alto or San Francisco, despite the city's lower housing values.

FLEXIBILITY MAY HAVE DISADVANTAGES

The fact that Sunnyvale's program is enacted through a city ordinance may contribute to its strong rate of inclusionary production. An ordinance allows less leeway for developers to negotiate requirements, and creates more certainty for developers by setting a clear and universally applied standard. This clarity may prove particularly useful at the program's inception, when developers are unfamiliar with the requirements. On the other hand, an ordinance does not offer the flexibility of a General Plan policy, and prevents staff from reviewing the inclusionary requirement on a project-by-project basis. A city can also adapt a General Plan-based program more easily to reflect changing market conditions and policy shifts over time.

ADMINISTRATIVE ISSUES A CHALLENGE

Estimates of the administrative cost of an inclusionary program vary from $40,000 to $110,000 among the case study cities. In both Sunnyvale and Palo Alto, at least one full time employee is required to manage the program, in addition to time spent by supervisory staff to adjust and refine the program requirements. Palo Alto's contract with a non-profit housing organization to monitor units and qualify households centralizes these two tasks, and may offer greater marketing and outreach opportunities since the organization already has contacts with low income households. The cities of Livermore and Pleasanton have considered jointly forming a non-profit to administer both cities' inclusionary programs and save costs.

In general, program managers characterized monitoring of inclusionary requirements as a challenging process. One Sunnyvale Housing Division staff person described the monitoring requirements as "time consuming" and "cumbersome." Complications regularly arise from unit resales, owners renting out their units, and tenants and owners losing their qualification as their incomes grow, among other issues. Staff in all cities emphasized the need for highly detailed deed restrictions to mitigate some of these problems.

HOW DID WE DO? 17 RECOMMENDATIONS FOR THE MONTEREY COUNTY INCLUSIONARY PROGRAM

*Monterey County Staff Report**

EDITOR'S NOTE

This selection is an excerpt from HOW DID WE DO? EVALUATION OF THE INCLUSIONARY HOUSING PROGRAM. *This report provides an excellent overview of many of the complex issues associated with inclusionary ordinances that are not always readily apparent when a program is first designed. The County deserves much credit for seeking broad citizen input and developing a meaningful audit of its program.*

Part of the usefulness of this selection is that the issues and recommendations are explained briefly. However, this part of the report follows a summary of the Monterey program. Thus, it assumes the reader has full knowledge of the Monterey Program. The report, in its entirety, is posted online at www.co.monterey.ca.us/housing. Then click "documents" and look for the title EVALUATION OF THE INCLUSIONARY HOUSING PROGRAM. *Readers may also be interested in the recently completed (January 2003)* INCLUSIONARY HOUSING ADMINISTRATIVE MANUAL *that is also located on this web page.*

I. ISSUES FOR HOMEOWNERS

1. CALCULATION OF SALES PRICE

The criteria used to determine original sales price of an inclusionary unit has varied with market conditions. The County used a housing cost ratio of 35 percent of median income for a four-person household (principal, interest, taxes, insurance and homeowner association fees make up 35 percent of household income). The County's 35 percent ratio is higher than that of most other communities. The ratio should be reduced to 30 percent if it is to include only housing-related costs. Also, the current formula assumes a 10 percent down payment with a 6 to 7 percent loan interest rate. It is recommended that the formula be changed to a 5 percent down payment with a standard 8 percent interest rate to provide more flexibility for buyers who might find it difficult to build up a 10 percent down payment.

The sales price calculation is also based on a four-person median income household. The sales price does not reflect the size of the unit. A question arose as to whether to "tie" the household size to the number of bedrooms. The recommended change is to calculate household income based on a formula of one person per bedroom plus one person. For example, a two-bedroom unit would require a three-person household income. Staff should prepare the calculation early in the development process. Sales prices should not be changed without prior written authorization from the County.

2. VALUE OF HOME IMPROVEMENTS

Currently, up to 5 percent of the original sales price can be credited for home improvements. Several inclusionary homeowners commented on the

**Monterey County Staff (Housing and Redevelopment Department) Staff also credit housing consultant Melanie Shaffer Freitas (based in the City of Santa Cruz) for her significant contributions to this report.*

valuation of improvements. Failure to consider improvements in the calculation of resale value may discourage property owners from investing in improvements. However, including the value of all improvements in the resale value may make the home too expensive for low- to moderate-income households.

The type of improvement is also a consideration. For example, bedroom additions are often necessary as a family expands. Thus, a bedroom addition could be considered a valuable improvement. The new resale value could then be based on number of bedrooms and, consequently, a larger household income. By contrast, landscaping, hot tubs and other types of improvements are not of the same significance as bedroom additions.

The County should increase the percentage weight of improvement to 10 percent of the original purchase price. A 10 percent credit will reflect basic improvements required to maintain a property. The County will no longer require proof of improvements. Instead, a 10 percent credit will be provided at the time of refinancing or resale if the unit meets a basic maintenance level. Furthermore, the value of a bedroom addition will be based on the difference in household size allowed to occupy the unit with the bedroom addition.

Another question is the resale of housing units that are not maintained. Several communities report that they inspect units prior to resale and deduct the costs of repair from the resale value. Monterey County has implemented this strategy. It is recommended that the County continue to enforce this policy.

3. Calculation of Resale Value

Many inclusionary homeowners want to be able to sell their homes during the affordability period without resale price restrictions. Monterey County calculates the resale value of an inclusionary housing unit based on original sales price plus the percentage change in median income since the original sales date. The current method of calculating resale price by "pegging it" to the change in median income reflects the intent of the program. As median income changes, the resale value changes in the same proportion. This ensures that the moderate-income household can still afford to purchase the unit.

Some communities tie the resale value increase to changes in the *Consumer Price Index*. However, there often are years when the *Consumer Price Index* increases but incomes do not. Therefore, the *Consumer Price Index* indicator might inflate the resale value beyond the reach of moderate-income households. Other communities allow property owners to resell the unit at market value. This practice depletes the inventory of affordable units in the housing stock. Even if some of the "housing subsidy" is recaptured, it is usually not sufficient to replace the lost affordable unit.

The underlying assumption of the inclusionary ordinance is that the high cost of housing excludes low- and moderate-income households from the benefits of home ownership. These households include teachers, public safety employees, health care workers and others. The goal of the inclusionary ordinance is to ensure that these households can stay in Monterey County. Achieving this goal requires that increases in the market value of an affordable unit do not make it too expensive for resale to another moderate-income household. In fact, the inclusionary ordinance specifically states that "resale control through deed restrictions" is a necessary consideration in order to prevent undermining of the credibility of the whole program, not so much because of the windfall to those who sell an inclusionary unit, but because of the loss of the unit itself as an affordable unit.

The question of resale value highlights the conflict between preserving the stock of affordable units and allowing the build up of equity for the owners' use. It is recommended that Monterey County continue to recognize the importance of preserving the stock of affordable units and ensuring that they remain affordable.

4. Refinancing and Second Deed of Trusts

After purchasing an inclusionary unit, homeowners may want to either refinance their existing first mortgage or encumber a second mortgage on the property. The current ordinance is interpreted to allow refinancing if:

- The loan-to-resale value does not exceed 95 percent;
- Improvements calculated in the resale value do not exceed five percent of the original purchase price;
- Homeowners receive no cash out; and
- The County's lien remains in second position.

Some inclusionary owners indicate that they would like to be able to refinance or encumber a second deed of trust. It is recommended that the County allow inclusionary homeowners to take out cash and revise the loans-to-resale value to 100 percent.

5. Title Changes

The variety of household types listed on the title of an inclusionary unit give rise to a number of possible title changes. Married couples, unmarried couples or single individuals may hold title. Monterey County allows transfer of title to surviving joint tenants upon death of one of the owners. The County retains all deed restrictions on the property. A new spouse may be added on the title, or title may also be transferred to a spouse as a result of a divorce.

The one issue that remains, however, is the question of inheritance. If the sole or surviving owner of the property dies, the property must be resold to another income-eligible household. The heirs of the deceased must qualify as an income-eligible household if they want to continue to occupy the property.

Should the County allow an inclusionary unit to be inherited, especially by a child or children of the original owner? This issue has proven to be a very difficult and emotional issue for the public as well as the Housing Advisory Committee and Planning Commission. Staff's recommendation is that the program be revised to allow children or stepchildren to inherit the property, regardless of their income. However, they must occupy it as their principal residence and a new 30-year resale period begins.

The Planning Commission indicated that the primary purpose of the inclusionary ordinance is to provide affordable units to low- and moderate- income households. Allowing non-income eligible children or stepchildren to inherit affordable units would not advance achievement of this goal. However, the Commission did acknowledge that there might be some transition time needed after the death of a parent and the sale of a property. Therefore, the Commission recommended that the ordinance continue to require the sale of the property to an income-eligible household. However, a one-year "compassion" period will be allowed between the settlement of the estate and the eventual sale of the property if a non-income eligible child or stepchild inherits it.

6. First Time Homebuyer Requirement

The Inclusionary Program does not restrict eligibility to first-time homebuyers. There have been instances where Monterey County inclusionary applicants already owned a home, sold or rented it and moved to an inclusionary unit. Most inclusionary applicants will be first-time buyers due to income and asset limitations. Restricting inclusionary housing to first-time buyers would prevent inclusionary owners from buying a larger unit. Therefore, it is recommended that the County retain its currently policy and not require inclusionary applicants for homeowner units to be first-time buyers.

II. RENTAL UNITS:

Current restrictions regarding inclusionary rental units include: (i) that units must be affordable to either very low-income or low-income households; (ii) affordability is defined as rents that are at 30 percent of 50 percent of median income for very low-income households or 30 percent of 70 percent of median income for low-income households; and (iii) rents are to be restricted to affordable rents and monitored as such "in perpetuity."

7. RENTAL UNIT OCCUPANCY AND AFFORDABILITY REQUIREMENTS

Monitoring of rental units identified units rented to households that are not income-eligible. In other cases rental units were occupied by households too large for the unit. Affordability restrictions have not been re-recorded upon the sale of rental property. To address these issues, regulatory agreements should contain detailed requirements for the occupancy of the rental units. These agreements should be recorded against the property.

The inclusionary ordinance should be revised in order to be more consistent. The ordinance restricts occupancy to very low- and low-income households. It defines low-income as households at or below 80 percent of median income. Yet, the ordinance also defines affordable rents as affordable to low-income households at 30 percent of 70 percent of median monthly income. The ordinance needs to consistently define low-income at 80 percent and to change the affordability definition to 30 percent of 80 percent, not 70 percent.

8. USE OF EXISTING UNITS TO SATISFY INCLUSIONARY REQUIREMENT

The inclusionary ordinance has been interpreted to allow developers to substitute existing units for their off-site contribution. Off-site units can be used to meet the inclusionary requirement if "a greater contribution" can be demonstrated. Usually this means that the units, if rentals, will be affordable to households at or below 50-70 percent of median income. Further, the County requires that the rental units have affordability restrictions imposed "in perpetuity."

Several members of the public and representatives of groups commented. Proponents argued that the existing procedure encouraged the rehabilitation of existing units in the housing stock and provided rental units at greater affordability levels. However, other comments included the statement that existing units do not really meet the intent of the ordinance, which was to provide affordable units in conjunction with new construction. Further, there is concern regarding the long-term property condition of existing units, as compared to the life cycle of a newly constructed unit.

It is recommended that the County no longer allow existing units to be substituted for off-site development of inclusionary housing requirements. There is no substantial community benefit to be derived from allowing existing units to be substituted.

III. ADMINISTRATIVE POLICIES

9. DEVELOP AN INCLUSIONARY HOUSING MANUAL*

Evaluation of the Inclusionary Housing program revealed a need to consolidate procedures and develop a written manual. The County should develop and maintain an Inclusionary Housing Manual that describes day-to-day administrative procedures and policies, including:

- ***Program Guidelines.*** A description of all elements of the inclusionary program, including eligibility criteria; unit pricing criteria; homeowner requirements (including occupancy, subordination, default and foreclosure, title changes and refinancing); rental requirements (including occupancy, rent adjustments and habitability); restrictions on resale and re-rental; on site unit requirements; off site unit requirements; land donation option; applicant selection and marketing procedures, special handling procedures;

- ***Compliance Guidelines.*** A description of the monitoring processes for developers, developments, homeowner occupancy, tenant occupancy and rents and the penalties for noncompliance.

- ***Fact Sheets.*** Shorter fact sheets should be developed that outline the procedures for homeowners, tenants and developers.

---

*Editor's Note: The County completed this manual in January 2003. It is posted online at www.monterey.co.us/housing. Click on "Documents" and look for title "*Inclusionary Housing Administrative Manual.*"

10. Monitoring and Compliance Procedures

As part of the 2001 evaluation process, staff from the Housing and Redevelopment Office initiated a comprehensive monitoring process. The monitoring effort needs to be continued in the future. Inclusionary housing units are an extremely valuable component of Monterey County's affordable housing stock. These units must be consistently monitored in order to ensure that units are not "lost" and converted to market rate units inadvertently.

Further, there needs to be considerable involvement by County Counsel or other legal professionals to define legally acceptable compliance methods. These methods need to be defined in legal agreements with owners of inclusionary units and, when required, enforcement must occur.

11. Improve Implementation Tools

A review of current resale agreements and legal documents indicate that there needs to be some revision of the documents. The current resale agreement is very difficult to understand and needs to be re-written to make it more customer-friendly and readable. Further, it may be necessary to require additional legal documents to be recorded against a property to prevent properties from being re-sold without proper notice to the County.

Public comment on this issue included a recommendation that all documents be available in English and Spanish for potential applicants. Further, it was recommended that the County consider on-going education of inclusionary recipients in regard to their responsibilities and maintenance of property standards.

12. Marketing and Selection Procedures

Evaluation of the inclusionary housing program identified a need to define marketing and selection procedures. Improved marketing and selection procedures should include:

- Staff markets the program, including advertising for availability of units.
- Staff conducts lottery and establishes a priority list based on written criteria, for example, households who live or work in Monterey County.

- Staff maintains and updates list on a yearly basis. List is used for both new inclusionary units as well as turnover of existing homeowner and rental units.
- Housing Authority will continue to qualify potential applicants for income eligibility.
- Staff will refer eligible applicants to developers who will coordinate eventual transfer of ownership to qualified applicants.

Members of the Planning Commission supported the priority for households who live or work in Monterey County and suggested that there also be consideration given to households who have jobs in close proximity to the inclusionary unit. Since one of the planning objectives for the County is to balance jobs and housing, it may be appropriate to give additional priority to households with jobs near the proposed unit. Further, the marketing plan should allow some flexibility for developers to propose alternative marketing strategies, especially in regard to employee housing.

13. Special Handling Procedures

In 1992, the County initiated a "Special Handling" program for affordable units. Although not tied directly to the Inclusionary Housing Ordinance, this program compliments the Inclusionary Housing Ordinance by encouraging a higher percentage of affordable units. The program applies to developments of 7 or more units that provide 25 percent or more affordable units. Incentives included as part of the program include fee reductions and waivers, priority processing, financial assistance and density bonuses.

The requirements for the affordable units are more stringent than the inclusionary ordinance in that "for-sale" units must be affordable to low income households and "rental units" must be affordable to very low-income households. The procedures also state that all affordable units must be "...rendered permanently affordable by deed restriction in the manner prescribed to inclusionary units by the inclusionary Housing Ordinance." In total, there have been eight developments processed under the Special Handling procedures.

One of the program goals should be assistance in expediting applications and permits. Therefore, it is recommended that the program be revised to "Entitlement and Permit Processing Coordination." Development applications that qualify for this program would be assigned to a specific staff member from the Housing and Redevelopment Office who would be responsible for monitoring and coordinating the development process as efficiently as possible. Further, there would be aggressive marketing of the program to the development community and County staff.

14. Exemptions for Owner-Occupied Units/Lots

Currently, if a developer/owner indicates that they will be occupying one of the units in a proposed development as an owner-occupant, that unit is exempt from inclusionary housing requirements. There have been several instances of misuse of this policy. For example, owners have claimed owner-occupied exemptions on more than one development during the same period of time. It is recommended that the County limit the number of owner-occupied exemptions to one per development and, further, one exemption per developer for every 10-year period. The Planning Commission further recommended that an owner-occupied exemption only be allowed for developments of 4 or less units.

15. Timing and Design of Inclusionary Units

The County currently has no definitive written policies regarding the design of inclusionary units. Specifically, there are no written policies regarding the exterior appearance of inclusionary units. Further, there should be more specific policies in terms of when inclusionary units are built in relation to the construction of the market rate unit. Examples of issues that should be addressed then are exterior appearance, size of units, clustering or scattering of units and timing of provision of inclusionary units.

The issue of clustering or scattering units is dependent on several variables. The first is the size of the project. A project requiring only two inclusionary units is different than a project generating 10 inclusionary units. The second variable is the type of project. Again, the type and actual costs of developing a large lot, single-family development are different that the costs and variables associated with a multi-family development of town homes or apartments. Therefore, it is recommended that the option of clustering or scattering be available and determined on a project-by-project basis.

It is recommended that the County include written guidelines in its administrative procedures that specify that the exterior appearance of the inclusionary units shall be similar to the market rate units. Further, the inclusionary units shall be similar in number of bedrooms to the market rate units although square footages can differ between the units.

Regarding timing, the issue involves the stage of the development approval process at which time the developer commits to an inclusionary requirement and option selection. Currently, the inclusionary requirement does not need to be identified until the final map stage. In order to provide full public disclosure of the inclusionary requirement, it is recommended that a written agreement be developed at the (earlier) tentative map stage. The written agreement should include the number of inclusionary units to be provided and the anticipated household income levels of affordability. Further, the agreement should contain the requirement that the inclusionary units must be built before or concurrently with the market rate units. It was initially suggested during the public comments on this item that the agreement be a "condition of approval" at the tentative map stage. However, there was also some concern that, by requiring it as a condition of approval, there was little flexibility provided should there be major or unforeseen changes between the tentative map and final map stages. Therefore, it is recommended that the requirement be finalized as a written agreement at the tentative map stage, rather than as a "condition of approval."

16. THREE OPTIONS TO FULFILL INCLUSIONARY REQUIREMENT

The Inclusionary Housing Ordinance has allowed developers to fulfill their inclusionary housing requirements by choosing one or a combination of three options: they may provide inclusionary units on-site, provide inclusionary units off-site or pay an in-lieu fee. The availability of three options provides flexibility for both the County and the developer in delivering affordable units. Each development proposal is different and the opportunity to have a variety of different options available helps to ensure that the maximum benefit will be achieved.

However, there is also concern that payment of in-lieu fees does not necessarily generate a unit similar to an inclusionary housing unit. In-lieu fees have been used to help with development and financing costs of affordable units in the County but there is not necessarily a one-to-one correlation between the amount of in-lieu fees paid and the development of a similar number of affordable units. Therefore, it is recommended that the payment of in-lieu fees for developments of 7 or more units only be allowed as a "last-resort," that is, if the developer demonstrates that provision of inclusionary units either on or off-site is infeasible. Payment of in-lieu fees would still be allowed for developments of six or less units.

There were several public comments in regard to the provision allowing off-site units. The real estate and development community generally favored allowing units off-site because it allowed more flexibility. However, others noted that off-site units were being developed in planning areas far from the market units. It could be construed, they argued, that the inclusionary units were being concentrated in areas that already had substantial numbers of low and moderate-income households.

In order to more accurately reflect the objective of the Inclusionary Housing Ordinance, it is recommended that off-site units be allowed only if

1) the off-site units are located within a 10-mile radius of the market rate units, and
2) there is demonstration that the off-site units are producing a "greater contribution".

"Greater contribution" will include requirement that rental units must be affordable to very low-income households and ownership units affordable to low income households. Further, "greater contribution" shall also include that the number of units produced off-site will be greater than the number of units required on-site.

17. In-Lieu Fee Calculation

In-lieu fees have been allowed since the inception of the program. The methodology used to determine the fee for projects of seven or more units or lots is:

> "Fifteen percent of the median sales price of a single family home in the unincorporated portion of the Planning Area in which the new residential development is located increased by the percentage difference between the lowest unincorporated planning area median single family home sales price and the median single family home sales price in the unincorporated portion of the Planning Area in which the new residential development is located."

A proportional fraction of the in-lieu fee is charged for projects of up to six units or lots.

Planning Area	Median Sales Price	In-lieu Fee (for 7 or more units/lots)
Greater Salinas	$219,000	$47,021
Toro	$404,750	$160,610

The original concept was that the in-lieu fee would equal the cost of providing an affordable unit similar to the market rate units. However, as the examples above demonstrate, the fees do not reflect the actual subsidy cost of providing an affordable unit.

The fee is based on 15 percent of the sales price of a home, adjusted for the difference between lowest and median priced homes. However, because the fee is based on only 15 percent of the price, rather than a 100 percent factor, the fee only reflects a portion of the actual cost of providing a housing unit. Further, the fee as currently calculated does not take into account cost of new construction.

The fee should be based on the difference between the market cost of an average unit or lot in the development and the cost of providing a unit or lot affordable to a household earning 80 percent of median income. There would then be no need to calculate fees by planning areas because the market cost of the average unit will reflect the market costs in that area. For projects of six or less units or lots, the fee would be calculated on a proportionate share of the in-lieu fee.

An example of the revised fee calculation:

Assumptions:

$400,000	Sales Price of Market-rate Unit
$116,000	House Price Affordable to a 4-person household at 80 percent of median income; 30 year term at 8 percent interest; and limiting principal, interest, taxes and insurance limited to 30 percent of household income
$284,000	In Lieu Fee for seven unit/lot project

The $400,000 sales price is based on the average sales price of a unit or lot in the market rate development that is triggering the inclusionary housing requirement. The in-lieu fee therefore will vary depending on the sale prices of the proposed development.

There has been some concern noted that, since a written agreement is recommended to be developed by the tentative map stage *(see Issue 15)*, the estimated sales price at the tentative map stage might change by the time the development is actually built. Therefore, it is recommended that a policy be included with the revised in-lieu fee calculation that the in-lieu fee calculation at the time of the tentative map is an estimate only and is subject to revision and verification at the time of construction.

One final issue regarding in-lieu fees is whether the fee should be assessed on existing or remainder lots. For example, a developer applies to subdivide an existing lot into three lots and the question has been asked whether the in-lieu fee applies to two or three lots. Staff has interpreted the ordinance in the past to require the fee to be assessed on all three lots. It is recommended that the County formalize this practice into a written policy that specifies that all lots in projects of up to six units shall be assessed an in-lieu fee.

Part V

LEGAL ISSUES

THE FACES OF AFFORDABLE HOUSING

Joan Haughton

"Having affordable rent takes all the worry away. Without having debt, I can just sit and enjoy being and feel at peace."

Joan is a retired great-grandmother and considers caring for her garden as her primary vocation. She finds that Santa Barbara is the perfect place to grow the flowers she has always loved. She is also an avid seamstress and reader. Joan continues to give back to the community by knitting baby wear for the St. Francis Hospital Guild. Joan lives at SHIFCO, which was named is named in honor of the developers of the property (Senior Housing Interfaith Corporation). This 107 unit senior complex with private gardens was built in 1976. In an effort to ensure stable management and guarantee affordability in perpetuity, SHIFCO was acquired by the Housing Authority in 1988 for $2.2 million in outstanding debt.

– Housing Authority of the City of Santa Barbara - 2002 Calendar

HOUSING ELEMENTS AND AFFORDABLE HOUSING LAWS

*Alexander Abbe, Roxanne M. Diaz and Robert H. Pittman**

EDITOR'S NOTE

The following selection provides an overview of legal issues related to local agency housing elements. The authors explain how local agencies can benefit from state certification of their housing elements, and show how planning for inclusionary housing helps local agencies improve their chances for obtaining certification. While most jurisdictions are familiar with the statutory requirement to adopt a housing element, local jurisdictions will need to become increasingly familiar with obligations under other provisions of state housing law. This selection comes from a paper presented at the County Counsels' Association of California, Land Use Section Spring 2002 Conference in Santa Barbara, California, May 24, 2002.

I. HOUSING ELEMENTS

In 1980, the Legislature required local agencies to adopt housing elements as a part of their general plan.[1] The legislation recognized the serious shortage of housing in California, particularly affordable housing, and gave local agencies the responsibility to facilitate the improvement and development of housing for all economic segments.

Under these laws, a housing element must provide for the existing and projected housing needs of all economic segments of the community. Although the local agency need not construct the housing itself, it must identify potential sites for its development, and form goals, policies and programs that will promote its development. A local agency's particular housing "need" is determined by the state Department of Housing and Community Development ("HCD"), in cooperation with the local council of governments, if a particular area has a council of governments.[2]

This information, known as the Regional Housing Needs Assessment (or "RHNA"), establishes the minimum new construction required for each of four income categories:

- very low (below 50 percent of area median income);
- low (50 percent to 80 percent of median income);
- moderate (80 percent to 120 percent of median income); and
- above moderate (above 120 percent median income).

The housing element must be reviewed by a state agency prior to adoption.

[1] Cal. Gov't Code §§ 65580 and following.

[2] Cal. Gov't Code § 65584

**The authors are associates in the Public Law Department of the law firm of Richards, Watson & Gershon. Alexander Abbe is an Assistant City Attorney for the City of Buena Park. Roxanne M. Diaz is an Assistant City Attorney for the cities of Beverly Hills and Hidden Hills. She also serves as Assistant General Counsel to the South El Monte Improvement District and Industry Urban Development Agency as well as General Counsel to the Hub Cities Consortium. Robert H. Pittman serves as an Assistant City Attorney for the cities of Beverly Hills, Pasadena and Rancho Palos Verdes.*

Local agencies must submit draft housing elements to HCD at least 90 days prior to adoption, or 60 days prior to amendment.[3] HCD evaluates whether the draft element or draft amendment complies with state law. The local agency is given an opportunity to make corresponding changes.

If HCD certifies that the element conforms with state law, the statute creates a rebuttable presumption of the element's validity in any subsequent litigation challenging the element.[4] This presumption is a powerful deterrent to litigation and is a primary reason local agencies strive to attain HCD certification of their housing elements. Existing law does *not* give the same legal force to a decision of HCD to decline to certify an element. Instead, the statute authorizes a locality to "self-certify"[5] the element by making findings as to why it rejects HCD's conclusions.[6]

CONSEQUENCES OF INVALID HOUSING ELEMENT

The consequences of failing to adopt a valid housing element can be severe. In addition to requiring a local agency to revise its housing element to conform to state law, a court may *suspend* the authority of the local agency to issue building permits, variances, and subdivision map approvals, or to grant zoning changes.[7] A court could also mandate the *approval* of all applications for building permits or other related construction permits for residential housing in certain circumstances.

- For example, one court prohibited a city from issuing any building permits, map approvals, or other discretionary land use approvals until the city revised its housing element.[8] The case concerned whether to grant relief to a developer who had a tentative map approval prior to the court's order. Ultimately, the court reasoned that even though the developer intended to build a housing development, approval of the development could still impair the city's ability to meet its RHNA for low-income housing, and disallowed the project until the housing

---

[3] Cal. Gov't Code § 65585.

[4] Cal. Gov't Code § 65589.3.

[5] The "self-certification," under which a local agency makes findings explaining why it complies with state law notwithstanding HCD's comments, is to be distinguished from the special "self-certification" for local agencies within the regional jurisdiction of the San Diego Association of Governments ("SANDAG"). *See* Cal. Gov't Code § 65585(f). Local agencies in the SANDAG region may adopt housing elements without undergoing HCD review, provided that a series of conditions are met. *See* Cal. Gov't Code § 65585.1.

[6] Cal. Gov't Code § 65585(f). Note, however, that if the local agency self-certifies its element, it will bear the burden of proof of establishing that the element complies with state law, in any legal action challenging the validity of the element.

[7] Cal. Gov't Code § 65755.

[8] *Committee for Responsible Planning v. City of Indian Wells*, 209 Cal. App. 3d 1005 (1989).

element was in compliance with state law.

- In another case, a court concluded that a city had not provided "adequate sites... to facilitate and encourage development of... emergency shelters and transitional housing."[9] As a result, the court required the city to approve all conditional use permit applications for emergency shelters and transitional housing until it brought the housing element into compliance with state law.

Without a valid housing element, local agencies cannot approve any development project requiring a finding of consistency with the general plan.[10] A finding of consistency with a general plan is not valid where a general plan is incomplete or inadequate.[11] Accordingly, a local agency without a valid housing element would not be able to approve most development projects.

TIPS ON GAINING HCD CERTIFICATION

Local agencies can improve their chances of obtaining HCD certification by reviewing HCD comments on draft elements. The following nine-point summary of common criticisms is based on comment letters HCD has sent to various local agencies.

1. INVENTORY OF LAND

A housing element must contain an inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites. This is one of the most closely scrutinized areas of the housing element. Unless there is ample land in the jurisdiction to satisfy the RHNA requirement, HCD asks that local agencies provide information on *specific* sites, rather than general observations about large areas of land.

In particular, HCD looks for information on the general plan designation, zoning and density, the suitability and feasibility of development, and the

---

[9] *Hoffmaster v. City of San Diego*, 55 Cal. App. 4th 1098 (1997). *See* Cal. Gov't Code § 65583(c)(1).

[10] Some of the approvals requiring a finding of consistency with the general plan include: subdivision map approvals (Cal. Gov't Code §§ 66473.5 and 66474); specific plan or other development plan and amendments thereto (Cal. Gov't Code §§ 65359 and 65454); development agreements (Cal. Gov't Code § 65867.5); public works projects and public acquisition or disposition of property (Cal. Gov't Code § 65402); capital improvement programs by joint powers agencies (Cal. Gov't Code § 65403); redevelopment projects (Cal. Health & Safety Code §§ 33331 and 33367); and housing authority projects (Cal. Health & Safety Code § 34326).

[11] *See for example*, *Resource Defense Fund v. County of Santa Cruz*, 133 Cal. App. 3d 800, 806-07 (1982).

Site	Site Characteristics		Site Evaluation					
	Parcel Size (acres)	Development Code Zoning Category	Infrastructure	Potential Units				
				Very Low	Low	Mod	Above Mod	TOTAL
123 Green St.	10.5	R-1 (1 DU/ac)	no sewer; narrow rd.				5	**5**
456 Blue Rd.	27.2	R-3 (3 DU/ac)	deficient fire protect.; no sewer			5	15	**20**
789 Red Lane	6.8	R-5 (5 DU/ac)	good	15	15			**30**
(insert additional rows for each potential development site)								
TOTALS				**100**	**130**	**80**	**93**	**403**
RHNA				**100**	**125**	**80**	**70**	**375**
Surplus (Deficit)				**0**	**5**	**0**	**23**	**28**

available infrastructure at each site.[12] In addition to a written discussion of these factors, a summary table satisfying the HCD requirements could take a form like the one above.

2. Constraints

The element must analyze potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels.[13] HCD typically looks for the following components in the constraints analysis:

- ***Land Use Laws.*** The element should identify development densities, parking requirements and restrictions on lot coverage, lot sizes, unit sizes, setbacks and building heights. In its comment letters, HCD invariably asks for more information about parking standards and building height limitations.
- ***Design Review.*** HCD will look at whether objective standards and

[12] Cal. Gov't Code § 65583(a)(3).

[13] Cal. Gov't Code § 65583(a)(4), (a)(5).

guidelines exist to allow developers to determine what is required prior to submitting an application and also what the cost impacts of design review are.

- ***Code Enforcement Program.*** HCD also asks for an analysis of whether a jurisdiction's code enforcement program poses a significant constraint to housing development or maintenance, and whether the jurisdiction has enacted any amendments to the Uniform Building Code that would affect development.

- ***Fees and Exactions.*** The element should identify permit, development and impact fees, in-lieu fees and land dedication requirements. Include any contributions or payments required as a precondition for receiving any kind of development permit.

- ***Processing and Permit Procedures.*** The element should describe the permit requirements and how these procedures affect the cost, timing and feasibility of housing. Include a description of typical permit processing times, standard approval procedures and the entire list of permits that would be necessary for a residential development. HCD also looks for a comparison of the permit and approval process for typical single-family subdivisions and typical multifamily projects. *HCD often asks for a thorough analysis of these constraints.*

- ***On- and Off-site Improvements.*** The element should describe the improvements that are required as conditions of development, such as improvements to street widths, curbs, gutters and sidewalks, as well as water and sewer connections.

- ***Thoroughness of Constraints Analysis.*** When a draft element does not contain a thorough constraints analysis, HCD will invariably defer consideration of the adequacy of the programs to remove constraints to housing, by simply stating that "absent a complete constraints analysis, it is not possible to determine if additional program actions are necessary to mitigate potential and actual governmental constraints." Given that this will lead to additional delays in adoption of the housing element, it is important to be as thorough as possible in the constraints analysis for the draft element.

3. SPECIAL HOUSING NEEDS

The element must contain an analysis of the special housing needs of certain groups, including the disabled, the elderly, large families, farmworkers, families with female heads of households and persons in need of emergency shelter.[14] For this part of the element, HCD requires that each of these groups have its own separate analysis, rather than an analysis of "special needs groups" in the aggregate.

In particular, HCD asks for additional analysis of the availability of emergency shelters and transitional housing and the feasibility and constraints for developing additional facilities. The land inventory must identify sites where such facilities are permitted. The programs, in turn, should identify methods of removing constraints to the development of the facilities and discuss how the local agency will encourage and facilitate the development of shelters and transitional housing. Finally, the element should describe what areas are accessible to public services and transit.

HCD also requires a detailed analysis of the special needs of the disabled and the constraints on development, improvement and maintenance of housing for the disabled, in *virtually every comment letter*. The element should contain a program that removes constraints or provides reasonable accommodations for housing intended for persons with disabilities, such as facilitating approval of group homes, Americans With Disabilities Act (ADA) retrofit efforts, an evaluation of the zoning code for ADA compliance, or other measures that provide flexibility in the development of housing for persons with disabilities.

4. Goals for Maintenance, Improvement and Development

The element must contain a statement of the local agency's goals relative to the maintenance, improvement, and development of housing.[15] HCD often asks for *quantified* information with respect to these goals, and also looks for the goals for each income category, rather than an aggregate number. In its comment letters, HCD sometimes recommends that the element contain the following table:

Income Category	New Construction	Rehabilitation	Conservation
Very Low Income			
Low Income			
Moderate Income			
Above Moderate			

[14] Cal. Gov't Code § 65583(a)(6).

[15] Cal. Gov't Code § 65583(b)(1).

5. SITES TO BE MADE AVAILABLE

The element must identify adequate sites, which will be made available through appropriate zoning and development standards and with services and facilities for a variety of types of housing for all income levels.[16] If the draft element does not identify adequate sites to meet the RHNA requirements, HCD is unlikely to certify the element. In addition, if the element does not identify adequate sites to accommodate the prescribed development for all income groups under the RHNA, the local agency must identify sites with zoning that permits both owner-occupied and rental multifamily residential use by right (without a conditional use permit).[17] Given that local agencies might prefer to maintain their discretion to approve or disapprove housing projects, it is important that the housing element identify sufficient potential locations for housing for all income groups, even if some of these sites would ultimately be impractical to develop as a result of the various governmental, environmental and market constraints.

Accordingly, a local agency should consider identifying additional sites, perhaps by identifying land suitable for redevelopment or recycling, including underutilized residential land, publicly-owned and surplus land, aging non-residential uses that may be suitable for recycling to residential uses, areas suitable for mixed commercial and residential uses, and sites eligible for adaptive reuse programs. The element cannot rely on the absence of land for housing, it must rely on financing and other non-site related constraints that explain its inability to meet its "fair share" of the regional need for affordable housing. Note also that if the local agency cannot locate sufficient sites for low-income housing, it must provide a numerical projection of the number of lower-income dwellings it does expect to produce.[18]

6. HOUSING PROGRAMS

The element must contain programs that set forth a five-year schedule of actions the local agency is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element.[19] This is another closely scrutinized area of the housing element, especially with respect to the following issues:

---

[16] Cal. Gov't Code § 65583(c)(1).

[17] Cal. Gov't Code § 65583(c)(1)(A).

[18] Cal. Gov't Code § 65583(b)(2).

[19] Cal. Gov't Code § 65583(c).

- *Timelines for Program Actions.* In the large majority of comment letters, HCD asks for specific time frames in which programs will be carried out, and even asks for separate dates for completion of intermediate steps in programs.

- *Adequacy, Utilization and Promotion of Density Bonus Ordinance.* As of 1979, all local agencies were required to adopt density bonus ordinances.[20] HCD examines whether the jurisdiction has such an ordinance, how it is implemented, and the extent to which developers are made aware of the availability of the density bonus. In addition, HCD interprets density bonus law to mean that density bonuses may not be offered for the development of *moderate-income* units unless a developer has already met the State standards for low- and very low-income or senior units.[21] Offering moderate-income units before lower-income units would "undermine the intent" of the density bonus law, according to HCD.

- *Other Incentives.* Similarly, the housing element should specify what other incentives and/or regulatory concessions will be used to implement program actions, such as reductions and waivers of fees and improvement requirements.

- *Mandatory Actions.* HCD prefers that local agencies commit themselves to taking specific actions to implement programs, rather than promise to consider adopting a program.

- *Outreach Efforts.* HCD sometimes suggests distributing an inventory of potential development sites to area developers and/or conducting a request for proposal process for affordable development on specific sites. HCD also recommends outreach efforts to persons who might benefit from these programs.

- *Funding Sources.* HCD asks for an identification of the specific funding sources of a program.

- *Responsible Party.* HCD also asks the local agency to identify the party that will be responsible for carrying out particular programs.

---

[20] Cal. Gov't Code §§ 65915 and following.

[21] *See* Cal. Gov't Code § 65917.

7. Equal Opportunity

The element must promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.[22] For this requirement, HCD typically looks for a description of how information is disseminated to potential complainants and what organization enforces fair housing laws. Where appropriate, HCD also looks to see if fair housing information is distributed in languages other than English. In addition, fair housing information can be distributed in a variety of locations, including buses, public libraries, community and senior centers and local social service offices.

Note that one common error in drafting housing elements is to include age as a proscribed category of discrimination. State Equal Opportunity requirements do not apply to age.[23] In fact, restricting housing to persons of certain age is permissible in limited circumstances, such as senior housing, and if the jurisdiction has senior housing developments it should clearly not proscribe them in the housing element.[24]

8. Public Participation

The element should describe the local agency's diligent efforts to achieve public participation of all economic segments of the community in the development of the housing element.[25] This is another category that HCD scrutinizes closely. HCD looks for information on how low-income groups were notified of the housing element revision. As with the equal opportunity information, one way the local agency can promote awareness is by distributing brochures at senior and community centers, libraries, public offices and other locations. HCD also will examine how the input of low-income groups was *utilized* in the element.

9. Review of Previous Element

The new element must contain an analysis of the effectiveness of the previous housing element in attainment of the community's housing goals and objectives.[26] For this requirement, HCD looks for quantified results, rather than simply qualitative observations. Accordingly, the element should include numbers demonstrating the effectiveness of the previous element. Where previous programs have been ineffective, HCD will look to see how the jurisdiction will improve and strengthen the programs to improve implementation.

---

[22] Cal. Gov't Code § 65583(c)(5).

[23] *See* Cal. Gov't Code § 65583(c)(5).

[24] Cal. Civ. Code § 51.2; Cal. Gov't Code §§ 12955.9, 65852.1 and 65906.

[25] Cal. Gov't Code § 65583(c)(6)(B).

[26] Cal. Gov't Code § 65588.

In sum, the growing need for affordable housing makes housing element certification a virtual necessity. However, the housing element statutes are not the only affordable housing laws with which local agencies must comply. The next section provides an overview of the various affordable housing statutes designed to implement the State's housing goals of providing affordable housing to all income groups.

II. AFFORDABLE HOUSING STATUTES

In an effort to both increase the available housing stock and to make it affordable, the Legislature enacted a number of laws and programs (collectively the "State housing law"). State housing law takes different forms, sometimes imposing affirmative obligations on local agencies and sometimes restricting the exercise of local authority. While most jurisdictions are familiar with the statutory requirement to adopt a housing element, local jurisdictions will need to become increasingly familiar with obligations under other provisions of State housing law.

DENSITY BONUSES AND OTHER INCENTIVES

State law requires a local agency to grant a density bonus or equivalent incentive to a developer who agrees to construct affordable housing.[27]

A density bonus is a "density increase of at least 25 percent" over the maximum allowable density under the applicable zoning ordinance.[28] Equivalent incentives may include the following:

- a reduction in site development standards;
- a modification of zoning code requirements (including a reduction in setbacks, square footage requirements, required parking, or architectural design requirements);
- approval of mixed-use zoning in conjunction with the housing project;
- other regulatory incentives or concessions proposed by the local agency or the developer that result in identifiable cost reductions.[29]

[27] Cal. Gov't Code § 65915.

[28] Cal. Gov't Code § 65915(f).

[29] Cal. Gov't Code § 65915(h).

The density bonus requirements apply when a housing developer agrees to reserve a portion of new units for affordable housing. The minimum percentage of affordable housing required to trigger application of the statutes varies with the eligibility classification of potential residents:

- at least 20 percent of the total units for occupancy by "lower income" households[30];
- at least 10 percent of the total units for occupancy by "very low income" households[31]; or
- at least 50 percent of the units for occupancy by "qualifying residents."[32]

Under these circumstances, the local agency must either grant a density bonus and at least one other development concession or incentive[33] or provide other incentives of equivalent value based upon land cost per dwelling.[34]

A developer who receives a density bonus or other concession or incentive from a local agency must agree to ensure the continued affordability of all lower income density bonus units for a specified number of years.[35] The duration of the agreement depends on whether the local agency grants any additional concession or incentive. The use of redevelopment monies or other public funds to subsidize the cost of construction may also affect the length of the covenant.

The local agency must establish procedures for waiving or modifying development and zoning standards that would otherwise bar the award of the density bonus on a particular site.[36] Examples of zoning standards that might inhibit the development of affordable housing include:

- minimum unit sizes;
- minimum lot sizes;
- maximum lot coverages; and
- outdoor living area requirements.

---

[30] As defined by Cal. Health and Safety Code § 50079.5.

[31] As defined by Cal. Health and Safety Code § 50105.

[32] As defined by Cal. Civ. Code § 51.3.

[33] *See* Cal. Health and Safety Code § 20052.5. The local agency may claim an exception if it can demonstrate that a concession or incentive is not required in order to make the units affordable.

[34] Cal. Gov't Code § 65915(b).

[35] Cal. Gov't Code § 65915(c).

[36] Cal. Gov't Code § 65915(d).

The density bonus standards represent minimum standards. Local agencies are free to adopt their own procedures to meet their communities' unique circumstances. Local agencies will be well served by proactive efforts to comply with state mandates to ensure that their unique circumstances and needs are addressed.

SECOND DWELLING UNITS

State law also encourages local agencies to adopt ordinances that provide for the creation of second units.[37] Local agencies that do not adopt a second unit ordinance must grant a conditional use permit for second units that meet the legal requirements.[38]

A local agency may adopt an ordinance that provides for the development of second units in single-family and multifamily residential zones.[39] Among other things, the ordinance may:

- designate areas within the jurisdiction where second units may be permitted;
- impose standards on second units that may include parking, height, setback, lot coverage, architectural review and maximum unit size;
- provide that second units are compatible with the existing zoning ordinance and general plan;
- establish a process for issuance of a conditional use permit or similar special use permit for second units.[40]

The second unit statute makes it difficult for local agencies to avoid its application. Except under limited circumstances, local agencies may not prohibit second dwelling units.[41] For example, a court ordered Laguna Beach to issue second unit use permits when it determined that the city had not adopted a second unit ordinance within the required timeframe.[42]

More recently, another court struck down an ordinance that allowed the creation of second units in single-family residential zones, but only if the person occupying the second unit was the property owner, his or her dependent, or a caregiver for the property owner or dependent.[43] Three important points came out of the decision:

---

[37] Cal. Gov't Code § 65852.150.
[38] Cal Gov't Code § 65852.2(b).
[39] Cal. Gov't Code § 65852.2(a).
[40] Cal. Gov't Code § 65852.2(a).
[41] Cal. Gov't Code § 65852.2.
[42] *Wilson v. City of Laguna Beach*, 6 Cal. App. 4th 543 (1994).
[43] *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451 (2001).

- First, in striking the occupancy restriction from the ordinance, the court held that the second unit laws applied to charter cities.[44]
- Second, the court found that the occupancy restrictions on residents of second units based on family status violated the right to privacy under the California Constitution.[45]
- Finally, the court held that the ordinance classified uses of second units in violation of the equal protection clause of the California Constitution.[46]

Local agencies are not, however, required to approve every application for a second unit. For example, a court upheld Costa Mesa's denial of a second unit permit based on the requirements of the city's adopted second unit ordinance.[47] The court found that the property owner's compliance with the city's zoning laws and building codes did not require the city to issue a permit as a matter of right. Instead, the court determined that the city could deny the proposed second unit because it was incompatible with the surrounding neighborhood and would reduce property values.[48]

ZONING SUFFICIENT LAND FOR HOUSING FOR ALL INCOME LEVELS

State law requires local agencies to designate and zone sufficient vacant land for residential use to meet low and moderate-income housing needs.[49] This duty is in addition to the requirement that local housing elements "[i]dentify adequate sites which will be made available through appropriate zoning and development standards... to facilitate and encourage the development of a variety of types of housing for all income levels."[50] The requirement ensures that the local agency takes appropriate steps to accommodate its fair share of the regional housing need for all income categories "at the lowest possible cost."[51]

---

[44] *Id.* at 458.

[45] *Id.* at 461.

[46] *Id.* at 463-464.

[47] *Harris v. City of Costa Mesa*, 25 Cal. App. 4th 963 (1994).

[48] *Id.* at 972.

[49] Cal. Gov't Code § 65913.1.

[50] Cal. Gov't Code § 65583(c)(1)(A). However, urbanized jurisdictions do not need to zone a site for a density that exceeds the density on adjoining residential parcels by 100 percent. *See* Cal. Gov't Code § 65913.1(b).

[51] Cal. Gov't Code §§ 65913.1 and 65913.1(a)(1).

The penalties for noncompliance can be severe. Failure to zone adequate land to provide housing for all income levels or to adopt standards which comport with the least cost zoning provisions can result in the courts forcing the local agency to approve the disputed application and others like it.[52]

DENIAL OF AFFORDABLE HOUSING PROJECTS RESTRICTED

Existing State housing law restricts a local agency's ability to disapprove a housing development project affordable to very low, low, or moderate-income households (referred to here as a "qualified housing project"). In addition, a local jurisdiction may not condition approval of a project in a manner that makes the development infeasible unless it can make one of the following findings:[53]

- the local agency has adopted a housing element that complies with State law and the project is not needed for the jurisdiction to meet its share of the regional housing need; or
- the proposed project would have a specific adverse impact upon the public health or safety that could not be satisfactorily mitigated without rendering the project unaffordable; or
- denial of the project or imposition of conditions is required under federal or state law and there is no feasible method to comply with that law without rendering the project unaffordable to low and moderate-income households; or
- approval of the project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households; or
- the project is proposed on land zoned for agriculture or resource preservation and is surrounded on at least two sides by land being used for agricultural or resource preservation purposes; or
- the project is inconsistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed complete and the jurisdiction has adopted a housing element in compliance with State law.[54]

---

[52] *See, for example, Hoffmaster v. City of San Diego*, 55 Cal. App. 4th 1098 (1997) (affirming judgment ordering San Diego to approve all conditional use permit applications for homeless shelters until it complied with Government Code Sections 65583(c)(1)(A) and 65913.1. It should also be noted that in any action that alleges that a local ordinance violates the "least cost zoning" provisions of Government Code Section 65913.1, the usual presumption that the land use regulation is valid does not apply. The local agency bears the burden of proving that the regulation is reasonably related to the public health, safety or welfare. *See Hernandez v. City of Encinitas*, 28 Cal. App. 4th 1048 (1994); Cal. Evid. Code § 669.5.

[53] Cal. Gov't Code § 65589.5.

[54] Cal. Gov't Code § 65589.5(d).

These findings are difficult to satisfy, and the provision may effectively limit the ability of a local jurisdiction to deny a qualified project that complies with all general plan and zoning policies.[55]

In any legal challenge to a local agency's decision denying an affordable housing project or imposing conditions that have "a substantial adverse effect on the viability or affordability" of the project, the local agency will bear the burden of proving that its decision complies with the findings.[56] If a court finds that a local agency disapproved an affordable housing project without making the required findings, the court is required to issue an order compelling compliance within 60 days.[57]

A local agency may also be liable for attorneys' fees when a party successfully challenges a local agency's denial of a project or imposition of conditions.[58] This provision represents a departure from the general standard that allows the private party to recover attorneys' fees only when the underlying decision in the case serves some general public purpose and underscores the importance the Legislature places on promoting the development of affordable housing projects.

REQUIREMENTS FOR MORATORIA ON MULTI-FAMILY HOUSING PROJECTS

In most cases, local jurisdictions adopt urgency or interim ordinances (also known as "moratoria" or "moratoriums") for an initial time period of 45 days that prohibit any uses in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying.[59] However, such an urgency ordinance must be adopted by a four-fifths vote and must contain certain legislative findings.[60] After notice and a public hearing, the interim ordinance may be extended for 10 months and 15 days and subsequently extended for one year.[61]

In addition, any interim ordinance that has the effect of precluding the

---

[55] *See Sequoyah Hills Homeowners Ass'n v. City of Oakland*, 23 Cal. App. 4th 704 (1993).

[56] Cal. Gov't Code § 65589.5(i).

[57] Cal. Gov't Code § 65589.5(k).

[58] Cal. Gov't Code § 65589.5(k).

[59] Cal. Gov't Code § 65858.

[60] Cal. Gov't Code § 65858(c).

[61] Cal. Gov't Code § 65858(a).

development of projects that include a "significant component of multifamily housing"[62] may not be extended beyond 45 days, unless the local agency makes burdensome findings supported by substantial evidence:

- approval of the multifamily housing projects would have a specific, adverse impact upon the public health or safety;
- the interim ordinance is necessary to mitigate or avoid the adverse impact identified; and
- there is no feasible alternative to satisfactorily mitigate the impacts.[63]

The evidence required to support the findings must be quantifiable, direct and based on written public health or safety standards.[64]

[62] A "significant component of multifamily housing" means any project in which multifamily housing consists of at least one-third of the total square footage of the project. Cal. Gov't Code § 65858(c).

[63] Cal. Gov't Code § 65858(c).

[64] *Id.*

SELECTION 12

REDEVELOPMENT INCLUSIONARY AND PRODUCTION HOUSING REQUIREMENTS

*David Beatty & Seth Merewitz**

EDITOR'S NOTE

The subject of inclusionary housing and redevelopment law is probably worthy of its own publication. In this selection, the authors succinctly summarize the inclusionary requirements most commonly associated with the California Redevelopment Law. It is adapted from the forthcoming 3rd Edition of REDEVELOPMENT IN CALIFORNIA *by Solano Press. The authors of this piece – David Beatty and Seth Merewitz, with the law firm of McDonough, Holland & Allen – have revised and condensed this section for inclusion in this publication.*

The California Redevelopment Law also plays a significant role in developing affordable housing opportunities in redevelopment project areas. Although many provisions within the Redevelopment Law may affect affordable housing programs, three sections are often cited as the law's "primary" requirements:

- **Replacement of Lost Housing Units.** Every housing unit occupied by a very low-, low- or moderate-income household that is destroyed or removed from the housing market as part of a redevelopment project, i.e. subject to written agreement with, or receives financial assistance from a redevelopment agency, must be replaced within four years.

- **Low- and Moderate-Income Housing Fund.** Set aside at least 20 percent of the tax increment generated by a redevelopment project area into a separate Low- and Moderate-Income Housing Fund, and spend the housing fund to increase, improve and preserve the community's supply of affordable housing for persons and families of low- and moderate-income. (The term "low- and moderate-income" as used in the Redevelopment Law also includes very low-income).

- **Inclusionary Housing Requirements.** Assure through the use of recorded affordability covenants and other means that certain minimum percentages of all new or substantially rehabilitated housing developed within a redevelopment project area are affordable to very low-, low- and moderate- income households

This summary focuses on the primary components of the inclusionary housing requirement.

**David Beatty and Seth Merewitz are attorneys with the law firm of McDonough, Holland & Allen (www.mhalaw.com). Mr. Beatty specializes in redevelopment, municipal and land use law and serves as counsel to a number of redevelopment agencies and the California Redevelopment Association. Seth Merewitz is the City Attorney for the City of Marysville and also advises several redevelopment agencies. Both Mr. Beatty and Mr. Merewitz have assisted in the formulation, adoption and implementation of redevelopment plans and projects (and related litigation) throughout California.*

INCLUSIONARY HOUSING IN REDEVELOPMENT AREAS

Unlike the typical inclusionary housing ordinance, which is usually applied on a project-by-project basis, the inclusionary requirements of the Redevelopment Law apply to all new construction and substantial rehabilitation of dwelling units within a redevelopment project area. Accordingly, the law provides more flexibility than the typical ordinance because it affords the opportunity to include more inclusionary units in one project and less in another.

The Redevelopment Law actually contains two inclusionary requirements for redevelopment project areas:[1] one for projects constructed and owned solely by a redevelopment agency and another for non-agency projects (specifically, projects that are developed by public and private entities or persons other than the redevelopment agency). This first requirement, however, is rarely applicable because nearly all housing that is assisted by redevelopment agencies is developed and owned by private or non-profit entities. Accordingly, most of the remainder of this section focuses on the second requirement.

STANDARDS FOR NON-AGENCY DEVELOPED PROJECTS

At least 15 percent of all new or substantially rehabilitated units developed in redevelopment areas adopted after 1975, by a public or private entity (or person), must be affordable to low- or moderate-income households.[2] This is sometimes referred to as the "15 percent requirement." In addition, at least 40 percent of the units included in the 15 percent requirement must be affordable to very low-income households. The units must remain affordable for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units.[3] In order for the new or substantially rehabilitated rental or owner-occupied unit to count towards the 15 percent requirement, the agency must require the recording in the office of the county recorder of covenants or restrictions implementing this restriction for each unit subject to the restriction. The covenants or restrictions must run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.[4]

---

[1] Cal. Health & Safety Code § 33413(b). All additional references are to the California Health and Safety Code unless acknowledged otherwise.

[2] § 33413(b)(2)(i).

[3] § 33413(c).

[4] §§ 33413(c)(3) and 33334.3(f)(2).

The Redevelopment Law does authorize redevelopment agencies to permit the sale of owner-occupied units prior to the end of the 45 year affordability period if the agency's investment of monies from the Low- and Moderate-Income Housing Fund is protected by an adopted program–such as an equity sharing program–that allows the redevelopment agency and the seller to share in the excess proceeds of the sale, based on the length of the occupancy. Funds received by the redevelopment agency are to be deposited into the Low- and Moderate-Income Housing Fund. This authority to allow sales at a price in excess of that permitted by the affordability covenant is conditioned on the redevelopment agency expending funds to make affordable an equal number of housing units at the same income level as the number of units sold within 3 years from the date of the sale of these affordable units.[5]

SUBSTANTIAL REHABILITATION

One issue that arises with some frequency is what actually constitutes a "substantially rehabilitated dwelling unit." There are two definitions that clarify what type of dwelling unit is included in the term, depending upon the date the unit was rehabilitated. Prior to January 1, 2002, the term meant, "substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is redevelopment agency assistance, or substantially rehabilitated, with redevelopment agency assistance, single-family dwelling units with one or two units." After January 1, 2002, however, the term means "all units substantially rehabilitated, with agency assistance."[6] In addition, the term "substantially rehabilitated" is defined to mean a rehabilitation where the rehabilitation value constitutes 25 percent or more of the after rehabilitation value of the dwelling (inclusive of the land value).[7]

IMPLEMENTATION PLAN REQUIREMENT

Historically, the inclusionary housing requirements within the Redevelopment Law have not been well understood or universally implemented. Accordingly, the Legislature now requires redevelopment agencies to adopt a plan demonstrating how the agency will comply with the inclusionary requirements and ensuring that they will be met every 10 years.[8] The implementation plan must be reviewed every 5 years in

---

[5] § 33413(c)(1).

[6] § 33413(b)(2)(A)(iii).

[7] § 33413(b)(2)(A)(iv).

[8] § 33413(b)(4). *See* also § 33490.

conjunction with either the implementation plan cycle or the housing element update cycle. If these inclusionary requirements are not met during the 10 year period, the redevelopment agency must meet the goals on an annual basis until the requirements for the ten-year period are met. Furthermore, the redevelopment agency must meet these requirements prior to termination of a redevelopment plan.

INCLUSIONARY IMPLEMENTATION METHODS

In addition to the new construction and substantial rehabilitation of dwelling units within a redevelopment project area, a redevelopment agency may satisfy its inclusionary housing obligations by other means. These alternatives are: the two-for-one alternative; the aggregation of units between redevelopment project areas; and the purchase of affordability covenants.

- ***Two-for-One Alternative.*** A redevelopment agency may provide two units outside a redevelopment project area (by regulation or agreement) that are affordable to low- and moderate-income households for each housing unit that otherwise would have to be available inside the redevelopment project area.[9]

- ***Aggregation Between Project Areas.*** A redevelopment agency may aggregate new or substantially rehabilitated dwelling units in one or more redevelopment project areas to meet the 15 percent requirement if the agency finds, based on substantial evidence and after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.[10]

- ***Purchase of Affordability Covenants.*** A redevelopment agency may also acquire long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at an affordable housing cost to low- or very low-income households, or (ii) are units that are presently available at an affordable housing cost to low- or very low-income households, but are units that the redevelopment agency finds, based on substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.[11]

---

[9] § 33413(b)(2)(A)(ii).

[10] § 33413(b)(2)(A)(V).

[11] § 33413(b)(2)(B).

The option of purchasing affordability covenants raises additional issues. For example, in order for units to count towards satisfying the agency's inclusionary requirement, the covenants must require that the units remain affordable to, and occupied by, low- and very-low income households for a minimum of 55 years for rental units and 45 years for owner-occupied units.[12] Covenants running with the land are to be recorded implementing these provisions.[13] In addition, the purchase or acquisition of long-term affordability covenants cannot be used to satisfy more than 50 percent of the 15 percent requirement,[14] and at least half of such units must be affordable to very low-income households.[15]

PRODUCTION HOUSING REQUIREMENTS FOR AGENCY PROJECTS

Redevelopment agencies that develop, i.e. construct and own, housing units must ensure that at least 30 percent of those units must be available at affordable housing cost to, and occupied by, persons of low- or moderate-income regardless of where these units are constructed.[16] Not less than 50 percent of these dwelling units are required to be available at and affordable to and occupied by, very low-income households. As noted earlier, this provision is rarely applicable as nearly all housing that is assisted by redevelopment agencies is developed and owned by private or non-profit entities.

---

[12] § 33413(b)(2)(C).

[13] § 33413(c)(3).

[14] § 33413(b).

[15] § 33413(b)(2)(C).

[16] § 33413(b)(1).