Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Richard J. Bruckner
Director

July 2, 2012

TO: Supervisor Zev Yaroslavsky, Chair
Supervisor Gloria Molina
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FROM: Richard J. Bruckner
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RESPONSE TO BOARD MOTION TO INITIATE PROGRAM 10 – INCLUSIONARY HOUSING PROGRAM OF THE HOUSING ELEMENT (AUGUST 5, 2008, ITEM NO. 68)

At the public hearing for the Los Angeles County Housing Element on August 5, 2008, the Board instructed the Department of Regional Planning (Department) to initiate Program 10 of the Housing Element to evaluate the feasibility of establishing an inclusionary housing policy and report back to the Board. The Department finalized this report, which is attached to this memo.

SB 184 (Leno)

Since the court's decision in *Palmer/Sixth Street Properties vs. City of Los Angeles (Palmer),* which found that mandatory affordability requirements for rental housing violate the Costa-Hawkins Act, the Department has been tracking the progress of SB 184 (Leno). This bill aimed to clarify that the Costa-Hawkins Act did not apply to local inclusionary housing policies. Due to a lack of support, this bill was not brought up for a vote as intended in January 2012.

Overview of the Inclusionary Housing Report

Due to the *Palmer* decision, the Department does not recommend pursuing an inclusionary housing policy at this time. Instead, we recommend that the County explore alternative strategies to address housing affordability in the unincorporated areas through the 5th Revision of the Housing Element, which is currently underway.

In addition to outlining the Department's key findings and recommendations, the report provides a comprehensive overview of inclusionary housing policy considerations and a summary of policies in other local jurisdictions. In order to gain multiple perspectives, Department staff reached out to numerous stakeholders, including, but not limited to,

planners from other local jurisdictions, building industry representatives, housing advocates, and researchers. Department staff also worked closely with the staff from the Los Angeles County Community Development Commission and County Counsel.

If you have any questions regarding the attached report, please contact Connie Chung or Anne Russett in the General Plan Development/Housing Section at (213) 974-6417, or cchung@planning.lacounty.gov and arussett@planning.lacounty.gov.

RJB:JS:CC:AR:gmc

Attachment

c: Executive Office, Board of Supervisors
Chief Executive Office (Rita Robinson)
County Counsel
Community Development Commission
Public Works

Inclusionary Housing Report

Los Angeles County
Department of Regional Planning
General Plan Development / Housing Section

July 2, 2012

INCLUSIONARY HOUSING REPORT

Los Angeles County
Department of Regional Planning
General Plan Development / Housing Section

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Sacramento County
City of West Hollywood
City of Irvine

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INTENT AND PURPOSE

This report provides an overview of inclusionary housing and examines implementing an inclusionary housing policy in the unincorporated areas of Los Angeles County. Inclusionary housing, also known as inclusionary zoning or mixed-income housing, is a policy tool that requires or encourages private housing developers to include a certain percentage of income-restricted units[1] within market rate residential developments. The Los Angeles County Housing Element, which was adopted by the Los Angeles County Board of Supervisors in 2008, includes an implementation program to consider the feasibility of an inclusionary housing policy in the unincorporated areas.[2]

Due to a recent court decision, *Palmer/Sixth Street Properties v. City of Los Angeles*, 175 Cal. App 4th 1396 (2009) (*Palmer*)[3], which restricts local jurisdictions from implementing mandatory inclusionary housing policies that apply to rental housing, the Department of Regional Planning does not recommend pursuing an inclusionary housing policy at this time. Instead, we recommend that the County explore alternative strategies to address housing affordability in the unincorporated areas. These, however, are severely limited due to the State of California's actions, which have eliminated Redevelopment's tax incentives, failed to enact inclusionary housing legislation, reduced affordable housing funds, and restricted unincorporated areas from the CEQA infill exemptions that cities utilize.

The report is organized into six parts: Part One outlines various inclusionary housing policy considerations. Part Two summarizes multiple perspectives on inclusionary housing. Part Three summarizes the provisions of inclusionary housing policies in other local jurisdictions. Part Four analyzes the legal issues surrounding inclusionary housing. Part Five outlines important considerations for affordable housing policies in the unique context of the unincorporated areas. Finally, Part Six outlines key findings and conclusions.

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[1] Income-restricted units are units that must be occupied by a household of a specific income-level. The state of California calculates income levels annually based upon each county's Area Median Income (AMI). These levels include "extremely low," "very low," "lower," and "moderate" income households.

[2] In its letter certifying the County's Housing Element, HCD instructs the Department of Regional Planning to, when evaluating the application of an inclusionary housing policy, consider the policy as a constraint on housing development.

[3] *Palmer* is discussed in greater detail in Part Four of this report.

PART ONE: INCLUSIONARY HOUSING POLICY OPTIONS

There are three basic types of inclusionary housing policies:

1. Voluntary inclusionary housing policies encourage developers to build affordable housing by offering incentives. The State of California employs this strategy through the implementation of the State Density Bonus Law.

2. Mandatory inclusionary housing policies require developers to include a portion of income-restricted units within a market rate development. The decision in *Palmer* has impacted mandatory inclusionary housing ordinances that apply to rental housing.

3. Conditional, or *quid pro quo*, inclusionary housing policies only require developers to build affordable housing in conjunction with discretionary approvals, such as zone changes and plan amendments.

BASIC COMPONENTS OF AN INCLUSIONARY HOUSING POLICY

AFFORDABLE HOUSING SET-ASIDE REQUIREMENTS

An affordable housing set-aside requirement prescribes the number or percentage of income-restricted units to be included in a housing development. Set-asides may vary for rental and for-sale housing, or depending on level of affordability. A study reported that over half of all local jurisdictions in California with an inclusionary housing policy required a set-aside of at least 15 percent (Calavita 2004).

THRESHOLDS

An inclusionary housing policy may be applicable to all development, to only developments of a certain size or, as in the case of a conditional policy, applicable when seeking discretionary approvals. Project thresholds vary widely from two units (e.g., City of West Hollywood), to 30 units (e.g., City of Emeryville). In addition, many local jurisdictions allow smaller projects to meet the affordable housing requirements through alternative means, such as the payment of in-lieu fees (CCRH and NPH 2007).

AFFORDABILITY

Defining income targets is a key component of an inclusionary housing policy. The State of California calculates income levels annually based upon each county's Area Median Income (AMI); levels from extremely-low to moderate are outlined for use with State affordable housing programs.[4] Affordability is generally defined by a household's ability to spend no more than 30

[4] "Extremely low," "very low," "lower," and "moderate" income households are defined as earning up to 30, 50, 80, and 120 percent of the Area Median Income (AMI), respectively. However, when calculating below-market rate rental and sale prices for affordable units, the California Health and Safety Code specifies to use 30, 50, 70, and 110 percent of AMI. The 2012 AMI for a four-person household in Los Angeles County is $64,800.

percent of its gross income on rent or mortgage payments. Because of the local nature of an inclusionary housing program, local jurisdictions may choose to extrapolate income levels for above-moderate households or "workforce" (120 to 200 percent AMI) to serve the specific housing needs of the community.

Duration of Affordability

The duration of affordability is also a variable in an inclusionary housing policy. Local jurisdictions do not have to rely on the State's standard durations of affordability; however, it may be useful to consider the financing mechanisms employed to maintain the affordability (e.g., Low Income Housing Tax Credits require housing to be affordable for 55 years), or incentives received (e.g., density bonuses require housing to remain affordable for 30 years). Inclusionary housing policies in California vary greatly in duration of affordability. Most programs require for-sale units to be affordable for 30 years, while rental units are required to be affordable for 55 years. Some policies, such as those in the cities of San Francisco, Davis and Pleasanton, require the affordable units to be income-restricted in perpetuity or for the life of the project.

Tenure

Another important variable in an inclusionary housing policy is the tenure of the income-restricted units. In both rental and for-sale housing, the occupant is required to annually demonstrate that his or her income is at or below the affordability level of the unit. A criticism of for-sale housing is that, when the duration of affordability is completed, the owner is entitled to a "windfall" profit upon re-sale. Some inclusionary housing policies incorporate caps on re-sale, which may limit households in affordable homeownership to build wealth (Powell and Stringham 2004a). On the other hand, if and when the duration of affordability expires on a rental unit, the occupant must make other arrangements for housing. Developers required to produce affordable units describe rental housing as being easier to maintain for a longer duration. However, in light of the ruling in *Palmer,* mandatory inclusionary housing ordinances that apply to rental housing have been severely limited.

Geographic Requirements

An inclusionary housing policy can apply to a specific geographic area, such as a newly annexed portion of a local jurisdiction or a rapidly growing community. A local jurisdiction may exempt projects within a planning area that is well-represented with affordable housing. Other inclusionary housing policies may further the goals of an existing transit oriented district or a Mello Act policy by requiring an additional set-aside in these locations.

Targeting of Specific Populations

Only a few inclusionary housing policies in California target specific groups, such as seniors and people with special needs. For example, the City of Burbank's inclusionary housing policy incentivizes projects that include units for large households (3 or more bedrooms) and units for persons with disabilities.

Phasing

The timing of the construction of affordable housing units is an additional variable in an inclusionary housing policy. In addition to outlining when the affordable units should be built, an inclusionary housing ordinance can stipulate penalties as a result of undeveloped affordable units. Bonds or the requirement of phased construction plans can be used to encourage developers to construct affordable units either before or concurrent with the market rate units. For multi-family units, a local jurisdiction may withhold a certificate of occupancy until the affordable units are made available.

Incentives

Many inclusionary housing policies offer incentives to help off-set the costs associated with providing income-restricted housing at below market rates. A discussion of various incentives is provided below.

Density Bonuses

Density bonuses allow residential developers to build more units than permitted by the applicable zoning and land use designation. In California, most local jurisdictions create a policy that works in combination with the State Density Bonus Law.

Flexible Development Standards

Another incentive is flexibility in development standards. Local jurisdictions may offer waivers from zoning standards, including reductions in setbacks and parking requirements, as well as increases in height. Furthermore, flexibility in development standards could include a decrease in the size of, or include fewer amenities in the affordable units in comparison to the market rate units. In crafting modifications from zoning requirements, local jurisdictions should analyze potential impacts on neighborhood character.

Fast-Tracking

Another incentive is fast-tracking, or permit expediting. Compared to density bonuses, the direct benefit to developers may not be as great. This is especially true in local jurisdictions with very few regulatory barriers (Calavita 2004). Furthermore, in local jurisdictions with mandatory inclusionary housing policies, offering permit expediting as an incentive may be ineffective and infeasible, as a significant number of residential projects would qualify for the incentive.

Fee Waivers and Reductions

Some local jurisdictions waive or reduce fees associated with development permits for affordable housing projects. In local jurisdictions with mandatory inclusionary housing policies, waivers and reductions may be infeasible as a significant number of residential projects would qualify for the incentive, and decrease the amount of revenue generated by local jurisdictions to fund general operations (Calavita and Mallach 2009).

Direct financial Subsidies

Although not very common, direct subsidies can be offered as part of an inclusionary housing policy. Funds utilized for subsidizing inclusionary housing may be allocated through a tax, funding program, or from a local jurisdiction's general fund (Calavita 2004).

Location, Appearance, Design

Many inclusionary housing policies require the affordable units to be equally dispersed within the housing development and have similar outward appearances and amenities as the market rate units. As an incentive to improve the feasibility of constructing the affordable units, some local jurisdictions allow the affordable units to be clustered. Other incentives may include the allowance of smaller affordable units and lower quality finishes.

Alternatives to the Production of On-site Affordable Housing

To provide flexibility, most inclusionary housing policies also identify alternatives to constructing affordable units on-site.

Off-site Construction

Many inclusionary housing policies allow for the provision of the affordable units in locations outside of the primary development. It may be difficult to build units on-site if land costs are especially high. In addition, if the primary housing type is a "luxury" product, it might pose a substantial financial burden on the developer to provide the set-aside on-site. In addition, some policies allow for the substantial rehabilitation of existing residential units or the adaptive reuse of non-residential buildings into dwelling units to satisfy the affordability requirements.

A criticism of allowing off-site construction is that if not carefully crafted, this policy may preclude lower income households from social and economic opportunities throughout the region and lead to disproportionate concentrations of affordable housing. For these reasons, cities like San Francisco permit off-site construction only within a mile radius of the primary development. San Diego allows the construction of off-site units outside of the planning area only if certain findings can be met.

In-Lieu Fees

Fees collected in-lieu of building the affordable units often support the development and maintenance of affordable housing. However, in-lieu fees are not always sufficient enough to produce the resources necessary to construct affordable housing units. Therefore, some advocates believe it is more productive to require developers to construct the units themselves (Rawson, et al. 2002).

A detailed economic analysis is required to determine whether in-lieu fees are set at a level that is comparable to the costs associated with producing affordable housing, as well as the cost of maintaining the long-term affordability of the unit. Many local jurisdictions periodically update their in-lieu fee to reflect current local economic conditions.

Some local jurisdictions allow in-lieu fees only under certain circumstances. For example, the City of Napa allows the payment of in-lieu fees for single-family residential and duplexes, but requires a city council action to approve the payment of in-lieu fees for multi-family residential consisting of three or more units. Additionally, some local jurisdictions calculate in-lieu fees based on the construction and maintenance costs of an affordable unit, while others are based on the affordability gap, or the difference between the price of the market rate unit and the cost of maintaining an affordable unit for the required duration of affordability.

Table 1.1 provides a brief comparison of the formulas used to calculate in-lieu fees in San Diego, Pasadena and San Francisco.[5] The table represents the existing fees as of the writing of this report; however, local jurisdictions often adjust these fees periodically to respond to market conditions.

TABLE 1.1: IN-LIEU FEE FORMULAS IN SAN DIEGO, PASADENA AND SAN FRANCISCO

Local Jurisdiction	Formula
San Diego	Applicable per square foot charge x Aggregate gross floor area of the project 2 units: $1.00 per square foot 3 units: $1.49 per square foot 4 units: $1.99 per square foot 5 units: $2.49 per square foot 6 units: $2.99 per square foot 7 units: $3.49 per square foot 8 units: $3.98 per square foot 9 units: $4.48 per square foot 10+ units: $4.98 per square foot
Pasadena	Fee is based on the number of units, tenure, and geographic location of the project. The per square foot range is based on four sub-areas. 10-49 rental units: $1.07 – $23.48 per square foot 50+ rental units: $1.07 – $32.01 per square foot 10-49 for sale units: $14.94 – $40.55 per square foot 50+ for sale units: $20.27 – $56.56 per square foot
San Francisco	Number of units x 20% Off-site requirement x In-lieu fee In-lieu fees: Studio: $179,952 1 bedroom: $248,210 2 bedroom: $334,478 3 bedroom: $374,712

[5] In response to the *Palmer* decision, San Francisco and San Diego recently amended their inclusionary housing ordinances and established a fee-based program. With some exceptions, projects in San Francisco and San Diego are now required to pay a fee.

Land Banking and Donations

The dedication of land for development in another location is another alternative to the production of affordable units. This option may be allowed in markets where developable sites are scarce, or where a greater number of units can be provided at an alternative location. Like in-lieu fees, land dedication options are criticized for allowing a developer to pay less than the full cost of developing the required units on-site. Both land dedication and in-lieu fee options require a local jurisdiction to oversee the development and maintenance of the required affordable units in a timely manner. Furthermore, the success of a land dedication option is dependent on the quality of the land being donated, any infrastructure or environmental constraints, and the capacity of the agency and local non-profits to undertake development of the site.

Opting Out

Some local jurisdictions provide an opt-out procedure to allow developers to prove that the provision of affordable housing would make the entire development infeasible. Oftentimes, this is determined by a hearing of the elected governing body or planning commission.

PART TWO: PERSPECTIVES ON INCLUSIONARY HOUSING

Inclusionary housing is a polarizing issue. One of the main points of contention is the impact that inclusionary housing policies have on local housing markets. Proponents of inclusionary housing policies indicate that residential development rates are driven more by the strength of the local housing market and broader economic and market trends, than by an inclusionary housing policy. A 2004 study by David Paul Rosen and Associates found that there is no correlation between inclusionary housing and housing prices and production. The study also indicates that the price of housing is unaffected by the added cost of developing affordable units.

Critics argue that inclusionary housing policies reduce the overall production of housing, which leads to increases in the cost of market rate housing for renters and buyers. A study from the Reason Public Policy Institute (Powell and Stringham 2004) suggests that inclusionary housing produces few affordable units, makes market rate homes more expensive, and restricts the overall supply of housing. In a study funded by the National Association of Homebuilders, Edward Tombari presents the argument that inclusionary housing policies not only drive up the cost of housing in the particular local jurisdiction that implements the policy, but also in nearby jurisdictions.

Researchers with the Furman Center for Real Estate and Urban Policy examined the housing market impacts of inclusionary housing policies in Bay Area cities and Boston suburbs. The authors maintain that both the critics and the advocates of inclusionary housing policies have exaggerated its effects, and that the policy has had modest impacts on local housing markets, as well as modest impacts in affordable housing production (Schuetz, Meltzer and Been 2008).

STAKEHOLDER PERSPECTIVES

In order to gain a variety of perspectives on an inclusionary housing policy in the unincorporated areas, the Department of Regional Planning staff conducted interviews and focus groups with multiple stakeholders. The following descriptions outline the spectrum of opinions on inclusionary housing.

LOS ANGELES COUNTY COMMUNITY DEVELOPMENT COMMISSION

The Los Angeles County Community Development Commission (CDC) prioritizes affordable rental housing because it produces more "bang-for-our-subsidy" in terms of sustained affordability, number of affordable units created and the residents' ability to succeed. Nonetheless, the CDC staff stated that an inclusionary housing policy should be applicable to both for-sale and rental housing despite the difficulties associated with affordable homeownership. The CDC staff commented that making long-term affordability work in conjunction with for-sale projects is difficult because 1) many first trust deed lenders do not allow affordability restrictions (or only allow them for a short term) because they make the loan "package" less favorable in the secondary market; and 2) ensuring continued affordability competes with the homeowner's ability to recognize an economic gain from a sale.

On the issue of using funding sources as incentives for an inclusionary housing program, the CDC staff believes that the County's limited affordable housing resources are best used to support projects with more affordable units at deeper levels of affordability, and envisions an inclusionary housing policy as a way to supplement efforts through the private sector to create more affordable housing opportunities for the unincorporated areas.

VINIT MUKHIJA, PROFESSOR OF URBAN PLANNING, UCLA

In 2010, Professor Mukhija was part of a team that produced a study, entitled *Can Inclusionary Zoning be an Effective and Efficient Housing Policy? Evidence from Los Angeles and Orange Counties*, which concludes that inclusionary housing policies can work without having an adverse effect on housing production. The study indicates that factors, such as strong program design and administration, and cost-offsets and incentives, have contributed to mitigating market impacts.

In regards to in-lieu fees, Professor Mukhija believes that local jurisdictions must provide adequate oversight and focus on program administration. In his research, he discovered that some local jurisdictions had collected the fees, but had not actually used the funds. He also added that in-lieu fees can be a good option, but they need to meaningful--in other words, not too high and not too low. He suggests that the fee should be at least 50% of the cost of constructing an affordable unit.

RICK JACOBUS, CONSULTANT

Rick Jacobus has contributed to the development of multiple inclusionary housing ordinances throughout California and the country. According to Mr. Jacobus, managing and monitoring the affordable housing is an especially important aspect, although it is sometimes overlooked in the development of an inclusionary zoning ordinance. A local jurisdiction with an inclusionary housing policy must be prepared administratively to manage and monitor the affordable housing.

According to Mr. Jacobus, some local jurisdictions have lost track of units in the past. In other cases, units were lost due to foreclosures or unfair lending that resulted in the release of the units from their affordability requirements. In most cases, it is feasible for inclusionary housing ordinances to ensure that the costs of monitoring are properly funded. Many local jurisdictions have established monitoring fees that fund staff time to sufficiently manage and monitor affordable units. In many cases, these fees are programmed within the ordinance to automatically adjust with inflation. Some local jurisdictions outsource the monitoring to outside private specialists, or rely on a non-profit partnership to keep track of the affordability.

Mr. Jacobus also discussed the resale provisions of inclusionary housing ordinances. Many local jurisdictions employ a shared appreciation model at resale, in which the seller, or affordable homeowner, shares a portion of the appreciated value with the local jurisdiction. Factors such as owner improvements to the unit and duration of affordability must be considered in the design of resale provisions.

SOUTHERN CALIFORNIA ASSOCIATION OF NON-PROFIT HOUSING

The Southern California Association of Non-Profit Housing (SCANPH) is a membership organization that supports the production, preservation and management of homes affordable to low-income

households. As a major advocacy organization for affordable housing, SCANPH supports the enactment of inclusionary housing policies throughout the region. According to SCANPH, unincorporated Los Angeles County has done poorly in terms of actually meeting its regional housing needs allocation (RHNA) targets, particularly for affordable housing.

Representatives of SCANPH indicate that any future inclusionary housing policy enacted in the unincorporated areas should be robust in its requirements and applicability. In addition, SCANPH would like to see a policy that targets the lowest income households to the extent feasible. SCANPH also maintains that any inclusionary housing policy for the unincorporated areas should be flexible and provide developers with a variety of options for compliance, as well as incentives. Any in-lieu fee should reflect the actual cost of developing and maintaining an affordable unit, and be allocated for that purpose. Furthermore, a "sliding scale" mechanism that requires a higher set-aside for both off-site construction and in-lieu fee payments should be considered.

In summary, SCANPH believes that local governments have an obligation to ensure that its residents have access to safe and affordable housing. Because local governments create value in land through policy and zoning, this value should be used, at least in part, to benefit the community as a whole. The inclusion of affordable housing is one way to ensure the value created by legislative authority benefits the people that live and work in the community.

Building Industry Association – Greater Los Angeles and Ventura Chapter

The BIA has outlined their perspective in a letter, which is provided in Appendix A.

PART THREE: OTHER LOCAL JURISDICTIONS

Throughout the country, cities, counties, and states have implemented inclusionary housing policies. Though inclusionary housing programs are well-represented geographically throughout the State, the most significant clusters are in the San Francisco Bay Area, metropolitan Sacramento, and San Diego County (Calavita 2004). As shown in Table 1.2, there are 11 local jurisdictions in Los Angeles County with inclusionary programs.

TABLE 1.2: LOCAL JURISDICTIONS IN LOS ANGELES COUNTY WITH INCLUSIONARY HOUSING PROGRAMS

City	Year of Adoption	Type of Program
Agoura Hills	1997	Mandatory
Avalon	1983	Mandatory
Burbank	2006	Mandatory
Calabasas	1998	Mandatory
Duarte	2002	Mandatory
Pasadena	2001	Mandatory
Rancho Palos Verdes	1997	Mandatory
Santa Monica	1983	Mandatory
Walnut	2002	Mandatory
West Hollywood	1986	Mandatory
Whittier	2008	Mandatory

Table 1.3 provides a summary of inclusionary housing policies from across the country. For a detailed look at inclusionary housing ordinances in Sacramento County, the City of West Hollywood, and the City of Irvine, please refer to Appendix B.

Table 1.3 Summary Matrix of Inclusionary Housing Policies in Other Local Jurisdictions

Location	Threshold	Set-Aside	Income	Duration of Affordability	Incentives	Alternatives
Boulder, CO	1 unit	20%	<80% AMI	Permanent	None	50% of the set-aside must be built on-site. The other 50% may be met through the following: - In-lieu fee - Land dedication - Dedicate existing units - Off-site units
Denver, CO	30 units	10% (for-sale)	<80% AMI (<3 stories) <95% AMI (4+ stories)	10 years	- Density bonus -$5,500 per affordable unit built and $10,000 per affordable unit build (to <60% AMI), reimbursement is capped at $250,000 - Expedited review - Reduced parking	- In-lieu fee: 50% price per unbuilt unit - Off-site units
Cambridge, MA	10 units	15%	<65% AMI	50 years (rental)	- Density/intensity bonus -Minimum lot area reduction	- Off-site units if developer proves hardship
Montgomery County, MD	20 units	12.5-15%	<65% AMI (rental) <70% AMI (for-sale)	30 years (for-sale) 99 years (rent)	- Density bonus - Fee waivers	- Land transfer - Alternative location (off-site) - Waiver - Alternative payment to Housing Initiative Fund
Irvine, CA	50 units	15%	For-sale or rental: 5% at 50% AMI 5% at 51-80 % AMI 5% at 80-120% AMI Also option of 10% at 60% AMI or lower. Commission also has the authority to approve rations on a case-by-case basis.	30 years	- Density bonus	Only projects with less than 50 units are eligible for alternatives: - In-lieu fee - Land dedication - Provision of alternative housing - Transfer of off-site credits for affordable units not provided on-site - Conversion of existing housing to affordable

Sacramento, CA	9 units	15%	<50% AMI (2/3 units) 50-80% AMI (1/3 units)	30 years	- 25% density bonus - Expedited review - Reduced water/sewer fees - Relaxed design guidelines - Priority for subsidies	- Off-site: If insufficient land on-site and new units are in "new growth" areas
San Diego, CA	2 units	10% (for-sale)	<100% AMI (for-sale)	55 years	- Expedited processing	- For-sale: Set aside at least 10% of the total number of units to households at 100% AMI.
San Francisco, CA	5 units	15%	55% AMI (rentals) 90% AMI (for-sale)	Life of the project	None	- For-sale: Provide affordable units on-site or off-site. - Rental: Provide affordable units on-site or off-site if 1) enter into a development agreement or 2) is exempt from Costa-Hawkins Act - Off-site: 20%
West Hollywood, CA	2 units	2 to 10 units: 1 unit 11 to 20 units: 20% 21 to 40 units: 20% 41 or more: 20%	Low and moderate income households	30 years	- Density bonus	- In-lieu fee option: 10 or fewer units - Off-site option: 11 or more units

PART FOUR: LEGAL ISSUES

Due to the ongoing debate surrounding inclusionary housing, it is no surprise that inclusionary housing policies have been challenged in court. Recent challenges have greatly impacted inclusionary housing ordinances in California and limit local jurisdictions options, specifically in the context of rental housing and in-lieu fees. However, there are inclusionary housing ordinances that have defeated takings challenges, and the constitutionality of inclusionary housing policies has largely been upheld in court.

HISTORICAL CASES

In 1971, an inclusionary housing policy was adopted in Fairfax County, Virginia. Shortly after its adoption, the Virginia Supreme Court ruled in *Board of Supervisors v. DeGruff Enterprises*, 214 Va. 235 (1973), that the County's 15 percent inclusionary requirement for housing developments over 50 units was not only beyond the scope of local planning and zoning laws, but also an unconstitutional taking of property. Despite this early ruling, governments have continued to implement inclusionary housing policies and laws. In 1989, Virginia passed legislation that allowed Fairfax County to implement a voluntary inclusionary housing policy.

In 1983, the New Jersey Supreme Court, in *Southern Burlington County NAACP v. Township of Mount Laurel,* 92 N.J. 158 (1983), held that inclusionary housing was constitutional and within a local jurisdiction's police powers. This ruling, known commonly as Mount Laurel II, specifically attempted to thwart ongoing exclusionary housing practices, which effectively excluded certain segments of society. The New Jersey Supreme Court determined that local jurisdictions must address the housing needs of all economic segments of society and if removing regulatory barriers was not enough to meet the need, inclusionary housing policies could be implemented (Kautz 2002). Mount Laurel II has been distinguished in at least 11 subsequent rulings.

TAKINGS CHALLENGES

In the context of takings challenges, the California court of appeals upheld the constitutionality of inclusionary housing policies. In *Home Builders Association of Northern California v. City of Napa,* 90 Cal. App. 4th 188 (2001) (*Napa),* the Home Builders Association (HBA) of Northern California claimed that the City of Napa's inclusionary housing ordinance violated the Fifth Amendment of the Constitution, which prohibits the taking of land for public use without just compensation. HBA also contended that the City's ordinance violated the due process clause of the Fourteenth Amendment of the Constitution, which prevents local jurisdictions from adopting regulations that are arbitrary, discriminatory, or not reasonably related to the legislative intent (Collins and Rawson 2004).

In evaluating a taking's claim, the courts have developed the following two step process[6] in order to determine whether or not a local regulation is a taking: 1) whether the regulation substantially

[6] This two step analysis came from *Agins v. City of Tiburon,* 447 U.S. 255 (1980). This two step analysis has been partially overturned by *Lingle v. Chevron USA,* 2005. Specifically, regarding the "substantially advances" test, *Agins*

advances a legitimate state interest; or 2) whether the regulation denies the property owner all economic viability of the land (Collins and Rawson 2004). In *Napa*, the court determined "beyond question" that the ordinance did substantially advance a state interest. In making this determination, the court cited the California housing element law, which states that "local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community"(California Government Code Section 65880(d)). In the second determination, the *Napa* court concluded that it did not apply, since this was a facial challenge. In other words, inclusionary housing ordinances do not preclude development (Collins and Rawson 2004).

In addition, HBA argued that the ordinance violated the due process clause since developers had to sell or rent ten percent of the units at below market prices. Furthermore, they argued that the inclusionary housing ordinance "provides no mechanisms to make a fair return."[7] This argument was rejected by the courts for two reasons: 1) the City's ordinance included in-lieu fee and land donation options, and therefore, developers were not required to sell or rent units at below market rates; and 2) the City included a clause in the ordinance that gave itself the authority to waive certain projects from the inclusionary housing requirements.

With this ruling, the constitutionality of Napa's inclusionary housing ordinance was upheld and both the California Supreme Court and the United States Supreme Court denied review of the lower court's opinion.[8] It is important to note that this lawsuit did not apply to a particular development project, but rather the ordinance itself. To avoid challenges to the application of an inclusionary housing ordinance, the California Affordable Housing Law Project and others have recommended the incorporation of safety valves into ordinances, which could include incentives such as density bonuses, as well as waivers or relief from the inclusionary housing requirements (California Affordable Housing Law Project and Western Center on Law and Poverty 2002).

Since the *Napa* decision, there have been other lawsuits regarding the constitutionality of local jurisdiction's inclusionary housing ordinances. In 2005, the North State Building Industry Association (BIA) in California filed a lawsuit against Sacramento County, which primarily challenged that its inclusionary housing ordinance constituted a taking. Subsequent to the legal challenge, the County amended its ordinance to include a waiver from the inclusionary housing requirements.[9] In March 2006, the Sacramento Superior Court dismissed the BIA's lawsuit (Legal Services of Northern California 2006).

In 2008, the plaintiff in *Action Apartment Association v. City of Santa Monica*, 166 Cal. 4th 456 (2008) argued that an amendment to the City of Santa Monica's inclusionary housing ordinance constituted

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"presupposes that the government has acted in pursuit of a valid public purpose". Per the *Lingle* decision, if the government action is arbitrary or if the government takes private land without meeting the public use requirement, no further analysis is required and no amount of compensation would be justified.

[7] *Home Builders Association of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001), review denied 2001 Cal. LEXIS 6166 (2001) and cert. den. 535 U.S. 954 (2002).

[8] Ibid.

[9] Notice of Motion and Interveners' Motion for Judgment on the Pleadings, Legal Services of Northern California, December 28, 2005.

a taking. The amendment required that developers of four units or more build the affordable units on- or off-site. The in-lieu fee option no longer applied, as it only was available as an alternative to projects of less than four units. The court determined that the plaintiff's facial challenge was "without merit," because so long as inclusionary zoning laws are applied generally to all projects they are not subject to heightened scrutiny. Moreover, the Santa Monica ordinance did not apply to rental units; therefore, the preemption challenge addressed was not valid. The plaintiff's appeal was denied by the California Supreme Court.[10]

Affordable Housing In-Lieu Fees

In *Building Industry Association of Central California v. City of Patterson*, 171 Cal. App 4th 886 (2009), the BIA challenged the City's affordable housing in-lieu fee, which the court concluded was not "reasonably justified."

In this case, the developer of a proposed 214 unit single-family subdivision had entered into a development agreement with the City, and agreed to pay an increased affordable housing in-lieu fee as long as it was "reasonably justified." Subsequent to the contract, the City increased the in-lieu fee from $734 to $20,946 per market rate unit. The increase relied on a fee justification study that calculated the fee based on approximate subsidies needed for each moderate, lower, and very low-income unit as determined by the City's regional housing needs allocation (RHNA). In its opinion, the court referred to *San Remo Hotel v. City and County of San Francisco* 27 Cal. 4th 643 (2002), and determined that the in-lieu fee of $20,946 per unit has no reasonable relationship to the negative impacts associated with the project.

Although this case provides no written opinion regarding the applicability of the Mitigation Fee Act to affordable housing in-lieu fees, some legal experts suggest that applying the Mitigation Fee Act requirements to in-lieu fees may be advisable in light of this recent decision, to avoid legal challenges (Bond, McIntosh and Grutzmacher 2009). Others argue that the Mitigation Fee Act does not apply to in-lieu fees since it pertains specifically to fees that are imposed on development, not optional fees. Nevertheless, local jurisdictions must establish a reasonable relationship between the in-lieu fee and the development of affordable housing (California Affordable Housing Law Project and Western Center on Law and Poverty 2002).

Costa-Hawkins Act and Local Inclusionary Housing Policies

The recent decision in *Palmer* has impacted mandatory inclusionary housing ordinances that apply to rental housing.

In *Palmer*, the California Court of Appeals ruled that the City of Los Angeles' inclusionary housing policy in the Central City West Specific Plan directly conflicted with the Costa-Hawkins Act, which allows landlords to set the initial rent for a dwelling unit.

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[10] *Action Apartment Association v. City of Santa Monica*, 166 Cal. 4th 456

The ruling in *Palmer* does not affect a local jurisdiction's ability to restrict the price of for-sale units. In addition, the decision does not affect voluntary programs, or situations in which a local jurisdiction enters into an agreement with a developer to provide affordable housing in exchange for either financial assistance or incentives. The developer in *Palmer* received no financial subsidies for the project or other non-monetary incentives, such as a density bonus. In addition, as this decision did not consider the validity of in-lieu fees, some policies that require developers of rental projects to pay in-lieu fees for affordable housing may still be legally viable. Furthermore, the decision has no impact on the State's Mello Act, which acts as a statewide mandatory inclusionary housing policy for the coastal zone.

The City requested that the California Supreme Court review the decision; however, the request was denied. In response to *Palmer*, SB 184 (Leno) was proposed to clarify that the Costa-Hawkins Act does not apply to local inclusionary housing policies. However, the support for this bill was limited and Senator Leno decided not to bring this bill up for a vote. Therefore, there remains some ambiguity as to whether inclusionary housing is a permissible land use power.

PART FIVE: UNINCORPORATED AREA CONTEXT

COUNTY AFFORDABLE HOUSING PROGRAMS

The County administers two existing regulatory affordable housing policies: the Density Bonus Ordinance and the Marina Del Rey Affordable Housing Policy.

DENSITY BONUS ORDINANCE

In accordance with the State Density Bonus Law, the Los Angeles County Board of Supervisors adopted the County's Density Bonus Ordinance in 2006.

The Government Code (Section 65915 et seq.) requires local jurisdictions to grant a density bonus and a certain number of concessions or incentives when a developer agrees to construct affordable or senior housing. Types of incentives include reduction or modification to development standards or zoning code requirements, approval of mixed use zoning, or other concessions that may be identified. In effect, the State Density Bonus Law encourages developers to build and maintain a certain percentage of moderate-, low-, or very low-income housing with the opportunity to build more residences than would otherwise be permitted. Under the State law, density bonus projects include, but are not limited to, single or multi-family developments, mixed use, mobilehome parks, subdivisions, condominium conversions and common interest developments.

In local jurisdictions with inclusionary housing policies, density bonus and inclusionary housing programs usually work together. If inclusionary housing units meet the requirements for the density bonus, in terms of number or floor area, affordability level, and duration of affordability, the units count toward a density bonus, as provided by State law.

MARINA DEL REY AFFORDABLE HOUSING POLICY

The Mello Act (Government Code Section 65590) is a State law enacted to protect and increase the supply of affordable housing in California's coastal zone (one mile from the coast). Under the Mello Act, new housing developments constructed within the coastal zone must, where feasible, include housing units for persons of low- or moderate-income. In addition, new projects that remove or convert existing housing units occupied by low- or moderate-income households must be replaced within the new development, or elsewhere in limited circumstances.

In 2009, the Los Angeles County Board of Supervisors adopted a revised policy to implement the Mello Act in Marina Del Rey. The policy requires that replacement dwelling units be comparable in size and reasonably disbursed throughout the development. In addition, the policy requires, where feasible, the construction of five percent low- and five percent moderate-income housing units, which may be accounted for by the replacement units. The duration of the affordability for the inclusionary housing units is the length of time until the ground lease expires. The affordable units may be rental or for-sale, independent of the tenure type of the remainder of the project.

Geographic and Market Diversity

The unincorporated areas, which are dispersed among 88 cities, encompass more than 2,600 square miles of land and represent 65 percent of Los Angeles County. In terms of population, the unincorporated areas account for one-tenth of the County's population, with approximately one million residents. Some of the unincorporated areas are as small as a few blocks, while others cover hundreds of square miles. The unincorporated areas are socially, economically, and environmentally diverse, and include coastal communities, such as Topanga in the Santa Monica Mountains; suburban communities such as Hacienda Heights; urban communities such as Florence-Firestone; and rural, high desert communities, such as Littlerock in the Antelope Valley.

Table 1.4: Median Gross Rent in CENSUS DESIGNATED PLACES IN LOS ANGELES COUNTY

Agua Dulce CDP	$971
Altadena CDP	$1,222
Castaic CDP	$1,376
East Los Angeles CDP	$873
Florence-Graham CDP	$904
Hacienda Heights CDP	$1,445
La Crescenta-Montrose CDP	$1,252
Ladera Heights CDP	$1,659
Lake Hughes CDP	$647
Lennox CDP	$948
Marina Del Rey CDP	$1,977
Rowland Heights CDP	$1,309
Stevenson Ranch CDP	$1,804
Topanga CDP	$1,822
Willowbrook CDP	$898

Source: U.S. Census Bureau, 2006-2010 American Community Survey, Table B25064 Median Gross Rent

TABLE 1.5: HOME RESALE ACTIVITY

		Single Family Homes			Condominiums			SFR Only
Community Name	ZIP Code	Sales of Single Family Homes	Price Median SFR ($1,000)	Price % Change from 2011	Sales Count Condos	Price Median Condos ($1,000)	Price % Change from 2011	Median Home Price / Sq. Ft
Countywide		12,184	$308	-3.80%	4,137	$260	-7.10%	$220
Unincorporated Areas								
Acton	93510	19	$358	2.10%	1	$159	47.40%	$146
Altadena	91001	78	$428	0.70%	1	$1,300	133.20%	$303
LA/Baldwin Hills	90008	27	$380	-7.50%	5	$145	-17.40%	$199
Castaic	91384	45	$371	2.10%	12	$244	-15.00%	$168
East L.A.	90022	46	$233	10.70%	n/a	n/a	n/a	$210
Florence-Firestone	90001	31	$150	-9.10%	n/a	n/a	n/a	$145
Hacienda Heights	91745	90	$395	11.30%	21	$262	-1.50%	$224
La Crescenta	91214	64	$465	-10.10%	13	$302	-23.50%	$333
Ladera Heights	90056	15	$666	20.80%	3	$275	72.40%	$232
Lake Hughes	93532	11	$107	-26.40%	n/a	n/a	n/a	$102
Littlerock	93543	44	$95	-9.50%	n/a	n/a	n/a	$74
Llano	93544	4	$167	57.80%	n/a	n/a	n/a	$83
Marina Del Rey	90292	7	$1,215	-20.00%	42	$518	-10.90%	$399
Pearblossom	93553	7	$51	-53.00%	n/a	n/a	n/a	$62
Rowland Heights	91748	56	$375	-4.60%	6	$405	-40.40%	$242
Stevenson Ranch	91381	35	$570	-9.50%	28	$285	-12.80%	$200
Topanga	90290	18	$715	-20.60%	3	$300	-3.20%	$399
View Park / Windsor Hills	90043	96	$240	-9.40%	n/a	n/a	n/a	$175

Source: www.DQnews.com. Data for 1st Quarter 2012.

The diversity in planning areas fosters a diversity of housing needs, housing types and housing markets, which is illustrated in Tables 1.4 and 1.5. Table 1.4 shows that median rents range from $647 in the community of Lake Hughes in the Antelope Valley, to $1,977 in the coastal community of Marina Del Rey. The data in Table 1.5 shows that the median price of single-family homes range from $51,000 in the community of Pearblossom in the Antelope Valley, to $1,215,000 in Marina Del Rey.

The six communities with the lowest median housing prices, as shown in Table 1.5, are Pearblossom, Littlerock, Lake Hughes and Llano, which are located in the Antelope Valley, and Florence-Firestone and East Los Angeles. Low housing prices and low rents suggest that these communities have relatively weak housing markets. On the other hand, higher median housing prices and higher rents in the San Gabriel Valley, such as Rowland Heights, Hacienda Heights, La Crescenta, and Altadena, and Stevenson Ranch in Santa Clarita Valley, indicate relatively strong housing markets.

The data in Table 1.5 also shows that the home prices for the majority of communities are continuing to decline. Over 60 percent of the communities shown in the table have experienced declines in single family home sale prices since 2011. One exception is the community of Ladera Heights, which has comparably high rents and sale prices, and is showing increases in sales prices for both single family homes and condominiums.

Limited Access to Affordable Housing Financing

The Economic and Housing Development Division of the Los Angeles County Community Development Commission (CDC) has two major affordable housing funding programs: the City of Industry program (housing set-aside funds from the City of Industry Urban Development Agency) and the HOME program (federal HOME Investment Partnerships Program).

In CDC's last funding round (Round 17 issued on September 30, 2011), 13 funding applications were submitted and seven projects, or 54 percent of the applicant pool, received awards. The awarded projects received approximately $2.35 million per project including energy efficiency incentives (or $71,000 per unit). This small funding amount per project indicates that CDC fills a funding gap left after all the larger affordable housing sources (i.e., Low Income Housing Tax Credits, State and Local sources, etc.) have been identified.

Because of the dissolution of the redevelopment agencies and the current economic environment, including the continual declines in property values, it is not clear what level of Industry and HOME program funds will be available in the future. Furthermore, with the uncertainty of the State budget, affordable housing cannot readily rely on these large sources of financing. The CDC, therefore, expects that its per project subsidies for new construction will increase, resulting in a reduction in the total number of projects funded.

Larger affordable housing funding sources are provided through a competitive process. This competition often rewards projects that provide deeper levels of affordability. Although the CDC requires 20 percent to 30 percent of the project units to be affordable, virtually all applicants

provide 100 percent affordability in order to be viable for the larger funding pools. Furthermore, the CDC has found that projects with 100 percent affordability have an advantage in the County pool because they have been structured to meet the rigorous requirements established by the larger affordable housing funders. As a result, while an inclusionary housing project could apply for Industry or HOME funding and meet CDC's affordability threshold, it is likely that projects with higher affordability will prove more competitive; therefore, inclusionary units without public subsidy may become an important source of affordable units in these times of funding loss.

The unincorporated areas have an additional disadvantage of not having any other government financing source for affordable housing. By contrast, projects within cities may have access to local city funds, which can be used to leverage funds from the CDC.

PART SIX: FINDINGS AND RECOMMENDATIONS

Based on research and interviews with a variety of stakeholders, the staff has made the following findings:

FINDING 1

An inclusionary housing policy must be flexible, adaptable and applicable to various community contexts. Unincorporated Los Angeles County is geographically and economically diverse, and is home to diverse housing markets. Although these markets differ in land costs, sales and rental prices, in general, the unincorporated areas lack a robust housing market.

FINDING 2

Inclusionary housing is a polarizing issue. Much of the research is advocate-based, and many interest groups voice strong opinions in support or opposition of inclusionary housing. Proponents ground their arguments in the principle that housing developers should bear some cost of producing housing for people or households who are priced out of the housing market; opponents maintain that affordable housing requirements are an unfair tax on development.

FINDING 3

For-sale requirements in inclusionary housing policies pose a number of challenges and require significant administration. Inclusionary housing policies that apply to for-sale projects must address the resale of homes, include provisions for added housing costs, such as homeowner association fees, and have a strong mechanism for monitoring the occupancy and continued affordability of the units.

RECOMMENDATIONS

Due to the court's decision in *Palmer*, the County is limited in its ability to create a flexible inclusionary housing policy that would serve the diverse housing needs of the unincorporated areas. These limitations restrict the County from implementing a mandatory inclusionary housing ordinance that applies to rental housing and, although for-sale provisions are still possible, it presents many challenges.

Therefore, the Department of Regional Planning recommends that the County explore alternatives to establishing an inclusionary housing policy in the unincorporated areas at this time. Specifically, the County should continue to work toward creating opportunities for affordable rental and for-sale housing through strategies, such as allowing small lot subdivisions, considering the feasibility of establishing residential and non-residential impact fees, and continuing to reduce regulatory barriers to housing development.

The Department of Regional Planning is currently working on the 5th Revision of the Housing Element, which is due to the State Department of Housing and Community Development in October

2013. This revision should explore these alternatives, as well as others, with the goal of addressing the housing needs of all economic segments of the unincorporated areas.

APPENDICES

Appendix A: Letter from the Building Industry Association

APR 21 2009

Greater L.A. /
Ventura Chapter

Building Industry Association
of Southern California

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April 20, 2009

Connie Chung
LA County Department of Regional Planning
Housing Section
320 West Temple Street
Los Angeles, CA 90012

Dear Ms. Chung,

Thank you for meeting with me and a group of BIA members last week to discuss the study underway on Inclusionary Zoning. I believe the dialog was very productive, and we look forward to ongoing discussions as you prepare your report to the Board of Supervisors. This letter serves to summarize many of the points made during our meeting.

The housing crisis facing Southern California is a societal issue.

Our experience has taught us that policies such as inclusionary housing are not the answer. Instead, local government, interest groups, builder associations, chambers and related organizations need to work together to deal with the issue via a broad housing policy that addresses the housing production shortfall that has plagued the region. By using the market, we are better positioned to produce far-reaching and lasting results.

To the extent that creating more affordable housing is a priority for LA County citizens, the population at large should assist in providing the subsidy necessary to produce that housing. BIA/LAV has been a supporter of efforts to provide public funding for affordable housing, such as in the recent statewide Prop 1C and LA City Prop H campaigns. We continue to work with the California Department of Housing and Community Development on a permanent source of funding for the state Housing Trust Fund. We discussed the need for new funding to augment other existing programs in Los Angeles County in order for Inclusionary Zoning to be successful.

Inclusionary housing puts the responsibility and the burden of the housing issue on the shoulders of developers.

Housing is an infrastructure element of any community, and the provision of affordable housing is a societal concern. Inclusionary zoning places the burden of providing affordable housing shortfalls exclusively on the housing development industry, which is,

by its nature, working to increase housing supply. Excessive requirements such as inclusionary zoning can actually exacerbate the affordability problem by increasing the cost of producing housing and further constraining supply.

New home construction is a significant contributor to the California economy. As members of the development industry, we are proud of our contributions to the development of infrastructure, paying for roads, parks, and schools, and donating land to be preserved as open space.

Inclusionary housing creates an unnecessary and unreasonable burden on the housing industry and on new homeowners. Such mandates ultimately make it harder to produce housing, not easier. It polarizes the housing market, negatively impacting the workforce of our community; encourages blight; and causes homebuilders to choose other communities to build in.
Inclusionary zoning creates more barriers to housing production and does nothing to reduce bureaucracy.

Providing affordable housing by requiring the construction of new income-restricted units is also the most expensive strategy for providing those units, and will take the greatest subsidy. We discussed possible policies and incentives that could be designed to preserve existing affordable units or to create affordable units from the existing housing stock. Such policies also provide much greater flexibility that can be tailored to the needs of the very different regions of Los Angeles County. This is preferable to a one-size-fits-all inclusionary zoning policy that does not take into account the geographical diversity of a region.

Inclusionary Zoning can create ongoing social and management issues.

Builders that have constructed inclusionary zoning units have experienced the ongoing difficulties with selling, maintaining and re-selling the income-restricted units. While for sale income-restricted units appear to provide a path to ownership, in reality they further limit the upward mobility potential of the buyer. The units are defacto rental units because the owner typically does not benefit from the full appreciation of the property. This further limits the person's ability to move into a market rate home at a later time.

Within a community, the inclusion of income-restricted units creates problems as well. These units are often stigmatized – even if to all appearances they are identical to the market rate units – and the perception is often that the affordable homes decrease the value of surrounding homes. Owners of these homes are often experience fiscal problems when association dues are increased to provide improved amenities for the community, or when improvements call for special assessments.

Finally, it appears that the ongoing management of these income-restricted units is difficult to oversee. Audits of inclusionary zoning programs routinely find that units have been subletted, that occupants do not meet qualification criteria, and that preferential selection has occurred. Given the size and diversity of Los Angeles County, it is difficult

to imagine the level of oversight resource that would be required to implement an inclusionary zoning program.

The current economic realities must be considered.

While there certainly remains a need to provide affordable housing in Los Angeles County, one cannot argue that housing is significantly more affordable now than a few years ago. In many other communities where inclusionary zoning requirements exist, market-rate units are selling for less than the income-restricted units. Other builders find it difficult to obtain loans for buyers who meet the criteria of the local inclusionary program because lending standards have become much stricter.

Ironically, the loose lending standards that contributed to the increase in home prices during the early to mid-2000s also enabled inclusionary zoning programs. During this time, many jurisdictions adopted inclusionary zoning programs and required that homes be sold at price controlled levels. Buyers of these units were able to get loans, even though they often did not have good credit scores. As the credit markets have frozen and lending criteria is stricter, these buyers are unable to attain loans. Many of the jurisdictions with inclusionary programs are waiving the requirements on builders because they cannot locate qualified buyers. Since it is unlikely that credit standards will loosen to the extent they were earlier this decade, we expect many more jurisdictions will have difficulty filling inclusionary units.

Housing policies should focus on incentives that create more affordable homes.

Instead of penalizing an industry that has kept our economy afloat and provided thousands of jobs, an effective affordable housing policy should focus on economic incentives to create more affordable homes, while also preventing the damaging effects caused by an Inclusionary Zoning ordinance. Meaningful incentives positively impact the creation of more affordable housing by allowing increased densities for housing developments that include affordable housing; allowing multi-family developments to increase in size while requiring some of those additional units to be affordable; easing parking restrictions; reducing other fees; expediting the permitting and approval processes; or permitting in-lieu fees for developments where the production of affordable housing is simply not economically viable.

That said, we also discussed the practical limitations of some of these ideas when applied in Los Angeles County. In most areas, there are no established and agreed-upon baseline densities upon which to give a density bonus. In practice, developers work with the BOS and surrounding communities to reach an agreed upon density that will not be exceeded – regardless of whether the units are income-restricted or not. Even if there were a more certain mechanism to provide a density bonus, we acknowledge that it has limitations. While they can be advantageous in many cases, if the bonus triggers a change in building type, for example, the associated construction costs may outweigh the benefit of the bonus. Given the type of construction common in Los Angeles County, we believe this issue would come up frequently.

BIA/LAV is working with LA County on many housing-related issues and with other jurisdictions on strategies to provide affordable housing. We look forward to a continuing dialog with you as you finalize your report and seek further direction from the Board. Please do not hesitate to contact me with any questions or to arrange further discussions with BIA/LAV members.

Sincerely,

APPENDIX B: INTERVIEWS WITH OTHER LOCAL JURISDICTIONS

In 2009, the Department of Regional Planning staff conducted interviews with planners, administrators, and housing specialists to better understand some of the successes and challenges of implementing inclusionary housing ordinances. The staff focused on three jurisdictions: Sacramento County, the City of West Hollywood, and the City of Irvine. Due to the court's decision in *Palmer* and the time that passed since the original interviews, the staff followed up with these local jurisdictions in May 2012.

SACRAMENTO COUNTY

Sacramento County adopted an inclusionary housing ordinance in August 2004. To understand how the ordinance works, the staff interviewed Lindsay Norris Brown, a planner with the Sacramento County Planning and Community Development Department. The following is a summary of the conversation.

The County's ordinance stipulates that all new residential developments over five units that require discretionary approval, such as special development permits, zone changes, plan amendments or subdivisions, must be subject to the inclusionary housing requirement. In practice, however, development procedures in Sacramento County are such that all new residential projects undergo discretionary review, which triggers the affordability requirement.

Although the ordinance offers a variety of options for compliance, the vast majority of residential development projects choose to pay an in-lieu fee. In fact, during the first two years that the ordinance was in effect, no affordable housing units were developed through the ordinance.

On May 15, 2012, the staff spoke with Tim Kohaya. Although no amendments have been made to the County's ordinance since the *Palmer* decision, the County is exploring other policy options as part of its Housing Element Update.

CITY OF WEST HOLLYWOOD

On June 17, 2009, the staff interviewed John Keho, Planning Manager, and on June 29, 2009, Jeff Skorneck, Housing Manager, of the City of West Hollywood. The following is a summary of these two conversations:

Since West Hollywood's incorporation in 1984, affordable housing has been a core value of the City, and in 1986, the City adopted an inclusionary housing policy.

The in-lieu option in the City's inclusionary housing ordinance only applies to residential projects with 10 or fewer units (recently changed from 20 units or fewer). In total, $23.6 million in in-lieu fees have been created through this ordinance. This money is used locally to finance the development of housing for very-low income residents and special needs populations.

The City's ordinance requires that residential projects of more than 10 units build the affordable units. Although the ordinance allows applicants to request to build the units off-site through a

discretionary process, the City has only received two such requests. Furthermore, the ordinance does not include a waiver or other safety valve mechanism. Mr. Keho noted that no developer has ever claimed that meeting the inclusionary housing requirements is economically infeasible, and the City's ordinance has never been challenged legally.

The City's inclusionary housing policy existed prior to implementing the State Density Bonus Law, and during that time, the City required developers to build affordable units through its inclusionary housing ordinance without offering developers any incentives, including increases in density or height. However, in conjunction with the State Density Bonus Law, the City modified its ordinance to offer density bonuses as an incentive to developers building affordable units.

Although the ordinance applies to both for-sale and rental housing, all of the affordable units developed through the inclusionary housing ordinance are rental units. In other words, the developers are choosing to provide affordable rental housing. Developers have been incorporating both for-sale and rental housing into the same project, but the for-sale units are sold at market rates, while the rental portion includes the income-restricted units. The for-sale and rental units are often in the same building on the same site.

To ensure quick lease-up of the income-restricted units, the City maintains an Inclusionary Housing Waiting List. This list is maintained and recertified every two years by the Housing Division. According to Mr. Skorneck, it is much harder to find moderate income renters, and therefore, moderate-income households may be added to the list. On the other hand, due to the high demand, the addition of new low-income households to the list is limited to households that have been evicted through no fault of their own.

The staff from the Housing Division is in charge of monitoring the affordable units that are created through the inclusionary housing ordinance. After adoption of the ordinance, the Housing Division did not need to hire additional monitoring staff. To date, the ordinance has created 106 income-restricted units (68 new and 38 rehab), all of which are rental, built on-site, without the use of public subsidies.

On May 15, 2012, the staff spoke with Jonathan Leonard and Roderick Burnley, who manage the City's inclusionary housing program. They informed the staff that no changes had been made to the City's ordinance since the *Palmer* decision. Although the City's ordinance technically has a mandatory rental component, developers receive incentives, most often in the form of a density bonus, to build the affordable rental housing. In fact, Mr. Leonard and Mr. Burnley stated that in most cases it makes more financial sense for the developer to provide affordable housing and receive a density bonus or other incentive than develop market rate units with no incentives.

City of Irvine

On June 9, 2009 the staff interviewed Mark Asturias, Housing Manager of the City of Irvine. The following is a summary of this conversation:

The City of Irvine's inclusionary housing ordinance came through a negotiation with the State Department of Housing and Community Development (HCD) as part of the Housing Element Update

and certification process. The City included a program in the Housing Element that committed the City to adopting an inclusionary housing ordinance, which it did in 2003.

The City's ordinance includes an in-lieu fee option, which only applies to projects that are either less than 50 units or proposed in areas with geographic constraints, such as hillside areas. In addition, projects of over 50 units can petition to pay an in-lieu fee if they find that it is financially infeasible to build the affordable units. The City's ordinance does not include a waiver from the inclusionary housing requirements; developers must either build the units on- or off-site or pay an in-lieu fee.

Although the in-lieu fee option is the most widely used by developers, the City offers a variety of other options to developers of projects less than 50 units. These range from land dedication, to the provision of alternative housing as determined by the City, to the transfer of affordable units from one project to meet the inclusionary requirements in another. The transfer option has only been utilized once when a for-profit housing developer included more than the required number of affordable units in one project in order to create a completely market rate project elsewhere. As for incentives, the City offers project expediting if developers request it. Also, projects may receive reductions in local park fees (not Quimby fees). Developers may also request variations in the affordable housing requirements. For example, for-sale projects only require a 7.5% set-aside, as compared to 15% for rental projects. In addition, the set-aside requirements can be reduced for projects with deeper levels of affordability or larger units with more bedrooms.

In 2006, the City created the Irvine Community Land Trust as another affordable housing strategy. Although the land trust is eligible to receive funds generated through in-lieu fees, it had been financed by the City's now defunct redevelopment agency. The $10.7 million created through in-lieu fees have been spent on developing affordable housing.

The City's housing department is currently in charge of monitoring all 3,100 affordable housing units that are located in the City, 500 of which were created through the inclusionary housing ordinance. Monitoring has been challenging for the City, but the inclusionary housing ordinance did not create additional monitoring burdens. The City only has a staff of three and does not charge monitoring fees.

On May 14, 2012, the staff followed-up with Mark Asturias. Mr. Asturias informed the staff that no changes had been made to the City's inclusionary housing program since the *Palmer* decision.

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