

**DRAFT:**  
**Affordable Housing**

California General Plan Law requires each jurisdiction to update their General Plan Housing Element every five years. El Dorado is required to update its Housing Element by June 30, 2008. As part of the process, each city and county must have land zoned to accommodate its fair share of the regional housing need. The California Department of Housing and Community Development (HCD) provides to each Council of Governments (COG) the number of dwelling units that must be planned for within the COG for the next planning period. The Sacramento Area Council of Governments (SACOG) has prepared a Regional Housing Needs Plan (RHNP) allocation for each jurisdiction within SACOG. These preliminary allocations will be revised and finally adopted in December of 2007. The draft El Dorado County RHNP housing dwelling unit allocation for the planning period 2006-2113 follows:

| <u>Income Category</u>                      | <u>EDC Allocation 2006-2013</u> | <u>Actual 2001-2006</u> |
|---|---------------------------------|-------------------------|
| Very Low<br>(\$32,700 MFI [med fam income]) | 3,559                           | 84                      |
| Low<br>(\$52,300 MFI)                       | 2,258                           | 281                     |
| Moderate<br>(\$ 65,400 MFI)                 | 2,208                           | -0-                     |
| Above Moderate<br>(\$ 78,500 MFI)           | <u>3,714</u>                    | <u>10,192</u>           |
| <u>Total</u>                                | 11,739                          | 10,557                  |

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**In El Dorado County most, if not all, planned dwelling units *not* covered by a Development Agreement may need to be planned as Affordable Housing**

According to the consultant (May 10, 2007) at full theoretical build-out, the General Plan allows 32,491 units, of which 11,976 have been built, leaving 20,515 dwelling units planned to be built by 2025. 6,025 of the remaining 20,515 theoretical units are covered by Development Agreements that do not require affordable housing. This leaves a theoretical 14,490 El Dorado County dwelling units to be built between now and 2025, including all affordable housing units. Considering the allocation for moderate or below income for 2006-2013 is 8,025 with 5,817 allocated to Low or Very Low Income, and assuming at least an equal allocation for 2014-2025, theoretically all of the units not in Development Agreements would be required to meet EDC affordable housing allocations if the allocation was actually enforced.

## What are the planning requirements for affordable housing?

The planning for affordable housing is not as simple as in the past. Recent changes in state law require each housing element to:

1.) **Contain a Site-Specific Inventory and Identify adequate sites** with appropriate zoning densities, appropriate standards and infrastructure, to meet the county's housing needs. This includes needs for housing for low and very low income households, mobile homes, farm worker housing and homeless shelters, that will be made available during the planning period (Govt. Code 65583 (c) (1) & 65583.2). In 2004 a Vacant Land Survey (Table A-3) summarized assessor parcel data to determine the County's ability to meet the 2001-2008 RNHP allocation. Recent updates to state law require the county to analyze whether a site is truly available for development: Govt Code 65583.2 (b) requires the inventory and analysis must include:

- a. List of parcels by parcel number;
- b. Size, general plan and zoning designations;
- c. Existing use of non-vacant sites;
- d. Environmental constraints (such as slopes);
- e. Infrastructure, including capacity;
- f. Second units may be identified to the extent developed in the prior housing element planning period;
- g. "By-right" sites (section 65583.2 (h));
- h. Capacity to justify how many units can be potentially accommodated;
- i. Minimum density for site;
- j. Lower income feasibility analysis.

2.) **"Address, and where appropriate and legally possible, remove governmental constraints"** to housing developments (Govt Code 65583 [c] [3]);

## What are the Consequences if Affordable Housing as Allocated is not Planned?

Whether a Housing Element is in compliance is a matter of law. A court will give deference to HCD's determination (Essentially, HCD's construction of the statute).

### Failure to Adopt or Implement an adequate Housing Element can result in:

1. **A court order curtailing the power of the county to approve development.** (Govt Code 65754, 65754.5). **If not in compliance, a court must** issue an order that either suspends the counties power to take development approval actions, or requires the county to approve proposed residential developments that includes affordable housing.

2. **General Plan inconsistency findings.** If the county approves a commercial development on a site identified as available for AH (affordable housing), the project may be challenged as inconsistent with the Housing Element. Failure to implement the housing element may also be deemed an act inconsistent with the Housing Element. As part of the housing element update, the Land Use Element may need revision as well.

3. **CalHFA and government housing funding may not be available:** For example the 30/15 permanent financing program for rental apartments for low to moderate-income households.

**Must the planned affordable housing actually be built as affordable housing?**

Although state law has increasingly imposed severe consequences for failure to plan for affordable housing, there are not yet serve consequences if the planned dwellings are not actually built. For instance SACOG has a voluntary compact where members may pledge that at least 4% of all new housing will be affordable to very low income households, 4 % to law income and 2% to moderate income households. El Dorado County has not made this pledge.

**State Law & General Plan Regulations Related to Affordable Housing**

**State Law**

Govt Code 65913.1, The “Least Cost” Zoning and Subdivision Law, expressly mandates county, “designate and zone sufficient vacant land” to meet county’s fair share of regional allocation with “appropriate standards.”

Govt Code 65589.5 “Anti Nimby” Statute.

Govt Code 65914 Bond requirements and atty fees in suits challenging AH. .

Govt Code 65589.7 Preference for sewer and water service for AH projects

Govt Code 65915-17 Density Bonus and Developer Incentive Law (all communities are required to have ordinances implementing this law.)

**GP Policies**

HO-G: Zoning ordinances to provide more AH flexibility.

HO-H: Density Bonus ordinance.

HO-N,U,V,DD: Ministerial design standards for AH

HO-T: PD combining zone district be developed to provide incentives

HO-JJ: Encourage mixed use

**County Action**

GP Amendment A06-02: Increase FAR standards and create a mixed use development designation. PMC is preparing a draft EIR and will add a new Mixed Use Density and related policies to implement “smart growth” policies.

GP Amendment A06-07: Amend GP to provide exemptions from the 30% open space requirement for affordable housing and compact developments.

To address HCD’s concern with the County’s Measure Y, now GP policy TC-Xa (4), on August 22, 2006 the BOS approved a new Traffic Impact Mitigation fee schedule, including the establishment of a fund (currently only \$1 million annually) to be used to offset the cost of affordable housing projects. The Department of Human Services is currently working on a process for distribution.

The Request for Proposal (RFP) to Update the Housing Element addresses the RHNP site identifications and constraints, which is the heart of the issue.

**Some of the ways slow growth or exclusionary jurisdictions are indicating area sites are:**

- Opportunities for higher density housing as permitted use in multi-family zones, even if developed with lower density uses, and mixed use zones;
- Opportunities for accessory dwelling units as permitted uses;
- Re-designation of industrial lands, school sites, in-fill sites;
- Using county land for housing;
- Allowing residential uses in more planning zones;
- Permitting duplex units on corner lots in low density zones;
- Increase height restrictions;
- Providing government financial assistance to make feasible;
- Designating downtown high density sites such as shopping centers as 20 units per acre to qualify;

Currently AB 414 (2007) seeks to place limits on cities and counties using “double zoned” sites (eg: vacant sites zoned for non-residential uses that allow residential development) to meet their “fair share” obligations.

**Inclusionary Zoning**

Inclusionary zoning is not required by state law or the GP. About 1 in 5 governments have adopted. It is a mechanism to ensure actual construction of a percentage of the planned units. It doesn't address the identification of RHNP sites, which is the bear in the living room. Table HO-31 of the GP indicates there are 8,060 adjusted maximum capacity dwelling units on higher density lands (4+ dwelling units per acre). In other words, inclusionary zoning couldn't theoretically result in more than 10% or 800 units of the 8,025 RHNP affordable housing allocation. Not sure why there is a priority in adoption. Should be part of RHNP evaluation which should also involve the mixed use and zoning actions.

Below is a representative summary of inclusionary arguments for and against and variables found in inclusionary ordinances:

Inclusionary zoning is a controversial issue. Affordable housing advocates seek to promote the policies in order to ensure that housing is available for variety of income levels in more places. These supporters hold that the inclusionary zoning creates income-integrated communities.

Detractors claim that inclusionary zoning levies an indirect tax on developers, which is passed on to the families that purchase the fair market value units, so as to discourage them from building in areas that face supply shortages. Furthermore, to ensure that the affordable units are not resold for profit, deed restrictions generally fix a long-term resale price ceiling, eliminating much of the benefit of home ownership.

Free market advocates oppose attempts to fix given social outcomes by government intervention in markets. They claim inclusionary zoning as one of many onerous land use regulations that exacerbate housing shortages. Affordable housing supporters note that the very act of zoning land creates value through the associated roads, utilities, sewers, and schools that are non-market benefits, subsidized by taxpayers, that accompany zoning decisions.

Homeowners sometimes contend that their property values will be reduced if low income families are given access to their community. Others counter that this is classism.

Inclusionary zoning ordinances vary substantially between municipalities. These variables can include:

- Mandatory or voluntary ordinance. While many cities require inclusionary housing, many more offer zoning bonuses, expedited permits, reduced fees, cash subsidies, or other incentives for developers who voluntarily build affordable housing.
- Percentage of units to be dedicated as inclusionary housing. This varies quite substantially between jurisdictions, but appears to range between 10-30%.
- Minimum size of development that the ordinance applies to. Most jurisdictions exempt smaller developments, but some require that even developments incurring only a fraction of an inclusionary housing unit pay a fee (see below).
- Whether inclusionary housing must be built on site. Some programs allow housing to be built nearby, in case of hardship.
- Whether fees can be paid in lieu of building inclusionary housing. Fees-in-lieu allow a developer to "buy out" of his/her inclusionary housing obligation. This may seem to defeat the purpose of inclusionary zoning, but in some cases the cost of building one affordable unit on-site could purchase several affordable units off-site.
- Income level or price defined as "affordable," and buyer qualification methods. Most ordinances seem to target inclusionary units to low- or moderate-income households, earning approximately the regional median income or somewhat below. Inclusionary housing typically does not create housing for those with very low incomes.
- Appearance and integration of inclusionary housing units. Many jurisdictions require that inclusionary housing units be indistinguishable from market-rate units, but this can increase costs.
- Longevity of price restrictions attached to inclusionary housing units, and allowable appreciation. Ordinances that allow the "discount" to expire essentially grant a windfall profit to the inclusionary housing buyer, preventing that subsidy from being recycled to other needy households. On the other hand, preventing price appreciation removes a key incentive of homeownership. Many programs restrict annual price appreciation (by, for instance, enrolling inclusionary housing into community land trusts), often tying it to inflation plus market value of home improvements, striving to balance the community's interest in long-term affordability with the homeowner's interest in accruing equity over time. Restricting profit does not allow families to move-up, which in turn would otherwise free up the starter homes for new starter-income buyers. Restricting profit does not allow low-to-moderate income families to grow wealth through homeownership.
- Whether a linkage fee is placed on non-residential development or all permits..

**HOUSING**

**Jurisdictions that HAVE ADOPTED an inclusionary housing ordinance**

|                     |                    |                 |                     |                 |
|---------------------|--------------------|-----------------|---------------------|-----------------|
| Agoura Hills        | Desert Hot Springs | Livermore       | Port Hueneme        | Sebastapol      |
| Avenal              | Dublin             | Loma Linda      | Rancho Palos Verdes | Selma           |
| Bakersfield         | East Palo Alto     | Marin County    | Rialto              | Soledad         |
| Benicia             | El Cajon           | Menlo Park      | Rohnert Park        | Sonoma County   |
| Buellton            | Folsom             | Mono County     | San Benito County   | St. Helena      |
| Burbank             | Fort Bragg         | Montclair       | San Clemente        | Tiburon         |
| Burlingame          | Greenfield         | Monterey County | San Diego           | Union City      |
| Calistoga           | Healdsburg         | Morro Bay       | San Juan Bautista   | Vallejo         |
| Campbell            | Hercules           | Mountain View   | San Mateo County    | Walnut Creek    |
| Claremont           | Highland           | Napa City       | San Rafael          | Watsonville     |
| Concord             | Huntington Beach   | Newark          | Santa Cruz County   | West Sacramento |
| Contra Costa County | Irvine             | Pasadena        | Santa Monica        | Windsor         |
| Coronado            | Larkspur           | Patterson       | Santa Rosa          | Winters         |
| Cupertino           | Lindsay            | Pittsburg       | Saratoga            | Yountville      |
| Davis               |                    |                 |                     |                 |

**Jurisdictions that HAVE NOT ADOPTED an inclusionary housing ordinance**

|                   |                 |               |                        |                   |
|-------------------|-----------------|---------------|------------------------|-------------------|
| Adelanto          | Del Norte       | La Mesa       | Norwalk                | Seal Beach        |
| Aliso Viejo       | Delano          | Laguna Woods  | Onkdale                | Shasta County     |
| Alpine County     | Dixon           | Lancaster     | Ojai                   | Signal Hill       |
| Anaheim           | Dunsmuir        | Lathrop       | Oroville               | Solvang           |
| Arcata            | Encinitas       | Laverne       | Pacific Grove          | South Lake Tahoe  |
| Auburn            | Etna            | Lawndale      | Palmdale               | Southgate         |
| Baldwin Park      | Exeter          | Lemoore       | Paradise               | Stanislaus County |
| Beaumont          | Farmersville    | Lincoln       | Pinole                 | Stanton           |
| Bellflower        | Fontana         | Live Oak      | Plymouth               | Sutter Creek      |
| Beverly Hills     | Fresno          | Lodi          | Rancho Cucamonga       | Tehama            |
| Biggs             | Fresno County   | Loomis        | Rancho Santa Margarita | Tehama County     |
| Blythe            | Fullerton       | Madera County | Redondo Beach          | Trinidad          |
| Brawley           | Garden Grove    | Mariposa      | Rio Vista              | Truckee           |
| Buena Park        | Glenn County    | Marysville    | Rocklin                | Tuolumne County   |
| Butte County      | Goleta          | Merced        | Ross                   | Tustin            |
| Camarillo         | Grass Valley    | Merced County | San Bernardino County  | Twenty-nine Palms |
| Carmel-by-the-Sea | Hermosa Beach   | Millbrae      | San Diego County       | Ukiah             |
| Cerritos          | Hillsborough    | Mission Viejo | San Dimas              | Upland            |
| Chino             | Hughson         | Modoc         | San Gabriel            | Ventura County    |
| Clayton           | Humboldt County | Monte Sereno  | San Jacinto            | Vernon            |
| Costa Mesa        | Imperial County | Montebello    | San Joaquin County     | Weed              |
| Crescent City     | Inyo County     | Moreno Valley | Santa Ana              | Woodlake          |
| Daly City         | Kerman          | National City | Santa Clara County     | Yorba Linda       |
| Del Mar           | Kings County    | Newport Beach | Santa Fe Springs       | Yreka             |

**Types of concessions that jurisdictions offer for affordable housing development projects under the State Density Bonus law (Government Code Section 65915)**

| City or County | Types of Concessions for Affordable Housing Development Projects                            |
|----------------|---|
| Agoura Hills   | Some waivers to public improvements, fees, and development standards; expedited processing. |
| Aliso Viejo    | Density bonus concessions consistent with State Density Bonus Law                           |
| Anaheim        | Reduced parking/setbacks, increased building heights, option for administrative review      |
| Arcata         | Parking   |
| Bakersfield    | Development standards, mixed uses   |
| Benicia        | Child care, parking, additional density.  |
| Brawley        | Set back, fence height, and parking requirement waivers                                     |

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| City or County     | Types of Concessions for Affordable Housing Development Projects  |
|--------------------|---|
| Buellton           | Based on the applicant's request in accordance with State Law   |
| Burbank            | Reduced open space, increased lot coverage, increased height, reduced setbacks, reduced landscaping, reduced amenities, development impact fee waivers for affordable units and deferrals for market units  |
| Burlingame         | Increased height, Allow some compact parking  |
| Camarillo          | Reduction in parking requirements, building height increase and reduction in setbacks   |
| Campbell           | Reduced Parking Requirements, Reduced Development Standards, Deferred impact fee payment  |
| Carmel-by-the-Sea  | Density bonuses based on # of affordable units; 3 concessions for affordable housing (SB 435)   |
| Chino              | Modifications to building setbacks; parking reductions; relief from covered parking requirements  |
| Clayton            | Concessions allowed by GC 65915   |
| Coronado           | Open to suggestion  |
| Crescent City      | Only one project has applied, requested density bonus   |
| Cupertino          | Parking, Open Space, Setbacks, park fees construction permit, tax exempt financing, other financial assistance  |
| Davis              | Density, setbacks, building permits   |
| Del Norte          | Additional housing units and reduced parking requirements   |
| Desert Hot Springs | 1) Reduction or modification of Zoning Ordinance requirements which exceeds the minimum building standard, 2) Approval of mixed use development, 3) Other regulatory incentives or concessions proposed by the developer or the City, which result in identifiable cost reductions  |
| East Palo Alto     | Density bonuses   |
| El Cajon           | All that are required by State law  |
| Exeter             | Setback and parking deviations  |
| Folsom             | Standards outlined in our density bonus ordinance.  |
| Fontana            | Please see attached Density Bonus Development Standards Pursuant to Section 30-161 of the City of Fontana Zoning and Development Code   |
| Fort Bragg         | These concessions are still under consideration   |
| Fullerton          | a) Grant 25% increase above allowable residential density, and additional incentive; or b) other incentives of equivalent financial value based on land cost per dwelling unit.   |
| Garden Grove       | Density Bonus and Parking Reduction   |
| Glenn County       | The minimum provided by statute.  |
| Goleta             | Increased FAR and lot coverage; greater density; fee reductions   |
| Greenfield         | 20% density bonus   |
| Hawaiian Gardens   | 2.5% density bonus for ea. added increase of 1% very low income units above initial 5% threshold...   |
| Healdsburg         | A reduction in site development standards   |
| Hughson            | Currently being considered under update of Zoning and Subdivision Ordinances  |
| Huntington Beach   | reduced development standards reduction in fees   |
| Inyo County        | Our office is working on adopting an inclusionary housing ordinance offering multiple concessions. We anticipate completing this in 2007.   |
| Irvine             | (a) Reduced minimum lot sizes and/or dimensions. (b) Reduced minimum lot setbacks (c) Reduced minimum outdoor and/or private outdoor living area (d) Increased maximum lot coverage (e) Increased maximum building height and/or stories (f) Reduced onsite parking standards including the number or size of spaces and garage requirements (g) Reduced minimum building separation requirements (h) Reduced street standards, e.g., reduced minimum street widths           |
| Kerman             | Typically would be setback and parking deviations   |
| La Mesa            | Concessions regarding development standards   |
| Laguna Woods       | Density, development standards  |
| Lathrop            | 25% housing density per net acre in any residential or multi-family district provided the maximum population density prescribed by the general plan or the site area per dwelling unit regulation for the district in which the planned unit development is to be located based on Section 65915 of the California Government Code pertaining to the granting of density bonuses and other incentives for housing development intended for low or moderate income households. |
| Laverne            | Density Increase, Fee Reductions  |

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| City or County        | Types of Concessions for Affordable Housing Development Projects   |
|-----------------------|--|
| Lemoore               | Up to 20%. In process of evaluating inclusionary housing.  |
| Lindsay               | Those mandated by the State.   |
| Livermore             | Ordinance is currently being updated to be consistent with the State law   |
| Lodi                  | Higher density, reduced standards, fast track processing   |
| Loma Linda            | Density bonus; off-site improvements; use/sale of City land for development, etc.  |
| Madera County         | Madera County has no density bonus ordinance, thus the County would negotiate any standards with developers  |
| Mariposa              | Same as provided in state law.   |
| Marysville            | Updated Zoning Ordinance includes Density Bonus provisions.  |
| Menlo Park            | Increased density and flexibility in all development standards   |
| Merced                | Parking reductions, reduced infrastructure improvements, increased density, lower architectural standards, less open space requirements, etc.  |
| Merced County         | Merced County has adopted a Density Bonus Ordinance Chapter 18.36  |
| Millbrae              | Our GP Housing Element has 15% affordable policy which we apply to all projects of at least 10 units when located within our RDA. Density bonus of at least 25% units are low, 10% are very low or 50% are for seniors   |
| Mono County           | Same as state law  |
| Montclair             | Increase development density and reduction of parking requirements   |
| Moreno Valley         | Reduction in site development standards; parking requirements and development impact fees  |
| Napa City             | Density bonuses; parking; setbacks; height bonus, etc.   |
| Oroville              | Density bonus, alternation of development standards  |
| Pacific Grove         | Exceptions to floor area maximums, setbacks, height limits, and parking requirements.  |
| Palmdale              | Reduction of open space  |
| Pasadena              | An applicant for a density bonus may request a reduction in a site development standard or modification of another Zoning Code requirement or design requirement and may furthermore request an additional floor area bonus equal to or greater than the size of an onsite child day-care center   |
| Patterson             | Density bonus units, fee reductions, fee deferral & fast-tracking  |
| Pinole                | This issue has not been raised in Pinole.  |
| Pittsburg             | Reductions in onsite parking requirements, flexible development standards, fee waivers/reductions  |
| Port Hueneme          | 25% or more density bonus; modify architectural regulations; shared participation in public improvements; relaxation of development standards; fee waivers and other incentives and concessions proposed by developer that result in cost reductions   |
| Rancho Mirage         | Up to 20% density bonus  |
| Rio Vista             | A project has not been proposed in this jurisdiction.  |
| Rocklin               | Reduction in building permit fees  |
| Ross                  | Those consistent with State law  |
| San Bernardino County | Density bonuses in compliance with statute; approval of mixed-use; etc.  |
| San Diego             | Eligible projects may receive a density bonus of more than 25% and financial incentives consisting of fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis, or a deviation from applicable development regulations of the underlying zone |
| San Gabriel           | Site development standards, modification of zoning code, or architectural design requirement   |
| San Jacinto           | Enclosed parking reduction and reduced side yards  |
| San Juan Bautista     | We use the state law   |
| San Mateo County      | Density bonuses, reduced fees and expedited processing   |
| San Rafael            | Reduced parking, more height, change in prop. dev. standards   |
| Santa Ana             | There have been no recent applications submitted for Density Bonus concessions by developers.  |
| Santa Cruz County     | Parking, height  |
| Santa Monica          | In residential zones: parking reductions; deviation from setback requirements; deviation from parcel coverage; In commercial zones: no restriction on the # of stories within allowable height limit; residential use counted as 50% FAR calculation; no private open space required.  |



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| City or County    | Types of Concessions for Affordable Housing Development Projects  |
|-------------------|---|
| Santa Rosa        | City negotiates deviations from standards for setbacks, building height, parking and any other items requested by the proponent   |
| Saratoga          | The City has officially amended our City Code to adopt the provision of Government Code Section 65915   |
| Sebastapol        | Density, parking, setbacks, height and similar standards.   |
| Sonoma County     | Fee waivers, reduced development standards, two density bonus programs, fast tracking   |
| South Lake Tahoe  | Our code provides a 25% density bonus for affordable housing  |
| St. Helena        | Parking; development standards (frontage, yards, structure height,); site improvements  |
| Stanislaus County | Jurisdiction development fees can be deferred for as long as the project remains affordable.  |
| Sutter Creek      | Case-by-case review with negotiations with project proponent, including reduced exactions and fees, density bonuses   |
| Truckee           | Development Code concessions (e.g., reduced parking, reduced setbacks)  |
| Tuolumne County   | Waive fees, flexibility in development standards, streamlined review process  |
| Tustin            | Reduced setbacks, parkland, and min lot area, density averaging, transfer of affordable housing   |
| Union City        | Varies  |
| Vallejo           | Development standards, density  |
| Walnut Creek      | Density Bonus Ordinance is in process.  |
| Watsonville       | Reduced minimum lot sizes, reduced lot dimensions, reduced minimum side yard setbacks, Increased maximum building height, reduced minimum distance between buildings, deferral of development-related impact fees |
| Winters           | Setback reductions, off-street parking reductions, increased in lot coverage, reduced street standards, and potentially other concessions   |
| Woodlake          | Setbacks, unit density  |
| Yountville        | All those allowed by this section which also include existing incentives for increasing inclusionary housing such as increased floor area ration when additional affordable units are provided.                   |
| Yucaipa           | All those required by the statute   |