



COUNTY OF SANTA CRUZ

HOUSING ADVISORY COMMISSION

701 OCEAN STREET, SUITE 310, SANTA CRUZ, CA 95060
(831) 454-3290 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, DIRECTOR

HOUSING ADVISORY COMMISSION

DRAFT MINUTES

Wednesday, **November 3, 2004**

4:00 - 5:30 p.m.

Aptos-La Selva Fire Protection District
Downstairs Conference Room
6934 Soquel Drive, Aptos, CA

1. CALL TO ORDER, ROLL CALL, AGENDA CHANGES

Acting Chairperson Guth formally called the meeting to order at 4:00 p.m.

Commissioners Present:	Carney, Guth, Melgoza, Pomper, Schiffrin Sprague, and Sweet
Commissioners Excused:	Averill and Stewman
Commissioners Absent:	Damon
Staff Present:	Erik Schapiro and Carolyn Watanabe
Public Present:	None
Agenda Changes:	None

2. APPROVAL OF MINUTES

A. It was moved by Commissioner Schiffrin, seconded by Commissioner Sprague and unanimously passed to approve the Minutes of the September 1, 2004 meeting with the following correction: Item 7.A. should read, "After a discussion of whether there should be a thirty-day stay limit per State park, or for all parks combined, it was agreed that this was not an issue that the Commission wished to pursue. There was a discussion whether the HAC wanted to undertake an assessment of the as-built density by preparing a parcel-by-parcel database. No further action was taken."

3. ORAL COMMUNICATIONS FROM THE PUBLIC: None

4. STAFF REPORTS AND ANNOUNCEMENTS

- A. It was moved by Commissioner Schiffrin, seconded by Commissioner Pomper and unanimously approved that Chairman Guth would prepare a letter of appreciation to Mary Thuerwachter for the Commissioners' signature.
- B. Commissioner Sweet announced that CFSC, an arm of Santa Cruz Community Counseling Center, has been awarded a Department of Housing and Urban Development 811 grant to build Grace Commons, a twelve-unit development at Soquel Drive and Cayuga Street.
- C. Commissioner Schiffrin announced that two housing bills were passed by the State, and asked for a summary at the next meeting.

5. CONSENT ITEMS - None.

HOUSING ADVISORY COMMISSION MEETING MINUTES

September 1, 2004

Page 2 of 2

6. NEW BUSINESS

- A. Commissioners reviewed the agenda format and made suggestions for changes for staff to follow up on.
- B. It was moved by Commissioner Sprague, seconded by Commissioner Sweet and passed with one no vote to agendaize the Farmworker Housing Pilot Program at the next meeting to discuss the program, barriers and strategies.
- C. It was moved by Commissioner Sweet, seconded by Chairman Guth and passed unanimously to hold the Measure J units marketing discussion until the next meeting.

7. OLD BUSINESS - None

8. ITEMS INITIATED BY THE HOUSING ADVISORY COMMISSION -None

9. MEETING ADJOURNED AT 5:10 P.M

Staff Analysis of SB 1818

SB 1818 (Hollingsworth) was signed into law by the Governor on September 29, 2004 and will become effective on January 1, 2005. This measure replaces existing density bonus law (which grants a flat density bonus for eligible projects) with a complex set of sliding scales which provide for increased density bonuses for projects with a greater number of affordable units and greater level of affordability. Additionally SB 1818 also increases current density provisions from a maximum of 25% to a maximum of 35%, requires cities and counties to increase concessions or incentives from 1 to 3; and creates a new density bonus for land donations. Planning Staff has prepared the following matrix that identifies existing density bonus provisions and details the key provisions of SB 1818.

Comparison Between Existing and New Density Bonus Law			
Existing Density Bonus Law			
Percent Density Bonus*	For	Or for	Or for
25%	20% lower income	10% very low income units	50% senior units
10%	Condo/ PUD with 20%; moderate income units		
New Density Bonus Law (SB 1818) - effective January 1, 2005			
Density Bonus Calculations			
Percent Density Bonus*	Project Type	Comments	
20%	50% senior units	This is a reduction of the previous requirement	
20%; + 1.5% density bonus; max 35%	10%; + 1% percent lower-income units	A 100 unit project with 10 lower income units can build 20 additional units; for every additional lower income unit (up to 35% of the total units), the project can build an additional 1.5 units	
20%; + 2.5% density bonus; max 35%	5%, + 1% very-low-income units	A 100 unit project with 5 very low income units can build 20 additional units; for every additional very low income unit (up to 35% of the total units), the project can build an additional 2.5 units	
5%; + 1% density bonus; max 35%	Condo/ PUD with 10%; + 1%; moderate-income units**	A 100-unit condo/PUD project with 10 moderate-income units can build 5 additional units; for every additional moderate-income unit (up to 35% of the total units), the project can build one additional unit.	
Incentives /Concessions***			
Number of Concessions	For	Or For	Or For
One	10% lower-income units,	5% very-low-income units,	Condo/ PUD 10% mod-income units
Two	20% lower-income units	10% very-low-income units	Condo/ PUD 20% mod-income units
Three	30% lower-income units	15% very-low-income units	Condo/ PUD 30% mod-income units
On-Site Parking Ratios			
<u>No. bedrooms</u>	<u>Existing law</u>	<u>AB 1818</u>	
0-1 bedroom:	two spaces (both sfd and mfd)	one space	
2-3 bedrooms:	three for sfd; 2.5 for mfd	two spaces	
4 bedrooms:	three (both sfd and mfd)	two and one-half spaces	
> 4 bedrooms:	for each add'tl bedroom; 1 sp. for sfd; .5 for mfd	one-half p/each add'tl bedroom	
** Additional units permitted above and beyond the maximum no. allowed under the zoning ordinance applicable to the project. Deletes previously required 10-year period of continued affordability for moderate-income units in condo projects. Moderate income requirements only apply to the initial buyer and the units could be resold at a full market value			
*** Examples include a reduction or modification of site development standards or architectural design requirements; reduced setback requirement; reduced parking standards, etc.			

2

Page

relating to the provision of affordable housing and in the density bonus law.

Assembly Amendments make numerous changes without altering the intent.

ANALYSIS : Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide a product that is affordable to low and even moderate income households. Public subsidy is often required to fill the gap on affordable units. Density bonus law, however, allows public subsidies to be reduced or even eliminated by allowing a developer to include more total units in a project than would otherwise be allowed by the zoning in order to spread the cost of the affordable units over the project as a whole. The idea is to give developers regulatory incentives in place of additional subsidy for providing affordable housing.

Under existing law, cities and counties are required to grant a density bonus and at least one other specified incentive, or other housing incentives of equivalent value, to a developer who agrees to construct an affordable housing development of five or more units unless the local government makes a finding that the bonus and incentives are not needed to achieve affordability. To qualify for the benefits of this provision, a proposed housing development must contain at least 10 percent of the units affordable to very low income households, 20 percent of the units affordable to low income households, 20 percent of the units in a condominium development affordable to moderate income households, or 50 percent of the units reserved for seniors.

The density bonus must be at least 25 percent over the existing maximum density for the site, except that the density bonus for condominium projects with 20 percent of the units affordable to moderate income households is 10 percent. The additional incentive the local government must provide may include any of the following:

- 1.A reduction in site development standards.
- 2.A modification of zoning code requirements (including a

□

SB 1818

Page

3

reduction in setbacks, square footage requirements, or parking spaces, or architectural design requirements that

5

exceed the minimum building standards)

3. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development, and if such nonresidential uses are compatible with the project.
4. Other regulatory incentives or concessions proposed by the developer or the city or county that result in identifiable cost reductions.

A density bonus does not require, in and of itself, a general plan amendment, zoning change, or other discretionary approval.

This bill makes various changes in the law relating to the provision of affordable housing and density bonuses: Specifically, this bill:

1. Lowers the number of housing units required to be provided at below market rate in order to qualify for a density bonus as follows:
 - A. From 20 percent to 10 percent of the total units of a housing development, for lower income households.
 - B. From 10 percent to five percent of the total units of a housing development, for very low income households.
 - C. From 50 percent of the total units for seniors to any senior citizen housing development as allowed under existing law.
 - D. From 20 percent to 10 percent of the units in a condominium development, for moderate-income households.
2. Lowers the density increase from 25 percent to 20 percent for low, very low or senior housing and lowers

□

SB 1818

Page

4

to five percent for moderate income, with respect to the number of extra units that may be included over the otherwise maximum allowable residential density under the local zoning ordinance.

3. Requires that the density bonus increase incrementally according to the following:

6

- A. For each one percent increase above 10 percent for lower income households, the density bonus shall increase by 1.5 percent to a maximum of 35 percent.
 - B. For each one percent increase above five percent for very low income households, the density bonus shall increase by 2.5 percent to a maximum of 35 percent.
 - C. For each one percent increase above 10 percent for moderate-income households, the density bonus shall increase by one percent to a maximum of 35 percent.
4. Requires local governments to provide a developer the following number of incentives or concessions if below market rate units are included within the project:
- A. One incentive or concession if the project includes at least 10% of the total units for low-income, or five percent very low-income, or 10 percent for moderate-income households.
 - B. Two incentives or concessions if the project includes at least 20 percent of the total units for low-income, or 10 percent very low-income, or 20 percent for moderate-income households.
 - C. Three incentives or concessions if the project includes at least 30 percent of the total units for low-income, or 15 percent very low-income, or 30 percent for moderate-income households.
5. Requires that the local government ensure that the initial occupants of the moderate-income units are actually moderate income.

□

SB 1818
Page

5

- 6. Allows, upon sale of the unit, the seller to keep the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
- 7. Provides that the local government shall recapture its proportionate share of appreciation, which shall be used within three years for promotion of affordable homeownership.
- 8. Provides a 15 percent density bonus to the developer of any market rate housing project who donates land to a local government that could accommodate housing for very

7

low income households equal to at least 10 percent of the number of units in the market rate development. For each one percent increase above the 10 percent the density bonus shall increase by one percent up to a maximum combined mandated density increase of 35 percent.

9. Provides that to be eligible for the bonus allowed above, all of the following conditions must be met:
- A. The applicant must donate and transfer the land no later than the approval of the final subdivision map, parcel map or development application.
 - B. The land being donated is suitable to accommodate at least 10% of the number of residential units of the proposed development.
 - C. The transferred land is at least one acre or can accommodate 40 units, has the appropriate general plan designation, is appropriately zoned for affordable housing, can be served by infrastructure, and the land has all the necessary permits and approvals.
 - D. The land is subject to deed restrictions ensuring continued affordability.
 - E. The land is donated to the local agency or to a housing developer approved by the local agency.
 - F. The transferred land shall be either within the

SB 1818
Page

6

boundary or mile of the proposed development.

- 10. Expands the definition of "housing development" to include a subdivision, or a planned unit development, or condominium project.
- 11. Requires that incentives or concessions offered by the local government result in identifiable, financially sufficient, and actual cost reductions.
- 12. Clarifies that local governments may still grant density bonuses greater or lower than what is provided under these provisions.
- 13. Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however request

8

additional parking incentives or concessions):

- A. Zero to one bedrooms: one onsite parking space.
- B. Two to three bedrooms: two onsite parking spaces.
- C. Four or more bedrooms: two and one-half parking spaces.

Comments

_____ To help address the affordable housing shortage, the Legislature enacted the density bonus law to encourage development of more low and moderate income housing units. Under existing law, a local government is required to grant a density bonus or other housing incentive or concession of equivalent value to a developer who agrees to construct housing that is affordable for persons of very low or low income, unless the city finds that the density bonus or housing incentive or concession is unnecessary for specified reasons.

According to the sponsors of this bill, density bonus law could potentially play a stronger role in meeting our state's housing needs, but the law is not as effective as it could be and needs to be strengthened.

_____ SB 1818
Page

7

Nothing in this bill affects or otherwise seeks to preempt local ordinances which may require the inclusion of affordable (low, very low or moderate-income) units within a housing development.

Arguments in Support

_____ Added Flexibility . According to the sponsors, California Association of Realtors, California Rural Legal Assistance Foundation and Western Center on Law and Poverty, this bill increases the flexibility and usefulness of density bonus law by both reducing the minimum percentage of targeted units needed to obtain a density bonus and by increasing the amount of density bonus that can be obtained when the percentage of targeted units is increased. Current law provides a flat **25** percent density bonus if the applicant includes 20 percent low, 10 percent very low or 50 percent senior housing in the development and a flat 10 percent density bonus if the applicant includes 20 percent moderate-income units in a condominium development. The sponsors also assert that this bill makes the density bonus more accessible by reducing those percentages to 20 percent

9

density bonus for 10 percent low, five percent very low or senior housing and a five percent density bonus for 10 percent moderate. The bill also expands density bonus law by incrementally increasing the amount of the density bonus, up to a maximum of 35 percent, if the applicant increases the percentage of targeted units.

Current law limits the moderate-income density bonus to condominium developments. This bill expands that to include moderate income planned unit developments. The bill, according to the sponsors, adds flexibility to the law by requiring the first occupant of such units to be moderate income rather than requiring a 10-year term of affordability by moderate-income households.

Cost Reductions . Current law requires local governments to provide applicants for density bonuses with incentives and concessions in addition to a density bonus, but the law does not quantify the value of the incentives and concessions that must be offered. This bill requires that the incentives and concessions "result in identifiable, financially sufficient and actual cost reductions."

L

SB 1818

Page

8

Incentives for Land Donation . To further expand the usefulness of density bonus law, say supporters, this bill creates a new land donation density bonus that provides an incentive for donation of land to local governments for affordable housing. Under the bill, for example, if an applicant for a 1,000 unit development donates five acres of land within that development sufficient to permit construction of 100 very low- or low-income units, the applicant would be entitled to a 15 percent density bonus, or 150 units. The land donation density bonus could be increased incrementally up to a maximum of 35 percent if the applicant increases the amount of land donated, and could be used in conjunction with the general density bonus, up to a combined maximum of 35 percent.

Arguments in Opposition

Costs . opponents express concerns over the costs implied by this bill. They state that the bill fails to provide sufficient funding to pay up front for the costs of revising existing local density bonus ordinances.

Bonus is too High . Local governments also object to the high-density bonuses in relation to the small percentage of affordable housing. They claim that a 20 percent density bonus is too high given what is provided in affordable

10

units has been reduced in half from the original density bonus law requirements.

Mandated Concessions . The opponents note that the bill includes a new mandate requiring the city and county to grant one, two or three concessions, depending on the amount of affordable housing provided or risk being sued by the developer. It also removes a provision of existing law that allows a city or county to make a written finding, based on substantial evidence that the concession is not necessary. This will require, according to the opposition, local governments to give the developer whatever the developer wants.

Price Controls on Moderate-Income Housing . The local governments object to having to manage price controls on sale of moderate-income condominiums. They state that

□

SB 1818

Page

9

existing law regarding the continued affordability of the moderate-income units for 10 years should remain. It allows local agencies to choose how to maintain affordability of moderate-income units rather than specifying a method requiring a resale share.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 5/12/04) (Unable to reverify at time of writing)

California Association of Realtors (co-source)
California Rural Legal Assistance Foundation (co-source)
Western Center on Law and Poverty (co-source)
Agora Group, The, Goleta
Beacon Housing, Lo8 Angeles
Bet Tzedek Legal services, Los Angeles
Cabrillo Economic Development Corp, Saticoy
California Affordable Housing Law Project, Oakland
California Church IMPACT
California Labor Federation, AFL-CIO
California Legislative Council for Older Americans
California Partnership, Downey
California Reinvestment Coalition, San Francisco
California Rural Legal Assistance Foundation,
Center for Community Advocacy, Salinas
Central City SRO Collaborative. San Francisco
Chicano Consortium, Sacramento
Civic Center Barrio Housing Corporation, Santa Ana
Coalition for Economic Survival, Los Angeles
Community Housing Improvement Program, Chico

11

Congregations Building Community, Modesto
 Council of Churches of Santa Clara County, Cupertino
 East Palo Alto Council of Tenants, East Palo Alto
 Emergency Housing Consortium, San Jose
 Enterprise Foundation, Los Angeles
 Esperanza Community Housing Corporation, Los Angeles
 Fair Housing Council of Riverside , Riverside
 Father Joe's Villages, San Diego
 First Community Housing Inc, San Jose
 Fisher Sehgal Yanez Architects Inc, Los Angeles
 Fresno Interdenominational Refugee Ministries, Fresno
 Fresno West Coalition for Economic Development, Fresno

SB 1818

Page

10

Golden State Mobilehome Owners League, Chapter 24, East Palo Alto
 Gray Panthers California
 Greenlining Institute, The, Oakland
 Hillview Mental Health Center Inc, Pacoima
 Housing Leadership Council of San Mateo County, Redwood City
 Housing Rights Committee of San Francisco, San Francisco
 Human Rights/Fair Housing Commission of the City and County of Sacramento
 Inclusive Homes Inc, Los Angeles
 Inquilinos Unidos, Los Angeles
 Jericho
 La Raza Centro Legal Inc, San Francisco
 Loaves and Fishes, Sacramento
 Los Angeles Housing Law Project, Los Angeles
 Los Angeles Housing Partnership Inc, Los Angeles
 Martha's Village and Kitchen, Indio
 Mental Health Advocacy Services Inc, Los Angeles
 Mid-Peninsula Housing Coalition, Redwood City
 Neighborhood Housing Services of Orange County, Anaheim
 New Directions Inc, Los Angeles
 Nightingale Manor, Palm Springs
 O.N.E. Company, Los Angeles
 Orange County Community Housing Corporation, Santa Ana
 Partners in Housing Inc, Ventura
 People of Progress, Redding
 Planning for Elders, San Francisco
 Protection and Advocacy, Sacramento
 Public Advocates, San Francisco
 Public Law Center, Santa Ana
 Rubicon Programs, Inc, Richmond
 Rural Communities Housing Development Corp, Ukiah
 Sacramento Neighborhood Housing Services, Sacramento
 Saint Vincent de Paul Village, San Diego
 San Francisco Homeless Senior Task Force, San Francisco
 Sanders and Associates, Barbara, Oakland

12

Santa Cruz Affordable Housing Advocates, Santa Cruz
 Senior Action Network, San Francisco
 Shelter Inc of Contra Costa County, Martinez
 Shelter Partnership Inc, Los Angeles
 Skid Row Housing Trust , Los Angeles
 Southern California Association of Non-Profit Housing, Los Angeles

□

SB 1818

Page

11

Southern California Housing Development Corp, Rancho Cucamonga
 Southern California Indian Center, Inc., Fountain Valley
 Strategic Actions for a Just Economy, Los Angeles
 Tenderloin Housing Clinic, San Francisco
 Valley Housing Foundation, Pacoima
 Vietnam Veterans of California - Sacramento Veterans Resource Center, Sacramento
 W.O.R.K.S., Los Angeles
 West Hollywood Community Housing Corp
 Western Center on Law and Poverty
 WRJ Group Inc, Fountain Valley

OPPOSITION : (Verified 5/12/04)

American Planning Association
 California State Association of Counties
 League of California Cities

ASSEMBLY FLOOR :

AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Keene, Kehoe, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Maddox, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, Nunez
 NOES: Hancock, Maldonado, Nakano, Yee
 NO VOTE RECORDED: Daucher, Firebaugh, Goldberg, Jackson, Koretz, Lowenthal, Pavley, Simitian

NC:cm 8/25/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** P7 ****

13

Changes to State Density Bonus Law
SB 1818 (Chapter 928/Statutes of 2004)
(Changes indicated in strikeouts and underlines)

Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for ~~proposes~~ a housing development within or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this ~~section~~ chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall ~~either grant a density bonus and at least one of the incentives or concessions described identified in subdivision (d) (j) or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit~~, when the applicant for the housing development seeks and agrees ~~or proposes~~ to construct at least any one of the following:

(1) ~~Ten~~ Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) ~~Five~~ Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) ~~A senior citizen~~ Fifty percent of the total dwelling units of a housing development for qualified residents as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) ~~Ten~~ Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil-Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

~~The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).~~

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure ~~continued affordability that, the initial occupant~~ of the moderate-income units that are directly related to the receipt of the density bonus ~~for 10 years if the housing is~~ in a condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision (k) of, Section 1351 of the Civil Code are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) ~~(1)~~ The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) (2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which 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.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 20 ~~25~~ percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the

applicant to the city, county, or city and county. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 Percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent ~~10, 20, or 50 percent~~ of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 20 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 5 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(5) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(6) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) (i) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or a planned unit development or condominium project, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) (j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking

spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions. This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

~~(l) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, county, or city and county may, at its discretion, grant more than one density bonus.~~

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

~~A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001-02 Regular Session of the Legislature.~~

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to means any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded UP to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

FAIR SHARE
 Summary Only
 (No marked copy available)

AB 2158
 Page 1

CONCURRENCE IN SENATE AMENDMENTS

AB 2158 (Lowenthal)
 As Amended August 17, 2004
 Majority vote

/ASSEMBLY:	30-0	(May 17, 2004)	ISENATE:	38-0	(August 23, 2004)
------------	------	----------------	----------	------	-------------------

Original Committee Reference: L. GOV.

SUMMARY : Enacts consensus-based changes proposed for the regional housing needs allocation (RHNA) process by the Housing Element Work Group (HEWG).

The Senate amendments :

- 1) Delete a provision directing that the determination of RHNA should be coordinated with regional transportation planning to the extent practical.
- 2) Delete provisions designating the Department of Housing and Community Development (HCD) as the default agency where there is no council of governments (COG) to perform the specified function.
- 3) Delete a procedure that requires that a subregion provide the COG with its allocation of regional housing needs within 60 days of the issuance of the proposed final allocation plan, and that the COG review and acts on this submission based on specified criteria.
- 4) Delete provisions allowing a COG to reduce a county's share of RHNA if the county and city have certified updated housing elements, or if one or more cities within the county agree to increase their share of RHNA to offset the reduction.
- 5) Provide that the provisions of the bill will only become operative if AB 2348 (Mullin) is enacted and becomes operative on or before January 1, 2005.
- 6) Make other minor technical and clarifying changes.

AS PASSED BY THE ASSEMBLY , this bill:

□

22

- 1) Required HCD to determine existing and projected housing needs at least two years prior to the scheduled revision of the housing element, requires either the local COGS or HCD to provide final numbers at least one year prior to the revision, and authorizes extensions to these deadlines of up to 60 days to incorporate relevant new data.
- 2) Required the plan to be consistent with increasing the mix of housing types and equitable distribution of allocations for low- and very-low income households, promoting infill development, promoting jobs-housing balance, and avoiding disproportionate allocation of housing need for a particular income level.
- 3) Exempted the determinations made by HCD, a COG, or a city or county from the California Environmental Quality Act (CEQA).
- 4) Set forth a method to be used by HCD in determining existing and projected regional housing need based upon data from the Department of Finance, regional population forecasts used to prepare regional transportation plans, and consultation with COGS.
- 5) Required HCD and COGs to consult at least 26 months before the scheduled housing element revision and prior to HCD making its determination, and requires COGs to provide specified data on local population, after which HCD may accept or reject these data, or modify its own assumptions or methodology.
- 6) Required HCD, after consulting with COGs, to determine the regional housing need based on the methodology developed by the previously noted process, and provides a mechanism and bases by which a COG may object to HCD's determination.
- 7) Required the determination of regional housing need made by HCD in consultation with COGs to be coordinated to the extent possible with regional transportation planning performed by COGs, and provides an alternative mechanism for determining regional housing need based on a regional transportation plan, under specified conditions.
- 8) Authorized two or more cities and a county or counties to form a subregional entity for the purpose of allocation of the subregion's housing need, subject to specified conditions and

□

requirements.

23

- 9) Required each COG to develop, at least two years prior to scheduled housing element revisions, a methodology for distributing the RHNA to cities, counties, or subregions, subject to the same consistency requirements found in #2) above.
- 10) Required a COG to survey its member jurisdictions, to use this information to the extent possible in developing its methodology, to provide for public participation and access to the development of the distribution methodology, to distribute the proposed methodology to all jurisdictions and specified members of the public, and to provide for at least one public hearing.
- 11) Required each COG to include in its development of a distribution methodology each member jurisdiction's existing jobs-housing balance, opportunities and constraints to housing development facing member jurisdictions (including lack of water or sewer capacity, land availability, land protected from urban development under state and federal programs, and county policies to protect farmland), the distribution of household growth assumed for purposes of regional transportation plans, market demand for housing, agreements between counties and cities to direct growth, loss of units in assisted housing developments, high housing costs burdens, and farmworker housing needs, and to explain in writing how each of these factors was incorporated into the methodology.
- 12) Prohibited any ordinance, policy, voter-approved measure that directly or indirectly limits residential building permits from serving as a justification for a reduction in the jurisdiction's allocation.
- 13) Required a COG or subregion to identify any existing incentives available to local governments willing to take more than their share of housing.
- 14) Required each COG to distribute a draft allocation to its member jurisdictions at least 18 months prior to the next scheduled housing element revision, authorizes any local government or subregion to request a revision of its share of the allocation within 60 days of receipt, requires a COG to act on the request within 60 days

U

 AB 2158

Page 4

of receipt from the local government, and provides for an appeals process if a COG does not accept the request.

- 15) Required a COG to issue a proposed final allocation within 45 days of the end of the designated appeals period, in which it

24

shall adjust allocations based on the appeals process, creates a mechanism for subregions to provide their allocation of housing needs, and requires a COG to hold at least one public hearing on the proposed final allocation.

- 16) Created a RHNA process for cities and counties without a COG in which HCD takes on the substantive role of a COG for purposes of RHNA.
- 17) Directed HCD to not limit its consideration of land suitable for housing or urban development to the existing zoning ordinances and land use restrictions of a city or county that is not a member of a COG, but to consider the potential for housing and urban development under alternative zoning and land use restrictions.
- 18) Required HCD to reduce a county's RHNA share, both before and after the due date for the revised housing element, based on specified criteria concerning the transfer of shares between the county and cities within the county.
- 19) Created a mechanism for reallocation of RHNA shares in the event of the incorporation of a new city.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis, negligible state and local fiscal impact. Streamlines the RHNA process, but does not fundamentally change state or local activities.

COMMENTS : In the beginning of May 2003, the Legislature established a moratorium on housing element related bills to allow HEWG to bring back recommendations for reform during the 2004 session. HEWG included representatives from HCD, cities, counties, COGs, planners, the for-profit and nonprofit building industry, housing advocates, and business groups. It agreed to identify priority issues and work toward developing consensus on reforms, including the objective of preparing specific legislative language. HEWG has reached consensus on language reforming the regional housing needs process, land inventory, and "by-right" development. This bill currently incorporates

AB 2158
Page 5

changes to the regional housing needs process upon which consensus has been reached by HEWG.

Analysis Prepared by : J. Stacey Sullivan / L. GOV. / (916)
319-3958

FN: 0007776

25

Housing Element

AB 2348
Page 1

CONCURRENCE IN SENATE AMENDMENTS
 AB 2348 (Mullin)
 As Amended August 23, 2004
 Majority vote

ASSEMBLY:	78-0	(May 24, 2004)	ISENATE:	38-0	(August 26, 2004)
-----------	------	----------------	----------	------	-------------------

Original Committee Reference: L. GOV.

SUMMARY : Makes numerous changes to the provisions of housing element law pertaining to land inventory, adequate sites, and permitted use, based on the work of the Housing Element Work Group (HEWG) .

The Senate amendments :

- 1) Specify that "use by right," as defined, does not exempt any subdivision of the relevant sites from local ordinances implementing the Subdivision Map Act.
- 2) Delete a provision making requirements for identifying sites for farmworker housing applicable commencing with the next revision of housing elements after the enactment of the bill.
- 3) Provide that the provisions of this bill shall only become operative if AB 2158 (Lowenthal), pending in the Senate, is also enacted and becomes operative on or before January 1, 2005.
- 4) Make other minor technical and clarifying changes.

AS PASSED BY THE ASSEMBLY , this bill:

- 1) Revised the criteria for the inventory of sites that can be developed for housing within the planning period of the general plan to accommodate that portion of a city's or county's share of the regional housing need for all income levels, as specified, and expands the relocation assistance available to persons displaced by sites identified for substantial rehabilitation.
- 2) Required the Department of Housing and Community Development

□

AB 2348

Page 2

(HCD) to evaluate a proposed or adopted housing element for substantial compliance with governing state law.

- 3) Revised the requirements that may be imposed on a development project that contributes to meeting the regional housing need.
- 4) Allowed a city, county, or city and county to reduce its share of the regional housing needs by 15% for each income group under prescribed conditions.

FISCAL EFFECT : According to the Assembly Appropriations' Committee analysis, there are:

- 1) Unknown state-reimbursable mandated costs, probably in excess of \$150,000 annually, for expanded relocation assistance requirements on local governments.
- 2) Minor, absorbable workload costs to HCD.

COMMENTS : Housing element law requires local government to **plan** to appropriately zone sites to accommodate their share of the regional housing need. Current law requires housing elements to include a land inventory identifying sites suitable for residential development compared with the local government's zoned residential development capacity with its share of the regional housing need by income level. This bill reflects HEWG's recommended changes to the land inventory and adequate sites requirement to provide greater certainty in the development process and provide local governments with greater clarity and certainty about the statutory requirements. This bill will also increase the usefulness and value of the housing element as a tool to facilitate the residential development process. According to HEWG, this bill will improve effectiveness of housing element as a tool to:

- 1) Facilitate housing development.
- 2) Provide clarity and transparency to current requirements.
- 3) Promote efficient use of land resources and provide local government with certainty regarding state review of land inventory of housing element.
- 4) Provide clarity about the relationship between the land

AB 2348

Page 3

inventory and adequate sites program.

27

- 5) Increase the effectiveness of provision in current law that allows local governments to get "credit" for rehabilitation when identifying adequate sites.
- 6) Strengthen existing requirements that local government make sites available "by-right" if their land inventory does not identify existing sites commensurate with the regional housing need.

The concept of "permitted use" or "use by right" is an important means to greater certainty in the development application process. However, greater clarity is needed to ensure effective implementation. This bill changes Housing Element Law to establish minimum densities for multifamily development on the identified sites and to strengthen the definition of "use by right" applicable to such sites. Other areas of existing planning and zoning law limit the ability of local jurisdictions to disapprove, or burden with undue conditions, housing development proposals. This bill repeals the ability of local jurisdiction to reject a project on the grounds that the project would cause a disproportionate concentration of lower-income households, and states that no finding based on inconsistency with planning or zoning requirements can be used to reject an affordable project on a site identified for affordable lower-income housing development in the local housing element.

Density Bonus Law requires that the developer of a residential project, which meets specified affordability criteria, be granted an increase equal to at least **25%** over the existing applicable density. In response to concerns that the imposition of local parking requirements severely hampers the utilization of the law, HEWG proposes the adoption of maximum parking standards applicable to density bonus projects.

Analysis Prepared by : J. Stacey Sullivan / L. GOV. / (916)
319-3958 FN: 0008720

Changes to State Housing Element Law
AB 2348 (Chapter 724, Statutes of 2004)

(Changes indicated in strikeouts and underlines)

SECTION 1: Section **65583** of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) *An* assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a ~~qualification~~quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) **An** analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. ~~The department shall adopt regulations to implement this paragraph, including parts of~~

~~(7) An analysis of this paragraph determined by the department or any other state agency or a court to be a reimbursable state mandate. For any revision of a housing element required pursuant to Section 65588 that occurs subsequent to the adoption of those regulations, any actions undertaken by the locality beyond those specified in the regulations are at that locality's option and are not required by this section. (7) At the option of local government, an analysis of~~ opportunities for energy conservation with respect to residential development.

(8) **An** analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) ~~(A) Identify adequate sites which~~ actions that will be made taken to make sites available through during the planning period of the general plan with appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, to domestic water supply, and septic tanks and Wells, needed to facilitate and encourage the development of accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including- multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and- transitional housing ~~meet the community's housing goals as identified in subdivision (b).~~

~~(i) (A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient identify sites with zoning that permits owner-occupied and rental multifamily residential use by can be developed for right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low income households. (ii) housing within the planning period pursuant to subdivision (h) of Section 65583.2.~~

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households. ~~(B) For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.~~

~~(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.~~

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, **sex**, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a).

The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions **and** the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to ~~Part~~ 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SECTION 2. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with ~~state law~~ this article, may allow a city or county to identify- adequate sites, as required pursuant to Section 65583, by a ~~variety of~~ of methods, including, but not limited to, redesignation of property ~~to~~ to a more intense land use category and increasing the density- allowed within one or more categories. The department may also ~~allow a city~~ a city or county to identify sites for second units based on the- number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the- need for these units in the community, the resources or incentives- available for their development, and any other relevant factors, as- determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by- this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 ~~if where~~ the community includes- in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2).

Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) ~~At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.~~ At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code, or as otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, ~~except that if the period is less than 20 years,~~

~~only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.~~

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of ~~16~~four or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at ~~a cost an~~ affordable housing cost to either of the following:

(I) Low-income households. if the unit will be made affordable to low-income households. (II) Very low income households. if the unit will be made affordable to very low income-households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households, or if the acquired unit is occupied, the local government has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) ~~The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.~~ (v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than ~~30~~55 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with ~~committed~~ assistance from the city or county by acquisition of

the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) **On** July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

SECTION 3 Section 65583.2 of the Government Code is amended to read:

65583.2. (a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 6.5584. As used in this section, "land suitable for residential development" includes all of the following:

- (1) Vacant sites zoned for residential use.
- (2) Vacant sites zoned for nonresidential use that allows residential development.
- (3) Residentially zoned sites that are capable of being developed at a higher density.
- (4) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for, residential use.

(b) The inventory of land shall include all of the following:

- (1) A listing of properties by parcel number or other unique reference.
- (2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.
- (3) For nonvacant sites, a description of the existing use of each property.
- (4) A general description of the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan for reference purposes only. This information need not be identified on a site-specific basis.
- (5) A general description of existing or planned water, sewer, and other dry utilities supply. This information need not be identified on a site-specific basis.
- (6) Sites identified as available for housing for above-moderate income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.
- (7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulations requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (4) of subdivision (a) of Section 65583.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

(ii) For unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.

(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.

(iv) For jurisdictions in metropolitan counties: sites allowing at least 30 units per acre.

(d) For purposes of this section, metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau. Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake Mendocino, Nevada, Tehama, and Tuolumne and such other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction is considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a MSA of 2,000,000 or greater in population in which case they are considered metropolitan.

(f) A jurisdiction is considered metropolitan if the jurisdiction does not meet the requirements for "suburban area" above and is located in a MSA of 2,000,000 or greater in population, unless that jurisdiction's population is less than 25,000 in which case it is considered suburban.

(g) For sites described in paragraph (3) of subdivision (b) the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c) and at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted.

(i) For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for

purposes of Division 13 (commencing with Section 21100) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including!,but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21100) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

SECTION 4 Section 65589.5 of the Government Code is amended to read:

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

(1) The lack of housing is a critical problem that 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 that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of 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 that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or *make* infeasible housing developments that 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 complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for 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, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low- or moderate-income households or condition approval, including through the use of design review standards, in a manner that 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 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 that 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 in substantial compliance with this- article. This subdivision cannot be utilized to disapprove a housing development project defined in subdivision (a) if the development project is proposed on a site that is identified for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(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 objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to jurisdiction's share of the development of regional housing, as required in the housing element need pursuant to subdivision (b) of Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other ~~exactions otherwise~~ authorized by law ~~which~~ that 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 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) "Housing development project" means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) "Housing for 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.

(4) "Area median income" means 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.

(5) "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.

(6) "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 design changes, a reduction of allowable densities or the percentage of a lot that 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, that have a substantial adverse effect on the viability or affordability of a housing development for 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, including design review standards, 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 housing for very low, low-, or moderate-income households, including farmworker housing, without 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 court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable ~~attorney~~attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section.- 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.

(l) 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.

SECTION 5 Section **65915** of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development-within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or-concessions for the production of housing units and child care facilities as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (k), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which 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.

The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorneys fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in ~~Part~~ 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(l) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, county, or city and county may, at its discretion, grant more than one density bonus.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001-02 Regular Session of the Legislature.

(o) For purposes of this section, the following definitions shall apply:

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes either (1) a project to substantially rehabilitate and convert an existing commercial building to residential use, or (2) the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request- a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 25 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. **All** density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10, 20, or 50 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, in which at least 20 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(1) "Development standard" means any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

(3) This subdivision shall apply to a development meeting the requirements of subdivision (b) and only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).