



# County of Santa Cruz

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## PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

December 7, 2001

Agenda: December 11, 2001

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, California 95060

**SUBJECT:** CONTINUED APPROVAL OF A POLICY TO REQUIRE THE APPROVING BODY MUST MAKE CERTAIN FINDINGS AS PART OF APPROVAL OF A RESIDENTIAL DEVELOPMENT THAT IS BELOW THE GENERAL PLAN DENSITY RANGE, INCLUDING INFORMATION ABOUT THE AMOUNT OF AFFORDABLE HOUSING IN EACH DISTRICT INCLUDING THE INCORPORATED CITIES.

Members of the Board:

On October 2, 2001, your Board hosted an affordable housing workshop. Following the workshop presentations, your Board directed the County Administrative Officer (CAO) and staff from various County agencies to return with a report that addressed a wide range of issues related to the current housing crisis in the County. Some of those issues included the high cost of new housing in projects approved by your Board (average price currently = \$695,000), the lack of affordable for-sale and rental units, the limited supply of available land for new development and the dire need for housing to serve special groups such as farm workers and the elderly, and the need to address the workforce housing needs.

On November 6, 2001, the CAO presented a report, entitled the Affordable Housing Action Plan, that responded to all of the issues raised by your Board on October 2. One of the central features of the proposed action plan considered by your Board involved a recommendation to adopt a policy to better ensure that properties currently zoned for residential use be developed at a density level consistent with the density range designated by the General Plan and zoning. Your Board directed staff to continue this proposal until today's agenda. In addition, in the context of your Board discussing the overall distribution of affordable units throughout the County, your Board directed staff to provide additional information regarding the number of affordable units in each supervisorial district, including affordable housing that is located in the incorporated cities. That information is also provided in this report.

## Proposed Policy Regarding Approval of Housing Development under Existing General Plan and Zoning

The Affordable Housing Action Plan addressed the issue of multi-residential zoning by presenting statistics regarding the current availability of RM zoned properties, discussing the recent history of development on these types of land and presented a number of recommendations focusing on ways that the Board could ensure that properties designated for multi-family development are developed at the densities designated by the General Plan. One of the recommendations (no. 2.a), was discussed by your Board at length. Recommendation 2.a. is as follows:

- a. Approval of a policy to require [that] the Approving Body must make certain findings as part of approval of a residential development that is below the General Plan density range and that the proposed use is consistent with the General Plan and appropriate, given the need for housing in the community, and return to the Board on December 11, 2001 with specific program recommendations;

The intent of this policy was to require the Approving Body (Zoning Administrator, Planning Commission or your Board) to consciously make a determination that the density of the proposed project was appropriate, based on General Plan policies and the need for housing in the community.

### Discussion of General Plan Density Issues

One of the issues identified in the Affordable Housing Action Plan was the fact that there are not many parcels remaining that are suitable for higher density residential development. In addition, projects have been approved in the past at densities that are not consistent with the General Plan land use designation. Recommendation No. 2.a. was proposed to ensure that the scarce multi-family residential land resources in the unincorporated area of the County be developed at densities consistent with the adopted General Plan Land Use Plan.

The 1994 County General Plan was adopted following a series of public hearings and extensive deliberations by the Planning Commission and your Board. It establishes a number of residential land use designations, each with a range of density. These land use designations were placed on properties, during the General Plan update process, based on a number of factors. These factors include terrain, access, proximity to commercial uses and transit lines, and existing development in the vicinity. One of the key findings that must be made for every development project is that the project is consistent with the General Plan, including density and all of the policies.

General Plan Policies 2.7.1, 2.8.1, 2.9.1 and 2.10.1 establish the minimum parcel sizes for the Urban Very Low Density, Urban Low Density, Urban Medium Density and Urban High Density land use designations, respectively (Attachment 2). These policies specify a range of densities for each designation. Policies 2.7.2, 2.8.2, 2.9.2 and 2.10.3 contain language

that lays the groundwork for determining the appropriate project density within each of the land use designation's density range, based on terrain, access, environmental resources, the pattern of existing land uses in the neighborhood and other factors (Attachment 2). Approval of projects requires a finding of consistency with these policies as well as all other General Plan policies and County Code standards, with certain variations as discussed below.

General Plan Policies **2.8.3**, **2.9.3** and **2.10.4** (Attachment 2) address situations where projects are not consistent with the land use designation density range. The first situation allows the County to approve a project, originally submitted with a density within the designated density range, at a density less than the lowest end of the density range if one of the following two conditions exist:

- (a) Where the proposed residential development fails to comply with the General Plan and LCP, zoning or development policies in effect at the time the application for such residential development is determined to be complete; or
- (b) Where the written findings required by Government Code Section **65589.5** have been made. (Attachment 3)

The first condition requires that the project have some inconsistency with policies or ordinances, other than density, that justify a reduction in density. Thus, if the project were in some way inconsistent with development policies or ordinances, other than density, the Approving Body could approve the project at a lower density, however, as discussed below, this would require a concurrent General Plan amendment.

The second condition addresses the case where the County wishes to reduce the density of a project for residential development which included housing for very low, low or moderate income households. In this case, the County must make the findings specified in the Government Code that address conformity with the Housing Element, concentration of lower income housing, significant adverse impacts and resource protection.

The second situation requires the County to deny any project when the planning or CEQA review demonstrates that the development within the density range will "cause significant health, safety, nuisance or other significant policy or environmental impacts that cannot be mitigated. Under CEQA, inconsistency with the General Plan is a significant impact. The policy also requires that the County initiate a General Plan amendment and rezoning to re-designate the property with an appropriate density range consistent with the unmitigatable impacts.

Finally, while the General Plan allows any property owner to file an initial application for development at a density less than the lowest end of the designated density range, these applications are, on the face of it, inconsistent with the General Plan. The appropriate action on these applications is to either deny the application and seek a General Plan amendment or for the developer to attempt to redesign the proposal so that the required density of the General Plan could be accommodated on the property.

## Proposed Action

The recommended action in the Affordable Housing Action Plan to address this issue was the development of a policy that required the Approving Body to make specific findings for a project with density less than the General Plan density range. The findings would specifically document how the project was consistent with the General Plan and appropriate given the need for housing in the community given the lower densities proposed. These findings would be in addition to the existing findings required by the County Code. As discussed above, while these findings would be useful in determining whether the particular site was appropriately designated, a project that was not consistent with the General Plan land use designation and the designated density range could not be approved unless a concurrent General Plan amendment was approved as well.

Another approach would be to develop a procedure for reviewing projects which are proposed at a density less than the lowest end of the range and, therefore, potentially inconsistent with the General Plan. We believe that this approach offers another method which is superior to current practices.

The proposed procedure would be added to the existing language to County Code Section 18.10.140 (Conformity with the General Plan and other legal requirements), as follows:

18.10.140 Conformity with the general plan and other legal requirements.

(a) All permits and approvals issued under this Chapter shall be consistent with the provisions of the adopted County General Plan. **Any** proposed permit or approval which is not consistent with the existing adopted General Plan may be issued or approved only concurrently with the adoption of appropriate amendments to the General Plan necessary to maintain consistency. "Consistent with" as used in this section means that the permits and approvals must be in harmony with and compatible with the policies, objectives, and land use programs of the General Plan.

(b) All proposals for development of property which is not consistent with the density range of the County General Plan/LCP land use designation shall be subject to review by the Development Review Group. Following completion of the Development Review Group process, the proposal and the information developed as a result of the Development Review Group process shall be referred to the Board of Supervisors for a General Plan policy determination. The Board shall determine whether the existing General Plan land use designation is appropriate or whether a different land use designation is more appropriate.

The proposed ordinance would establish a procedure that would require the Board of Supervisors to review the General Plan land use designation of particular parcels when development is proposed that is not consistent with the existing land use designation density range.

As indicated in the proposed ordinance language, the referral to the Board of Supervisors would occur following the Development Review Group (DRG) process. Staff is recommending this particular process for a number of reasons. Firstly, the DRG process is intended to gather a great deal of information regarding the property including infrastructure constraints, environmental issues, and consistency with County ordinances and General Plan policies. This information will give the Board of Supervisors a basis to conduct the policy review. Secondly, the DRG process, an advisory process, is conducted in the earliest stage of the development review process and is prior to the filing of applications for a project. This means that there are no Permit Streamlining Act, CEQA or Subdivision Map Act issues. And thirdly, because the DRG is a relatively inexpensive review (\$1,376 plus DPW charges) and the application requirements are much less rigorous than for a permit application, the applicant's investment in the project and the process will be minimized.

Following the Board's review, a determination will be made regarding whether the existing land use designation is appropriate for the site. If the Board reaffirms that the existing designation is appropriate, the applicant will know this before the permit application is filed. If the Board determines that the existing designation is inappropriate for the site, the applicant can either delay the permit application until the County completes its amendments process or include a General Plan amendment in the actual permit application for the project.

#### Affordable Housing by Supervisorial District

Your Board, on November 6, 2001, requested that staff provide additional information regarding the number of affordable units in each supervisorial district, including affordable housing that has been developed in the cities. The following table provides the requested information:

Affordable Housing: by Supervisorial District					
Supervisorial District	Total Number of Units <sup>1</sup>	Affordable Units - Unincorporated Area <sup>2</sup>	Affordable Units - Incorporated Area <sup>1</sup>	Total Number of Affordable Units	Percent of Total Units
First	20,031	1255	31	1286	6.4
Second	21,913	478	197	675	3.1
Third	19,829	13	1816	1829	9.2
Fourth	14,239	523	1160**	1683	11.8
Fifth	22,120	31	95	126	0.6
Total	98,132	2300	3299	5599	5.7

\* Includes all units with enforceably restricted income limitations.

\*\* May include some units in Second District.

1. Source: Assessor files

2. Source: County Planning Department

3. Source: Affected cities

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## Discussion and Recommendation

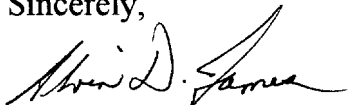
As identified in the Affordable Housing Action Plan considered by your Board on November 6, 2001, the amount of land suitable for residential development is limited. These residential properties have been designated with specific density ranges, the result of detailed analysis during the preparation and adoption of the County General Plan update in 1994. In order to prevent the development of the remaining residential properties at densities below the designated density range, the CAO recommended in the November 6 Affordable Housing Action Plan that your Board adopt a policy that would require the Approving Body to make additional findings to approve projects at densities less than the density range. This approach would promote the goals outlined in this letter.

Planning staff and County Counsel have devised an alternative that not only allows the Board of Supervisors to determine the appropriate General Plan designations for specific sites, but does so at the earliest stage of the development review process. The proposed process will provide a means for the County to maintain the integrity of its General Plan land use designations while addressing the site specific issues regarding infill development and would promote the development of for-sale and rental housing at more affordable prices.

Given the urgent need for housing for those who live and work here, we RECOMMEND that your Board:

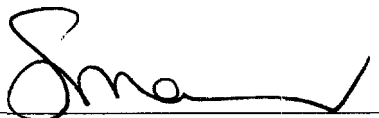
1. Accept and file this report; and
2. Approve, in concept, the proposed amendments to County Code Chapter 18.10, noted above, to add a process to review applications that are not consistent with the General Plan density range; and
3. Direct the Planning Department to process the ordinance amendments and to develop any required administrative procedures, and to return on or before April 9, 2002, for final adoption of the ordinance.

Sincerely,



Alvin D. James  
Planning Director

RECOMMENDED: \_\_\_\_\_



Susan A. Mauriello  
County Administrative Officer

- Attachments
1. Minute Order, Item No. **63**, November 6, 2001
  2. Pages 2-19 through 2-22, 1994 County General Plan
  3. Government Code Section 65589.5

# COUNTY OF SANTA CRUZ

## STATE OF CALIFORNIA



### AT THE BOARD OF SUPERVISORS MEETING

On the Date of November 6, 2001

CONSENT AGENDA Item No. 063

**ATTACHMENT 1**

(from having more stringent requirements by State Law;  
(u) directed the County Administrative Officer to  
(report back on April 9, 2002 on the feasibility of  
{working with the City of Santa Cruz, private  
, foundations and churches to finance and develop a  
:permanent homeless shelter in the County of Santa  
{Cruz; and (v) approved staff recommendations as  
:amended...

CONSIDERED report on Affordable Housing Action Plan;

Upon the motion of Supervisor Beautz, duly seconded by Supervisor Pirie, the Board, by unanimous vote, accepted and filed report; considered the Proposed Affordable Housing Action Plan and Implementation Schedule and took action on the following items:

Upon the motion of Supervisor Beautz, duly seconded by Supervisor Pirie, with Supervisor Wormhoudt and Almquist, voting "no", continued to December 11, 2001 approval of a policy to require the Approving Body must make certain findings as part of approval of a residential development that is below the General Plan density range and that the proposed use is consistent with the General Plan and appropriate, given the need for housing in the community, with an additional direction to include information on the total amount of affordable housing in each district irrespective of city developments;

Upon the motion of Supervisor Wormhoudt, duly seconded by Supervisor Beautz, with Supervisor Almquist and Campos voting "no"; substituted the language contained in Supervisor Wormhoudt's letter, of October 27, 2001, item #7, for the language in 2b and c, of the County Administrative Officer's letter of November 1, 2001, as follows: "directed Planning staff to include in the work program for the upcoming General Plan Amendment process an analysis of the potential for designating additional affordable housing sites";

Upon the motion of Supervisor Beautz, duly seconded by Supervisor Pirie, the Board, by unanimous vote, directed staff to return on December 11, 2001 with proposed recommendations to increase the inclusionary affordability requirement from 15% to 20%; directed the Chair of the Board to write to LAFCO requesting LAFCO adopt a policy requiring a minimal level of affordability for annexed properties;

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State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

# URBAN RESIDENTIAL SITING AND DENSITY ATTACHMENT 2 8

## Objective 2.7 Urban Very Low Density Residential Designation (R-UVL)

To provide areas of residential development on large lots at very low densities (1.0 to 4.3 units per net developable acre) inside the Urban Services Line which have a full range of urban services, or in Urban or Rural Services Line areas currently developed to an urban density. This designation is appropriate in areas with significant environmental constraints, or as a transition to adjacent rural density development.

### Policies

#### 2.7.1 Minimum Lot Sizes

(LCP) Allow residential development at densities equal to or less than 4.3 units per net developable acre. This density range is equivalent to 10,000 square feet to one acre of net developable parcel area per dwelling unit. Include increased density incentives for projects with a large percentage of very low or lower income housing in accordance with State law. (See section 2.1.1.)

#### 2.7.2 Specific Density Determination

(LCP) Consider terrain, adequacy of access, presence of significant environmental resources, the pattern of existing land use in the neighborhood, and unique circumstances of public value for instance, the provision of very low or lower income housing in accordance with State law, in determining the specific density to be permitted within the Urban Very Low Density Residential designation. (See chapter 8: Community Design.)

### Programs

a Establish design and development standards in the zoning ordinance for the Urban Very Low Residential designation. Determine allowed uses and zoning districts appropriate to very low density residential neighborhoods. (Responsibility: Planning Department, Planning Commission, and Board of Supervisors)

Figure 2-3 Allowable Densities for Urban Residential Land Use Designations		
Urban Designation	Density ①	Lot Size Requirements ② ③
Urban Very Low	1.0 – 4.3 units per acre	10,000 sf – 1 acre
Urban Low	4.4 – 7.2 units per acre	6,000 sf – 10,000 sf
Urban Medium	7.3 – 10.8 units per acre	4,000 sf – 6,000 sf
Urban High	10.9 – 17.4 units per acre	2,500 sf – 4,000 sf
① All densities are in units per net developable acre. Refer to the Glossary for a definition of net developable area. ② All lot sizes are square feet of net developable parcel area per unit. Refer to the Glossary for a definition of net developable area. ③ The minimum lot size for the creation of new parcels for detached units is 3,500 square feet. (see Policy 210.2)		



## Objective 2.8 Urban Low Density Residential Designation (R-UL)

## ATTACHMENT 2

- (LCP) To provide low density residential development (**4.4 to 7.2 units** per net developable acre) in areas within the **Urban Services Line** which have a **full** range of **urban** services, or in **Urban** or **Rural Services Line** areas currently developed to an urban density. Housing **types** appropriate to the Urban Low Density designation may include detached houses, duplexes, and clustered small lot detached **units** at allowable densities.

### Policies

#### 2.8.1 Minimum Lot Sizes

- (LCP) Allow residential development at densities equivalent to 6,000 to 10,000 square feet of net developable parcel area per **unit**. Increased density incentives for projects with a large percentage of very low, or lower income housing **are** also allowed in accordance **with State** law. (See section 2.1 1.)

#### 2.8.2 Specific Density Determination

- (LCP) Consider terrain, adequacy of **access**, presence of significant environmental **resources**, the pattern of existing land use in the neighborhood, and unique circumstances of public value for **instance**, the provision of very low or lower income housing in accordance **with State** law, in determining the specific density to be permitted within the **Urban Low Density Residential** designation. (See chapter 8: Community Design.)

#### 2.8.3 Development Density **Less than Lower Limit of Range**

Where an applicant **has filed** an application for residential development **within the** designated density range, do not approve the application at a density **less** than the lowest end of the designated density range, except in the following **circumstances**:

- Where the proposed residential development fails to comply with the General **Plan** and LCP, **zoning** or development policies in effect at the time **that** the application for such residential development is determined to be complete; or
- Where the** written findings **required** by Government Code Section **65589.5** have **been** made.

When planning or environmental review demonstrates **that** development in the designated density range will **cause** significant health, safety, nuisance or other significant policy or environmental impacts **that** cannot be feasibly mitigated, the proposed development **shall be denied** and the County **shall** initiate a **General Plan and LCP amendment and rezoning (as appropriate) to redesignate the parcel with density range consistent with those unmitigable impacts.**

Nothing in this policy **shall** preclude a **property** owner from voluntarily filing an initial application for development at less **than the** lowest **end** of the designated density range.

#### 2.8.4 Aptos: Parcel Size Restrictions

**Prohibit reduction in parcel size on those parcels in the Deer Park Villas area with a Salamander Protection (SP) Combining Zone District.** Cooperate with **Fish** and Game commission efforts to create a **wildlife** refuge in this area.

### Program

- Implement the Urban Low Density land use designation through the zone districts shown in section 13.10.170 of the Santa Cruz County Code.** (Responsibility: Planning Department, Planning Commission, Board of Supervisors)

**Objective 2.9 Urban Medium Density Residential Designation (R-UM) ATTACHMENT 2**

**(LCP)** To provide medium density residential development (7.3 to 10.8 units per net developable acre) in areas within the Urban Services Line (USL) served by a full range of urban services, with access onto collector or arterial streets, and location near neighborhood, community or regional shopping facilities. Housing types appropriate to the Urban Medium Density Residential designation may include: detached houses, duplexes, townhomes, mobile home parks, and small lot detached units at allowable densities.

## Policies

### 29.1 Minimum Parcel Sizes

**(LCP)** Allow residential development at densities equivalent to 4,000 to 6,000 square feet of net developable parcel area per unit. Increased density incentives for projects with a large percentage of very low or low income housing and for senior housing projects are also allowed in accordance with State law. (See section 2.11.)

### 2.9.3 Specific Density Determination

Consider terrain, adequacy of access, presence of significant environmental resources, the pattern of existing land use in the neighborhood, and unique circumstances of public value for instance, the provision of very low or lower income housing in accordance with State law, in determining the specific density to be permitted within the Urban Medium Density Residential designation. (See chapter 8: community Design.)

### 2.9.3 Development Density Less than Lower Limit of Range

Where an applicant has filed an application for residential development within the designated density range, do not approve the application at a density less than the lowest end of the designated density range, except in the following circumstances:

- (a) Where the proposed residential development fails to comply with the General Plan and LCP, zoning or development policies in effect at the time that the application for such residential development is determined to be complete; or
- (b) Where the written findings required by Government Code Section 65589.5 have been made.

When planning or environmental review demonstrates that development in the designated density range will cause significant health, safety, nuisance or other significant policy or environmental impacts that cannot be feasibly mitigated, the proposed development shall be denied and the County shall initiate a General Plan and LCP amendment and rezoning (as appropriate) to redesignate the parcel with density range consistent with those unmitigable impacts.

**Nothing** in this policy shall preclude a property owner from voluntarily filing an initial application for development at less than the lowest end of the designated density range.

## Program

- a. Implement the Urban Medium Density land use designation through the zone districts shown in section 13.10.170 of the Santa Cruz County Code. (Responsibility: Planning Department, Planning Commission, Board of Supervisors)

**Objective 2.10 Urban High Density Residential Designation (R-UH)**

- (C)** To provide higher density residential development (10.9 to 17.4 units per net developable acre) in areas within the ~~Urban Services Line (USL)~~. ~~These~~ areas shall be located where increased density can be accommodated by a ~~full~~ range of urban services and in locations near collector and arterial ~~streets~~, transit service, and neighborhood, community, or regional shopping facilities. Housing ~~types~~ appropriate to the Urban High Density designation may include: small lot detached houses, “zero lot line” houses, duplexes, townhomes, garden apartments, mobile home parks, and congregate senior housing.

**Policies****2.10.1 Minimum Parcel Sizes**

Allow residential development ~~at~~ densities equivalent to **2,500 to 4,000** square feet of net developable parcel area per **unit**. Include increased density incentives for projects with a large percentage of very low or lower income housing and for senior housing projects in accordance with **State law**. (~~See~~ section 2.11)

**2.10.2 Minimum Lot Size**

- (1.CP)** Establish a minimum lot ~~size~~ of 3,500 square feet of net developable parcel area per residential parcel for ~~the~~ creation of new ~~lots~~ in detached unit residential subdivisions.

**2.10.3 Specific Density Determination**

- (1.CP)** Consider terrain, adequacy of ~~access~~, presence of significant environmental resources, ~~the pattern~~ of existing land use in ~~the neighborhood~~, and unique circumstances of public value for ~~instance~~, ~~the~~ provision of very low or lower income housing in accordance with **State law**, in determining the specific density to be permitted within the Urban High Density Residential designation. (See chapter 8: Community Design.)

**2.10.4 Development Density Less than Lower Limit of Range**

Where an applicant ~~has filed an~~ application for residential development ~~within~~ the designated density range, do not approve ~~the~~ application ~~at a density less than~~ the lowest end of the designated density range, except in the following ~~circumstances~~:

- (a) Where ~~the proposed~~ residential development fails to comply with ~~the~~ **General Plan** and **LCP**, zoning or development policies in effect ~~at the time that the application for such residential development is determined to be complete; or~~
- (b) Where ~~the written findings~~ required by Government Code **Section 655895** have been made.

When planning or environmental review demonstrates that development in the designated density range will cause significant health, safety, nuisance or ~~other~~ significant **policy** or environmental ~~impacts~~ that cannot be feasibly mitigated, the proposed development ~~shall be denied~~ and the County ~~shall~~ initiate a **General Plan and LCP amendment and rezoning (as appropriate) to redesignate the parcel with density range consistent with those unmitigable impacts.**

Nothing in this policy shall preclude a property owner from voluntarily filing an initial application for development at less than the lowest end of ~~the~~ designated density range.

**2.10.5 Live Oak: Pacific Family Mobile Home Park**

Recognize the Pacific Family Mobile Home Park (025-161-13) as existing residential ~~area~~ and allow a density bonus to increase the park from ~~34 to 37 spaces~~ subject to obtaining all appropriate development permits.

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65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to very low, low- or moderate-income households or condition approval in a manner which renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income

**ATTACHMENT 3**

households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Affordable to very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) "Area median income" shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code.

The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(4) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of very low, low-, or moderate-income households without properly making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The

**ATTACHMENT 3**

court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(1) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure, all or part of the record may be filed (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.