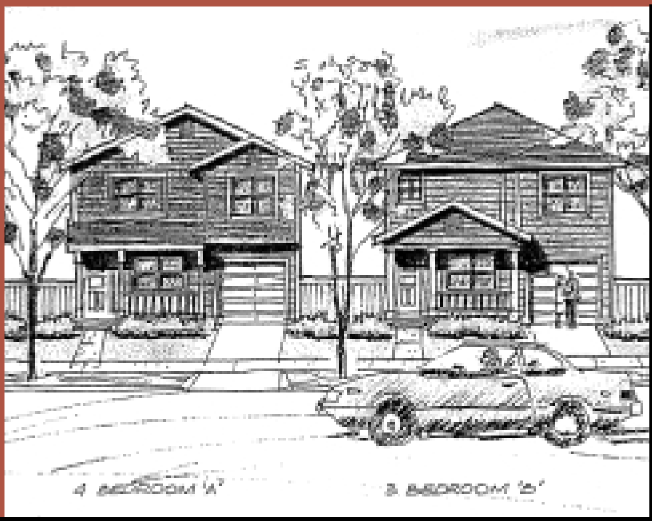
Inclusionary Housing in California:

30 Years of Innovation



California Coalition for Rural Housing

Non-Profit Housing Association of Northern California

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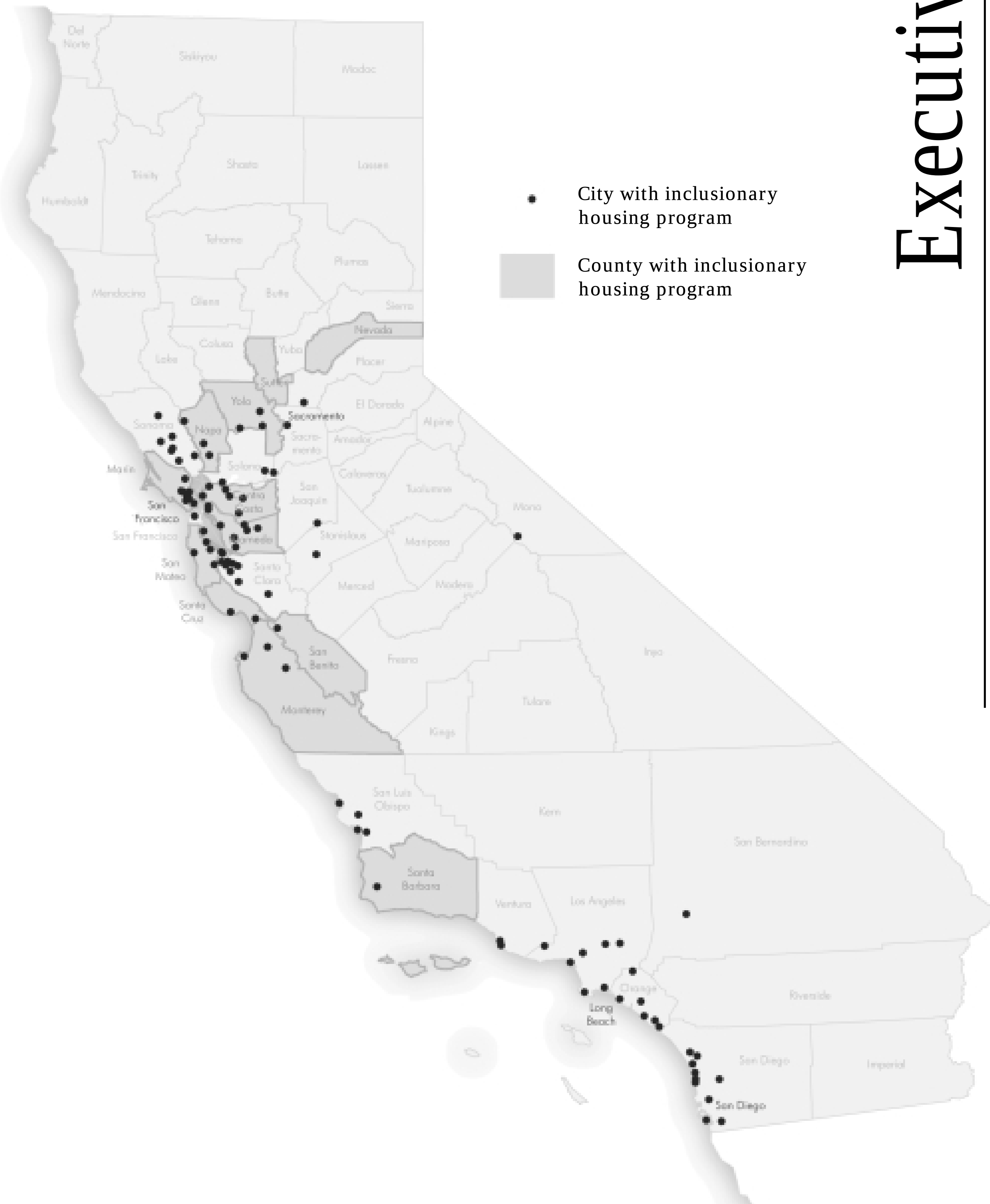

• City with inclusionary housing program

County with inclusionary housing program

Map provided by Greeninfo Network

Executive Summary

Inclusionary Housing in California: 30 Years of Innovation examines the increasing prevalence and impact of inclusionary housing programs as one of the most promising ways to address the affordable housing crisis in California. The California Coalition for Rural Housing (CCRH) and the Non-Profit Housing Association of Northern California (NPH) summarize their survey findings and highlight key program features that are successfully creating affordable housing in 20 percent of the localities in California (107 cities and counties). This represents a two-thirds increase in inclusionary programs in California over the last decade, indicating the growing popularity and importance of this affordable housing strategy.

The report is intended to inform policy makers and the public about the central policy decisions in creating an effective inclusionary housing program. This understanding is crucial because inclusionary housing has the potential to create at least 15,000 units of affordable housing annually, nearly doubling the current rate of affordable housing production in California, according to the authors' calculations. While inclusionary housing is not a substitute for a comprehensive affordable housing strategy, it can and does play a significant role in creating and maintaining vibrant neighborhoods, reducing traffic gridlock, and strengthening families and communities.

How did we get here?

The sad reality today is that a very large proportion of California families can't afford to pay market prices for housing. While overcrowding and substandard quality are also major aspects of the housing crisis in our state, the biggest problem facing California households is affordability. While the crisis of affordability hits lower income renters the hardest, it has now spread to middle class earners, seriously impacting dreams for homeownership. The search for affordable homeownership has also exacerbated the "jobs-housing imbalance"—the geographic mismatch between available jobs and affordably priced housing.

What has led to this housing problem? Most experts can agree on three primary factors:

1. Failure to produce enough affordable housing to keep pace with population growth;
2. Slow growth in incomes for low and moderate-income people; and
3. Job growth exceeds housing growth in all of the state's major metropolitan areas.

Inclusionary Housing As An Integral Part of The Solution

Inclusionary housing (or inclusionary zoning), while not uncontroversial, is increasingly being used as a major tool for addressing the affordable housing shortage. For the purpose of this study, "inclusionary" is defined as a mandatory requirement or voluntary goal to reserve a certain percentage of housing units for lower-income households in new residential developments. The affordable units are often expected to be dispersed throughout the development in an effort to include a mix of income levels within new residential areas.

Inclusionary housing has created over 34,000 affordable homes and apartments in California over the past 30 years. As of March 2003, one-fifth of all localities in the state (107 California cities and counties) reported using inclusionary housing, nearly a 50 percent increase since 1994, when researchers first identified 64 inclusionary policies or ordinances. The spread of inclusionary programs is most dramatic among cities, which represent 41 of the 43 new programs. At least a dozen other California jurisdictions are presently considering adopting inclusionary housing, including the largest city, Los Angeles.

California's housing crisis has serious implications for the future of our state.

The performance of our schools; urban sprawl; transportation gridlock; the continued strength of the California economy; health care for families and children—these are pressing social issues at the top of the agenda of decision makers and concerned citizens. Largely hidden from view is how powerfully affordable housing impacts these very issues.

Given the pressing need for solutions and the increasing importance of inclusionary housing, NPH and CCRH conducted a survey to determine how local inclusionary housing programs are structured, as well as their relative effectiveness.

In designing effective inclusionary housing programs, the most significant policy considerations are:

1. The inclusionary percentage—how much is required;
2. Income levels targeted;
3. Alternatives to construction on-site;
4. Developer incentives; and
5. Length of affordability.

These are briefly summarized below and in more detail in the body of the report.

Key Findings: Features of Local Inclusionary Housing Programs in California

Inclusionary Percentage

There is considerable variation in terms of percentage of units required under these programs. The mean percentage of affordable housing required in both rental and for-sale housing developments is 13 percent, indicating little variation in requirements by form of tenure. Half of all programs require at least 15 percent, of which nearly one-quarter of programs require 20 percent or more. The most frequent inclusionary percentage is 10 percent (44 percent of jurisdictions).

Income-Targeting

Most programs require that inclusionary homes be targeted to one or more pre-determined income groups, rather than providing developers with discretion or choices about whom to serve. Rental units are targeted most frequently to low-income households (earning 51 to 80 percent of median income), while for-sale units are most frequently targeted to moderate-income households (81 to 120 percent of median income).

Alternatives to Construction On-site

Programs typically offer developers one or more alternatives to constructing affordable units within the market-rate project. Most common is paying fees in-lieu of construction, offered by 81 percent of reporting programs. However, the in-lieu fee option is automatic in only 45 percent of programs; for instance, payment of fees may be an option only if the developer can prove that construction of affordable units is infeasible. In two-thirds of programs, developers are permitted to construct affordable units off-site. Less commonly, land dedications are allowable.

The mean in-lieu fee level among 57 programs reporting was surprisingly low at $107,598 per affordable unit. Given that this fee level is lower than the actual subsidy amount needed to create an affordable unit in many jurisdictions in California, it seems likely in these cases that in-lieu fees are effectively undercutting the stated goals of governing policy or ordinance. This is not necessarily an argument for eliminating in-lieu fees, however, since they can provide jurisdictions with funds to build affordable housing serving people of even lower incomes, or to create supportive housing for people with special needs.

Developer Incentives

Density bonuses are by far the most popular incentive offered to developers to build affordable housing, reported by 91 percent of the programs. This is hardly surprising given that State Density Bonus law requires such a bonus. Nonetheless, many jurisdictions have adopted additional density bonus provisions to provide developers further incentives. Among other options, fast-track permit processing is an incentive in 44 percent of programs, followed by subsidies in 43 percent, and design flexibility in 40 percent. In addition, fee waivers (38 percent), fee reductions (32 percent) and fee deferrals (25 percent), were also reported.

Length of Affordability and Monitoring

Virtually all jurisdictions now report that they have formal mechanisms to maintain affordability over time. Restrictions range from periods of ten years to in perpetuity, with the mean term for rental housing being 42 years, and for homeownership housing being 34 years. Permanent affordability is reported in at least 20 percent of programs for both rental and for-sale. Monitoring remains an area of great concern. Many jurisdictions declined to answer survey questions related to monitoring and overall tracking of inclusionary production. Among those that responded, the responses were often incomplete, leading the researchers to believe that greater emphasis on monitoring and tracking is needed.

Conclusion

The failure to address the housing crisis in both California and across the country indicates the desperate need for a much broader debate around housing policy at all levels of government. This report is designed to inspire a timely discussion about one of the most promising approaches to addressing not just the affordable housing crisis, but related issues about growth and community stability. While inclusionary housing does not provide all the answers, it has proven to be a critical tool for enabling local governments to help begin solving the affordable housing shortage in their communities.

A. Introduction

Since the mid-1970s, many Californians have experienced enormous hardships from living in some of the most expensive housing markets in the nation. One quarter (25 percent) of renters in California's metropolitan areas pay more than half of their incomes toward rent (2001).[1] Only 34 percent of California households in 2001 could afford to buy the median-priced home in their area, compared to 57 percent nationally.[2]

The mismatch between supply and demand has been most painful for lower-income people. Statewide, low-income renters with annual household incomes under $18,000 (50 percent of the state median income) outnumber low-cost rental units (those renting for $450 or less per month at 30 percent of household income) in California's metropolitan areas by a ratio of 2.3-to-1 (2001).[3]

As the affordability crisis has worsened, it has created new environmental, social and economic problems. The search for affordable housing has literally driven millions of Californians to seek housing hours from their existing communities and jobs. The resulting 2 to 3 hour commutes have a devastating impact on air and water quality. They also dramatically limit people's ability to participate actively in the lives of their children and communities. School districts, hospitals, and private sector employers struggle to find and retain employees.

In response to these conditions, more and more communities have turned to inclusionary housing practices to create affordable housing for their residents and workers. Generally, inclusionary housing practices require developers to ensure that a certain percentage of a new residential housing project will be priced affordably. While not a substitute for a broader affordable housing strategy, inclusionary housing practices are generally thought to address economic and racial segregation by creating more economically diverse communities, particularly in suburban jurisdictions. By providing housing options for lower-wage workers in high-cost communities, inclusionary housing can also help reduce commutes and address local mismatches between available jobs and housing supply.

While not uncontroversial, inclusionary housing practices have clearly emerged as important and increasingly prevalent policy tools for addressing the affordable housing crisis in California and nationwide. Today, 107 inclusionary jurisdictions have been identified in California compared to 64 recorded in 1994.[4] At least a dozen other jurisdictions are in the process of adopting or considering adopting inclusionary housing.

This report lays out the findings of a survey conducted by the California Coalition for Rural Housing (CCRH) and Non-Profit Housing Association of Northern California (NPH) during 2002 and early 2003. It provides detailed information about how local inclusionary zoning programs are structured. It also provides information on the relative effectiveness of these programs and offers some ideas about what program features may be key factors in assisting local governments to adopt policies or ordinances that will actually create more affordable housing. Additional information about the survey is available online at *www.calruralhousing.org* and *www.nonprofithousing.org.*

Designs on an old Navy base–City of Sunnyvale is kicking off a public-private venture with Sares-Regis Group and the United States Navy to redevelop a former base into a mixed-income residential development, 10 percent of which will be single-family detached homes distributed throughout the development and affordable to low- and moderate-income families.
(Photo credit: City of Sunnyvale Housing Division)

B. Inclusionary Programs in California and Nationwide

Sometimes known as inclusionary zoning, inclusionary housing programs first took hold in California during the early 1970s, when jurisdictions designed policy incentives or imposed requirements for the inclusion of affordable units in new residential developments.

State legislation has since supported this trend, evidenced by the use of inclusionary requirements in California Community Redevelopment Law[5] and in the California Coastal Act.[6] In redevelopment areas, for example, State law requires that redevelopment agencies ensure that between 15 and 30 percent of new residential units are affordable. In some jurisdictions, most residential construction is concentrated within redevelopment areas and there are no additional inclusionary requirements; but, elsewhere, local inclusionary policies are critical because new development is occurring outside redevelopment areas as well as within these areas.

Year of Adoption

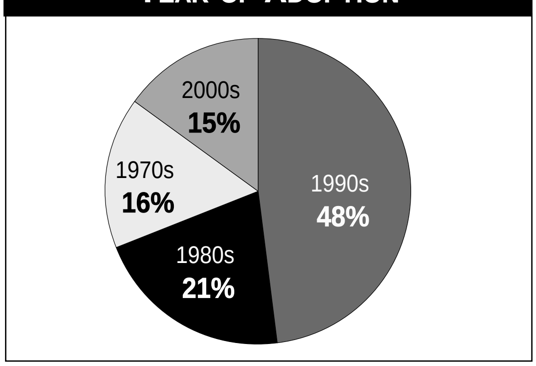

Figure 1
The popularity of inclusionary housing grew dramatically in the 1990s and the beginning of this decade, coinciding with growing awareness of inclusionary housing concepts and steady expansion of the affordability crisis.

Inclusionary housing policies and ordinances in California have spread dramatically since Petaluma and Palo Alto led the movement in 1973. As mentioned earlier, there are currently 107 known inclusionary jurisdictions statewide; two-thirds more than existed in 1994. More than a dozen other jurisdictions, including the City of Los Angeles, are in various stages of considering adoption of inclusionary programs.[7] (see Fig. 1)

California leads the country in the number of inclusionary housing programs, but the first programs in the United States originated in suburban Washington, D. C.,in Fairfax County, Virginia, and Montgomery County, Maryland, in 1971 and 1973, respectively. The Virginia Supreme Court later invalidated Fairfax County's program under Virginia law, but Montgomery County's Moderately Priced Dwelling Unit (MPDU) Program has thrived and is considered one of the most productive in the country.[8]

The New Jersey Supreme Court's Mt. Laurel decision in 1975, and a subsequent ruling of that court, provided the earliest legal rationales for inclusionary housing practices. Seeking to rectify exclusionary local zoning, the cases required all municipalities to offer housing opportunities to low- and moderate-income households and use "affirmative governmental devices…including…mandatory set-asides".[9]

C. The Great Debate

Inclusionary housing practices have aroused considerable controversy. While local authorities turn to inclusionary policies as a means to ensure affordable housing provision, opponents, particularly market-rate developers, argue that they may have harmful market effects.

Market-rate developers argue that requiring production of below-market-rate units forces them to recover their losses by increasing the prices of their market-rate units; in other words, shifting costs to moderate- and above moderate-income renters and homebuyers. Other observers have noted that costs can only be shifted to consumers if the homes would have otherwise been priced below prevailing market prices, and that the willingness and ability of renters and buyers to absorb these costs is limited. Thus, all or part of the costs will have to be borne by developers, or passed on to land sellers (through reduced land values). The presence of an inclusionary program may even dissuade developers from building at all within a particular jurisdiction, resulting in price increases in the existing stock over time.

Some inclusionary critics go further, arguing that the demand for lower-cost housing is generally satisfied by the older housing stock, and that price-capping new units is not the most efficient market intervention. There are numerous other affordable housing strategies, such as mortgage or rental assistance programs, that achieve affordability by supporting the consumer.

Inclusionary supporters counter that developer claims regarding costs are exaggerated, and that current interest in the strategy is tied, in large part, to its unique strengths as an affordable housing policy. First, by requiring the affordable housing to be developed as part of larger market-rate developments, it expands the supply of affordable housing and creates economically diverse communities. Second, inclusionary housing offers a way for communities to create affordable housing at little or no cost to local governments. Third, it addresses the challenge of creating affordable housing in communities in which very little land is deemed suitable for new housing. In that context, inclusionary housing is essential to ensuring that the price of housing available within a jurisdiction, particularly ones that are growing, matches the housing needs of local residents and provides shelter for a growing workforce. Fourth, simultaneous construction of affordable and market-rate units reduces the increased costs of producing affordable housing due to NIMBY (Not In My Back Yard) opposition and resulting lengthy challenges.

These debates, though fierce, remain largely theoretical due to the lack of empirical research documenting either viewpoint.[10] Accordingly, tensions between local authorities and "free-market" advocates often accompany implementation. Despite these concerns, inclusionary implementation continues to spread.

D. Past Inclusionary Research

Over the last three decades, few studies have assessed the effectiveness of inclusionary programs in California. Only two major statistical evaluations have been published. The first was conducted by researchers at the Kellogg Public Service Research Program (UC Davis) in 1981[11] and the second by the California Coalition for Rural Housing (CCRH) in 1994.[12]

The Kellogg Public Service Research Program report emphasized the role of rapidly rising housing costs in necessitating inclusionary programs and assessed the state of inclusionary projects by adding related questions to the annual Local Government Planning Survey conducted by the California Office of Planning and Research. At that time, 18 percent of the polled jurisdictions reported some kind of incentive program for building affordable housing, in addition to state and federal subsidies. Approximately 45 percent of jurisdictions with special programs offered density bonuses for developers for construction of low- and moderate-cost units and 16 percent gave priority to permit applications that included low- and moderate-cost units. Thirty-seven percent of the jurisdictions offered fee waivers, fast-track processing, or other incentives to encourage affordable housing production.

The CCRH report surveyed cities and counties across the state for specific policy data on both the existence and design of local inclusionary programs. At that time, 64 jurisdictions (approximately 13 percent of all California cities and counties) confirmed the existence of inclusionary housing programs. In 1995, CCRH's survey was augmented with academic research that took an historical view of the emergence and use of California inclusionary programs over two decades.[13]

This current report fills the information gap by updating the list of confirmed inclusionary programs and assessing policy strengths and weaknesses. It should be noted that the findings are based on self-reports by local jurisdictions, not independent field investigation. Moreover, they represent a snapshot of existing practice that is, in fact, quite fluid and changing as increasing numbers of jurisdictions experiment with their own versions of inclusionary housing.

E. Key Policy Issues

In the absence of a statewide approach to inclusionary housing, each jurisdiction in California is free to choose whether or not inclusionary practices are needed or would be effective in that local context. This freedom has spawned virtually endless variation in program design, as each jurisdiction molds inclusionary housing practices to match its local needs and political reality.

Beyond the debate on the general fairness or advisability of inclusionary housing lies a set of practical questions and concerns for policy-makers and advocates. What makes a program effective? What are appropriate goals for a policy or ordinance? What are the key variables or features in balancing developer concerns and community needs? In essence, what works?

In designing effective inclusionary programs, the most significant policy points are the:

1. Size of the inclusionary percentage;
2. Income-targeting of the housing;
3. Alternatives to construction on-site;
4. Developer incentives; and
5. Length of affordability.

This report addresses all of these key features, as well as presents examples and case studies to supplement the statistical profiles. While not offering a model ordinance or policy, the statistical profile and individual case studies provide powerful guidance to policy-makers and advocates that can inform local planning and decision-making.

Central to all these decisions are a few key considerations. First, the political realties of adopting a policy or ordinance often pit for-profit developers against "social-equity" advocates, with developers pushing for maximum flexibility and advocates striving for certainty. The extent to which developers actually have to produce the units or take actions to ensure production of an equivalent number of units depends largely on the flexibility of the program.

While alternatives may be crucial to ensure financial feasibility and program flexibility, too much flexibility can negate any positive policy impact. If in-lieu fees or land dedication requirements are set too low, developers will consistently opt out of construction. Allowing off-site construction and design differences threaten some of the potential benefits of inclusionary programs, such as simultaneous development of market- and below market-rate units, functional and aesthetic integration of affordable units into new neighborhoods, and minimization of neighborhood opposition. However, if builders can't or won't build, then an inclusionary program is rendered virtually meaningless. Accordingly, program design and revision must consider both the benefits and potential limitations of each policy detail.

Section II

Research Methodology

People's Self-Help Housing Corporation produced 36 family apartments inside a Santa Barbara County market-rate development. While market-rate homes sell for over $600,000, the affordable homes helped families in the 35 to 60 percent of area median income range, including four units dedicated to the developmentally disabled. *(Photo credit: Peoples' Self Help Housing)*

The California Coalition for Rural Housing (CCRH) and Non-Profit Housing Association of Northern California (NPH) initiated the 2002/03 survey to reassess the use of inclusionary housing practices across California. The survey questionnaire used in CCRH's 1994 study was modified, updated, and expanded to include detail on housing production and other program features (see Appendix B). Local advocates, planning officials and academics were consulted in these revisions and a final questionnaire was distributed by mail in early April 2002. All planning agencies listed in the California Planners' Information Network were contacted, including 58 counties and 467 cities (San Francisco is counted as both a city and county).

To increase the response rate, two rounds of follow-ups were conducted. In June 2002, the questionnaire was again mailed and telephone contact was made with non-responding jurisdictions reported to have local programs. In January 2003, a short follow-up survey was prepared and forwarded to responding jurisdictions seeking additional information on methodology for determination of in-lieu fees, total fees collected, income-targeting goals and production numbers. One last effort was also made to contact non-responding jurisdictions.

In total, 98 jurisdictions returned completed questionnaires accounting for 92 percent of known programs in California. Based on previous studies and Internet searches of jurisdiction web sites, another nine jurisdictions that did not return completed questionnaires are judged to have some form of inclusionary housing.[14]

Section III

Key Findings

See full-sized map on page i.

A. Number of Inclusionary Jurisdictions

As of March 2003, 107 California jurisdictions are known to use local inclusionary practices to provide affordable housing, outside of the requirements of redevelopment law. These include cities and counties that require affordable construction through an ordinance, general plan, or permit approval process.[15] This list consists of 12 counties (21 percent of all counties) and 95 cities (20 percent of all cities). As the map (see p. *i*) clearly demonstrates, inclusionary housing is most prevalent in high-cost housing markets in the coastal counties. The most significant clusters are in the San Francisco Bay Area, metropolitan Sacramento and San Diego County.

B. Measuring Effects on Affordable Housing Production

Although this report is primarily focused on providing a profile of inclusionary policies and ordinances, the survey also sought to gather data on affordable housing produced as a result of inclusionary housing practices. About one-third of known inclusionary jurisdictions reported production numbers accounting for over 34,000 units of affordable housing. In addition, 80 percent of all respondents believe that their inclusionary program has stimulated the production of affordable housing that would not have been built otherwise. For those jurisdictions that did not find inclusionary practices helpful in creating affordable housing, they generally agree that the principal barriers have been market stagnation or infrastructure limitations.

C. Forms of Inclusionary Policy

Inclusionary policies take the form of either a local ordinance, a General Plan policy, or a permit approval process that requires or rewards affordable projects. While the terms "inclusionary housing" and "inclusionary zoning" are often used interchangeably, in fact, not all inclusionary housing practices are, in practice, zoning requirements or overlays.

Seventy-eight percent of inclusionary programs are defined by a formal ordinance and 49 percent are prescribed in General Plans.[16] In many cases, the two are linked; General Plan policies often charge or commit local government to adopt an ordinance.

Three jurisdictions (three percent of respondents) report no ordinance or General Plan policy, but have permit approval procedures that promote affordable production. These jurisdictions are Contra Costa County, Morgan Hill, and Huntington Beach. Critics argue that this form of inclusionary practice is inadequate since it is not explicitly required at the individual development or project level. Instead, annual permitting targets are set or preferences established within a competitive permitting approval process. This leaves open the possibility that the more difficult-to-develop, affordable units will be delayed and concentrated at the end of the permitting period, thereby undercutting the notions of mixed-income housing and simultaneity of development. All three jurisdictions, however, report that the permit process regulations have provided affordable units that would not otherwise have been built.

While adoption of an inclusionary ordinance or General Plan policy is often needed to establish a clear program mandate, which of the two is more effective in terms of actual production is difficult to say. Certainly, the passage of a formal ordinance tends to impose inclusionary requirements in a more permanent and universal way (applicable to all developments of a certain size), with more formal procedures and specificity for implementation than does a General Plan policy. However, there was no statistical correlation between the relative effectiveness of an inclusionary housing program and whether the policy itself is codified in ordinance or identified in the jurisdiction’s General Plan or both.

D. Voluntary or Mandatory

Only six percent of jurisdictions responding report voluntary programs, which allow more flexibility for developers but compromise local ability to guarantee affordable housing production. Los Alamitos and Long Beach both specifically blame the voluntary nature of their programs for stagnant production despite a market-rate boom. In general, our research indicates that the voluntary programs do not cause market rate developers to build or facilitate affordable units unless including affordable housing makes an application more competitive in the permit approval process.

Case Study

MORGAN HILL

In general, jurisdictions with voluntary or incentive-only policies report that their policies did not produce the desired affordable housing. However, Morgan Hill in southern Santa Clara County is a notable exception. Morgan Hill accomplishes its inclusionary housing goals through its Residential Growth Management Policy, which limits the number of residential permits issued per year. The growth management policy is effectively a competition among potential projects. As part of the intense competition for permits, providing inclusionary affordable housing is worth as many as 13 points. In order to score high enough in the competition to get the permits for the overall development, builders must voluntarily choose from a set of inclusionary housing options. To date, the policy has created over 300 units of affordable housing.

E. Inclusionary Requirement and Project Size

Variation from jurisdiction to jurisdiction in the percentage of units required to be affordable is significant, ranging from four to 30 percent. The average requirement in rental developments is 13 percent, which is also the average requirement for ownership housing. The most commonly found inclusionary percentage is ten percent. However, approximately half of all jurisdictions require at least 15 percent and nearly one-quarter require 20 percent or more.

In many cases, the inclusionary percentage is only applied to projects over a certain size, commonly ranging from three to ten units. As Figures 2 and 3 indicate, there is relatively little difference between the percentage requirements for rental vs. ownership. For example, the City of San Anselmo reports that no inclusionary units have been built because the inclusionary requirement is only required of projects over 10 units, and all developments in recent years fell below this threshold. In 20 percent of jurisdictions, the inclusionary requirement is applied to all developments, regardless of size. Typically, smaller projects are allowed to meet the inclusionary goals differently than larger projects (in 42 percent of

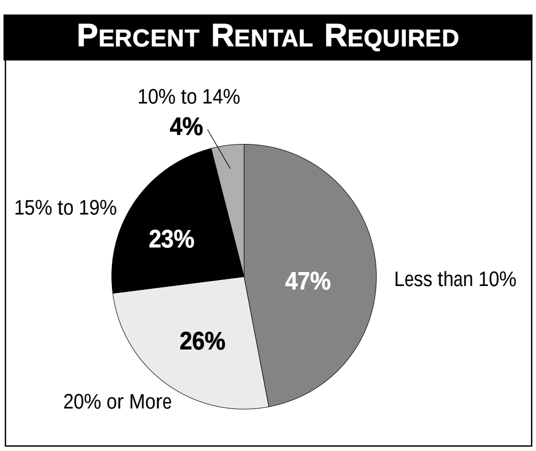

Figure 2

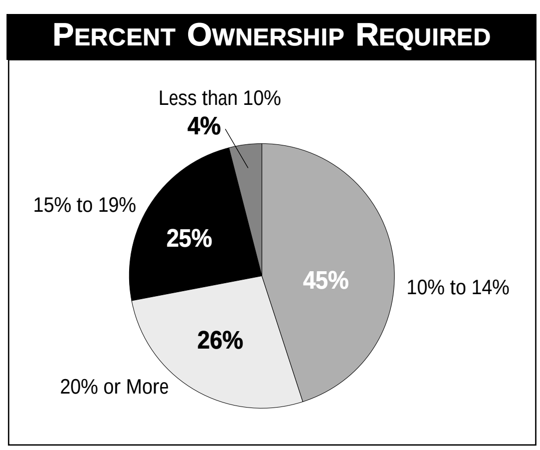

Figure 3

Figures 2 and 3 indicate the percentage of inclusionary units required for rental and ownership developments. Although there are some slight variations due to a few unique programs, the vast majority of jurisdictions require the same percentages regardless of tenure type.

Income-Targeting

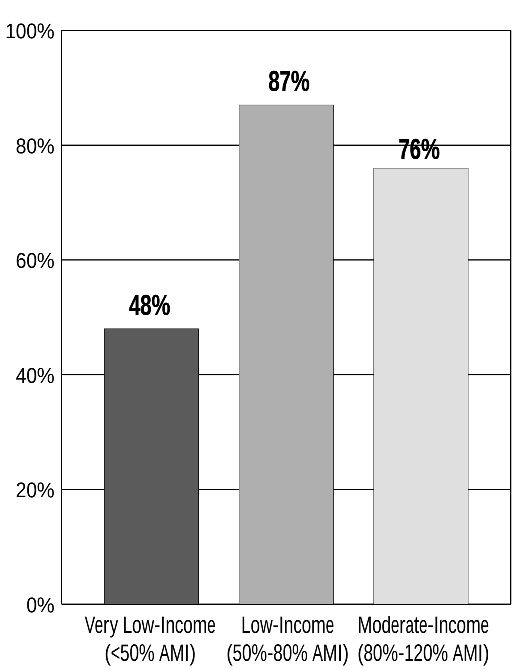

Figure 4
Nearly all inclusionary housing programs in California target low-income households. Moderate-income housing is, in most cases, only a target in ownership housing. Likewise, very low-income households are typically only within new rental housing developments.

jurisdictions), more often than not through the payment of in-lieu fees. Still others require different percentages based on project or parcel size, as is the case in the City of Davis, where rental developments of over 20 homes must provide 35 percent of the homes as affordable versus 25 percent for rental projects under 20 units.[17]

F. Income-Targeting

Most jurisdictions require that inclusionary homes be made affordable and offered to a pre-determined income group, rather than providing developers with discretion or choices about whom to serve. Nonetheless, some jurisdictions do provide developers with options, such as providing a higher percentage of units to moderate-income households versus a lower percentage to very low-income households.[18] For example, the City of Richmond in the San Francisco Bay Area provides developers the option of providing 10 percent of the units to very low-income households, 15 percent of the units to low-income households, or 17 percent of the units to moderate-income households.

As demonstrated by Fig. 4, most programs target some percentage of their inclusionary homes to low- and moderate-income households, 87 percent and 76 percent, respectively. Fewer than half of the programs (48 percent) target very low-income households. In 59 percent of jurisdictions, such as the City of Sacramento, no distinction is made between income-targeting for rental units versus units for ownership. Of the other 41 percent of cases, the income-targeting is linked to form of tenure. In these instances, rental units are often targeted to low-income households and for-sale units to moderate-income households.

Many inclusionary policies have been adopted in order to address the requirements of Housing Element law. For example, Calavita and Grimes found that all eight of the San Diego County jurisdictions with inclusionary programs had adopted inclusionary housing in order to compensate for past under-production in particular income categories.[19]

Because not all jurisdictions provided reliable data on the actual income limits of inclusionary units already produced, it is not possible to assess accurately who the actual beneficiaries of these policies are without more extensive and verifiable field research at the local community and project levels.

The Housing Element

Housing Elements are state-mandated local plans for meeting housing needs, which are periodically required to be updated. The Housing Element is part of each locality's General Plan, its constitution for growth. Every Housing Element must show that the jurisdiction has adequate land zoned appropriately to accommodate its projected housing need for all income levels.

G. Alternatives to Construction On-Site

The most common alternatives to on-site construction are in-lieu fees and land dedications. In addition, developers are sometimes allowed to build the affordable housing off-site or receive credit for excess affordable units built in previous projects through credit transfers.

The flexibility with which policies and programs regulate developers varies greatly from jurisdiction to jurisdiction. The table below shows that the majority of jurisdictions allow in-lieu fees or off-site construction, 81 percent and 67 percent, respectively. Often, these two alternatives are offered within the same program; in 55 jurisdictions (54 percent), both strategies are allowed.

COMMON ALTERNATIVES TO ON-SITE CONSTRUCTION

In-Lieu Fees	Developer can pay a fee into a local fund instead of constructing the required affordable units. Often, fees are calculated per unit or per square foot for each unit not built.	Allowed by 81% of surveyed jurisdictions (N=102)
Land Dedications	Developer can substitute a gift of land that may accommodate an equivalent number of units in place of affordable unit construction.	Allowed by 43% of surveyed jurisdictions (N=93)
Credit Transfers	Developer can credit affordable units built beyond the inclusionary requirement in one project to satisfy the requirement in another.	Allowed by 20% of surveyed jurisdictions (N=93)
Off-Site Construction	Developer can build the affordable units at a different site than the market-rate units, sometimes conditioned on agreeing to increase the number of affordable units to be built.	Allowed by 67% of surveyed jurisdictions (N=96)

In-Lieu Fees

In-lieu fees are among the most controversial elements of inclusionary housing. While most jurisdictions offer in-lieu fees as a potential option, there is relatively little standardization in terms of calculating in-lieu fees or determining at whose discretion the in-lieu fee is an option. In-lieu fees can significantly affect levels of affordable construction, not only because they allow developers to pay instead of build, but also because the methods of calculation and uses of in-lieu fees can render them relatively ineffective. On the other hand, in-lieu fees can provide jurisdictions with the funds to subsidize affordable housing that serves people of even lower incomes or create supportive housing for people with special needs, such as mental health or substance abuse problems. In addition, in-lieu fees can be

Silver Spur Drive is one of three affordable housing sites located within Bellevue Ranch in Santa Rosa (Sonoma County). Burbank Housing Development Corporation received land from the market-rate developer to provide homeownership opportunities for 54 families and individuals seeking affordable housing.
(Photo credit: Burbank Housing Development Corporation)

used in conjunction with other housing funds, such as the federal and state Low-Income Housing Tax Credit or the State of California's Multi-Family Housing Program.

Jurisdictions vary greatly in terms of how they calculate in-lieu fees, often based on either construction costs or potential revenue. Typically, the dollar total of fees collected is not sufficient to produce the same number of units that would have been produced had developers opted to build the units themselves. For example, in fast-growing Patterson in San Joaquin County, the in-lieu fee per affordable unit required is a mere $7,340. Despite a ten percent inclusionary requirement and growth of 750 units since the policy was enacted, the jurisdiction reports that its inclusionary program has created only five units of affordable housing since implementation. The County of Santa Cruz, on the other hand, has a $272,889 fee per affordable unit. A more typical case is Livermore in Alameda County, whose fee in 2002 was $122,720 per affordable unit—below what is actually needed to create the unit, but significantly increased from its previous level.

When in-lieu fees have been set below the level needed to actually fund new construction, they can undermine the program goals, as it is in the developer's clear financial interest to simply pay the fee. Therefore, a jurisdiction with a 20 percent inclusionary requirement but a low in-lieu fee might effectively create less affordable housing than a jurisdiction with a ten percent requirement and fewer or less appealing alternatives to construction. To ensure that policies or ordinances produce results in keeping with their goals, the required fee should be high enough either to dissuade developers from opting out of construction or enable the city to finance construction of an equivalent number of affordable units elsewhere.

Some cities use in-lieu fees not for new construction, but for homeownership downpayment assistance or rental assistance programs, such as in the City of Coronado in southern California. While consumer subsidies are needed forms of housing assistance, they only indirectly affect production by increasing effective demand and do not ensure that supplies of affordable housing will increase.

In many cases, respondents credit a low in-lieu fee option with reducing the effectiveness of inclusionary mandates. According to the survey data, 80 percent of jurisdictions that reported numbers for affordable housing production allow in-lieu fees to be paid. Production numbers in these jurisdictions ranged from zero to levels commensurate with the outcomes anticipated by their policy goals. In other words, the in-lieu fee option may offer a way out for some developers who are not willing or able to construct affordable units themselves, but it does not necessarily impede affordable housing production in every case.

The freedom with which developers can choose fee payment also depends on policy design. In Davis, developers of smaller projects are allowed the in-lieu fee option only under circumstances of "unique hardship" as defined by the City Council. Many other jurisdictions allow the in-lieu fee option more freely, sometimes allowing developers to choose fee payment in all instances, or all developments below a certain size. In the case where an inclusionary formula obligates a developer to produce a fraction of an affordable unit, some jurisdictions require payment of in-lieu fees, instead of waiving the obligation entirely (see Case Study: Monterey County).

Those jurisdictions that successfully produce affordable housing while using the in-lieu fee offer clues for effective policy design. The County of Monterey and Port Hueneme require that developers request permission to pay the in-lieu fee;

Case Study

MAKING EVERY UNIT COUNT IN MONTEREY COUNTY – THE IMPORTANCE OF IN-LIEU FEES

In-lieu fees currently feed the engine driving Monterey County's inclusionary housing production. Since 1980, developers have constructed 448 units to directly satisfy inclusionary requirements, while 940 units have been created with assistance from in-lieu fees and other funds. In-lieu fees are an option for developers of small projects (seven units or less) and are based on the replacement cost of an affordable unit and the financing gap between affordable and market housing costs. For example, a project in the coastal zone of the County would pay an in-lieu fee of $339,636 per affordable unit required, which represents the difference between the average total development cost of $546,000 and the affordable sales price for a family of four at 100 percent of area median income, which is currently $206,364.

While other jurisdictions often waive requirements entirely in small projects, unincorporated Monterey County has greatly benefited from the in-lieu fees collected on each of these small projects, using funds for new construction and acquisition/rehab projects. County planners note that, in the absence of an inclusionary policy, high land costs would prevent construction of affordable units. Monterey County requires permanent affordability for rental units, and imposes resale controls on homeowners who sell within 30 years. As of this writing, the County expects to amend its program by increasing inclusionary requirements to 20 percent (currently 15 percent), making the program mandatory for all developers, extending resale restrictions in perpetuity, eliminating the option for off-site construction, lowering the threshold for the in-lieu fee option to five units, and crafting developer incentives.

Edgewater Place in Larkspur in Marin County, a 50 unit development built by EAH, Inc. on land dedicated by adjacent condo developer. In this case, the land dedication allowed for double the number of units required under the policy by combining the land with funding from other sources.
(Photo credit: Tom Jones, California Futures Network)

projects are only allowed to use the in-lieu fee under certain circumstances defined on a case-by-case basis. This strategy avoids the overuse of the in-lieu fee alternative.

Land Dedications

As noted above, 43 percent of jurisdictions responding allow land dedication instead of construction. This alternative faces similar challenges to in-lieu fees, in that the amount of land required to substitute for construction (similar to the amount of fees generated) must be large enough to ensure production of an equivalent number of units. Land dedications are most effective in areas where land is scarce and the cost is high; where the absence of land that is available for development and reasonably priced makes affordable housing development very difficult. In these environments, land dedications are most likely to yield significant resources for housing development.

A prerequisite for successful land dedication is that affordable units will be built on the dedicated land. Local governments must assume responsibility for this construction and often recruit non-profit developers to complete the task. Typically, the land is deeded to the jurisdiction, which then deeds it to a community-based non-profit on a competitive basis, or is deeded directly by the developer to a nonprofit organization.

Edgewater Place in Larkspur in Marin County is a 50-unit development built by EAH, Inc. on land dedicated by an adjacent condo developer. In this case, the land dedication allowed for double the number of units required under the policy by combining the land with funding from other sources.

Ensuring construction on dedicated land can be problematic. Portola Valley in the San Francisco Bay Area, for example, reports that the land dedication option may be revoked because the local government has been unable to advance development on four lots previously dedicated to it. Ideally, the land to be dedicated should be integrated into, or contiguous to, the proposed market-rate development.

Case Study

CHOOSING PRODUCTION OVER INTEGRATION IN LIVERMORE

Livermore's inclusionary program is dedicated to boosting the affordable housing stock as the top priority, with secondary concern for integration. The program was first implemented in 1986 and has since become an integral part of the permit approval process. With a Residential Growth Management Policy as part of the General Plan, Livermore restricts residential development through a competitive permit selection process. Inclusionary requirements must be met as part of this review and project proposals that provide 35 to 50 percent affordable may bypass the selection process completely. By discretion of the City Council, off-site construction, in-lieu fee payment, or land dedications are considered, and the city claims to be flexible wherever affordable construction can be maximized.

Accordingly, Livermore reports that in-lieu fees have helped create some 600 affordable units. Livermore calculates the in-lieu fee as 10 percent of the difference between the cost of developing the market-rate unit and the maximum affordable purchase price for a unit of that size. As of 2002, that calculation resulted in a fee of over $120,000 per affordable unit. Fee collections finance Affordable Housing Fee Fund activities, including mortgage and rental subsidies, new construction and rehabilitation.

The construction of affordable units on isolated plots of land may undermine the economic and social integration that many inclusionary policies aim to create.

Ultimately, the success of land dedications depends on the quality of the land being dedicated, including its size and shape, location, the existence of adequate sewer and water capacity and other infrastructure, and environmental limitations; the capacity of local developers, especially non-profit organizations, to undertake the development; the availability of financing to improve the land and build and operate the housing; and the level of public acceptance by the surrounding community.

Off-Site Construction

The allowance that affordable units may be built off-site also challenges the inclusive goals of inclusionary policy. Debate arises over whether programs should permit off-site development if that is the best way to maximize the number of affordable units that can be developed or, conversely, whether it is more important to insist on integrated development on-site even if such development yields fewer units. As noted above, the location of affordable units on an isolated site restricts the extent to which new development can promote residential integration. In some cases, programs require that developers building off-site include more than the inclusionary allotment of affordable housing. This strategy attempts to justify the isolated construction by ensuring a greater number of affordable units, arguably the highest priority of inclusionary policy overall.

Off-site construction issues are particularly relevant when considering partnerships between for-profit and non-profit developers. In some cases, developers team

Case Study

CARLSBAD—THE BENEFITS OF FLEXIBILITY

A city of nearly 88,000 inhabitants in San Diego County, Carlsbad initiated its inclusionary program in 1993 during a period of fast residential growth. Impetus for the program came from a need to satisfy housing element requirements; before this time little affordable housing was produced. Despite effectively increasing the supply of affordable housing, the city still struggles to design adequate mechanisms to ensure continued affordability.

The ordinance requires 15% of all new residential development to be affordable to low-income residents, with an in-lieu fee option for projects of less than six units; larger developments are required to build. Land dedications are not regularly used, yet when the city joined a deal to finance a large affordable complex, some unassigned affordable units planned for construction were bought by small developers to satisfy their inclusionary requirements from other projects. Carlsbad's Housing and Redevelopment Agency, emphasizes the importance of (1) requiring construction instead of allowing in-lieu fees indiscriminately, (2) setting in-lieu fees high enough to encourage construction and fund development elsewhere and (3) mandating concurrent construction to reduce social resistance.

up to satisfy the inclusionary requirements; the for-profit developer builds the market-rate units and the non-profit builds the affordable units off-site on land it controls with funding support provided by the former. While this strategy allows each developer to exercise its expertise and appears to be a win-win proposition for all parties, the segregating effects should not be overlooked. In contrast to the land dedication option where jurisdictions can be left with no means to develop the dedicated land, off-site construction requires the developer to be responsible for actual development.

INCLUSIONARY HOUSING AND SMART GROWTH

Inclusionary housing practices relate to efforts to curtail sprawl and create "smart growth." State law requires all jurisdictions to provide density bonuses as a means of incenting affordable housing. Such bonuses also encourage higher-density construction, a key outcome for reducing sprawl and encouraging transit. Unfortunately, in practice, development standards such as high rear and front yard setbacks and parking requirements can undermine a developer's ability to use the density bonus effectively.

The relationship with sprawl and growth is even more confusing in jurisdictions with permit metering. In these instances, local policies or ordinances attempt to slow growth by imposing caps on the number of residential permits that be issued each year. This often creates a highly competitive permit application process in which affordable housing inclusion can become a bargaining tool, such as in Livermore or Morgan Hill. While the overall constraint on housing supply is problematic for affordable housing, the policies often attempt to mitigate the impacts by increasing the number of affordable units that are produced under these circumstances.

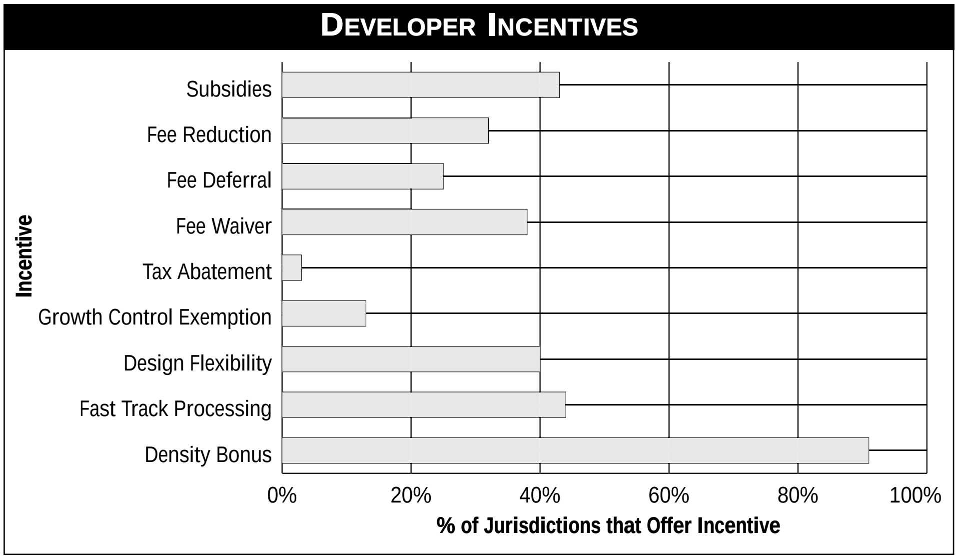

Figure 5
Beyond the State-mandated requirement for density bonuses, the most common incentives offered to developers are local financial assistance (e.g., subsidies, reduced or waived fees, etc.), faster permit processing, and design flexibility.

H. Developer Incentives

Various incentives are offered to developers to promote the construction of affordable housing. These incentives can be critical. Some jurisdictions stimulate significant numbers of affordable units by granting development benefits for those projects that either fulfill or exceed the inclusionary percentage. Some jurisdictions credit incentives for the success of their inclusionary program, claiming they have directly contributed to increases in actual affordable production. (See Fig. 5)

Density bonuses are by far the most popular incentive offered to developers to build affordable housing, reported by 91 percent of the respondents. There is some question, however, whether this density bonus can be used in some jurisdictions due to parking, set-back and other requirements that effectively negate efforts to increase density. In some cases, developers may opt to build at less than the maximum allowable density in order to maximize the amount of non-residential space for project facilities and open areas and minimize the density concerns of neighbors. Other incentives were fast-track processing (45 percent), followed by subsidies (43 percent), design flexibility (40 percent), fee waivers (39 percent), fee reductions (32 percent), and fee deferrals (25 percent).

Design flexibility often means requiring identical or similar exteriors but allowing variations in internal features in order to facilitate financial feasibility for developers. While design differences between market- and below market-rate units might

Case Study

SUBSIDIZING INCLUSIONARY HOUSING

Roseville, a rapidly growing suburb of Sacramento, adopted a General Plan policy in 1988 mandating housing affordability. Each plan area is required to meet a 10 percent inclusionary requirement, but the specific plan mandates different percentages on different parcels within each area. When City funding is not available to assist construction of below-market units, the requirement is waived entirely. The program has produced over 2,000 units of very low-, low-, and moderate-income housing since adoption of the policy. As required, 75 percent of affordable units constructed have been rental units.

ease the burden for developers, jurisdictions struggle to avoid the neighborhood opposition and social stigma that can come with housing that stands out because of external design standards that are compromised or lowered to reduce costs. The City of Livermore in Alameda County takes these issues into account by requiring "comparability of units" in its inclusionary program. This is defined in terms that reflect the goals of integration common in many communities: "From the street, the reserved units must not be distinguishable from other units in the project." Nonetheless, Livermore does allow for design flexibility on the interiors, focusing its attention on comparable numbers of bedrooms and bathrooms, and like amenities such as air conditioning and laundry facilities.

The relatively high percentages of respondents providing subsidies, as well as various fee concessions as incentives, indicates that many jurisdictions are "paying" for inclusionary housing, either by direct cash assistance, foregone revenue, or both. In other words, developers in these communities are not bearing 100 percent of the cost of earmarking a percentage of their units for affordable housing. Unlike direct housing subsidies, however, it is not clear whether fee concessions actually secure a specific public benefit, such as longer-term affordability. Because the depth of subsidy was only reported by a few jurisdictions, future research in this area would be helpful.

State Density Bonus Law

Technically speaking, all jurisdictions in California are required to offer a density bonus per state law. Government Code Section 65915 provides that a local government shall grant a density bonus of at least 25 percent and an additional incentive or financially equivalent incentive(s), to a developer of a housing development agreeing to construct at least: a) 20 percent of the units for lower-income households; or b) 10 percent of the units for very low-income households; or c) 50 percent of the units for senior citizens. Other incentives might include reduced parking requirements, reduced setbacks, fee waivers, or other concessions identified by the developer or jurisdiction.

The Challenge of Long-Term Affordability

While there is general agreement on the value and the mechanisms for ensuring long-term affordability of rental housing, for-sale housing is a more complicated picture. On the one hand is the desire to enable low-and moderate-income homebuyers to accumulate equity (wealth), which is one of the main benefits of homeownership in this country. On the other hand is the desire to ensure that public policy and investment assists more than just the one household that initially buys an affordable home.

The City of Palo Alto, in the heart of Silicon Valley, has emphasized long-term affordability. The city has one of the oldest inclusionary housing policies in the state, having first adopted as a general plan policy in 1975. Since that time the policy has led to the creation of 253 inclusionary units. Palo Alto not only records a 59 year affordability requirement on the deed for affordable ownership housing, the City goes one step further by retaining the right to purchase the home on resale. The City only assigns this right to a buyer from their waiting list. Then the City places a new 59 year deed restriction on the home, in essence creating permanent affordability.

(Continued on p. 19)

The Challenge of Long-Term Affordability (cont'd)

The college town of Davis has one of the tightest housing markets in the Central Valley. Since 1974, the City has worked to meet its affordable housing needs through an inclusionary policy that requires an ambitious 25 to 35 percent of new units be affordable to very low-, low-, and moderate-income households. Like other cities producing for-sale affordable units, Davis has long struggled to keep such units affordable. Originally, restrictions only applied to the initial homebuyer, a problem that translated into the loss of affordable units once that buyer sold their home. Among the strategies employed by the city over the years were a limit on price appreciation, seven-year restrictions on for-sale units, and in one instance, limiting the resale price in perpetuity. Recently, the City has turned to a very different approach, selling a group of for-sale units to a limited equity cooperative. The limited equity structure allows co-op members to enjoy some of the benefits of homeownership, including resident control and appreciation of their share of the co-op, while ensuring affordability for future residents. Davis plans to continue using this model in future developments.

Interestingly, cities that allow the use of alternatives under specific conditions have been more successful than cities without those conditions. Monterey County's success is likely due to the use of: (1) restrictions on the use of the in-lieu fee option; and (2) incentives for developers to construct more than the required number of affordable units. In-lieu fees are only permitted under exceptional circumstances and are used specifically to buy land for affordable housing.

I. Length of Affordability

Ensuring that new affordable units stay affordable is another problematic issue. Some jurisdictions report the loss of affordable housing stock because there were not adequate requirements or monitoring mechanisms in place to guarantee continued affordability. Affordable rents can easily be recalculated for subsequent renters and are typically offered by non-profit and for-profit ownership entities subject to long-term use agreements or deed restrictions that are conditions of the underlying financing. Restricting homeowners from reselling affordable units at market-rate prices or requiring equity-sharing are much more difficult to regulate and require sustained and active monitoring by local officials.

One stunning example of the consequences of such policy failures is the City of Irvine in Orange County. Because the city had no system for resale control prior to 2001, almost all of the 1,610 ownership units created before that time are no longer part of the affordable housing stock, having now been resold at market prices.[20] In contrast, the City of Palo Alto in Santa Clara County has a 59-year deed restriction on its inclusionary ownership units, which is reset each time a home is sold or refinanced, achieving something very close to permanent affordability. Palo Alto also retains the right to purchase the home upon resale and only assigns this right to a buyer from its waiting list.

Virtually all jurisdictions now report that they have formal mechanisms to maintain affordability over time. Deed restrictions, resale controls, and rental contracts are the most common means by which affordability is ensured. These restrictions range from periods of ten years to perpetuity with the median length for rental housing of 42 years and for-sale housing of 34 years. Permanent affordability is reported in 20 percent of programs for both rental and for-sale.

Over the last decade, many jurisdictions have chosen to amend their policies or ordinances to address deficiencies in this area. In fact, nearly 50 percent of all jurisdictions have amended their ordinances at least once, many in the last five years. In doing so, many jurisdictions have increased the term of affordability to 55 years or permanent affordability. Many have adopted new policies or mechanisms to address the particular challenge of monitoring and maintaining the affordability of for-sale units.

Nonetheless, monitoring of units remains an area of obvious concern. Many jurisdictions declined to answer survey questions related to monitoring and overall tracking of inclusionary production. Among those that responded, most cities and counties report that they assume overall responsibility for monitoring long-term affordability, but it is unclear from discussions with local staff just how effectively those units are monitored. The high incidence of incomplete responses on tracking of units, in particular, leads the researchers to believe that greater emphasis on monitoring and tracking is needed.

J. Obstacles to Implementation

Local officials cite a number of factors that complicate or undercut successful implementation of inclusionary programs. The principal obstacle is scarcity of land for development, noted by 59 percent of jurisdictions, followed by developer opposition, noted by 39 percent. Lack of funding and community opposition are obstacles in 31 percent and 19 percent of jurisdictions, respectively. Other respondents cite high land prices and inadequate public works infrastructure as challenges to the development of new affordable housing.

Developer opposition arises from the perspective that inclusion of affordable housing in market-rate developments is financially prohibitive and/or unfairly shifts costs to moderate- and above moderate-income families via higher sales prices and rents. Moreover, profit-motivated builders argue that they are unfairly forced to shoulder the financial onus for affordable housing provision that should rightly be borne by the public sector in partnership with below-market-rate developers in the business of developing and operating affordable housing.

In the face of enormous housing needs, expectations are shifting in the contemporary development scene. Accepting the task of building or supporting affordable housing will require for-profit developers to adapt. While it is not surprising that there is resistance, the market arguments that inclusionary policies will stifle construction or dramatically increase market-rate real estate prices have yet gone unproved. During the 1990s, construction rates and permit valuations remained steady or rose in inclusionary jurisdictions, as they did statewide. Anecdotal reports confirm that developers continue to build and that more newly constructed units are affordable as the result of local inclusionary programs.

Section IV

Conclusion

A. In Summary – Program Comparison

The rapid expansion of inclusionary housing in California over the last 30 years has aroused considerable debate. Advocates on both sides of the issue have raised questions about the impact of various kinds of inclusionary policies.

In this section, we attempt to answer some of the critical questions pertaining to inclusionary implementation and make policy recommendations based on the experience of the 15 most successful programs as measured by sustained and significant production of affordable housing.

Top 15 Affordable Housing Producers

Cities	Counties
Carlsbad	Monterey
Chula Vista	Santa Barbara
Davis	
Emeryville	
Huntington Beach	
Irvine	
Petaluma	
Roseville	
Sacramento	
Salinas	
San Diego	
San Rafael	
Santa Rosa	

Based on annual production since adoption (alphabetical).

Although the data collected from the survey do not provide definitive answers, it is instructive to compare the 15 programs regularly producing affordable housing with the other 92 programs in the state, some of which have struggled to achieve consistent production.[21] We recognize that no simple statistical comparison can measure a program's success without understanding the particular local contexts involved. Likewise, it may very well be that the local variability of inclusionary programs is a key to their success—certainly this appears true in political terms.

B. Critical Questions in Inclusionary Implementation

Does a strong inclusionary policy discourage overall housing production?

Perhaps not surprisingly, it appears that the jurisdictions producing the most inclusionary units are those that have experienced rapid expansion. These jurisdictions have managed to harness their exceptionally rapid population growth to stimulate affordable housing production. Respondents who offered comments on the subject believe their policy has *not* hindered overall housing production.

POPULATION CHARACTERISTICS OF JURISDICTIONS PRACTICING INCLUSIONARY HOUSING

POPULATION CHARACTERISTICS	15 MOST PRODUCTIVE PROGRAMS	OTHER PROGRAMS
Rate of population growth, 1990-2000 [mean]	25%	14%
Population [mean]	238,158	94,921

One of the key measurements of a policy's strength is the percentage of units required to be affordable. Interestingly, the more productive programs had similar percentage requirements to those of the other programs. This would seem to indicate that the results of a program depend heavily on other factors. One respondent commented that his jurisdiction had to reduce inclusionary requirements from 25 percent to 20 percent of all units produced to make the program effective, while four respondents recommended raising the percentage of units currently required to make their programs more effective.

PERCENTAGE OF NEW UNITS REQUIRED TO BE AFFORDABLE				
% REQUIREMENT	15 MOST PRODUCTIVE PROGRAMS		OTHER PROGRAMS	
	RENTAL	OWNERSHIP	RENTAL	OWNERSHIP
Less than 10%	7%	13%	4%	3%
10-14%	40%	33%	45%	43%
15-19%	33%	27%	23%	21%
20% or more	20%	20%	22%	22%

In contrast, comparison shows that deep income-targeting *is* a feature of many policies that produce a significant number of units. In fact, the most productive programs are more likely to target low- and very low-income households and less likely to target moderate-income households. On the surface, this would seem counter-intuitive; programs with relaxed or higher targeting would seem more likely to produce greater numbers of units than programs with more stringent targeting. What this analysis suggests is that deeper targeting does not, in and of itself, discourage production and, perhaps, coupled with staff commitment, funding resources, and other local factors, can create an environment for success.

INCOME GROUPS TARGETED BY INCLUSIONARY PROGRAMS		
INCOME-TARGETING	15 MOST PRODUCTIVE PROGRAMS	OTHER PROGRAMS
Very Low-Income	60%	42%
Low-Income	87%	71%
Median-Income	53%	65%

Can a voluntary program be as effective as a mandatory program?

Only six jurisdictions responding to the survey identified their policy as voluntary. None of these jurisdictions was among the most productive and three reported no production of inclusionary units at all. Programs classified as "mandatory with exceptions" because they allow developers to avoid inclusionary requirements under certain conditions, such as small project size or lack of funding, appeared in both groups. Although truly voluntary programs are generally unsuccessful in producing affordable units, mandatory programs with exceptions are not necessarily less effective simply because they permit exceptions.

MANDATORY AND VOLUNTARY INCLUSIONARY PROGRAMS		
MANDATORY / VOLUNTARY	**15 MOST PRODUCTIVE PROGRAMS**	**OTHER PROGRAMS**
Voluntary	0%	7%
Mandatory with Exceptions	33%	32%
Mandatory	67%	61%

Do alternatives to construction promote the production of affordable housing or merely provide a loophole for developers who want to avoid inclusionary requirements?

The highly productive programs are more likely to permit most alternatives to construction than other programs. In-lieu fees are permitted by a high percentage of all programs, although somewhat less often by the most successful programs. The success or failure of an in-lieu fee option is likely to depend on the way the fee is calculated, as well as the ways in which collected funds are used. This correlation suggests that flexibility is not inimical to program success, provided it is accompanied by appropriate controls to ensure that units are still produced.

ALTERNATIVES TO CONSTRUCTION ALLOWED BY INCLUSIONARY PROGRAMS		
ALTERNATIVES TO CONSTRUCTION	**15 MOST PRODUCTIVE PROGRAMS**	**OTHER PROGRAMS**
Off-Site Allowance	86%	64%
Land Dedication Allowance	60%	39%
In-Lieu Fees	73%	80%
Developer Credit Transfer	33%	17%

Should jurisdictions allow owners to "opt out" of inclusionary requirements altogether, based on small project size or infeasibility?

Of the most productive programs, none allow exemptions to inclusionary requirements based on infeasibility. The most productive programs are also slightly less likely than other programs to allow exemptions based on small project size.

EXEMPTIONS PERMITTED BY INCLUSIONARY PROGRAMS		
EXEMPTIONS	**15 MOST PRODUCTIVE PROGRAMS**	**OTHER PROGRAMS**
Small project size	67%	82%
Infeasibility	0%	15%

What incentives help developers produce affordable units?

The most productive programs were much more likely than the other programs to subsidize the construction of affordable units (71 percent vs. 38 percent). The substantial difference suggests that funding is an important facet of a successful inclusionary program. There was little difference between productive programs and less productive programs with respect to other incentives offered.

INCENTIVES OFFERED TO PRODUCE AFFORDABLE HOUSING		
INCENTIVES	15 MOST PRODUCTIVE PROGRAMS	OTHER PROGRAMS
Density bonus	93%	92%
Fast-track processing	47%	44%
Standards reduction	33%	42%
Growth control exemption	7%	13%
Tax abatement	0%	4%
Fee waiver	20%	42%
Fee deferral	53%	19%
Fee reduction	20%	35%
Other	29%	32%
Subsidies for IZ units	71%	38%

What prevents inclusionary programs from being successful?

Respondents identified a number of obstacles to the production of inclusionary units. Among the most productive programs, lack of funding was the most commonly cited concern, listed by 67 percent of these respondents compared to only 24 percent of the others. On the other hand, scarcity of land was much more likely to be identified as an obstacle by the less productive programs (64 percent vs. 33 percent). Respondents from both groups frequently mentioned developer opposition as a significant obstacle to construction of affordable units.

Several considerations help explain why jurisdictions producing more units perceive the obstacles to inclusionary production differently. Since land is a prerequisite for all new construction, jurisdictions with a limited supply of land are much more likely to find themselves producing fewer units each year than other jurisdictions. In other words, programs producing fewer units may be more restricted in terms of their available land. The more productive jurisdictions' greater concern about funding is probably due to a couple of factors. One is that these jurisdictions were also more likely to report that subsidies were provided for inclusionary units, implying that limited funding would truly harm these programs' ability to produce. Also, jurisdictions might be less likely to single out limited funding as a problem when other barriers frequently prevent a project from moving to the funding stage.

Although many respondents in both groups identified developer opposition as an obstacle, one respondent commented that most developers in California are "resigned" to inclusionary policies, given the number of jurisdictions in the state that have such requirements. Another respondent observed that market-rate housing developers may not like inclusionary programs, but choose to produce affordable units rather than stop developing altogether.

OBSTACLES TO SUCCESS OF INCLUSIONARY PROGRAMS		
OBSTACLES TO IMPLEMENTING POLICY	**15 MOST PRODUCTIVE PROGRAMS**	**OTHER PROGRAMS**
Community opposition	8%	22%
Developer opposition	42%	38%
Local government processes	0%	5%
Lack of funding	67%	24%
Scarcity of land	33%	64%
Other	33%	27%

What other factors tend to increase the number of units produced?

The most productive programs were adopted earlier, but amended more recently, than the others. It is not surprising that the jurisdictions that have had a sustained commitment and continued to fine-tune and update their programs, would be the ones that have achieved the most production of affordable units.

YEAR OF ADOPTION AND AMENDMENT OF INCLUSIONARY PROGRAMS		
AGE AND AMENDMENTS	**15 MOST PRODUCTIVE PROGRAMS**	**OTHER PROGRAMS**
Median year of adoption	1990	1993
Amended	47%	43%
Median year of amendment	2002	2000

C. Policy Recommendations for Local Governments

There is a great deal of variation in the success of local inclusionary programs, as judged from the production of affordable units. The following policy recommendations for local governments are drawn largely from the characteristics of those programs that have produced the most affordable units since their inception.

Since the most productive programs are often older, the recommendations below also include successful elements of newer programs, as well as program elements contained in recently updated inclusionary policies. While each jurisdiction has unique circumstances and needs, cities and counties developing a new inclusionary program (or revising an existing program) can learn from what is working well elsewhere.

Dove Family Housing–plans for inclusionary affordable housing on the La Costa development in Carlsbad (San Diego County). *(Photo credit: Mercy Housing California)*

INCLUSIONARY PERCENTAGE

Aim high in the percentage of units required to be affordable; 15 percent is realistic in most communities. If developers express concerns, design incentives and program flexibility to mitigate the burden they face in meeting inclusionary requirements, as described below.

INCOME-TARGETING

Unless financially infeasible, require housing for very low-income, low-income, and moderate-income households to be included. Very low-income units are usually feasible only in rental housing. Section 8 vouchers can provide deeper affordability.

Income categories can and should be adjusted based on local needs; for example, programs can target moderate-income units to a maximum of 100 percent of median, instead of 120 percent. The relative need of income groups as identified in the locality's Housing Element should guide inclusionary program design, with the inclusionary housing complementing other housing programs, such as new construction of assisted housing.

RENTAL AND OWNERSHIP

Adopt inclusionary requirements for rental and for-sale housing that are similar enough so that developers continue to provide an appropriate mix of both housing types. Creating too great a difference between the targeting of inclusionary rental units versus for-sale units could create an unintended financial incentive for developers to produce only for-sale housing.

DEVELOPMENT-SIZE THRESHOLD

Subject residential development of any size to inclusionary requirements, with payment of in-lieu fees allowable for any fractional units required. Alternatively, provide a complete exemption for only the smallest developments, such as those below five units.

ALTERNATIVES TO CONSTRUCTION ON-SITE

Offer some flexibility to developers, such as in-lieu fees, land dedication, or off-site development, but subject to local government determination that the alternative meets the need for affordable housing at least as well as traditional on-site inclusionary units.

Where in-lieu fees are an option, set the fee level as high as the cost to the locality of making the units affordable without other public subsidy. In other words, the developer's decision to build units or pay fees should be revenue-neutral, and the locality collecting the fees should be able to fund as many units as would have been required of the developer. In-lieu fee levels should be tied to the cost of construction, and adjusted regularly.

Allow in-lieu fees at the discretion of local government or in specific circumstances, such as when fractional units are required, or when the developer can prove that providing affordable units on-site is financially infeasible.

DEVELOPER INCENTIVES

Provide incentives that local developers want and can use. Consult with developers during program design to find out how to structure density bonuses, reduced parking requirements, expedited permit review, design differences, growth control exemptions, etc., so that they are meaningful incentives.

LENGTH OF AFFORDABILITY

Require units to be kept affordable permanently, or for at least 55 years for rental and for-sale homes. For home ownership units, programs need carefully constructed adjustments to provide reasonable amounts of equity to accrue to owners.

Design effective mechanisms to track long-term affordability, such as restrictions recorded against the property.

D. Future Research

While this report provides a useful snapshot of inclusionary housing programs in California, more research in this area is clearly needed. The most obvious but difficult to ascertain information would be an analysis of the cost impacts of inclusionary programs on market-rate units. There is a great deal of theoretical writing on the topic, but the authors did not find an empirical study on the subject. Given the difficulty of determining the economic impact of inclusionary programs, another potential area of research would be to compare housing production of communities within the same region, those with inclusionary and those without.

There is also great need for more in-depth field research on specific programs to analyze the effectiveness of particular program features, such as credit transfers. More work on the relative effectiveness of various monitoring and affordability restrictions is needed for both rental and for-sale homes. For ownership housing in particular, research and case studies are needed to better understand the long-term affordability of inclusionary homes and the loss of units with no or limited deed restrictions. Similar research is needed to better understand how land dedication and local public subsidies, both direct outlays and fee concessions, are working to facilitate the creation of inclusionary units.

Undoubtedly, further research will provide more detailed information about these key elements of inclusionary housing programs. In the meantime, this report

Petaluma Ecumenical Properties developed these 40 rental apartments in Petaluma (Sonoma County) with funding from the City's in-lieu fees to help target families earning 30 to 50 percent of area median incomes.
(Photo credit: Petaluma Ecumenical Properties)

is intended as a starting point for advocates and local government officials. What we know today is that the effectiveness of inclusionary housing programs in a few cities and counties illustrates the potential for all jurisdictions. At the same time, the report offers proponents of inclusionary zoning a road map for avoiding problems that others have discovered over time. With so many Californians still struggling with unmet housing needs, it is crucial that this report and future work help create a greater shared understanding of how inclusionary housing can be a major piece of solving the affordable housing crisis in California and nationwide.

ENDNOTES

1 The California Budget Project, *Locked Out 2002: California's Affordable Housing Crisis Continues* (Sacramento: October 2002), p. 10.

2 Department of Housing and Community Development, *Raising the Roof– California Housing Development Projections and Constraints 1997-2020, Statewide Housing Plan* (Sacramento: May 2000).

3 The California Budget Project, *Locked Out 2002*, p. 9.

4 This list of 107 inclusionary jurisdictions includes cities and counties implementing inclusionary programs through an ordinance, General Plan policy, or permit approval process.

5 California Community Redevelopment Law: Article 9, Section 33413. <<www.redevelopmentlaw.com>>

6 California Coastal Act: Chapter 7, Article 1. <<http://www.coastal.ca.gov>>

7 Some of the jurisdictions currently considering inclusionary policies or ordinances include: Albany, Hayward, Los Angeles, Milpitas, Oakland and Placer County.

8 Judd, Rick, Seifel, Libby, and Shoemaker, Doug, "Creating Mixed-Income Communities: Inclusionary Housing" in book to be published by Solano Press Books, Point Arena, California.

9 Southern Burlington NAACP et al v. Township of Laurel, 67 N.J. 151 (1975).

10 Calavita, Nico and Grimes, Kenneth. "Inclusionary Zoning in California: The Experience of Two Decades," *Journal of the American Planning Association*, American Planning Association, Vol. 64, No. 2, Spring 1998, Chicago, Illinois; p. 152.

11 Johnston, Robert & Schwartz, Seymour. *Local Government Initiative for Affordable Housing: An Evaluation of Inclusionary Housing Programs in California*. Davis: Kellogg Public Service Research Program, December 1981.

12 Zatz, Shoshana. *Creating Affordable Communities: Inclusionary Housing Programs in California*. Sacramento: California Coalition for Rural Housing, November 1994.

13 Calavita and Grimes, p. 157-8.

14 Various jurisdictions listed on the California Planners Information Network *(www.calpin.ca.gov)* self-report having some kind of inclusionary housing. Our research confirmed that many of these jurisdictions only have formal inclusionary programs as required or governed by State Redevelopment Law or the Coastal Act.

15 Jurisdictions enforcing inclusionary requirements as part of Redevelopment Agency practices or State Density Bonus Law, but with no local policy, were not included.

16 It seems likely that more jurisdictions with inclusionary ordinances also have policies in their General Plans since local laws are required to be consistent with General Plans.

17 Appendix A provides detail on those variations, but for the purposes of the charts comparing inclusionary practices in California, the authors have classified those policies in terms of the minimum percentage required for a project.

18 Figure 4 on page 10 and Appendix A provide detail on those variations, but for the income-targeting charts in this section, the authors have classified multiple-choice policies in terms of the highest income target allowed at the developer's discretion.

19 Calavita and Grimes, p. 160-5.

20 Calavita and Grimes, p. 155.

21 Several factors determine the relative "strength" of an inclusionary policy. A multivariate statistical analysis to correlate overall housing production with the relative strength of a locality's inclusionary program, controlling for other factors, would not be possible based on the data collected. However, we have made simple correlations that may explain, at least in part, the success experienced by the top 15 programs in terms of annual production relative to the other 92 programs, and dispel some of the negatives associated with different inclusionary program features. These jurisdictions produce at least 35 affordable units per year.

Appendix A

Summary of Inclusionary Housing Survey

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Agoura Hills	Los Angeles	1987	11	10	MI	OSA ILF	50	N/A
Alameda County	Alameda	2000	0	N/A	N/A	N/A	N/A	N/A
Arroyo Grande	San Luis Obispo	1993	5	10	LI	OSA ILF LDA	1	30
Benicia	Solano	2000	10	10	VLI LI	OSA ILF LDA DCT	N/A	30
Berkeley	Alameda	1986	5	20	VLI LI MI	None	75	P
Brea	Orange	1993	20	10	VLI LI MI	OSA ILF	278	30
Calistoga	Napa	1990	5	20	LI MI	None	78	N/A
Carlsbad	San Diego	1993	0	15	LI	OSA ILF	1142	N/A
Chula Vista	San Diego	1981	50	10	VLI LI MI	OSA ILF LDA DCT	1172	55 to Permanent
Clayton	Contra Costa	1995	10	10	VLI LI	OSA ILF LDA	84	N/A
Contra Costa County	Contra Costa	N/A	0	15-25	MI	LDA	756	15-30
Coronado	San Diego	1982	2	20	LI MI	ILF	N/A	N/A
Corte Madera	San Mateo	1989	10	10	MI	None	43	P
Cotati	Sonoma	1985	5	15	MI	ILF	N/A	N/A
Cupertino	Santa Clara	1983	N/A	15	VLI LI MI	ILF	160	99
Danville	Contra Costa	1999	8	10-15	MI	OSA ILF DCT	70	20
Davis	Yolo	1974	5	25-35	VLI LI MI	OSA ILF LDA DCT	1453	N/A
Del Mar	San Diego	N/A	10	10	LI	ILF	N/A	30

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Dublin	Alameda	1996	20	12.5	VLI LI MI	OSA ILF LDA DCT	59	30-55
East Palo Alto	San Mateo	1994	2	20	VLI LI MI	OSA ILF	115	50-59
Emeryville	Alameda	1990	30	20	MI	OSA	463	45-55
Encinitas	San Diego	1990	10	10	VLI	ILF	56	55
Fairfax	Marin	N/A	0	N/A	N/A	N/A	N/A	N/A
Fremont	Alameda	2002	7	15	VLI LI MI	OSA ILF LDA	N/A	30-99
Gonzales	Monterey	N/A	0	N/A	N/A	N/A	N/A	N/A
Half Moon Bay	San Mateo	1996	10	20	VLI LI MI	OSA ILF	12	P
Healdsburg	Sonoma	1993	0	15	LI MI	OSA ILF LDA	N/A	10
Hercules	Contra Costa	1997	10	10	MI	OSA	N/A	N/A
Hesperia	San Bernardino	1991	5	**	N/A	LDA	202	30
Huntington Beach	Orange	2001	3	10	LI	ILF LDA	313	30-60
Irvine	Orange	1977	0	5-15	VLI LI MI	OSA ILF LDA DCT	4469	N/A
Isleton	Sacramento	2000	N/A	15	VLI	OSA ILF DCT	N/A	10
Laguna Beach	Orange	1985	3	25	VLI LI MI	OSA ILF	139	30-55
Larkspur	Marin	1990	10	10-15	LI MI	ILF LDA	85	N/A
Livermore	Alameda	1986	N/A	10	LI	OSA ILF LDA	217	55-99
Lompoc	Santa Barbara	1992	10	10	VLI LI MI	OSA ILF	3	30
Long Beach	Los Angeles	N/A	5	N/A	N/A	ILF	N/A	N/A
Los Altos	Santa Clara	1990	2	10-20	N/A	None	50	30
Los Gatos	Santa Clara	N/A	5	10	MI	ILF	N/A	55
Mammoth Lakes	Mono	2000	0	10	LI MI	OSA ILF DCT	2	50
Marin County	Marin	N/A	10	15	LI MI	OSA ILF LDA DCT	N/A	N/A
Menlo Park	San Mateo	1980s	5	10-15	LI MI	OSA ILF	28	55
Mill Valley	Marin	1988	2	10-15	VLI LI MI	OSA ILF	319	case by case

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Monrovia	Los Angeles	1990	0	20	MI	None	280	30-Permanent
Monterey	Monterey	1981	10	15	MI	OSA LDA	438	30
Monterey County	Monterey	1980	7	10-15	N/A	OSA ILF DCT	1388	30-Permanent
Morgan Hill	Santa Clara	1977	0	10	LI MI	ILF	302	45-55
Morro Bay	San Luis Obispo	N/A	0	10	LI MI	ILF	N/A	30
Mountain View	Santa Clara	1999	4	10	LI MI	ILF	N/A	55
Napa	Napa	1999	0	10	VLI LI MI	OSA ILF LDA	56	30-Permanent
Napa County	Napa	1992	0	10	VLI LI MI	OSA ILF LDA DCT	N/A	40
Nevada County	Nevada	1995	20	10	MI	OSA	N/A	10-30
Novato	Marin	1999	0	10-15	LI	ILF DCT	40	P
Oceanside	San Diego	1991	3	10	LI MI	ILF	N/A	55
Oxnard	Ventura	1999	10	10	VLI LI	ILF	15	20
Palo Alto	Santa Clara	1973	5	15-20	LI MI	OSA ILF LDA	274	59
Pasadena	Los Angeles	1991	10	15	LI MI	OSA ILF LDA	14	30-Permanent
Patterson	Stanislaus	1995	5	10	LI MI	ILF	5	P
Petaluma	Sonoma	1984	5	15	LI MI	OSA ILF LDA	1442	P
Pismo Beach	San Luis Obispo	2001	5	10	MI	OSA ILF LDA	N/A	30
Pleasant Hill	Contra Costa	1991	5	5-25	VLI LI	OSA ILF LDA DCT	5	P
Pleasanton	Alameda	1978	0	15-20	VLI LI MI	OSA ILF LDA DCT	300	P
Port Hueneme	Ventura	N/A	10	25	LI MI	ILF	20	N/A
Portola Valley	San Mateo	1991	0	15	LI MI	ILF	N/A	N/A
Poway	San Diego	1993	0	15	VLI LI	OSA ILF	N/A	N/A
Rancho Palos Verdes	Los Angeles	1997	5	5-10	VLI LI	OSA ILF	N/A	variable
Richmond	Contra Costa	2001	10	10-17	VLI LI MI	OSA ILF	N/A	30
Rio Vista	Sacramento	2002	400	10	LI	None	N/A	N/A

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Ripon	San Joaquin	2001	5	10	LI	ILF LDA DCT	N/A	P
Rohnert Park	Sonoma	2002	5	15	VLI LI MI	OSA ILF LDA DCT	N/A	30-50
Roseville	Placer	1988	0	10	VLI LI MI	ILF LDA DCT	2000	30-Permanent
Sacramento	Sacramento	2000	10	15	VLI LI	OSA LDA	92	30
Salinas	Monterey	1992	10	12	LI MI	None	453	30
San Anselmo	Marin	1995	10	10	LI MI	OSA ILF LDA	N/A	P
San Benito County	San Benito	1997	0	20	N/A	None	N/A	variable
San Carlos	San Mateo	1991	0	10	LI MI	OSA ILF	40	N/A
San Clemente	Orange	1980	6	4	VLI	OSA ILF LDA	627	N/A
San Diego	San Diego	1994	0	20	LI	OSA LDA	537	N/A
San Francisco	San Francisco	1992	10	10-17	LI MI	OSA ILF	302	N/A
San Juan Bautista	San Benito	2000	6	16.7	VLI LI MI	OSA ILF	1	55
San Juan Capistrano	Orange	1995	2	30	VLI LI	ILF	196	10 - 30
San Leandro	Alameda	1980	20	10	LI	OSA	312	15-55
San Luis Obispo	San Luis Obispo	1999	5	15	VLI LI MI	OSA ILF LDA	N/A	30
San Mateo	San Mateo	1992	11	10	LI MI	OSA	102	30-Permanent
San Mateo County	San Mateo	1994	5	20	VLI LI	None	124	variable
San Rafael	Marin	1988	10	10	VLI LI MI	OSA ILF	611	N/A
Santa Barbara County	Santa Barbara	1993	5	5-20	VLI LI MI	OSA ILF	2244	30
Santa Clara	Santa Clara	1992	10	10	MI	None	N/A	N/A
Santa Cruz	Santa Cruz	1980	5	15	VLI MI	OSA ILF LDA DCT	640	N/A
Santa Cruz County	Santa Cruz	1978	3	15	LI MI	OSA ILF	750	P
Santa Monica	Los Angeles	1985	2	10-20	VLI LI	OSA ILF LDA	N/A	N/A
Santa Rosa	Sonoma	1992	0	15	VLI LI	OSA ILF LDA	385	30

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Sebastopol	Sonoma	1994	3	20	LI	ILF	9	15
Solana Beach	San Diego	1997	4	10	LI	OSA ILF	N/A	30
Sonoma	Sonoma	1995	5	10	VLI MI	None	11	30-45
South San Francisco	San Mateo	2001	4	20	LI MI	ILF	N/A	N/A
Sunnyvale	Santa Clara	1980	10	10	LI MI	ILF	749	20
Sutter County	Sutter	1995	10	5	LI MI	OSA ILF LDA DCT	N/A	N/A
Tiburon	Marin	1988	0	10	LI MI	OSA ILF	19	N/A
Union City	Alameda	2001	2	15	VLI LI MI	OSA ILF	N/A	N/A
Vista	San Diego	N/A	0	6	LI	ILF LDA	N/A	N/A
Watsonville	Santa Cruz	1991	N/A	20	VLI LI MI	OSA ILF	11	40
West Hollywood	Los Angeles	1986	2	20	LI MI	OSA ILF	13	P
Winters	Yolo	1994	5	15	VLI LI MI	ILF LDA	76	55
Woodland	Yolo	N/A	10	10-20	VLI LI	OSA ILF LDA	N/A	40
Yolo County	Yolo	1996	10	10	VLI LI	ILF	N/A	30
Yountville	Napa	1992	5	15	VLI LI MI	OSA ILF LDA	19	N/A

Key:

OSA	Off-site Allowance
ILF	In-Lieu Fees
LDA	Land Dedication Allowance
DCT	Developer Credit Transfer
VLI	Very Low-Income
LI	Low-Income
MI	Moderate-Income
N/A	Not Available
P	Permanent

* Voluntary Policy

** City encourages through a modified version of state density bonus law.

APPENDIX B

SURVEY INSTRUMENT

For the purpose of this study, "inclusionary" is defined as a mandatory requirement or voluntary goal to reserve a certain percentage of housing units for lower-income households in new residential developments. The affordable units are often expected to be dispersed throughout the development (hence the term "inclusionary"), in an effort to generate a mix of income levels within new residential areas.

SURVEY OF INCLUSIONARY HOUSING POLICIES

CITY:	AGENCY/DEPARTMENT:
RESPONDENT:	RESPONDENT TITLE:
ADDRESS:	CITY, ZIP:
TELEPHONE:	FAX:
EMAIL:	DATE:

GENERAL POLICY

1 Is inclusionary housing produced in your jurisdiction? ❍ Yes ❍ No

2 Is there a formal policy for inclusionary housing? ❍ Yes ❍ No

3 Is local inclusionary policy documented as a: ❍ Local Ordinance ❍ General Plan policy ❍ Other (please specify):

4 What year was the policy adopted?

5 Has policy been amended? ❍ Yes ❍ No
If yes, what year?

6 Does policy impose requirements on both rental and for-sale housing? ❍ Yes ❍ No
If yes, do these requirements differ for rental and for-sale housing? ❍ Yes ❍ No

7A Are projects with less than a certain number of units exempt from all inclusionary requirements (including in-lieu fees)? ❍ Yes ❍ No
If yes, please specify minimum project size that is subject to inclusionary requirements: ____ units

7B Are smaller projects permitted to meet inclusionary requirements differently than larger projects? ❍ Yes ❍ No
Example: Some cities allow payment of an in-lieu fee as an option for projects below a certain number of units, but not for larger projects; in this case, the respondent would check "Yes" and explain below.

If yes, please explain how projects of __ units or fewer may meet inclusionary requirements differently:

8A What percent of total **rental** units is required/encouraged to be affordable (for new development permits)? ______ %

8B Which income level(s) are **rental** inclusionary units targeted to?
Example: if there is a 10% inclusionary requirement, with half of the units targeted to very low income households at 50% AMI and the other half targeted to low income at 60% AMI, write *5%* next to "very low" and *5%* next to "low."
___ % very low - at or below 50% of area median income (AMI), as defined by HUD
___ % low – 51% - 80% of AMI
___ % moderate – 81% - 120% of AMI
___ other (please explain):

8C What percent of total **ownership** units is required/encouraged to be affordable (for new development permits)? ______ %

8D Which income level(s) are **ownership** inclusionary units targeted to?
Example: if there is a 10% inclusionary requirement, with half of the units targeted to low income households 80% AMI and the other half targeted to moderate income at 100% AMI, write *5%* next to "low" and *5%* next "moderate."
___ % very low - at or below 50% of area median income (AMI), as defined by HUD
___ % low – 51% - 80% of AMI
___ % moderate – 81% - 120% of AMI
___ other (please explain):

8E Does the **percentage of units required to be affordable** vary depending on project size, density, or at the option of the developer? ❍ Yes ❍ No
If yes, please attach a program description or explain here:

SUPPLEMENTAL POLICY

9 Inclusionary requirements are: ❍ Voluntary ❍ Mandatory for all developers ❍ Mandatory with exceptions

10 Does policy require that both market-rate and inclusionary units required be constructed concurrently? ❍ Yes ❍ No

11 Does policy allow inclusionary affordable units to be built off-site? ❍ Yes ❍ No
If yes, how many units have been built off-site since implementation? __________ ❍ No Data on Record

12 Does policy allow land dedications to substitute for construction? ❍ Yes ❍ No
If yes, how many units have been built as a result since implementation? __________ ❍ No Data on Record

13A Does policy contain an in-lieu fee option? ❍ Yes ❍ No
If yes, please complete questions 13B – 13G.

13B How many units have been funded partially or in whole by these funds? __________ ❍ No Data on Record

13C How many dollars have been collected in in-lieu fees since implementation? $__________ ❍ No Data on Record

13D Which of the following are used to trigger the ability to pay fees instead of construction?
❍ Minimum parcel size of __________ ❍ Maximum parcel size of __________
❍ Minimum unit # of __________ ❍ Maximum unit # of __________
❍ Other:

13E On what basis is the in-lieu fee calculated?
❍ Based on financing gap between affordable rent/sale price and market rent/sales price
❍ Based on cost to provide an affordable unit in jurisdiction (replacement cost)
❍ Based on assessed value of market rate units
❍ Based on square footage of market rate units
❍ Other (please explain):

13F Please attach a schedule of current in-lieu fees, or list current fee levels here.

13G For which of the following housing activities are in-lieu fees used? Please check all that apply.
❍ New construction of rental/ownership housing
❍ Acquisition/rehab of existing rental/ownership housing
❍ Homeownership assistance (e.g. downpayment or mortgage assistance, single family rehab)
❍ Rental assistance (e.g. rent subsidies, emergency rent assistance)
❍ Other (please explain):

14 Does policy allow for developer credit transfers? ❍ Yes ❍ No
If yes, how many transfers have been executed since implementation? __________ ❍ No Data on Record

15 Does policy allow for developers to avoid inclusionary requirements by proving infeasibility? ❍ Yes ❍ No

16 Are linkage fees used to tie affordable housing construction to commercial growth? ❍ Yes ❍ No
If yes, please note the total amount of fees collected since implementation. $__________ ❍ No Data on Record

17 If policy allows for development of units off-site, does it require that more units be built off-site than would have been required on-site? ❍ Yes ❍ No
If yes, please explain how this allowance is defined.

18 Does policy allow differences in design standards for affordable units? ❍ Yes ❍ No

19 Does policy require dispersion of affordable housing units throughout market rate developments? ❍ Yes ❍ No
If yes, how is this deconcentration ensured?

20 What penalties exist if developers do not comply with inclusionary requirements?
❍ Permits refused ❍ Extra fees ❍ Future development refused ❍ None ❍ Other (please explain):

21 Please indicate which additional incentive strategies are used to promote affordable housing construction?
❍ Density bonus ❍ Fast-track processing ❍ Standards reduction ❍ Growth control exemption
❍ Tax abatement ❍ Fee waiver ❍ Fee deferral ❍ Fee reduction
❍ Other(please explain):

22 Do federal, state and/or local subsidies supplement funding for inclusionary projects? ❍ Yes ❍ No
If yes, please identify the average subsidy per unit:
For rental units: $__________
For for-sale units: $__________

PRODUCTION	23 How many **total residential units** have been constructed since policy implementation? ❍ No Data on Record
	24 How many **total residential units** were constructed in the five-year period **1997-2001**? ❍ No Data on Record
	25 How many **inclusionary** affordable units have been **entitled** since policy implementation? ❍ No Data on Record
	26 How many **inclusionary** affordable units have been **constructed** since policy implementation? ❍ No Data on Record 27A How many **inclusionary** affordable units were constructed by market rate developers **directly** satisfying their inclusionary obligation either on-site or off-site during the five-year period from 1997-2001? ❍ No Data on Record 27B How many affordable units were constructed during the five-year period from 1997-2001 by an entity other than a market-rate developer, such as a non-profit, through land dedication or in-lieu fees? ❍ No Data on Record
	28 Of the inclusionary affordable units constructed by market rate developers, How many were for **sale**? ❍ No Data on Record How many were for **rent**? ❍ No Data on Record
HOMEOWNERSHIP	29 Since policy implementation, how many inclusionary **ownership** units have been constructed by a market-rate developer? _________ units ❍ No Data on Record 30 Since policy implementation, how many inclusionary **ownership** units have been constructed by another entity, such as a non-profit, through land dedication or in-lieu fees? _____________ units ❍ No Data on Record
	31 Affordable sales prices are computed as __________% of target group's median household income.
	32 What methods are used to ensure the units are occupied by subsequent targeted income group populations? ❍ Deed restrictions ❍ Resale controls ❍ Recapture mechanisms ❍ None ❍ Other:
	33 How are resale prices computed?
	34 Newly constructed units for homeownership are marketed by: ❍ City ❍ County ❍ Developers ❍ Realtors ❍ Not monitored ❍ Other:
	35 Long-term affordability requirements for ownership units are monitored by: ❍ State ❍ City ❍ County ❍ Developers ❍ Realtors ❍ Third Party ❍ Other:
	36 How long is affordability required for sale units? ❍ __________years ❍ Permanent
	37 Does the jurisdiction have a way of prolonging affordability beyond this term? ❍ Yes ❍ No If yes, please describe.
RENTAL	38 Since policy implementation, how many inclusionary **rental** units have been constructed by a market-rate developer? ___________ units ❍ No Data on Record 39 Since policy implementation, how many inclusionary **rental** units have been constructed by another entity, such as a non-profit, through land dedication or in-lieu fees? _____________ units ❍ No Data on Record
	40 Affordable monthly rent is defined as __________% of target group's median household income.
	41 What methods are used to ensure the apartments are occupied by subsequent targeted income group populations? ❍ Deed restrictions ❍ Rental restriction agreements ❍ Contracts with property owner ❍ None ❍ Other: 42 Describe methods used for disposition of the housing after the affordability controls expire? ❍ First right-of-refusal by: ❍ City/County ❍ Non-profit ❍ Other: ❍ Other (please explain): ❍ None
	43 Newly constructed rental units are marketed by: ❍ State ❍ City ❍ County ❍ Developers ❍ Realtors ❍ Other (please explain):

PERFORMANCE REVIEW	
	44 Long-term affordability requirements for rental units are monitored by: ❍ State ❍ City ❍ County ❍ Developers ❍ Realtors ❍ Third Party ❍ Other (please explain):
	45 How long is affordability required for rental units? ❍ ___________years ❍ Permanent
	46 Does the jurisdiction have a way of prolonging affordability beyond this term? ❍ Yes ❍ No If yes, please describe.
	47 Have inclusionary housing practices in your jurisdiction stimulated the production of affordable housing that would not have been built otherwise? Please explain. ❍ Yes ❍ No
	48 How has the growth of affordable housing compared to the growth of market-rate housing since inclusionary policy was implemented? (Please note if both have been stagnant or booming.)
	49 What have been the primary obstacles to implementation of inclusionary policy? ❍ Community opposition ❍ Developer opposition ❍ Local government processes ❍ Lack of funding ❍ Scarcity of land ❍ Other (please explain):
	50 How has inclusionary policy affected relations with market-rate and non-profit developers?
	51 Please describe the extent to which special groups (e.g., farm workers, seniors) are specifically targeted by inclusionary practices in your jurisdiction. 52 What changes would make the inclusionary policy more effective in promoting affordable housing development?
	53 Is the inclusionary policy for your jurisdiction available online? ❍ Yes ❍ No If yes, please indicate the web address: **If no, please attach a copy of policy.**

Please return survey to Non-Profit Housing Association of Northern California
369 Pine Street, Suite 350, San Francisco, CA 94104. Via Fax: (415) 989-8166.

APPENDIX C

ADDITIONAL READINGS & RESOURCES

Brown, Karen Destorel, *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area*, The Brookings Institution Center on Urban and Metropolitan Policy, Washington, D.C., October 2001.

Calavita, Nico, and Grimes, Kenneth, "Inclusionary Zoning in California: The Experience of Two Decades," *Journal of the American Planning Association*, American Planning Association, Vol. 64, No. 2, Chicago, Illinois, Spring 1998.

Calavita, Nico, Grimes, Kenneth, and Mallach, Alan, "Inclusionary Housing Programs in California and New Jersey: A Comparative Analysis," in *Housing Policy Debate,* Fannie Mae Foundation, Volume 8, Issue 11, Washington, D.C., 1997.

California Affordable Housing Law Project and the Western Center on Law and Poverty, *Inclusionary Zoning: Legal Issues.* Oakland: The California Affordable Housing Law Project, 2002.

California Affordable Housing Law Project and the Western Center on Law and Poverty, *Inclusionary Zoning: Policy Considerations and Best Practices.* Oakland: The California Affordable Housing Law Project, 2002.

Heller, Frederik, Field Guide to Inclusionary Zoning, National Association of Realtors, www.realtor.org/libweek.risf/pages/fg806, Washington, D.C.

Institute for Local Self-Government, *California Inclusionary Housing Reader.* Sacramento: Institute for Local Self-Government, 2003.

Johnston, Robert, and Schwartz, Seymour, *Local Government Initiative for Affordable Housing: An Evaluation of Inclusionary Housing Programs in California*. Davis: Kellogg Public Service Research Program, December 1981.

Judd, Richard, and Rosen, David Paul, "Inclusionary Housing in California: Creating Affordability Without Public Subsidy", in *ABA Journal of Affordable Housing and Community Development Law,* pp. 4-7, 1992.

Judd, Richard, and Seifel, Libby, "Creating Mixed-Income Communities: Inclusionary Housing" in book to be published by Solano Press Books, Point Arena, 2003.

Mallach, Alan, *Inclusionary Housing Programs: Policies and Practices,* New Brunswick, New Jersey, 1984.

National Housing Conference, "Inclusionary Zoning: Lessons Learned in Massachusetts," *Affordable Housing Policy Review,* Vol. 2, Issue 1, Washington, D.C., January 2002.

New Century Housing, "Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?" *New Century Housing,* Vol. 2, Issue 1 October 2000. Washington, D.C.: The Center for Housing Policy, July 2000.

Zatz, Shoshana, *Creating Affordable Communities: Inclusionary Housing Programs in California*. Sacramento: California Coalition for Rural Housing, November 1994.

WEBSITES WITH ADDITIONAL TOOLS OR RESOURCES

Policy Link: http://www.policylink.org/EquitableDevelopment/

Innovative Housing Institute: http://www.inhousing.org/

Massachusetts Housing Partnership Fund:
http://www.mhp.net/termsheets/inclusionaryzoning.pdf

Inclusionary Housing in California: 30 Years of Innovation was researched and written collaboratively by staff from the California Coalition for Rural Housing (CCRH) and the Non-Profit Housing Association of Northern California (NPH).

The California Coalition for Rural Housing (CCRH) is a statewide network of non-profit housing developers, legal service providers, and public housing agencies who support the production of decent, safe, and low-cost housing for rural and low-income Californians. CCRH advocates at all levels of government and provides technical assistance to community groups and non-profits on housing issues.

The Non-Profit Housing Association of Northern California (NPH) works to advance affordable housing as the foundation for thriving individuals, families and neighborhoods. As the collective voice of those who finance, build, operate and support affordable housing, NPH promotes the proven methods offered by the non-profit housing sector and focuses government policy on housing solutions.

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Santa Alicia Apartments, home to 84 very low- and low-income families in Irvine (Orange County), was developed by BRIDGE Housing Corporation

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