



*Cedarbrook Walk — Camarillo*



*Mission Walk - Old Town Camarillo*

County of Ventura  
Inclusionary Housing Policy Report

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# 1. Summary

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Ventura County faces a severe housing crunch. Exacerbated by rapidly increasing rental rates and home prices as well as job growth in Ventura, Santa Barbara and western Los Angeles counties, the demand for affordable housing continues to swell. As wages remain stable and the cost of purchasing a home countywide increases 20-30 percent per year, the short supply of rental and ownership housing affordable to average wage earners threatens to impact the county's economic base.

In response, dozens of stakeholders representing the diverse interests of the business community, nonprofit organizations, housing advocates, local government, and the development community have come together in a variety of countywide forums to seek solutions. At these venues, one often highly touted method to address the short supply of affordable housing is the adoption of an Inclusionary Housing policy by local governments. This typically takes the form of an ordinance requiring that new residential developers earmark a specified percentage of their housing units for purchase or rent by low and/or moderate income households.

The Ventura County Board of Supervisors has approved several residential General Plan Amendment Screening applications in the past four years with varying requests or requirements for lower-income housing. These requirements have been on an ad hoc basis and have not followed any consistent or universally applied policy criteria.

The intent of this report is to explore the potential for adoption of an Inclusionary Housing policy or ordinance in Ventura County. This report provides background on Inclusionary Housing as a planning tool, details the advantages and potential challenges of an Inclusionary Housing policy, reports on implementation in other jurisdictions, expands in rough detail upon the key considerations in designing and implementing such a policy, touches upon legal and legislative issues and, finally, addresses the policy implications for the Board of Supervisors.

## **2. Background**

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### **2.1 What is Inclusionary Housing?**

Inclusionary housing is a mandatory requirement or voluntary concession for a minimum percentage of lower and/or moderate income housing units to be included in new residential development.<sup>1</sup> It links construction of affordable housing to construction of market rate housing with the result that new residential areas include diverse housing options. There is no statewide standard for Inclusionary Housing, leaving jurisdictions free to determine whether Inclusionary Housing policies are appropriate and to design them within the constraints of their unique local context. When adopted, these requirements are typically incorporated into the zoning code in the form of an ordinance and/or integrated as policies in a jurisdictions' General Plan.

The first Inclusionary Housing programs in California were adopted by the cities of Petaluma and Palo Alto in 1973. Since that time, local governments have increasingly turned to Inclusionary Housing as a tool for increasing the stock of affordable rental and for-sale housing in their communities. Dozens of ordinances were codified during the housing crises in the early 1980s and 1990s, and dozens more were codified in the last five years. While not uncontroversial, in many cases Inclusionary Housing policies were initiated to satisfy State Housing Element requirements and to avoid potential legal challenges by housing advocate groups.

According to a report published jointly by the California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California, as of March 2003 more than 100 California cities and counties, or one-fifth of all jurisdictions statewide, used local inclusionary practices to ensure construction of affordable housing.<sup>2</sup> Not surprisingly, the primary concentration of cities and counties with adopted Inclusionary Housing ordinances remains centered in metropolitan regions with escalating housing costs, such as the Bay Area and coastal California.

The specific requirements of Inclusionary Housing policies vary from one jurisdiction to the next. However, most Inclusionary Housing ordinances include the following elements:

- targeted income categories for housing;
- the inclusionary percentage required for varying types of residential development;
- developer incentives;
- the length of affordability for the project; and
- alternatives to on-site construction, such as payment of in lieu fees.

As a rule, the precise details are hammered out by policymakers as they seek to balance developer needs with housing advocates' concerns and community needs.

### **2.2 Land Inventory: Is More Affordable Housing Needed in Ventura County?**

On October 5, 2004, the Board of Supervisors received the General Plan 2003 Annual Report, which detailed the County's progress in meeting its share of the regional housing needs as determined by the Southern California Association of Governments (SCAG) Regional Housing Needs Assessment (RHNA). The Annual Report indicated that in the current cycle (1998-2005) the County already exceeded targets set for housing in the low and moderate income categories. This is due less to proactive County housing policies and more to circumstances; primarily the completion of the first and second phases of construction at California State University Channel Islands (CSUCI), where apartments, townhouses, and single family

dwellings for students and faculty were designed with affordability in mind. Figure 1 summarizes housing attainment in the various income categories through 2003.

**Figure 1: Regional Housing Needs Assessment Goals and Progress**

<b>Income Category</b>	<b>Dwellings Needed 1/98 – 6/05</b>	<b>Dwellings Provided 1/98 – 12/03</b>	<b>Percent of Needs Already Met</b>
<b>Upper</b>	690	494	72%
<b>Moderate</b>	334	347	104%
<b>Low</b>	250	366	146%
<b>Very Low</b>	404	264	65%
<b>Total Dwellings</b>	<b>1,678</b>	<b>1,471</b>	<b>88%</b>

The 2003 Annual Report stressed that in the low and moderate income categories the County is meeting the RHNA targets; however, in the very low income category the County is not producing sufficient new housing to meet the targeted goal by mid-2005. Less attention is focused on the target for upper income housing because households in this income category have the option of purchasing a home available to the moderate or low income households. Given fluctuating housing markets, it's difficult to estimate how close the County will come to achieving the overall goals for very low and upper income housing. However, if construction growth through 2004-05 continues at the same pace as 2003, 90 percent of the housing affordable to upper income households would be produced and 84 percent of the housing needed for very low income households would be constructed.

Achieving these levels of housing construction during the current RHNA cycle would be laudable. Nevertheless, as the tables in Figures 2, 3, 4, 5, and 6 show, the unincorporated County's potential land inventory for affordable housing after this cycle is becoming constrained. Contributing factors include: 1) the State's purchase of Ahmanson Ranch resulting in the substantial loss of potential housing, especially affordable housing; 2) development constraints in some unincorporated areas; 3) build out at CSUCI, where a significant percentage of lower and moderate income units have been constructed in recent years; and 4) the method used by HCD to calculate second dwelling unit inventory by using a five-year historical average. To illustrate changes, the land inventory tables shown in the following Figures have been updated in legislative format from the Ahmanson Ranch supplement to the 2002 Annual Report reviewed by the Board in November 2003.

**Figure 2: Moderate-Income Housing**  
 (Single-Family Detached <10,000 sq ft and >2,000 sq ft; ≤ 6 Units per Acre)

Land Use Designation	Zoning	Vacant Parcels	Potential Parcels	Total Parcels
<b>Urban/Existing Community</b>	RA	208 228	0	208 228
	RO	2	0	2
	RE	418	0	418
	R1	55 444	151 422	206 266
	RPD-4 du/ac	3 8	12 82	15 90
	RPD-6 du/ac	2	90	92
	SP (SFA 5 du to 10 du/ac)*		519	519
	SP (Attached 10 du to 25 du/ac)*	4	240	240
	SP (Affordable 10-20 du/ac)**		469	469
	SP (Affordable 2nd du)**		84	84
<b>State/Federal Facility</b>	CSUCI (SF Detached)***		139 475	139 475
<b>Piru Redevelopment Area</b>	R1		30	30
<b>Total</b>		<b>686 802</b>	<b>332 1,421</b>	<b>1,110 2,223</b>

\* Ahmanson Ranch Specific Plan – Market Rate Housing. Overall minimum density is 80%

\*\* Ahmanson Ranch Affordable Housing Program specifically requires a minimum of 253 moderate income units with 30 year rental/resale restrictions to house project workers. Overall minimum density is 80%.

\*\*\* CSUCI Specific Reuse Plan requires re-sale price restrictions so as to be affordable to faculty and staff in the future.

**Figure 3: Lower-Income Housing (Attached)**  
(Multi-Family ≥ 6.7 Units per Acre)

<b>Vacant &amp; Redevelopment Land</b>			
<b>Land Use Designation</b>	<b>Zoning</b>	<b>Vacant Parcels</b>	<b>Potential Units</b>
<b>Urban/Existing Community</b>	RPD-67 du/ac to 9 du/ac	38	95,462
	R2-7,000sq ft (10 du/ac)	1164	121,700
	RPD-10du/ac to 15 du/ac	34	15,220
	SP (Affordable 10-20 du/ac)*	4	155
	SP (Public Housing)*		100
	SP (SRO 50 du)*		50
<b>State/Federal Facility</b>	CSUCI-Condos (10-20 du/ac)*	1	333,365
	CSUCI-Apartments (20-30 du/ac)		212,360
	CSUCI-Dorms (2000 students)		Unknown
<b>Piru Redevelopment Area</b>	RPD-15 du/ac		30
<b>Total</b>		<b>1867</b>	<b>806,1314</b>

\* Ahmanson Ranch Specific Plan – Market Rate Housing. Overall minimum density is 80%.

\*\* Ahmanson Ranch Affordable Housing Program specifically requires a minimum of 253 moderate income units with 30 year rental/resale restrictions to house project workers. Overall minimum density is 80%.

\*\*\* CSUCI Specific Reuse Plan requires re-sale price restrictions so as to be affordable to faculty and staff in the future.

**Figure 4: Lower-Income Housing  
Second Dwelling Units**

<b>Second Dwelling Units (PD Permit Zone Clearance)</b>	<b>Zoning</b>	<b>Potential Parcels (5 year avg.)**</b>
1999-2004	All residential zones	202,490
	S P (Ahmanson)*	216
<b>Total</b>		<b>202,706</b>

\* Ahmanson Ranch Affordable Housing Program specifically requires a minimum of 236 low income and 185 very low income units with 30 year rental/resale restrictions to house project workers, plus up to 100 public housing units (very low and low). Overall minimum density is 80%.

\*\* Reflects changes to State law that detail how the potential for second dwelling units will be calculated.

**Figure 5: Lower-Income Housing  
Farmworker/Animal Caretaker Units**

<b>Farmworker/ Animal Caretaker Dwellings (Zone Clearance)</b>	<b>Zoning</b>	<b>Potential Parcels (5 year avg.)**</b>
Agricultural Designated Land	AE > 40ac	510
	AE < 80ac	180
	AE > 120ac	113
1999-2004	AE and OS	85
<b>Total</b>		<u>85</u> <del>803</del>

\*\* Reflects changes to State law that detail how the potential for farmworker dwelling units will be calculated.

**Figure 6:  
Total Potential Lower-Income Dwelling Units**

<b>Total Potential Lower-Income Housing</b>	<u>1,093</u> <del>3,548</del>
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The numbers shown in Figures 2, 3 and 4 reflect the loss of affordable housing units that would have been provided by the Ahmanson Ranch development over a 10-15 year period. This impact will be more evident in the 2005-2011 RHNA cycle. If completely built out, the Ahmanson Ranch project would have provided 3,050 housing units, of which 25 percent (774 units) would have been required to be “affordable” for at least 30 years. The affordable units consisted of 253 moderate-income units, 236 low-income units, and 185 very low-income units, plus 100 public housing units. In addition to these units, Ahmanson Ranch would have provided a significant source of housing for upper income households earning more than 120 percent of the median income.

Additionally, public facility constraints in some unincorporated areas play a role by restricting future residential development. In Ojai Valley, for example, where approximately 40 percent of the County’s multifamily housing land inventory outside of CSUCI lies, traffic policies prohibit new residential development. Similarly, there are water supply constraints in the Santa Monica Mountains and sewage system constraints in El Rio/Del Norte and the Santa Rosa Valley. It should be noted that the Board of Supervisors directed the Planning Division to prepare an amendment to the General Plan to exempt farmworker housing complexes and affordable housing from traffic policies that prohibit discretionary development in areas where roads do not meet the required level of service. If approved, this amendment would open the door to future construction of affordable housing in the Ojai Valley. This amendment will be reviewed by the Board with the General Plan Update in spring/summer 2005.

Unincorporated areas with significant vacant residential land inventory for lower and moderate income housing include CSUCI, Ojai Valley, Piru and Saticoy, which are further described as follows:

- CSUCI will be largely built out by the end of the current RHNA cycle. The CSUCI Affordable Housing Program provided 107 and 109 housing units in 2002 and 2003, respectively. These dwelling units were rental and for-sale units affordable to low, very low, and moderate income households. An additional 302 lower income units are anticipated in CSUCI's Phase III, scheduled for completion in 2005. Housing units will be a mix of apartments, single-family, and townhomes.
- As mentioned previously, the Ojai Valley is subject to traffic policy restrictions that currently prevent the development of discretionary residential projects.
- In Piru, the Planning Division is collaborating with several developers and the Piru Community Council to amend the Piru Area Plan and plan for future urban residential land uses. The history and present local perception of affordable housing in Piru is addressed in more detail in the Policy Implications section of this report.
- In Saticoy, the County is in communication with the City of Ventura regarding the existing vacant R-2 (duplex) area, which the draft City Comprehensive Plan shows for industrial development. Additionally, there are a few remaining R-2 lots in Montalvo and Somis.

The new method for calculating the number of potential second dwelling units requires taking a five-year average. In the last Housing Element update, staff estimated that 10% of the potential second dwelling units within the County (1,490 units plus 216 units in Ahmanson Ranch) would be added to the inventory. Figure 4 shows that 202 actual second dwelling units were approved between January 1999 and November 2004, 148 of them after revisions to the ordinance in June 2003. Use of a five-year historical average includes several years when very few second dwelling units were approved, bringing these estimates significantly lower than anticipated. Likewise, Figure 5 reveals that by using the five-year historical average, the count of potential farmworker housing units will be reduced to a much lower than estimated level—from 803 to 85 units.

As shown in Figure 6, the aggregate potential for lower income housing in unincorporated areas currently amounts to approximately 1,093 dwelling units, including farmworker units and second dwelling units. This total will decrease as more units are constructed between January 1, 2004 and the start of the next housing cycle (July 1, 2005). By comparison, the lower-income housing need for the unincorporated area of the County for the current housing cycle (1998-2004) is 654 dwelling units.

In summary, the County's inventory of developable residentially zoned unincorporated land is becoming constrained and without more proactive measures may not be sufficient to meet the RHNA construction targets for the next Housing Element update period (2005-2011).

### **2.3 The Growing Disparity Between Wages and Home Prices**

In addition to the factors listed above, market forces have shifted the previous affordability of homes and apartments away from lower income households to moderate or upper income households. The emphasis of the 2001 Housing Element was on the provision of low and very low income housing, but both California State law and State redevelopment law now call out the need for also providing moderate income housing in California communities.

In February 2004, the California Association of Realtors (CAR) reported that the median priced home in Ventura County sold for \$528,650 (includes condos, townhouses, and existing housing stock). According to a study completed by CAR, a household income of at least \$122,932 was needed to purchase the median-priced home and only 22 percent of Ventura County

households attained this income level.<sup>3</sup> Median household income for a family of four in Ventura County is currently set at \$77,400. By October 2004, CAR reported that Ventura County's median sales price for existing homes rose to \$584,950.

The disparity between wages and housing prices in Ventura County has mushroomed in recent years, driving housing prices beyond the means of many existing and would-be residents and dramatically altering the demographic of those who need affordable housing. It is no longer simply the low wage earners and needed service workers who require affordable housing, but working professionals and single wage earner families that struggle to rent and purchase homes. This reality is often overlooked by existing residents who are longtime homeowners in a community. Yet it has virtually redefined the term "affordable housing" (with all of its many negative connotations) to include workforce housing for physical therapists, pharmacists, administrative assistants, and others who are unable to keep pace with rising housing costs.

Indeed, in recent years family income thresholds for affordable housing eligibility shifted appreciably. The income categories used by HUD for public subsidy purposes in Ventura County are shown in Figure 7 (assumes a household size of four persons):

**Figure 7: HUD Affordability Categories**

<b>Income Category</b>	<b>Percent of Median</b>	<b>Annual Income</b>
<b>High Income</b>	>120%	> \$ 92,880
<b>Moderate Income</b>	80-120%	\$ 57,500- 92,880
<b>Low Income</b>	50-80%	\$ 38,700- 57,500
<b>Very Low Income</b>	<50%	< \$ 38,700
<b>Extremely Low Income</b>	<30%	< \$23,220

Source: Ventura County Area Housing Authority (Effective January 2004)

Low income households now include many teachers, police officers, entry-level nurses, and social workers. As the mean annual wage data in Figure 8 further illustrates, the median priced home in Ventura County is no longer within reach for much of the County's workforce, particularly those who may be the sole wage earners for their families.

**Figure 8: Ventura County Occupations and Mean Wages**

<b>Occupation</b>	<b>Ventura County Mean Annual Wage (2004)</b>	<b>Percent of Median Income</b>
<b>Optometrist</b>	\$81,718	106
<b>Computer Programmer</b>	\$77,522	100
<b>Chiropractor</b>	\$76,831	99
<b>Registered Nurse</b>	\$57,822	75
<b>Technical Writer</b>	\$66,648	86
<b>Physical Therapist</b>	\$64,353	83
<b>Fire Fighter</b>	\$55,733	72
<b>Accountant</b>	\$54,118	70
<b>Electrician</b>	\$52,468	68
<b>Loan Officer</b>	\$52,027	67
<b>Elementary School Teacher</b>	\$50,909	66
<b>Graphic Designer</b>	\$41,820	54
<b>Social Worker</b>	\$41,618	54
<b>Administrative Assistant</b>	\$30,914	40
<b>Janitor</b>	\$20,958	27
<b>Child Care Worker</b>	\$20,235	26

Source: California Employment Development Department (2004)

Where home purchase is out of reach, it's common for young families, seniors, and average-income wage earners to rely on rental housing to provide affordable housing. However, the supply of rental housing (single-family detached and multifamily attached) in Ventura County remains tight; barring significant economic shifts in the local housing market, the future rental housing outlook appears equally bleak.

If the Bay Area experience is any indication, without countywide changes to housing policies Ventura County is likely to face a shortage of workers and difficulty recruiting new employees, more traffic congestion and longer commute times as workers drive longer distances to work, increased air pollution, and strained infrastructure. Additional impacts that may arise from limited housing options are qualitative in nature, but nonetheless significant. These include the impacts on quality of life when residents work long distances from the communities they live in (e.g., less time to participate in civic activities and a missing sense of connection to their communities, children remaining in daycare for extended hours, and a shortage of critical safety workers during potential disasters). This will be coupled with the instability that results from exporting young families and educated entry-level professionals and technical workers to other areas of the state and country, primarily because they can no longer hope to participate in the first-time homebuyer market.

## 2.4 Existing Ventura County Housing Policies

Like many other communities, Ventura County has initiated a range of affordable housing programs and incentives to incrementally or indirectly increase the supply of affordable housing, primarily through federal subsidy programs, loans, and other mechanisms. These programs are detailed in the Consolidated Annual Plan published each fiscal year by the County Executive Office. In addition, zoning code changes have been approved in recent years to encourage the production of farmworker housing and second dwelling units. Amendments to the Non-Coastal Zoning Ordinance were approved in 2003 to increase the potential number of farmworker/caretaker dwellings that could be approved ministerially. Likewise, in 2003 amendments were made to the Non-Coastal Zoning Ordinance to permit second dwelling units by right in most areas of the county. Perhaps partially in response to rising home prices and partially due to the relaxing of the development standards, the County has seen a marked increase in the number of permits issued for second dwelling units in the past 18 months (although it remains to be seen whether this increase will be sustained). These units typically fill a defined need in the community by providing housing affordable to lower income individuals (college students, ailing parents, etc.).

However, there are currently no specified objectives or policies with respect to Inclusionary Housing in the unincorporated area of Ventura County. Such policies would be consistent with Goal 3.3.1(5) of the *Goals, Policies, and Programs* section of the General Plan, which seeks to “increase housing opportunities for households of all income levels, with special emphasis on lower-income households, the elderly, the mentally ill, single heads of household, large families, farmworkers, handicapped, and homeless.” Likewise, Goal 3.3.1(6) is consistent with an Inclusionary Housing policy because it attempts to promote a diversity of housing types, tenures, and prices through such goals as “striving for an equitable distribution of housing types and prices throughout the unincorporated County.” Housing Opportunity and Diversity Programs listed in the General Plan address residential developer incentives by supporting implementation of Article 16 of the Non-Coastal Zoning Ordinance. Although in need of an update to remain consistent with State law, Article 16 establishes standards, density bonuses and other incentives to encourage the construction of senior and lower income housing.

Although the County has no formal policy, the Board has set a de facto inclusionary housing policy for legislative approvals by requiring an affordable component in new residential projects. All recent General Plan Amendment (GPA) screenings for urban residential projects have included some form of inclusionary housing, provided either voluntarily by the developer or required as a condition of approval. Figure 9 shows the various GPA screenings and their affordable housing components:

**Figure 9:  
GPA Screening Applications with Affordable Housing Components**

<b>GPA Screening Project</b>	<b>Location</b>	<b>Date of Board Screening</b>	<b>Number of Potential Dwelling Units</b>	<b>Affordable Housing Component</b>
<b>John Rieder</b>	Piru	July 2001	60 multi-family units	Board directed staff to “examine the applicability and feasibility of setting aside a yet to be determined portion of the project for lower-income family housing.”
<b>Dana Levy</b>	Piru	February 2003	120 single-family units	Board directed that a development agreement to “set aside a yet to be determined portion of the project for lower-income family dwelling units” be filed concurrent with the GPA application.
<b>Rockwell Scientific</b>	Lynn Ranch/ Thousand Oaks Area	July 2003	Approximately 23 single-family units	Conditioned by the Board to provide a “variety of housing densities to meet the needs of diverse family income levels,” as described in the Thousand Oaks Area Plan.
<b>Dennis Nickerson</b>	Channel Islands Harbor Area	July 2003	10-16 apartment units	Developer proposed the project with 25% of units affordable to lower income households.
<b>Colton Lee Communities</b>	Santa Susana Knolls	July 2004	150-250 apartment units	Developer proposed the project with 20% of apartment units affordable to lower-income households.
<b>James Finch</b>	Piru	July 2004	145 single family and 65 apartment units	Board directed that a development agreement to “set aside an appropriate percentage of lower income housing relative to state mandated housing goals” be filed concurrent with the GPA application

If developed and adopted, an Inclusionary Housing policy would provide a consistent framework for applying affordability requirements to these projects and those that follow. Ideally, such a policy would define “affordable” by identifying targeted income groups and set aside rates for both rental and for-sale housing.

### **3. The Pros and Cons of Inclusionary Housing**

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#### **3.1 Competing Interests**

Given the controversial nature of Inclusionary Housing and the trade-offs inherent in designing such policies, they often spark considerable debate. Ventura County is likely to be no different.

Potential supporters of Inclusionary Housing in Ventura County include affordable housing advocacy groups, nonprofit housing organizations and developers, low-income workers hurt by rising rents, residents of all income levels who recognize the need for additional housing, legal aid foundations, environmental groups, employers who have trouble recruiting qualified workers due to housing prices, and County agencies that provide housing assistance services. Their arguments in favor of Inclusionary Housing will likely center on social equity and the negative quality of life impacts that result from inadequate housing— e.g., longer commute times, overcrowded housing, increases in air pollution, traffic congestion, etc. Their basic argument is that escalating housing prices deny housing to residents who contribute significantly to the community's quality of life. The result is that even professionals like teachers, accountants, and fire fighters find home ownership out of reach and become difficult to retain and recruit to Ventura County. For service workers and low-income families the situation is grimmer, with rising rents forcing them to either share housing or commute long distances to work.

Opponents to Inclusionary Housing in Ventura County may include the Building Industry Association (BIA), residential developers, local Chambers of Commerce, and existing residents who harbor fears about lowered property values and the perceived impact of affordable housing on their communities. Critics will assert that a requirement for lower income units impedes the production of housing and increases the price of market rate units in the same development. They will emphasize that Inclusionary Housing imposes an obligation on the homebuilding industry to meet a community need for affordable housing that should be a shared public responsibility. A follow-up criticism is that commercial and industrial employment generating uses have contributed to the dearth of housing for lower income residents, but these uses are not faced with a similar obligation to provide housing.

#### **3.2 Potential Challenges**

The BIA is often, but not always, pitted against housing advocates on the issue of Inclusionary Housing. In many communities the BIA lobbies policymakers for increased incentives and flexibility, while housing advocates lobby for tighter controls and higher in-lieu fees. Some jurisdictions, like the County of Santa Barbara, have successfully fashioned a compromise between the two groups by allowing increased densities that match the number of inclusionary units. This satisfied both the need for affordable units and the need for a reasonable profit by the developer.

Yet Inclusionary Housing remains a complex issue and there are valid arguments raised by opponents. For example, critics emphasize that buyers of inclusionary units cannot take advantage of one key aspect of homeownership— increased home equity. In California it is still assumed that this equity will make up a significant portion of household wealth. Nonetheless, in order to maintain affordability, deed restrictions are typically placed on for-sale units to limit their resale value, thus, limiting the homeowner's share of the equity gain. Opponents will also point out that oversight of these deed restrictions is time intensive and in some cities has been largely ignored, with the resulting loss of affordable units and/or costly litigation proceedings.

Another common argument is that a voluntary policy to include affordable units would function better than a mandatory requirement. A follow-up contention is that Inclusionary Housing relies on a strong residential real estate market to create below market rate units. Implementation of an Inclusionary Housing policy in a weaker real estate market may discourage residential development or artificially inflate the cost of market rate homes. Consequently, it is not an effective tool in every locality. Another concern often raised by existing residents of a community is that where density bonuses are provided with Inclusionary Housing, an undesirable “massing” of development occurs.<sup>4</sup> These criticisms of Inclusionary Housing are all warranted and substantive.

More recently, Benjamin Powell and Edward Stringham, economists at San Jose State University, espoused the viewpoint that price control policies like Inclusionary Housing have a dampening effect on overall housing production. Powell and Stringham studied 13 cities in southern California with Inclusionary Housing ordinances and found that housing production “drastically decreased the year after cities adopt inclusionary zoning”. They argue that the production of 770 inclusionary housing units in southern California in the seven years following adoption of inclusionary zoning resulted in the production of 17,000 fewer market rate units. Powell and Stringham further surmise that Inclusionary Housing ordinances raised the price of market rate homes by \$33,000-\$66,000/unit in Southern California. They support these conclusions with several papers published in 2004 by the libertarian Reason Public Policy Institute and point to the fact that inclusionary housing is not the “silver bullet” needed to meet regional housing needs.

Planning staff evaluated the methodology used by Powell and Stringham and believes that flawed assumptions biased their study and resulted in potentially false conclusions. For example, in calculating the cost of Inclusionary Housing, the authors assume that developers do not pay any of the cost of the additional units, but rather pass this extra cost on to the landowners and the buyers of market rate units. However, it is generally agreed that some of the cost of inclusionary units is shouldered by the developer and that the reason the developer is willing to make economic concessions is because, even with inclusionary requirements, construction of the project is still sufficiently profitable. Powell and Stringham further declare that housing construction fell dramatically in the year following adoption of Inclusionary Housing ordinances without factoring in the reality in most jurisdictions that to process a typical residential subdivision takes a minimum of 2-3 years and that typically in the last 1-2 years prior to adoption of such a policy developers rush to receive approval for residential projects. Thus, the true impact of a new Inclusionary Housing policy would not be obvious for at least 3-5 years. Likewise, in the study, which compared seven years of housing production after adoption of an ordinance, the authors failed to demonstrate that the reduction of 17,000 housing units (a questionable number to begin with) was not due to economic recession, tightening land use controls in the targeted cities, lack of vacant land, or other related reasons.

Ultimately, the research of Powell and Stringham lacks credibility because it does not include a comparative study between cities with and without an Inclusionary Housing policy. Instead, the authors self-selected cities with Inclusionary Housing policies to create their sample data. Then, in calculating the additional cost of Inclusionary Housing, Powell and Stringham assumed that there were no incentives or subsidies available to the developer, that the inclusionary units were identical in size to the market rate units and that there were no alternatives to construction of the affordable units through in-lieu fees, etc. This is because the rigidity of their economic model did not factor in day-to-day negotiations that occur as policymakers balance the housing needs of the community with developers’ needs. However, this does not mean that there are not some conclusions in the report that ring true. For example, the observation that Inclusionary Housing policies have only succeeded in providing a small percentage of the affordable housing needed in California is quite true. Still, Planning Division staff questions the value of the Reason Policy

Institute studies for policymakers when they do not reflect the experience of most cities and counties who have implemented Inclusionary Housing.

### 3.3 Potential Advantages

Advocates of Inclusionary Housing argue that as a regulatory tool, Inclusionary Housing allows affordable housing to be integrated with market rate units and distributed throughout the jurisdiction rather than constructed in one location. This in turn creates economically diverse communities and reduces the ability of affordable housing opponents to challenge the construction of housing units for low and moderate-income residents on the basis of the creation of “poor neighborhoods”. Integration of the housing units with market rate projects also avoids the problems of deferred maintenance and stigmatization that can occur. Indeed, inclusionary affordable units are more likely to be part of well-designed projects compatible with the existing community. This quality design serves to promote community acceptance of future affordable housing. In addition, Inclusionary Housing policies benefit local government in that the production of affordable housing units does not require significant expenditure of public funds, yet helps to meet state mandated housing goals. Historically, there has been no equivalent to this mechanism that enables a community to retain its character while accommodating affordable housing.<sup>5</sup>

To respond in part to the studies completed by Powell and Stringham, supporters of Inclusionary Housing are likely to point out that many jurisdictions adopt Inclusionary Housing policies at a point where they are running out of land and build-out is quickly approaching; thus, it's not a surprise that fewer units are built after adoption of an Inclusionary Housing ordinance than in the time period beforehand. Housing advocates would also point out that successful inclusionary housing policies have been implemented in strong housing markets, presumably because inflation in the housing market yields a significantly greater profit for developers and land owners, making it economically feasible to integrate affordable units with market rate housing. In jurisdictions where compliance is voluntary, very few, if any, inclusionary units have been produced. Yet, rather than harm the developer's bottom line, well executed Inclusionary Housing policies can function to create a fair playing field and provide clear direction to developers who are designing new residential projects.

Environmental groups often highlight the negative quality of life impacts that result from insufficient affordable housing, pointing to increased commute times and the effects on air quality as reasons to support Inclusionary Housing. Housing advocates and local businesses typically argue that Inclusionary Housing requirements help bridge the gap for professional workers (e.g., mid-level managers, nurses, and sheriff's deputies) who can no longer keep pace with the high cost of housing. Provision of more housing would allow some of these critical wage earners to remain in the county and for recruitment of such workers to the county. Most new residential real estate investment in Ventura County, especially in the cities, is geared toward construction of high end homes for those in the upper-income range. At the same time, traditional subsidies from CDBG, HOME, and other federal assistance programs primarily target lower income groups. However, the majority of the Ventura County workforce falls somewhere between these two extremes. Inclusionary housing policies are one method of increasing the supply of housing for this moderate income group.

Indeed, the City of Santa Barbara (where the mismatch between housing prices and wages is even more dramatic) recently took the unusual tactic of revising their Inclusionary Housing ordinance to target *only* moderate and above-moderate income households for ownership housing, or those earning between \$77,640 and \$129,400 annually. Residential projects with for-sale units are now required to set aside 15 percent of their units for households in these two income categories. This policy was viewed as necessary in order to maintain the quality of life

expected in Santa Barbara. Similarly, the County of Santa Barbara is in the process of adding a “workforce housing” category to their income categories, with housing targeted at households earning between \$78,287 and \$129,400 per year (121-200% of median income).

Lastly, in response to criticisms such as Powell and Stringham’s complaint that it is not a panacea, housing advocates contend that Inclusionary Housing policies are not intended to provide a region’s entire supply of affordable housing, but rather to work in tandem with more comprehensive housing programs and policies to address the community’s need for housing.

## 4. Implementation in Other Jurisdictions

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### 4.1 General Requirements

The *Inclusionary Housing in California: 30 Years of Innovation* 2003 survey revealed that approximately 20 percent of California communities (107 cities and counties) have adopted Inclusionary Housing programs. Among others, the counties of Monterey, Contra Costa, San Mateo, Napa, Yolo, Santa Barbara, Santa Cruz, Nevada, San Francisco, San Luis Obispo, San Benito, and San Diego have all adopted programs.

California jurisdictions have generally implemented inclusionary requirements in one of three ways:

- 1) Amendment of the Housing Element and adoption of an Inclusionary Housing ordinance;
- 2) Amendment of the Housing Element with project-by-project implementation; or
- 3) A general statement of housing policy or program with project-by-project implementation.

Without a state standardization of Inclusionary Housing, there are myriad variations in the design of these requirements. As summarized in the Background section of this report, key considerations of Inclusionary Housing programs include: the appropriate percentage or “set aside” to be required; income categories to be targeted; alternatives to construction on site; length of affordability; developer incentives; and varying thresholds for project tenure and size.

### 4.2 Ventura County Cities

**Port Hueneme** was the first city in Ventura County to adopt an Inclusionary Housing Ordinance. It was adopted in the early 1990s in response to the housing cost increases experienced in the late 1980s. Their ordinance applies only to coastal development, which covers much of the city. According to Greg Brown, Community Development Director at the City of Port Hueneme, nearly all new development is located in this coastal area. The inclusionary requirement mandates that new residential projects over 10 units in size set aside 25 percent of the housing units for low and moderate income households. Where necessary, in lieu fees of \$13,670 per unit are collected and used to rehabilitate existing housing stock and fund the City’s first time homebuyer program. However, most residential development in Port Hueneme consists of small infill projects that are exempt from the ordinance.

The **City of Moorpark** took a different approach and adopted a General Plan Inclusionary Housing policy in their Housing Element. This policy requires 10 percent of all new residential units to be affordable to low and very-low income wage earners, unless the project is located in the redevelopment area, where the required set aside is 15 percent. These requirements are negotiated by the City Manager and incorporated into the development agreement for individual projects.

In late 2002, the **City of Oxnard** adopted an Inclusionary Housing ordinance. Their ordinance requires new residential projects of 10 or more units in size to set aside 10 percent of ownership units to low-income households and 5 percent of multifamily rental units to very low income households; in lieu fees were set at \$3,500-4,200 per unit and most developers have opted to pay the fee rather than construct inclusionary housing units. A separate Redevelopment

Agency resolution was passed by the Oxnard Community Development Commission. This resolution is structured similarly to Oxnard's Inclusionary Housing ordinance but requires a 15 percent set aside in the City's redevelopment areas.

More recently, the **City of Santa Paula** City Council enacted an Inclusionary Housing ordinance that went into effect October 2004. This ordinance requires that 15 percent of all dwelling units in a project be designated for low income households or 10 percent be designated for very low income households. Developers that choose to provide the affordable housing component off-site must meet higher set aside rates. Where appropriate, in lieu fees will be paid to the Affordable Housing Trust Fund and used to develop affordable housing, though the amount of these fees has not yet been determined. In addition, Santa Paula is considering a policy that would give preference to low income households that reside and/or work in the community when the lottery for affordable units is held.

In 2003, the **City of Thousand Oaks** appointed an ad-hoc citizens committee to study affordable housing options. According to Russ Watson, the Housing & Redevelopment Manager for the City, much of that time was spent developing recommendations for an Inclusionary Housing policy that will be reviewed by the Thousand Oaks City Council in January 2005. The committee's recommendation is to provide a 20 percent set aside that will be tiered for rental and ownership units. Their recommendation is that for-sale housing be targeted to moderate-income households and rental housing directed to low-income households. Where permitted, in lieu fees would reflect the actual cost of providing affordable housing units.

In 2003, the **City of Fillmore** considered an Inclusionary Housing ordinance, but an existing Redevelopment Area requirement mandates that 15 percent of new residential units remain affordable to low-income households. According to City Planner Kevin McSweeney, since the boundaries for the Redevelopment Area cover most of Fillmore, there was little political interest in codifying a separate ordinance.

The **City of Camarillo** is currently drafting an Inclusionary Housing ordinance. Study sessions with the City Council have been held to discuss potential set aside rates, length of affordability, in lieu fees, etc. The City's 2003 Housing Element included a program to adopt an Inclusionary Housing ordinance by November 2004. Housing Program Analyst Randy Richardson expects that an ordinance will be adopted by the City Council in early 2005. Prior to initiating a mandatory Inclusionary Housing program, Camarillo managed a successful voluntary affordable housing program using developer incentives such as General Plan amendments, density bonuses, and exemptions from the growth limit ordinance. However, according to Randy Richardson, the housing units generated by the voluntary program were insufficient to meet the growing demand for workforce housing.

The **City of Simi Valley** does not have a mandatory Inclusionary Housing requirement, but administers a voluntary affordable housing program per State law through their Density Bonus Ordinance.

The **City of Ventura's** certified Housing Element includes a requirement for the city to study the potential for adoption and implementation of an Inclusionary Housing ordinance. The City is currently preparing to fund a nexus study that will evaluate incentive-based alternative strategies and the economic impacts of an Inclusionary Housing ordinance.

## 5. Implementation in Unincorporated Ventura County

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If the Board of Supervisors agrees to pursue consideration of an Inclusionary Housing policy or ordinance, a range of different options would be explored and potential policies submitted to the Board for review and comment. Generally, policies and ordinances that are effective and equitable in producing a wide range of affordable housing do not have simple rules and, thus, require careful crafting. The policy questions and considerations highlighted here are intended to provide a representative sample of the choices inherent in developing such a policy.

### 5.1 Program Features

On their most rudimentary level, most Inclusionary Housing ordinances in California contain the following elements:

- 1) A requirement that 10-30 percent of the residential units be affordable to specific income categories (multifamily rentals are typically targeted to low or very-low income households and for-sale units targeted to moderate income households);
- 2) Income eligibility criteria (the basis for defining the specified households to be targeted);
- 3) Pricing criteria for affordable units;
- 4) Length of affordability (California Redevelopment law requires no less than 55 years in redevelopment areas for rental units and 45 years for owner-occupied units; most cities have opted for a 30-99 year timeframe);
- 5) Resale restrictions for affordable units (this requires on-going administration as units are refinanced or sold or rented to new occupants);
- 6) Provision of in-lieu fees for smaller projects or fractions of projects or land dedication by the developer (the mean in-lieu fee in a recent statewide survey was \$107,598 per affordable unit; if fees are set too low then actual construction of affordable units is less likely to occur);
- 7) Developer incentives (the most common are density bonuses, fast track processing, and a reduction in development standards);
- 8) Eligibility for exceptions or alternatives to on-site construction; and
- 9) A system for enforcing and monitoring compliance (some jurisdictions employ full-time staff, others contract with a local housing authority and still others leave compliance up to the individual developer).

The above list addresses the content of an Inclusionary Housing ordinance. To provide direction on the process of developing a successful Inclusionary Housing policy or ordinance, in 2003 the Institute for Local Self Government compiled the *California Inclusionary Housing Reader*. Based upon the varied experiences of many cities and counties in California, this document details specific suggestions for local officials considering Inclusionary Housing strategies<sup>6</sup>: The suggestions are listed in full with comments in italics added by Planning Division staff to further illustrate the various points:

- 1) **Involve Developers.** Include both for-profit and nonprofit developers in discussions about program design. *Many cities and counties have established citizens' advisory groups and ad-hoc committees to provide recommendations on Inclusionary Housing and a broad spectrum of housing programs to decision makers.*
- 2) **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. When used, the fee should be sufficient to facilitate the development of the required affordable units at another nearby location. *To remain effective, in-lieu fees need to stay in tune with local housing market changes and may require regular updating. Santa Cruz County manages this by tying the in-lieu fee to a percentage of the average sales price for market rate homes.*
- 3) **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 nonprofit housing developer. A nonprofit developer then develops the donated land, using their expertise and resources for constructing and managing affordable housing.
- 4) **Consider Increasing Densities.** Increased densities and other land use changes to enhance residential development capacity may accompany inclusionary zoning requirements. This will help offset the financial impact of inclusionary requirements for the developer. *Density increases allow the construction cost of affordable units to be spread over a greater number of market rate units. This makes the project more economically feasible and minimizes the impact on the price of market rate homes in the same development. Density increases can be considered as part of a General Plan Amendment/Zone Change request or in conjunction with a locally enacted density bonus ordinance.*
- 5) **Set Reasonable Requirements.** Affordable housing requirements should be relatively modest (10-15 percent) if there are not development incentives such as density bonuses and fee waivers. *To be reasonable and equitable, the benefits and potential limitations of each policy detail needs to be considered, e.g., size of inclusionary percentage, targeted income categories, incentives, etc.*
- 6) **Establish Appropriate In-lieu Fee Levels.** 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. *In lieu fees can be applied in a number of ways. Typically, they are charged on a per unit basis and reflect the difference between the fair market value of a unit and the below-market price. Some communities exempt projects of fewer than 10 units from payment of in-lieu fees altogether, others simply prorate the requirement for smaller projects.*
- 7) **Vary Requirements by Area.** Inclusionary requirements may vary by area or 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. *The County of Santa Barbara tiers in-lieu fees by subareas that include Santa Maria, Santa Ynez, Lompoc, Montecito, and the South Coast. The Board of Supervisors is now considering tiering the inclusionary requirement further by distinguishing between types of affordable housing to be provided in the project. Since government subsidies for moderate or workforce housing (120-200% of area median income) are nearly nonexistent, the in-lieu fees for these units are set higher than those for lower income inclusionary units. For example, in the South Coast area the very low and low income fee per affordable unit would be set at \$110,000. The moderate and workforce housing fee would be \$422,700 per unit.*

- 8) **Establish Design Guidelines.** Ensure that inclusionary units are integrated within the development so as not to be distinguishable from the market rate units. *One relatively simple method of accomplishing this in a single-family home project is to create a duplex that houses two affordable units. From the street, the only demonstrable difference would be the presence of two entrances and possible separate garages for the home. Architectural congruity could be ensured by use of the same building materials and identical design and architectural treatments on the exterior of the building, but different and smaller floor plans on the interior.*
- 9) **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 certain to exceed supply. *One method used by many communities is to either restrict affordable units to residents/workers who meet a minimum residency requirement or to assign a higher priority to families that live and/or work in the community.*
- 10) **Establish Resale Controls.** Resale restrictions 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. *Projects are typically subject to regulatory agreements that carefully define what will be delivered, when and to whom, as well as defining long term affordability controls.<sup>7</sup> Estimates of administrative costs for inclusionary programs vary from \$40,000-110,000 per year among case study cities. In both Sunnyvale and Palo Alto, where the programs have a long history, a full time employee is required to manage the program. Palo Alto contracts with a non-profit housing organization to monitor units and qualify households. However, highly detailed deed restrictions may cut down on some administrative costs.*

Planning Division staff believes that the more critical challenges in Ventura County include developing an effective monitoring system to maintain long term affordability, determining reasonable requirements for diverse areas of the county, and incorporating sufficient flexibility to respond to evolving market conditions. In addition, though it was touched upon in the discussion on density bonuses, Planning Division staff believes that developer incentives should be reviewed in great detail. The most common of these include waivers or reduction of permit fees, waivers or reduction of zoning requirements (e.g. density bonus, height waivers, etc.), and “fast track” permitting for affordable projects. Incentivizing Inclusionary Housing makes a higher set-aside rate more economically feasible and reduces the pricing impact on market rate units.

## 5.2 Policy Considerations

Beyond the nuts and bolts of defining income categories, set asides and incentives, there are several key policy considerations intrinsic to crafting a successful Inclusionary Housing program.

### Apply to Legislative Amendments vs. Apply to all Discretionary Development

The first question to be answered is whether Inclusionary Housing requirements will apply solely to legislative approvals (General Plan amendments and zone changes) where the developer is receiving a benefit or entitlement not already affixed to the property or whether Inclusionary Housing requirements will apply to all discretionary development within the county? For example, a General Plan amendment might amend the existing designation from Existing Community, Rural Exclusive 1-ac to Existing Community, Residential Planned Development 11 du/ac and a zone change might entail a change from RA-5ac to RA-2ac. Many cities apply Inclusionary Housing requirements to specific development approvals (e.g., planned unit

developments, conditional use permits, etc.) and most exempt certain types of development such as assisted living facilities and small in-fill projects. Typically, Inclusionary Housing ordinances apply across-the-board to discretionary residential development in a community rather than to legislative approvals. Some legal sources, however, have advocated higher set aside rates for legislative approvals as opposed to adjudicative approvals (e.g., Planned Development Permits and Tract Maps).

### **Ojai Traffic Policy Exemption for Affordable Housing Projects**

In the proposed General Plan Update, farmworker housing, affordable housing projects that meet the criteria cited in Article 16 of the Non-Coastal Zoning Ordinance, and 100% lower income housing projects will be considered for a waiver from traffic policies that prohibit discretionary development. Restrictions on residential development are in place where roads do not meet the required level of service (e.g., the Ojai Valley). Many of the potentially impacted projects would not require legislative approval, but would provide the property owner with additional residential development potential. If the Board chooses to apply an inclusionary policy or ordinance to legislative approvals only, the Board may want to consider whether it would be appropriate to also apply it to affordable housing projects that would be exempt from such traffic policies. The impetus for including these projects in an Inclusionary Housing policy would be to ensure that the minimum percentage of affordable housing units required remains higher than that required by Assembly Bill 1818, which goes into effect on January 1, 2005. AB 1818 defines a project as affordable if it includes 10% moderate or low income housing or 5% very low or senior housing (see Section 7 of this report for a detailed description of the provisions of AB 1818). The composition of a farmworker housing complex would by definition be 100% affordable and, therefore, inclusion in an Inclusionary Housing Policy or Ordinance is not warranted.

Although the requirements of an Inclusionary Housing Policy or Ordinance may be more stringent than those of AB 1818, staff believes that non-legislative discretionary approvals would be covered by the provisions of AB 1818. Consequently, discretionary residential projects not requiring a General Plan amendment or zone change would be eligible for a density bonus and up to three incentives of the developer's choice, depending on the percentage of affordable units included in the project. Incentives may include reductions in site development standards, design requirements, planning fees, etc. The Board may want to consider whether the potential benefits outweigh the potential costs. Unlike discretionary approvals, legislative acts can require a development agreement that would be structured to preclude a density bonus in addition to that allowed by a General Plan amendment or zone change.

### **Contribution of Employment Generating Land Uses**

Another preliminary policy question would be whether significant employment generating uses should also contribute to the provision of affordable housing in the County through a jobs/housing linkage fee? Like in-lieu fees from residential developers, these fees would be collected and placed in a Housing Trust Fund. In January 2001, a Housing Trust Fund Feasibility Report was provided to the Board of Supervisors in conjunction with the General Plan Housing Element Update. This report discussed the potential for creation of a County Housing Trust Fund to finance new housing construction, housing rehabilitation, acquisition of property, land banking, assistance to homebuyers, rental assistance, and support of local homeless programs. Various funding mechanisms, including a transient occupancy tax, an increased business tax and a commercial/industrial development fee were considered. Ultimately, the report concluded that due to lack of commercial/industrial development in unincorporated Ventura County, projected funding from these sources would not be sufficient to support local housing programs in a meaningful way. However, in conjunction with an Inclusionary Housing

ordinance or policy, a jobs/housing linkage fee may be a more practical option. A new study would need to be completed to determine whether there would be sufficient revenue to provide an effective funding source for affordable housing.

Many communities have established such funds to leverage residential in-lieu fees provided by developers that choose not to construct Inclusionary Housing on-site. These funds often provide “gap financing” to 100 percent affordable multifamily projects constructed by nonprofit housing organizations for lower income households.

### **Policy vs. Ordinance**

Finally, there is the question of whether to adopt a General Plan policy or an actual ordinance. Adoption of a formal ordinance makes specific requirements more permanent and consistent in their application than would be possible with a General Plan policy, but both have been used successfully by other jurisdictions. The Legal Review section of this report provides more detail on the legal implications of each method. In short, an ordinance that applies a universal standard has a lower threshold to achieve in the courts than a policy applied on a case-by-case basis. An ordinance does not require a “nexus” study to prove direct correlation, whereas a General Plan policy that applies the equivalent of an impact fee on new residential projects does. On the flip side, however, a General Plan policy or housing program may allow more leeway for individual developers to negotiate requirements and create a more dynamic process that is open to changing conditions. Many jurisdictions have chosen to incorporate a policy statement in their General Plan with an Inclusionary Housing ordinance to follow. However, some jurisdictions, like Palo Alto and San Francisco have added an Inclusionary Housing program into their General Plans with a less prescribed set of requirements that can be negotiated.

## 6. Legal Review

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Because they represent local governments' use of zoning power to protect the general welfare, Inclusionary Housing policies can often stir debate over the legal grounds for their adoption. In California there are no laws that expressly authorize, require or otherwise place limits on the adoption of Inclusionary Housing with the exception of redevelopment areas and areas impacted by the Coastal Act.<sup>8</sup>

Inclusionary policies are specified by the California Health and Safety Code (§ 33413(b)) as applied to community redevelopment law. This statute requires development in local redevelopment areas to set aside 30 percent of new residential development to low and moderate income families when developed by the redevelopment agency and to set aside 15 percent when the housing is constructed by a non-agency entity, with 40 percent of the 15 percent targeted to very low-income households. The Piru Redevelopment Agency is responsible for implementing this statute in the Piru Redevelopment Area, and has collected approximately \$400,000 for the Housing Set Aside Fund since its inception in 1996. Likewise, the California Government Code (§ 65590(d)) requires new housing developed in the Coastal Zone to "provide housing units for persons and families of low or moderate income, where feasible," though this requirement is typically not economically feasible for the type of small, infill development seen in the unincorporated County.<sup>9</sup> Nevertheless, these state laws legitimize Inclusionary Housing as a tool for achieving the public good provided by adequate affordable housing. And, in fact, under California Housing Element law (§ 65583(c)(1)(a)), all jurisdictions are required to adopt a Housing Element that "identifies adequate sites" for housing needs "at all income levels" in the community.

In the past, developers and builders raised the question of whether Inclusionary Housing requirements were an unlawful "taking". The 2001 case of *Homebuilders of Northern CA vs. City of Napa* finally addressed this by establishing Inclusionary Housing practices as constitutionally valid. In this case, the court determined that Napa's Inclusionary Housing ordinance "substantially advanced a legitimate state interest" and that the required 10 percent set aside for affordable housing was constitutional. It did not constitute a "taking" due to the availability of a waiver or reduction in the requirements for hardship reasons. The ordinance also provided benefits to the developer through fee deferrals, expedited permit processing, and density bonuses.

The City of Napa case demonstrated that in order to withstand legal challenge an Inclusionary Housing ordinance should include the following elements:

1. Address a jurisdiction's need for housing through findings that demonstrate a correlation between this need and the inclusionary requirements;
2. Establish clear standards and a reasonable relationship between the alternatives and the purpose of the ordinance;
3. Include procedures for claiming a reduction or waiver and the standards for determining the extent of a reduction, if necessary;
4. Provide incentives and regulatory concessions over and above those required by state law; and
5. Incorporate provisions allowing for administrative relief (i.e., the ability to waive a developer's obligation if there is hardship).

Legal precedent suggests that adoption and implementation of a formal ordinance provides better protection from legal challenge than a policy that is applied on a case-by-case basis to individual projects. In the case of Inclusionary Housing, some jurisdictions have imposed inclusionary requirements based on general policy statements in their General Plan Housing Element. However, this type of general policy can lead to the kind of individualized ad hoc application that leaves the County susceptible to legal challenge. Local agencies are on firmer ground when conditions of development are imposed legislatively by ordinance.<sup>10</sup> Ideally, the General Plan would contain a policy statement on the provision of affordable housing through Inclusionary Housing that is then supported by the local zoning ordinance.

## 7. Pertinent Legislation

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A number of State Assembly and Senate bills dealing with housing were signed into law by Governor Schwarzenegger in September 2004. Among others, Density Bonus law, Regional Housing Needs Assessment (RHNA) reform, and Housing Element reform were tackled, while proposed changes to second dwelling unit regulations were vetoed by the Governor. Summaries of the signed legislation most pertinent to Inclusionary Housing are provided below.<sup>11</sup>

### 7.1 SB 1818 — Density Bonus Law

SB 1818 amends a portion of the Government Code often referred to as the Density Bonus law, which encourages low-income housing in exchange for developer incentives and construction at increased densities. Current state law mandates that all jurisdictions in California offer a density bonus for affordable housing. However, the new revisions to this law expand the use of incentives for developers and increase the financial burden upon local government.

Prior to this legislation, when a developer proposed a residential project with lower or moderate income or senior housing units (and met specified criteria), the local jurisdiction was required to provide the developer with a density bonus or other incentives, unless a finding was made that these concessions were not needed to achieve affordability. Existing law also required an additional density bonus or incentive to be granted if the project included a child care facility. SB 1818 revised these requirements to reduce by half the percentage of total units necessary to qualify for a density bonus. Thus, the new law allows a 20 percent density bonus for providing 10 percent low income housing or 5 percent very low income or senior housing that meets state standards. Furthermore, a 5 percent density bonus would be awarded for the provision of 10 percent moderate income housing in a project. The density bonus and associated concessions increase incrementally as the percentage of affordable units in a project increases, up to a maximum of 35 percent above existing zoning.

Under the new legislation, the number of concessions a jurisdiction is required to grant (e.g. relaxing development or design standards, waiver of permit fees, etc.) was raised from one to as many as three. In addition, this bill creates a new land donation density bonus of up to 35 percent for developers who donate land for affordable housing. SB 1818 further removes a provision of existing law that allowed a jurisdiction to make a written finding that the incentives were not financially necessary and instead requires that the incentives and concessions result in “identifiable, financially sufficient, and actual cost reductions”. Though local government may still grant density bonuses above or below those required, the jurisdiction must prove that the density bonus is unnecessary. Parking standards are limited by SB 1818 to the following maximums: one on-site parking space for a unit up to one bedroom in size, two on-site parking spaces for a 2-3 bedroom unit, and 2.5 parking spaces for a unit of four or more bedrooms in size. Finally, the new bill requires jurisdictions to determine and enforce resale and price controls for designated affordable housing, even when there is no public subsidy provided to the project.

Last revised in 1994, Article 16 of the County’s Non-Coastal Zoning Ordinance, which covers density bonus incentives for low income and senior housing development, has been inconsistent with state law for some time. The County’s existing zoning code does not yet factor in density bonuses for moderate income attached housing, which is further addressed in SB 1818. To date, however, there have been no applicants requesting a density bonus for residential projects that would have qualified for one. By lowering the required thresholds and

increasing the potential density bonus and concessions, the introduction of SB 1818 may create more demand. Clearly, adoption of an Inclusionary Housing policy affecting residential projects not requiring a GPA would generate increased demand for such incentives. Consequently, Article 16 needs to be revised to address these inconsistencies.

This bill does not preempt Inclusionary Housing ordinances adopted by local jurisdictions. Rather, the density bonus and concessions mandated by this legislation may be complimentary to policies that require developers to incorporate Inclusionary Housing into their projects. However, the Density Bonus law applies to all discretionary approvals, not simply to legislative approvals within a jurisdiction.

## **7.2 AB 2158 — Reform of Regional Housing Needs Process**

In response to litigation from the last RHNA process in the Southern California Association of Governments (SCAG) region, AB 2158 was developed to revise procedures for determining shares of existing and projected regional housing need in individual jurisdictions. The stated purpose of the bill is to correct perceived inequities and give more say to local governments in determining regional housing needs, thereby achieving greater local buy-in to the RHNA process. It is a lengthy bill that establishes overall policy objectives for the RHNA allocation integral to the Housing Element update, requires Councils of Governments (COGs) to incorporate specific factors into their methodologies, and establishes a detailed process for determining the regional housing allocations, including public participation and appeals.

Specifically, this legislation establishes the following policy objectives for the RHNA process:

- ties the RHNA to Regional Transportation Plans;
- increases the housing supply and the mix of housing types, tenure, and affordability in all communities in an equitable manner;
- promotes infill development and socioeconomic equity;
- protects environmental and agricultural resources, and encourages efficient development patterns;
- promotes an improved intraregional relationship between jobs and housing;
- achieves better collaboration and dispute resolution among jurisdictions; and
- addresses over concentrations of housing for any income group within communities.

The bill also requires that each jurisdiction receive an allocation of housing units for low and very low income households.

Finally, AB 2158 allows HCD to extend the deadlines for the determination of the RHNA and, in turn, for communities to update their housing elements by not more than 60 days, if the extension will enable access to more recent population or housing data from the Census Bureau or Department of Finance (DOF).

## **7.3 AB 2348— Housing Element Reform**

This statute enacts changes to existing laws related to affordable housing development, Housing Element law, Density Bonus law and anti-NIMBY statutes. It was developed in tandem with AB 2158 with input from the Housing Element Working Group. The intent of AB 2348 is to more specifically identify adequately zoned sites for affordable housing and remove common pitfalls to affordable housing that can occur during the entitlement process— e.g., excessive

parking requirements, arbitrary project denials, and neighborhood opposition. It does this by reducing local control of land use policies.

AB 2348 enacts the following revisions to Housing Element law:

1. Sets requirements for the required Housing Element land inventory;
2. Establishes a “rule of thumb” for determining densities that will accommodate lower income housing;
3. Clarifies that a jurisdiction’s Housing Element must commit to rezone sites to make up the difference between the assigned housing need and the projected housing inventory;
4. States that where the inventory of sites does not identify adequate sites to accommodate the need for housing in all income groups and for farmworker housing, sufficient sites shall be identified where these housing types are allowed by right;
5. Redefines “use by right” to mean that a project shall not require discretionary review or approval that constitutes a project for the purposes of CEQA;
6. Makes changes that allow newly or not-yet vacated units that will be rehabilitated to count toward meeting a jurisdiction’s RHNA obligation;
7. Expands the relocation assistance available to persons displaced by sites identified for substantial rehabilitation;
8. Specifies that under anti-NIMBY law, over concentration cannot be used as a reason for denying or conditioning development;
9. Likewise, zoning inconsistency cannot be used as a reason to deny or condition a project if the inconsistency results from the jurisdiction’s failure to conform zoning to General Plan land use designations;
10. Limits parking requirements for projects receiving a density bonus and allows parking to be provided through tandem or uncovered parking; and
11. Allows a developer to seek further parking concessions as one of the incentives provided under the density bonus law.

Immediate implications of this legislation include reduced parking requirements for projects receiving a density bonus and the potential for multifamily and farmworker housing to be “allowed by right” where adequate inventory for low and very low income households is not identified. If the County’s housing inventory does not include sufficient capacity for all units assigned by SCAG, these lower income housing units must be allowed through ministerial approval with densities of at least 20 units per acre to make up the deficit.

## 8. Policy Implications

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The policy implications of this analysis on Inclusionary Housing are manifold. First, it would be a mistake to assume that the County could supply its way out of the current crisis. The lack of affordable housing is a regional problem that deserves a comprehensive, regionally-based solution of which Inclusionary Housing is simply one potential facet. Nonetheless, Inclusionary Housing policies do offer a conduit for improving the supply of housing affordable to a range of income groups within the local context of development constraints in some areas, limited available land for urban/residential uses, and high demand.

As the forecasted demand for affordable housing surges, the Board is faced with three potential policy options in regard to Inclusionary Housing: 1) Maintain current General Plan housing policies; 2) Adopt a countywide Inclusionary Housing policy or ordinance; or 3) Direct staff to perform more research on Inclusionary Housing.

- 1. Maintain Current General Plan Housing Policies.** The first option is to rely on current General Plan policies to meet the future demand for housing and not adopt a formal Inclusionary Housing policy. Selecting this option would affirm that the County is making a good faith effort to provide lower income housing. Supporters of this option might argue that adoption of an Inclusionary Housing policy is not an appropriate action by a local government. Alternatively, proponents might argue that no policy change is needed at this time because the County is, in fact, achieving a reasonable proportion of its regional housing goals for low and moderate income housing in the current cycle without additional regulation. Indeed, one could argue this to be a significant accomplishment when juxtaposed with County policies emphasizing that urban development should be centered in the cities and existing urban areas, not in rural, unincorporated areas.

This option emphasizes maintaining existing housing policies and leaving a specific, overall Inclusionary Housing policy discussion to the future (e.g., as part of the next Housing Element update due in 2006). In the interim, where necessary and feasible, affordable housing requirements may still be applied on a case-by-case basis to individual residential projects that require legislative approval (e.g., General Plan amendments).

If this is determined to be the most suitable option, Planning Division staff requires general direction from your Board on affordable housing requirements screened through for General Plan amendment projects listed in Figure 9 earlier in this report. Three of these projects were in Piru, where an Area Plan update is currently in progress. By virtue of the timing of these GPA screenings, the Board has imposed an inclusionary housing requirement on residential projects in Piru. Yet the substance of these requirements remains undefined.

In order to adequately plan for future land uses in Piru, Planning staff and development applicants need more detailed direction from your Board. For example, what percentage of the housing units should be set-aside for lower and/or moderate-income housing? Piru contains the County's only Redevelopment Agency, but, with the exception of John Rieder's 5-acre parcel, the properties affected by the Area Plan update are not located within Piru's Redevelopment Area (RDA). State Redevelopment law requires that private residential projects in a RDA set aside at least 15% of the new or rehabilitated housing units for low or moderate income households; 40% of these dwelling units must be affordable to very low income households. Covenants or restrictions are required to maintain affordability for a period of 45-55 years, based on tenure. Research is currently being conducted to determine whether the affordable housing projects constructed in

Piru's RDA since 1996 included recorded affordability covenants that meet this criteria. If not, it is unclear whether the deficit will need to be made up through future projects. State law includes a provision that would allow projects located within close proximity to the RDA to fulfill such a requirement. Staff hopes to provide a fuller report at the upcoming Board hearing. In the interim, the following policy options remain in regard to Piru:

- a) **Maintain a 15% Inclusionary Requirement in the RDA Area Only.** As stated above, this is the minimum required by State Redevelopment law. Your Board may determine that this inclusionary requirement is sufficient for the community of Piru.
- b) **Impose an Inclusionary Requirement on Projects Outside of the RDA.** Your Board may choose to impose a set-aside requirement across-the-board on projects in Piru. Based on the experience of other jurisdictions, 10-20% is a reasonable set-aside rate. Your Board could choose to require that 15% of the units be set-aside for low and moderate income households to mirror the requirement in the RDA. If so, single-family detached units could be targeted to low and moderate income households and multifamily units could be targeted to low and very low income households.
- c) **"Catch Up" Provisions.** If the County is required to make up for existing affordable units that don't meet State statutes, it may be necessary to apply this requirement to future projects in Piru that are not located within the RDA. Your Board may want to discuss whether the Levy and Finch projects should be required to set aside the same percentage of very low, low and/or moderate-income units as the Rieder project.

2. **Adopt a Countywide Inclusionary Housing Policy or Ordinance.** Selecting this option assumes that projecting past housing trends into the future may not be a reliable method for estimating future housing production, given the subtleties of the local housing market and the constraints on the supply of vacant, residentially zoned land in the unincorporated area of the County. Thus, the County may come close to meeting state mandated housing goals through 2005, but these numbers may not be sustained into the future and more proactive policies to encourage the supply of affordable housing could be warranted. A countywide Inclusionary Housing Policy or Ordinance is a legitimate and readily available tool to use for this purpose. It would provide direction for projects already conditioned to incorporate affordable housing into their project design and create a fair playing field for future residential developers. Staff also believes that such a policy could work in concert with the State Density Bonus law to increase the supply of affordable housing.

This report is intended to provide conceptual information on the building blocks of an Inclusionary Housing policy rather than to comprehensively address all potential issues. Yet there are several distinct policy decisions needed prior to creating the basic form of such a policy:

- a) **Apply to Discretionary or Legislative Approvals?** Should an inclusionary requirement apply to all discretionary decisions or solely to legislative approvals (e.g., General Plan Amendments and zone changes)? Should such a policy also apply to affordable housing projects that are being considered for a waiver from County traffic policies in the current General Plan update? Discussed in detail earlier in this report, these alternatives would apply countywide to all discretionary and/or legislative approvals for residential development.

- b) **Implement as a General Plan Policy, Zoning Ordinance, or Both?** The relative advantages and disadvantages of implementing a General Plan policy vs. an ordinance were highlighted earlier in this report.
- c) **Required Percentage of Affordable Housing?** The program could be structured in a variety of different ways:
- ❖ It could address the income categories where the County is currently struggling to meet RHNA goals. In other words, it could be structured to require a 10 percent set-aside targeted to very low income households with no consideration of upper, moderate, or low income households. This assumes that the market will address housing demand in these other income categories on its own and does not require additional regulation to do so. It also assumes that it is economically feasible to construct for-sale units targeted to very-low income households, which may not be practical unless there are significant government subsidies;
  - ❖ It could follow a graduated scale and allow the developer to select the income category to target (e.g., discretionary residential projects required to set aside 10% very low, 15% low or 20% moderate); or
  - ❖ It could impose an across the board set-aside rate (e.g., 15%) with targeted income categories based on project density and/or tenure. Due to the difficulty in identifying low income households that can manage a regular mortgage without heavy subsidies, many high cost areas bifurcate the designated income categories to require single-family detached development to set aside housing for low and moderate income households and multi-family development to provide affordable housing for low and very low income households.

As far as an economically feasible set-aside rate, the California Coalition for Rural Housing 2003 survey revealed that the most common Inclusionary Housing percentage is 10 percent. Approximately 35 percent of all jurisdictions required at least 15 percent set-aside and approximately 13 percent required 20 percent or more. Typically there was not much difference between the required set-aside for single-family detached versus multi-family units, although smaller projects were typically allowed to meet inclusionary requirements in a different way than larger projects.

Existing policies in the County's General Plan specifically target lower income households; however, as described earlier in this report the definitions of who qualifies as "low" and "moderate income" are quickly changing. In addition, as home and land prices soar, the demand for homes to house young professionals, critical safety workers, needed teachers, etc. becomes more intense than was true during the last Housing Element update. Thus, a new category of "workforce housing" will gain importance. This is a policy point the Board will want to consider if an Inclusionary Housing policy or ordinance is pursued, and targeted households are defined.

- d) **Require Housing Impact Fees from Employment Generating Uses?**

This topic was covered briefly in the implementation section of this report. The rationale for a jobs/housing linkage fee is the increased demand for housing created

by employment generating uses. Funds collected for this purpose could be combined with in-lieu fees from residential development and placed in a Housing Trust Fund. Ultimately monies from this fund would be used for the construction of affordable housing.

e) **Vary Inclusionary Requirements by Geographical Area?**

One additional variable that requires further review and discussion is whether to recognize the diversity of the County and vary inclusionary requirements by geographical area rather than apply the same percentage irrespective of the community's history or past contributions. For example, the Board may feel that specific areas of the County should have a lower inclusionary requirement due to higher land prices or because significant affordable housing already exists there. Clearly, the differences among cities within Ventura County mirror an unequal distribution of wealth, and, therefore, of housing. Should a higher percentage be required in areas that are traditionally more affordable to build in, or should the set-aside rate remain consistent? Santa Barbara County substantially adjusts in-lieu fees to reflect the reality of diverse market factors operating in Santa Ynez vs. Lompoc and Montecito.

As was stated to the Board in recent GPA screening hearings, the Piru Community Council would prefer an inclusionary policy that targets unincorporated communities differently. The perception by residents of Piru is that they have been unfairly designated the last bastion of affordable housing in the county. In fact, the last four residential projects approved in Piru have been affordable housing projects: rehabilitated apartments developed by the Area Housing Authority (formerly the Palms Motel); the Colina Vista Apartments constructed by the Area Housing Authority; Habitat for Humanity single family homes; and single family homes in the Citrus View tract. Each of these was 100% affordable, with the exception of the Citrus View tract, which included both market rate and affordable units. However, the County did not initiate these affordable projects or enforce resale restrictions. Market forces simply made land costs in Piru more affordable than other areas and Piru remained one of the locations in the county where affordable housing could be built without heavy subsidies. Piru residents might point out that due to these same market forces, their market rate housing is still moderately priced compared to other areas of the county, making inclusionary zoning unnecessary in their community. Nonetheless, the economic landscape is quickly changing. Prices in neighboring Fillmore are rising and as Newhall Ranch builds out this paradigm may not persist indefinitely.

If the Board chooses to direct the Planning Division to pursue a General Plan Inclusionary Housing policy or an Inclusionary Housing ordinance, further direction from the Board and review and preparation of a detailed report to address the myriad policy considerations would be necessary.

- 3. Direct Staff to Perform More Research on Inclusionary Housing.** The Board may opt to postpone a decision on Inclusionary Housing until more detailed information is provided by an advisory committee. The Board may choose to initiate a program through the Planning Division to convene a citizens' group to study the challenges and advantages of an Inclusionary Housing policy with the ultimate goal of bringing a recommendation to the Board. This group would likely be composed of developers, housing advocates, a BIA representative, members of local environmental groups, residents, and representatives from large area employers. If an advisory committee is assembled, staff recommends

that the group concurrently review the mechanics of the Density Bonus ordinance to provide recommendations on implementation of this ordinance.

## 9. Conclusions

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The affordable housing crisis in Ventura County is due in large part to the success achieved in creating and maintaining a desirable place to live. Yet with this privilege of living in an attractive region comes the responsibility to maintain quality of life for existing and future residents. This becomes increasingly difficult as home and land prices rise and neither low wage workers nor professionals can keep pace, resulting in deleterious impacts on the local economy. It is no surprise then that augmenting the supply of affordable housing has emerged as a challenge for diverse interest groups within the county and that Inclusionary Housing has been touted as one potential solution.

Inclusionary Housing policies may be an imperfect regulatory approach to a complex community problem, but in many coastal communities they are proving to be an effective method for increasing the diminishing supply of affordable housing. And, while Inclusionary Housing policies may not be appropriate for all housing markets, the market in Ventura County appears to be at a place where such a policy could be sustained without a negative impact on the housing supply.

Indeed, several cities within Ventura County have already adopted Inclusionary Housing ordinances or are in the process of adopting such policies. The paradox is that affordable housing is toughest to provide in the areas where it is most needed, such as on the coast and closer to regional job centers. Land costs in these areas are significantly higher and residential projects predictably smaller in scale. Within this context, Inclusionary Housing offers a legitimate and effective means of increasing the supply of affordable housing throughout unincorporated Ventura County.

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- <sup>11</sup> These summaries are taken in part from the legislative analyses provided on the California State Assembly website at <<[www.assembly.ca.gov/acs/acsframeset2text.htm](http://www.assembly.ca.gov/acs/acsframeset2text.htm)>>.