SUMMARY OF HOUSING ELEMENT LAW AND LITIGATION

SUMMARY

The following report describes the legal requirements for housing elements in detail and evaluates potential strategies for non-compliance with these requirements. In summary:

- The California Constitution requires the State Legislature to adopt laws of general application to promote the public policies of the State.
- The city is a subdivision of the State. It has broad discretion to adopt laws to promote the health, safety and welfare of the inhabitants of the jurisdiction. Local laws may not conflict with general law. In this case, general law includes the State Planning and Zoning Law and the specific requirements of the Housing Element Law.
- The California Legislature adopted the Housing Element Law to promote a statewide policy of providing housing opportunities for all Californians. The Housing Element Law is significantly more detailed and more directive than the general provisions of State planning law, applicable to other elements of a city's general plan. For the last few years, the Legislature has adopted several statutes to make the requirements on local government stricter, more detailed, harder to evade and easier to enforce.
- Courts require that cities and counties substantially comply with the requirements of the law. This means actual compliance with the substance of each specific Housing Element Law requirement. So long as counties have met the specific statutory requirements, courts will not second-guess the wisdom of local legislatures in adopting particular policies and implementing actions.
- To date, the State has not taken legal action to enforce Housing Element requirements on non-compliant or recalcitrant jurisdictions. The Attorney General has authority to file such a lawsuit. The Housing Element Law provides for private enforcement and judicial remedies for a breach of a jurisdiction's obligations. Housing advocates have sued numerous jurisdictions for non-compliance. **The appendix to this memo lists jurisdictions that were sued and the consequences – orders to bring Housing Elements into compliance, injunctions prohibiting development approvals other than housing, and attorneys' fees awards.**
- The city is given a Regional Housing Needs Assessment (RHNA) by the local council of governments (Southern California Association of Governments or SCAG). SCAG receives an overall city RHNA from the State Department of Housing and Community Development and determines the RHNA for each jurisdiction. State law provides a procedure for challenging a city's allocation.
- The Housing Element Law has been interpreted and upheld by the courts. A challenge to the law, or its enforcement, will in all probability fail. The doctrine of equitable estoppel is rarely applied against a public agency, particularly where estoppel is sought against enforcement of a law enacted to further a public policy. A claim based on the

State's creation and exacerbation of the housing problem through failure to enforce immigration laws appears to raise political, non-justifiable questions that courts will not review.

- Thus, a city's non-compliance with the requirements of law entails risks. If non-compliance is deliberate and publicly advertised, the risk of being sued and the risk that a court will impose draconian and costly remedies increase.

BACKGROUND – GENERAL PLAN LAW

The California Planning and Zoning Law requires a city to prepare, periodically review, and revise, as necessary, the general plan (Government Code §§ 65100(a), 65300). It must also implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances (§ 65100(b)).

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. (§ 65302.) A general plan has seven mandatory elements including a housing element as provided in Article 10.6 (§ 65302(c)).[1]

A city has inherent police power to control its own land use decisions, and for the most part has broad discretion in carrying out the legislative mandate to adopt general plans. See *DeVita v. County of Napa* (1995) 17 C.3d 9 Cal. 4th 763, 781-783 (holding that general plan can be amended by initiative). In contrast, the Housing Element Law imposes specific obligations on cities in furtherance of a state policy to promote affordable housing. (See legislative findings § 65580: Decent housing and suitable living environment for every Californian is a statewide goal; attainment requires cooperative participation of local government and private sector to expand housing opportunities and accommodate housing needs of Californians of all economic levels; local and state governments have a responsibility to make adequate provisions for the housing needs of all segments of the community).[2]

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[1] Article 10.6 included §§ 65580-65589.8 and referred to in this memo as the "Housing Element Law." Related provisions of the Government Code are Article 10.7 § 65590 (replacement housing in coastal zone), Chapter 4.2 §§ 65913-65914 (Housing Development Approvals), and Chapter 4.3 (Density Bonuses and other Incentives) §§ 65915-65918.

[2] See legislative findings for § 65913. The Legislature found a severe shortage of affordable housing and a need to encourage the development of new housing through "changes in law designed to expedite the local and state residential development process, assure that local governments zone sufficient land at densities high enough for production of affordable housing, and assure that local governments make a diligent effort through the administration of land use and development controls and the provision of regulatory concessions and incentives to significantly reduce housing development costs and thereby facilitate the development of affordable housing, including housing for elderly persons and families…." These changes in the law are consistent with the responsibility of local government to adopt the program required by subdivision (c) of Section 65583.

(b) The Legislature further finds and declares that the costs of new housing developments have been increased, in part, by the existing permit process and by existing land use regulations and that vitally needed housing developments have been halted or rendered infeasible despite the benefits to the public health, safety, and welfare of those developments and despite the absence of adverse environmental impacts. It is, therefore, necessary to enact this chapter and to amend existing statutes which govern housing development so as to provide greater encouragement for local and state governments to approve needed and sound housing developments.

HOUSING ELEMENT COMPLIANCE ENFORCEMENT

No jurisdiction has successfully challenged the authority of the state to mandate compliance with housing element law. ***Attached as Appendix A is a list of counties and cities which have been sued and a description of consequences.***

A. The Legislature has made clear its intent to elevate housing element law as an enforceable mandate:

Section 65580: "The Legislature … declares … (a) The availability of housing is of **vital statewide importance**, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a **priority of the highest order**.
…
(d) Local … governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing … for … all economic segments…"

GOVERNMENT CODE § 65581: "It is the intent of the Legislature in enacting this article: …
(a) To assure that counties … recognize their responsibilities in contributing to the attainment of the state housing goal.
(b) To assure that counties … will prepare and implement housing elements which, … will move toward attainment of the state housing goal."

B. Authority to enforce housing mandates:

Section 65754: "In any action brought to challenge the validity of the general plan of any … city …, if the court, in a final judgment …, finds that the general plan or any mandatory element … does not substantially comply with the requirements of Article 5 [General Plan law] … : (a) The … city … shall bring its general plan or relevant mandatory element[s] into compliance … within 120 days…"

C. Mandatory judicial action:

Section 65755: "(a) The court shall include in the order or judgment rendered pursuant to Section 65574, one or more of the following provisions … until the … city … has substantially complied …:

(1) Suspend the authority … to issue building permits …
(2) Suspend the authority …to grant any … zoning changes, variances, or both.
(3) Suspend the authority … to grant subdivision map approvals …
(4) Mandate the approval of all applications for building permits … for residential housing where a final subdivision map, parcel map … has been approved ... where the approval will not impact on the ability of the … city … to properly adopt and implement an adequate housing element …
(5) Mandate the approval of … final subdivision maps for residential housing projects which have previously received a tentative map approval … where approval will not impact on the ability of the … city … to properly adopt and implement an adequate housing element …

(6) Mandate that … any tentative subdivision map for a residential housing project shall be approved … [if consistent with an adequate general plan.]"

D. Authority of State Attorney General:

There have been no lawsuits brought by the State to enforce compliance with housing element law. This fact may follow from the right of the public to sue to ensure general plan compliance (Sections 65754 and 65755), rather than from any statutory prohibition. The Attorney General recently brought a related action against the County of San Bernardino, which updated its General Plan to accommodate a projected 25% increase in population by the year 2030. The Attorney General contends " … the FEIR on the General Plan update … makes no attempt to analyze the effects of … [emission] increases on global warming or the greenhouse gas emissions reductions required by AB 32 …" (AB 32 seeks a 25% reduction in GHGs by 2020.) The recent Grand Jury report stating "If the local jurisdiction does not change the HE and receive certification, ***there is no state enforcement mechanism or penalty***," is correct in the sense there is no direct requirement of ***certification;*** the Grand Jury acknowledged, however, the potential for litigation for a noncompliant housing element resulting in court orders which may include development moratoria.

The California Constitution provides a broad grant of authority to the Attorney General. "Subject to the powers and duties of the Governor, the Attorney General shall be the Chief Law Officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced." In the absence of legislative restriction (which does not appear to exist in housing element law) the Attorney General has the authority to file any civil action deemed necessary for the enforcement of the laws of California, the preservation of order, and /or the protection of the rights and interest of the public. Section 65755, quoted above, has effectively removed motivation for the state to expend resources pursuing litigation—public interest groups are sufficiently motivated and compensated by judicial attorney fee awards.

E. Public proposals to "resist the state mandates:"

1. "Local communities have the right to control their own destiny."

There is no "right to local self-government" except to the extent authority is delegated by state law. The California State Legislature is constitutionally authorized to adopt state wide laws for the public benefit;

The California Constitution, Article 4, Legislative, Section 16, provides:

"(a) All laws of a general nature have uniform operation.
(b) A local or special **statute is invalid in any case if a general statute can be made applicable."** (emphasis provided.)

The California Constitution, Article 11, Section 7, Local Government, provides:

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in conflict with general laws."** (emphasis provided.)

2. "The State is estopped from enforcing housing laws because of its failure to control immigration: the National Guard should be sent to the border.."

This theory would ask a court to (1) find that the State is estopped from enforcing the law, and (2) adjudicate a political controversy and find that the Governor had a duty to call out the National Guard to seal the borders. The lawsuit would fail.

First, equitable estoppel "will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. (*Bib'le v. Committee of Bar Examiners* (1980) 26 Cal.3d 548, 553 [162 Cal. Rptr. 426, 606 P.2d 733]; *Hock Investment Co. v. City and County of San Francisco* (1989) 215 Cal. App. 3d 438, 449 [263 Cal. Rptr. 665].)" (*Hughes*, *supra*, 17 Cal. 4th at p. 793.) See *City of Goleta v. Superior Court* (2006) 40 Cal.4th 260, 279, where the Supreme Court rejected a developer's claim that the city was estopped to deny a subdivision map. A "strong public policy" has clearly been articulated by the California State Legislature in its enactment of housing law. Section 65580, quoted above.

Second, "political" controversy involving issues such as the wisdom and appropriate means to control immigration are non-justiciable. The United States Supreme Court stated the test in *Vieth v. Jubelirer* (2004) 541 U.S. 267, 277-78**: "…** Sometimes … the law is that the judicial department has no business entertaining the claim of unlawfulness--because the question is entrusted to one of the political branches or involves no judicially enforceable rights. See, *e.g.*, *Nixon v. United States*, 506 U.S. 224, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993) (challenge to procedures used in Senate impeachment proceedings); *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 32 S. Ct. 224, 56 L. Ed. 377 (1912) (claims arising under the Guaranty Clause of Article IV, § 4). Such questions are said to be "nonjusticiable," or "political questions."

Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), set forth six independent tests for the existence of a political question:

> "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of the government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.*, 369 U.S. 186 at 217, 82 S. Ct. 691, 7 L. Ed. 2d 663.

It appears that the challenge to the Housing Element Law on grounds that the State is estopped from enforcing it because of the failure of State and Federal Governments to enforce the immigration laws meets several of the criteria for non-justiciability – a "constitutional commitment of the issue to coordinate political departments," a lack of judicially manageable standards for resolution, and dependency on an "initial policy determination of a kind clearly for nonjudicial discretion." (See also *Susman v. City of Los Angeles* (1969) 269 Cal. App. 2d 803, 817-19; the Court of Appeal rejected a claim that the city and State were liable for not calling out

the National Guard to protect against riot damage. It held that the city was not liable because of various immunities and that the claim against the State was a non-justiciable political question.)

Third, the National Guard has been deployed to the border. Since August 2006, the California National Guard has kept over 1,000 troops deployed along the California-Mexico border through Operation Jump Start. Those California National Guard troops support U.S. Customs & Border Patrol agents, but cannot legally engage in direct law enforcement activities:

- California Military & Veterans Code §§ 143 and 146(a) generally limit the use of the California National Guard to cases of riot, public calamity and public catastrophe.
- The Posse Comitatus Act generally prohibits federal military personnel and National Guard units under federal authority from acting in direct law enforcement roles within the United States. 18 U.S.C. §1385.
- California National Guard troops participate in Operation Jump Start under the special federal authority of United States Code Title 32.

F. CEQA compliance.

As with any project that has a potential to affect the environment, adoption of a housing element requires compliance with CEQA. The necessity of careful analysis of potential impacts, including careful cumulative effects and alternatives analysis has been emphasized by two recent lawsuits.

First, the Attorney General, as noted above, recently brought a CEQA action against the County of San Bernardino to compel analysis in the draft EIR of the effects of increased greenhouse gas emissions which would result from the increased population projected and planned for in its general plan. Second, San Francisco lost an appellate decision (unpublished) on June 22, 2007, which held that a "revised" Housing Element in fact instituted changes reflecting a change to greater densities, which changes were not speculative in nature, and which therefore required a new EIR.

HOUSING ELEMENT LAW: DETERMINATION OF REGIONAL HOUSING NEED.

Unlike all other general plan elements, housing elements must be revised and updated every five years. (Section 65588.) The revision is preceded by State HCD's determination of the overall housing need – the regional housing need allocation (RHNA), which in turn is allocated to the cities and county by the Council of Governments (SCAG in Southern California). Section 65584(a) provides each city and county share of the RHNA is derived from and specifies the housing needs of all income levels ("very low," "low," "moderate," and "above moderate" as defined by Health and Safety Code § 50093).

The RHNA allocation process begins with State HCD, in consultation with SCAG, determining the region's share no more than 24 months before the elements are due. (Sections 65584 and 65584.1.) Section 65584.01 (b) requires that the determination be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans. If the difference between the DOF projections and the regional forecast is less than 3%, HCD must base the determination on the regional population forecast. If the difference is greater than 3%, HCD and SCAG are required to discuss variances in methodology used for population projections and seek agreement. SCAG is required to assist

in the determination by providing data it used in the regional forecast relating to rate of household growth, household size trends, new household rates, vacancy rates, and replacement housing needs.

Section 65584.01(d) allows SCAG to file an objection within 30 days of HCD's RHNA determination. The objection must substantiate either (1) HCD failed to properly use either the DOF or regional forecast as required, or (2) HCD failed to reasonably apply the statutory methodology. An objection must include a proposed alternative determination of the RHNA and documentation of the basis of the alternative determination. HCD must consider the objection and make a final written explanation determination of the RHNA within 45 days. (Section 65584.01(d)(3).)

A. SCAG Allocation of RHNA to County and Cities:

SCAG must develop a methodology for distribution of the RHNA at least two years prior to the housing element revision date. (Section 65584.04.) This entails survey of local governments regarding factors such as jobs-housing ratio, development opportunities and constraints, distribution of household growth vs. transportation, market demand, loss of subsidized housing, housing cost burdens, and farmworker needs. However, *no ordinance, policy, voter-approved measure, or standard that directly or indirectly limits the number of residential building permits issued may be used as a basis for a reduction in the RHNA allocation*. (Section 65584.04(f)).

SCAG must distribute the draft allocation 18 months before the housing element revision date. (Section 65584.05.) A revision of the allocated share may be requested within 60 days, "based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation." (Section 65584.05(b)). Within 60 days thereafter, SCAG must accept, modify, or indicate the revision is inconsistent with the RHNA. (Section 65584.05(c.)) An appeal of the RHNA allocation must be heard within 60 days, and a proposed final allocation issued within 45 days thereafter. (Section 65584.05(e) and (f)). Within 60 days of the SCAG allocation, HCD determines whether the final allocation is consistent with the total RHNA it assigned to the region, and revises the determination if necessary to achieve consistency. (Section 65584.05(h)).

B. Legal challenge to RHNA allocations:

The statutory process, as outlined above, provides an administrative mechanism to object to allocated housing numbers. A court would require exhaustion of the statutory objection methodology before entertaining arguments, which could be brought by writ of mandamus, that decisions of State HCD and/or SCAG amounted to an abuse of discretion and were not supported by evidence. Judicial review would determine whether substantial evidence, as applied to the application of Sections 65584.01 and 65584.04, supported the allocation.

C. Transfer of RHNA Allocation to Cities:

Section 65584.07 provides a mechanism for transfer of RHNA numbers before the housing element revision is due under certain conditions:

(1) The city agrees to increase its RHNA;
(2) The transfer is within the city;

(3) The city's share of low-income and very low-income housing is reduced in the same proportion as the city's share of moderate- and avove moderate housing; and
(4) SBCAG determines that conditions 1 through 3 are satisfied.

HOUSING ELEMENT LAW: CONTENT REQUIREMENTS.

Section 65583 states the requirements for housing elements. 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. A housing element consists of:

A. An **identification and analysis of projected housing needs**, including the RHNA and an inventory of resources and constraints relevant to meeting those needs. Section 65583(a) specifies the contents of the assessment and inventory.

B. A statement of the community's **goals, quantified objectives, and policies** relative to the maintenance, preservation, improvement, and development of housing.[3]

C. **A program that 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. Section 65583(c) specifies program requirements. Significantly, as amended by AB 2348, if the city's housing inventory "does not identify adequate sites to accommodate the [RHNA] need for groups of all household income levels …, the program shall identify sites that can be developed for housing within the planning period pursuant to § 65583.2(h)"

ELEMENTS OF THE HOUSING NEEDS ASSESSMENT AND INVENTORY.

Under § 65853(a), the assessment of housing needs and inventory of resources and constraints shall include:

- Needs. Analysis and 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 (RHNA) ((a)(1).) Analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. ((a)(2))

- Sites inventory. 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. ((a)(3))

[3] Section 65583(b)(2) provides "It is recognized that the total [identified] housing needs …may exceed available resources and the community's ability to satisfy this need within the content of the [county's] general plan …. 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."

- Constraints analysis. An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and persons with special housing needs.[4] Constraints include 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 must demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its RHNA share and from meeting the need for housing for persons with special needs. ((a)(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. ((a)(6).)

- Existing assisted housing that can change. An analysis of existing assisted housing developments 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.[5] The statute specifies the contents of the analysis in detail. ((a)(8).)[6]

HOUSING ELEMENT PROGRAM REQUIREMENTS.

Under § 65583(c), the local government must adopt a program that sets forth a five-year schedule of existing or intended actions to implement the policies and achieve the goals and objectives of the housing element. These include administration of land use and development controls, regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available (including housing funds set aside under the Community Redevelopment Law). 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:

- Actions to meet RHNA shortfall. Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the RHNA for each income level that could not be accommodated on sites identified in the city's inventory without rezoning. Identify sites 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. ((c)(1).)

  Section ….. further provides: "(A) Where the inventory of sites, … does not identify adequate sites to accommodate the [RHNA] need for groups of all household income levels …, the program shall identify sites that can be developed for housing within the planning period pursuant to § 65583.2(h). (Discussed infra.)

[4] Under § 65583(a)(6), the county must analyze "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."

[5] "Assisted housing developments" means "multifamily rental housing that receives governmental assistance under federal programs …, 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 § 65916."

[6] Section 65583(a)(7) requires an analysis of opportunities for energy conservation.

(B) Where the inventory of sites… 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."

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

- Remove Government Constraints. 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. ((c)(3).)

- Conserve Housing Stock and Promote Housing Opportunity. 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. ((c)(4).) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability. ((c)(5).)

- Preserve Assisted Housing Developments. Preserve for lower income households the assisted housing developments identified pursuant to (a)(8). "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 … 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." ((c)(6)(A).)[7]

IDENTIFYING LAND SUITABLE FOR RESIDENTIAL DEVELOPMENT TO MEET HOUSING NEEDS.

Section 65583.2, added by § 3 of AB 2348, provides that "a city's inventory of land suitable for residential development [§ 65583(a)(3)] 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 …. 'Land suitable for residential development' includes: (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; and (4) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for, residential use." (§ 65583.2(a).)

Section 65583.2(b) requires the inventory of land to list properties and identify parcel size, plan

[7] Under § 65583(c)(6)(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."

designation and zoning, existing use, environmental constraints, areas designated for market rate housing without sewer service.[8] Based on this information, the city "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 …. 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." (§ 65583.2(c).)

Determination of number of units. The city shall determine the number of units that each site in the inventory can accommodate, as follows:

1. Use the minimum density for development of a site (or adopt a law or regulations requiring the development of a site at a minimum density), or demonstrate how the number of units determined for that site will be accommodated.
2. Adjust the number of units calculated based on the land use controls and site improvements requirement identified in § 65583(a)(4). The total of the individual sites' adjusted densities equals the number of units available to accommodate the housing need.

Determination of Density. For the number of units calculated to accommodate its calculated share of the regional housing need for lower income households, a city "shall do either …:

(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. [**OR**]

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households…(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.…[9]"

If the city can meet its share through analysis ("Method A") the following provisions requiring sites to be zoned at 20 units per acre do not apply.

ZONING OF SITES TO MEET SHORTFALL AT MINIMUM DENSITY WITH USE BY RIGHT.

If the city's inventory does not identify site capacity to accommodate the entire RHNA for housing for very low and low-income households, § 65583.2(h) requires the housing program (§ 65583(c)(1)(A)) to accommodate the shortfall "on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites

[8] Under § 65583.2(g), for non-vacant sites identified under (b)(3), the county "shall specify the additional development potential for each site within the planning period and [explain] 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."

[9] Santa Barbara County is considered a suburban jurisdiction. Under § 65583.2(e) "Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a [Metropolitan Statistical Area (MSA)] of 2,000,000 or greater in population in which case they are considered metropolitan."

shall be zoned with minimum density and development standards that permit at least … 20 units per acre ... 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."

Section 65853.2(i) defines "use by right." "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 [the California Environmental Quality Act.] 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 [CEQA]. Use by right for all rental multifamily residential housing shall be provided in accordance with § 65589.5(f).[10]

NEW HOUSING ELEMENTS MUST MAKE UP SHORTFALL IN ADDITION TO NEW REGIONAL SHARE.

Section 65584 applies to housing elements due on or after January 1, 2006. If the City in the prior planning period failed to identify or make available adequate sites to accommodate its share of the regional need, it shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to meet the shortfall. (§ 65584.09(a).) The rezoning required to meet the shortfall is in addition to any zoning or rezoning required to accommodate the City's share of the regional housing need for the new planning period and does not diminish the City's other obligations regarding the HousingElement. (§ 65584.09(b) and (c).)

LIMITS ON REDUCTION IN DENSITY – ACCOMMODATION OF REGIONAL HOUSING NEED.

Section 65863 is part of the zoning law. Section 65863(a) requires a city to ensure that its inventory or programs of adequate sites under the housing element law (§§ 65583(a)(3) and 65583(c)(1) can accommodate its share of the regional housing need (§ 65584), throughout the planning period.

The city shall not, by administrative or legislative action, reduce the residential density for any parcel to a lower residential density that is below the density used by the state in determining compliance with housing element law. (§ 65683(b).) The exceptions allowing density reduction are narrow. The city may reduce residential density to a lower residential density only if it makes written findings supported by substantial evidence that the reduction is consistent with the general plan, including the housing element, and the remaining sites identified in the housing element are adequate to accommodate the city's share of the regional housing need. Density may also be reduced if the city identifies sufficient additional, adequate, and available sites with

[10] "(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 jurisdiction's share of the regional housing need pursuant to § 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 that are essential to provide necessary public services and facilities to the development project."

an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity. (§ 65683(c).) A court may enforce the statute and award attorneys' fees to a developer if the city is found in violation.

LIMITS ON HOUSING DEVELOPMENT DISAPPROVALS AND CONDITIONS.

Section 65589.5, called the "Anti-NIMBY Law," is part of the Housing Element Law. It limits the ability a city to disapprove or make infeasible housing developments that contribute to the jurisdiction's RHNA.

Section 65689.5(d) limits the city's ability to disapprove or condition approval of an affordable housing project[11]. The city may not disapprove, or condition approval (including design review standards), in a manner that renders the project infeasible[12] unless it finds, based upon substantial evidence in the record, one of the following:

(1) The city has adopted a housing element in compliance with state law and the development project is not needed to meet its share of the regional housing need for very low, low-, or moderate-income housing.[13]

(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.[14]

(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) 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.

(5) In limited circumstances, the development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as of the date the application was deemed complete, and the jurisdiction has adopted a housing element in

[11] The limitations apply to a housing development project, including farm worker housing, for very low, low- or moderate-income households.

[12] § 65589.5(h)(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."

[13] AB 575 (Torlakson) Chapter 601, 2005 Statutes, amended § 65589.5. The ability to disapprove housing development projects based on plan inconsistency was further limited. Disapproval is not allowed when a jurisdiction has not met its RHNA allocation (§ 65589.5(d)(1)).

[14] 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. AB 575 (note 16, *supra*) amends § 65589(d)(2) to specify that "inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health and safety."

substantial compliance with the Housing Element Law.[15]

The limitations on disapprovals and conditions that make a project infeasible do not relieve the City from compliance with the Congestion Management Program required by § 65088 or the California Coastal Act (Public Resources Code § 30000 et seq.), or from complying with the California Environmental Quality Act.

Section 65589.4 provides that an "attached housing development" in an urban infill area shall be a permitted use not subject to a conditional use permit if the parcel is (1) zoned to allow the use and the development is consistent with the zoning and general plan, (2) is covered by a plan document adopted within the past five years, and (3) meets minimum density standards (more than 100 units with minimum density of 12 units per acre, or 4 or fewer units with minimum density of 8 units per acre). A project may not be disapproved if the only inconsistency is that the property has not been rezoned to conform to the general plan.[16]

2006 HOUSING LAWS

Recent amendments to housing law continue the trend of increasing statutory encouragement of legislative housing policy.

SB 1802 (Ducheny): Farmworker Housing By Right

Chapter 520, Statutes of 2006.

The Employee Housing Act (Calif. H & S Code § 17000 et seq.) currently provides that 12 or fewer units or beds of employee housing (as defined in the Act) may be sited by right. SB 1802 expands this provision to 36 units or beds.

AB 1387 (Jones): CEQA Infill

Chapter 715, Statutes of 2006.

The California Environmental Quality Act (CEQA) generally prohibits approval of a project (such as a housing development) for which a significant environmental impact has been identified, unless the impact is mitigated or the local government makes certain findings. AB 1387 provides a limited exception to this requirement for traffic impacts on infill projects.

AB 2184 (Bogh): Residential facility siting.

[15] "This subdivision cannot be utilized to disapprove an [affordable] 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."

[16] Added by SB 619 (Ducheny) Chapter 793 Statutes 2003 § 2, amended by SB 326 (Dunn) Chapter 598 Statutes 2005. The 2005 amendment makes the limitation on disapprovals applicable to "attached housing developments", defined to mean "a newly constructed or substantially rehabilitated structure containing two or more dwelling units and consisting only of residential units, but does not include a second unit [§ 65852.2(h)(4)] or the conversion of an existing structure to condominiums" (§ 65589.4(h).)

Chapter 746, Statutes of 2006.

This legislation would provide that the state statute governing zoning and conditional use permits for residential care facilities for six or fewer persons does not prohibit adoption of local ordinances dealing with health, safety, building, or environmental impact standards applicable to homes or facilities not subject to state licensure. As amended, the bill appears to restate existing law.

AB 2511 (Jones): Land Use and Housing

Chapter 88, Statutes of 2006.

AB 2511 made changes to several housing-related statutes:

Permit Streamlining Act

AB 2511 clarifies how the Act applies to affordable developments by specifying that it applies to any development in which at least 49% of the units are affordable to very low- or low-income households, and the rents will remain affordable for at least 30 years. It further specified that mixed-use affordable developments meeting certain conditions are entitled to the Act's expedited timelines (see § 65950 (c)).

No Net Loss

The No Net Loss (NNL) law limits a locality's authority to reduce the density of multi-family zoned sites, or require a reduction in density of a project as a condition of approval, below the density relied on in its housing element, absent certain findings.

AB 2511 revised the law to better conform to recent changes in housing element law, and to ensure that it also applied to jurisdictions which do not have a compliant housing element.

Anti-Discrimination (Gov. Code § 65008)

Section 65008 prohibits discrimination by local governments in the enactment or administration of their land use and zoning powers. AB 2511 clarifies that the prohibited discrimination applies to the enactment or administration of any law by a local government. The bill also adds very low income to the existing references to low and moderate income households in various sections, and clarifies its application to provisions of the anti-NIMBY statute.

Annual Report on RHNA Progress

Existing law requires each local government to report annually on its progress in implementing its general plan, including its progress toward meeting its RHNA and removing constraints (§ 65400). AB 2511 provides a new enforcement mechanism to obtain compliance by local governments with this provision.

Non-Substantive Changes

AB 2511 establishes an index in the code of the primary affordable housing related laws, which can now be found in section 65582.1. The Anti-NIMBY law has been renamed the Housing Accountability Act. (§ 65589.5).

AB 2634 (Lieber): Extremely Low Income

Chapter 891, Statutes of 2006.

AB 2634 adds several new provisions to housing element law to ensure that jurisdictions plan for the housing needs of extremely low income households (those at 30% of median income and below). The bill makes the following changes:

- Explicitly requires a quantification in the housing element of a jurisdiction's extremely low income housing need.
- Existing law provides that a jurisdiction's adequate sites program must identify sites that facilitate and encourage the development of a variety of housing types, and then provides a list of such housing. AB 2634 adds supportive housing, and single room occupancy, units to the list of housing types. (*See* § 65583(c)(1).)
- Clarifies that in analyzing governmental constraints to the provision of housing for all income levels, the jurisdiction must consider constraints on the development of housing types referenced in the preceding paragraph. (§ 65583(a)(4).)
- Existing law requires the housing element to include a five-year program of actions, which, among other things, will assist in the development of adequate housing to meet the needs of very low, low and moderate-income households. AB 2634 adds extremely low income to that provision. (*See* § 65583(c)(2).)

AB 782 (Mullin): Blight definition.

Chapter 113, Statutes of 2006.

Deletes the criterion for a blight finding that the land in the project area is characterized by the existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership.

SB 1206 (Kehoe): Blight definition and enforcement.

Chapter 595, Statutes of 2006.

Alters the definition of blight; makes it easier for residents to challenge unpopular redevelopment decisions and increases Attorney General oversight of the redevelopment process.

SB 1210 (Torlakson): Eminent domain.

Chapter 594, Statutes of 2006.

Enacts several reforms to the condemnation process:

Requires a finding of continuing "substantial blight" prior to any exercise of eminent domain pursuant to a redevelopment plan longer than 12 years after the adoption of the plan

Prevents issuance of a pre-judgment order of possession without prior notice and an opportunity to respond for the property owner or occupants.

Requires an entity seeking to take property to offer to pay the property owner's reasonable costs in ordering an independent appraisal of the property.

Defines litigation expenses to include reasonable attorney's fees and reasonable expert witness and appraiser fees.

PREPARED BY SANTA BARBARA COUNTY COUNSEL, 2007.

APPENDIX A:

RESULTS OF HOUSING ELEMENT LITIGATION

COUNTY OF SACRAMENTO

SUED BY LEGAL SERVICES.

COUNTY FAILED TO IMPLEMENT ITS HOUSING ELEMENT.

COURT RULED AGAINST COUNTY IN SEVERAL PROCEEDINGS, RESULTING IN STIPULATED JUDGMENT TO IMPLEMENT HOUSING ELEMENT. SUBSTANTIAL **ATTORNEYS' FEES** AWARDED.

COURT ORDERED COUNTY TO ADOPT UPGRADED DEVELOPMENT STANDARDS FOR MULTIFAMILY PROJECTS AND ENACT AMENDMENTS TO THE ZONING CODE TO ENSURE THAT MULTIFAMILY PROJECTS ARE REVIEWED THROUGH A SIMPLIFIED PROCESS.

COUNTY IMPOSED **MORATORIA** PROHIBITING BUILDING EXCEPT MULTIFAMILY RESIDENCES ON LANDS ZONED LIMITED COMMERCIAL OR SHOPPING CENTER. COUNTY ADOPTED AN INCLUSIONARY ZONING ORDINANCE.

LEGAL SERVICES LAWSUIT REMAINS ACTIVE BASED ON CLAIMS COUNTY STILL HAS NOT COMPLIED WITH THE SETTLEMENT AGREEMENT.

COUNTY OF MENDOCINO

SUED BY LEGAL SERVICES AND CALIFORNIA AFFORDABLE HOUSING LAW PROJECT.

STATE HCD REQUIRED COUNTY TO REZONE 40 ACRES FOR AFFORDABLE HOUSING. COUNTY SITES WERE NOT PHYSICALLY OR REALISTICALLY CAPABLE OF ACCOMMODATING AFFORDABLE HOUSING.

SETTLEMENT IMPLEMENTED A **DEVELOPMENT MORATORIUM** IF HCD DID NOT CERTIFY THE COUNTY'S HOUSING ELEMENT.

ATTORNEYS' FEES AWARDED FOR PRE-LITIGATION WORK BASED ON PUBLIC BENEFIT THEORY.

HCD HAS CONDITIONALLY CERTIFIED THE COUNTY'S CURRENT HOUSING ELEMENT, BUT THE COURT MONITORS ONGOING COUNTY COMPLIANCE.

COUNTY OF SONOMA

SUED BY SONOMA COUNTY HOUSING ADVOCACY GROUP.

COURT ORDERED **MORATORIA** ON ALL DEVELOPMENT UNTIL THE COUNTY ATTAINED A STATE CERTIFIED HOUSING ELEMENT.

THE COUNTY WAS ORDERED TO PAY OVER **$300,000 IN ATTORNEYS' FEES**.

COUNTY OF MADERA

SUED BY CALIFORNIA RURAL LEGAL ASSISTANCE.

COUNTY CHALLENGED HOUSING ELEMENT LAW AS AN "UNFUNDED MANDATE," A DEFENSE WHICH COUNTY COUNSEL DESCRIBED AS HANDING A "SLAM DUNK" WIN TO PLAINTIFFS.

COURT ORDERED COUNTY TO PAY **ATTORNEYS' FEES**.

COUNTY OF NAPA

SUED BY CALIFORNIA RURAL LEGAL ASSISTANCE AND PUBLIC ADVOCATES, INC.

COURT ORDERED STIPULATION: THE COUNTY AGREED TO (1) MAKE ADEQUATE PROVISION FOR LOW INCOME AND FARMWORKER HOUSING IN ITS GENERAL PLAN, (2) IDENTIFY AND REZONE SITES TO ACCOMMODATE AFFORDABLE HOUSING, (3) ALLOCATE FUNDS FROM ITS TRUST FUND FOR AFFORDABLE HOUSING, AND (4) PROHIBIT MARKET RATE DEVELOPMENT FROM SITES "RESTRAINED" TO AFFORDABLE HOUSING – **AS DETERMINED BY PLAINTIFF**.

COURT ORDERED **MORATORIA** ON DEVELOPMENT.

THE COUNTY WAS ORDERED TO PAY **ATTORNEYS' FEES**.

COUNTY OF SUTTER

SUED BY CALIFORNIA RURAL LEGAL ASSISTANCE.

COURT ORDERED CONSENT DECREE REQUIRING THE COUNTY IDENTIFY ADEQUATE SITES TO ACCOMMODATE AFFORDABLE HOUSING.

COUNTY OF SANTA CRUZ

SUED BY CALIFORNIA RURAL LEGAL ASSISTANCE.

CIVIL GRAND JURY RECOMMENDED THE DISTRICT ATTORNEY SUE COUNTY SUPERVISORS TO FORCE THEM TO COMPLY WITH HOUSING MANDATE.

COUNTY'S HOUSING ELEMENT CONTAINS AN "AFFORDABLE HOUSING COMBINING DISTRICT PROGRAM," WHICH PROVIDES FOR THE REZONING OF 44 ACRES AT 20 UNITS PER ACRE, WITH 40% OF THE UNITS PERMANENTLY AFFORDABLE THROUGH DEED RESTRICTIONS.

WHEN PLAINTIFF SUED, THE PROGRAM HAD NOT GONE INTO EFFECT, AND THE 44 ACRES HAD NOT BEEN DESIGNATED.

THE PROGRAM REQUIRED THE COUNTY TO APPLY DESIGN REVIEW, SUBDIVISION MAP ACT AND CEQA REVIEW. BUT STATE LAW SAYS "THE USE AND DENSITY SHALL BE ALLOWED BY RIGHT." THE COURT RULED THE PROGRAM GAVE THE COUNTY DISCRETION TO APPLY CEQA CONTRARY TO STATE LAW.

COUNTY COUNSEL ANTICIPATES THEY WILL BE WRITING PLAINTIFF "A BIG [**ATTORNEYS' FEES**] CHECK."

COURT ORDERED THE COUNTY TO REZONE 30 ACRES FOR HIGH DENSITY PROJECTS BY JUNE 30, 2007. THE COUNTY WILL NOT MEET THE DEADLINE, AND EXPECTS PLAINTIFF WILL TAKE THEM BACK TO COURT.

COUNTY OF YUBA

SUED BY CALIFORNIA RURAL LEGAL ASSISTANCE.

COURT ORDERED **MORATORIA** ON ALL DEVELOPMENT UNTIL THE COUNTY ATTAINED A STATE CERTIFIED HOUSING ELEMENT.

COUNTY WAS ORDERED TO PAY **SUBSTANTIAL ATTORNEYS' FEES**.

CITY OF BENICIA

SUED BY CALIFORNIA AFFORDABLE HOUSING LAW PROJECT.

STATE HCD CERTIFIED THE CITY'S HOUSING ELEMENT "BASED ON PAPER." CAHLP TOOK PICTURES OF SITES THE CITY IDENTIFIED. SOME WERE UNDER WATER; OTHER WERE ALREADY DEVELOPED. HCD RESCINDED THEIR CERTIFICATION.

CITY SETTLED AFTER 6 MONTHS OF LITIGATION. THE CITY WAS ORDERED TO PAY $90,000 IN **ATTORNEYS' FEES**.

A NEW CITY COUNCIL RENEGED ON THE AGREEMENT, APPEALED THE COURT'S JUDGMENT THREE TIMES, AND LOST ON EVERY APPEAL. ALL IN ALL, THE CITY EXPENDED **$500,000 IN ATTORNEYS' FEES**.

SETTLEMENT EXCEEDED THE REQUIREMENTS OF STATE LAW.

CITY OF CORTE MADERA

SUED BY LEGAL AID AND PUBLIC ADVOCATES, INC.

COURT ISSUED AN **INJUNCTION** AGAINST CORTE MADERA, WHICH SETTLED THE LAWSUIT ON THE CONDITION THAT THE CITY MEET A SERIES OF STRINGENT REQUIREMENTS, INCLUDING ATTAINING A

STATE CERTIFIED HOUSING ELEMENT AND IMPOSING A FEE ON COMMERCIAL DEVELOPMENT TO FUND AFFORDABLE HOUSING.

COURT PROHIBITED THE CITY FROM APPROVING ANYTHING BUT AFFORDABLE HOUSING DEVELOPMENT ON 10 KEY SITES UNTIL IT ATTAINED CERTIFICATION.

THE CITY WAS ORDERED TO PAY **ATTORNEYS' FEES**.

CITY OF ROHNERT PARK

SUED BY SONOMA COUNTY HOUSING ADVOCACY GROUP.

COURT ORDERED ROHNERT PARK TO REVISE ITS HOUSING ELEMENT FOR IMMEDIATE SUBMISSION TO HCD.

THE CITY WAS ORDERED TO PAY **ATTORNEYS' FEES**.

CITY OF FOLSOM

SUED BY LEGAL SERVICES.

CITY PREVIOUSLY SIGNED AN AGREEMENT TO PRODUCE 650 AFFORDABLE UNITS WITHIN FOUR YEARS. THE AGREEMENT FELL APART. NONE OF THE 7,000 HOUSING UNITS APPROVED BY THE CITY DURING THE 10 YEARS BEFORE LITIGATION WERE FOR LOW OR MODERATE INCOME RESIDENTS.

COURT ORDERED **MORATORIA** ON DEVELOPMENT OF 600 ACRES UNTIL THE CITY ATTAINED A STATE CERTIFIED HOUSING ELEMENT.

A STIPULATED JUDGMENT REQUIRED THE CITY TO REZONE 128 ACRES FOR AFFORDABLE HOUSING, TO CREATE INCENTIVES FOR DEVELOPERS, AND TO CREATE AN AFFORDABLE HOUSING TRUST FUND.

CITY OF MISSION VIEJO

SUED BY CALIFORNIA AFFORDABLE HOUSING LAW PROJECT AND LEGAL AID.

THE CITY'S RHNA WAS SMALL – ONLY 94 MORE UNITS WERE NEEDED. THE CITY FAILED TO COMPLY. HCD RESCINDED THEIR CERTIFICATION.

COURT ISSUED A WRIT AGAINST MISSION VIEJO AND ORDERED **MORATORIA** ON THE 3 SITES THE CITY HAD IDENTIFIED BUT NOT REZONED FOR AFFORDABLE HOUSING.

COURT GAVE THE CITY 120 DAYS TO COMPLY WITH THE WRIT OR BE HELD IN **CONTEMPT OF COURT**.

ATTORNEYS' FEES ARE T.B.D. UPON FINAL JUDGMENT.

CITY OF PASADENA

SUED BY CALIFORNIA AFFORDABLE HOUSING LAW PROJECT AND LEGAL SERVICES.

COURT ORDERED **MORATORIA** ON ALL DEVELOPMENT UNTIL THE CITY ATTAINED A STATE CERTIFIED HOUSING ELEMENT.

CITY OF HEALDSBURG

SUED BY SONOMA COUNTY HOUSING ADVOCACY GROUP.

SETTLEMENT AGREEMENT REQUIRED THE CITY TO REZONE PARCELS, ANNEX OTHERS, AND ENACT ZONING ORDINANCES TO ENCOURAGE AFFORDABLE HOUSING.

THE CITY WAS ORDERED TO PAY **ATTORNEYS' FEES**.

CITY OF SANTA ROSA

SUED BY CAHLP AND SONOMA COUNTY HOUSING ADVOCACY GROUP.

MOST OF THE HOUSING BUILT PRIOR TO LITIGATION WAS FOR UPPER INCOME HOUSEHOLDS. LOW AND MODERATE INCOME FAMILIES (70% OF THE POPULATION) SAW ONLY 7% OF THE HOUSING BUILT.

COURT ORDERED SANTA ROSA TO REVISE ITS HOUSING ELEMENT FOR IMMEDIATE SUBMISSION TO HCD.

UNDER THE TERMS OF THEIR SETTLEMENT, SANTA ROSA IS COMMITTED TO SIMPLIFYING THE APPROVAL PROCESS FOR HIGHER DENSITY HOUSING DEVELOPMENTS (E.G., DEVELOPERS ARE NOT REQUIRED TO APPLY FOR CUPS), TO SPECIFYING A SITE FOR A 40 + BED HOMELESS SHELTER AND ASSISTING WITH ITS ACQUISITION, TO ESTABLISHING AN AFFORDABLE HOUSING TRUST FUND, AND TO IMPOSING A FEE ON NEW COMMERCIAL AND INDUSTRIAL DEVELOPMENT TO SUPPORT DEVELOPMENT OF AFFORDABLE HOUSING FOR THE FACILITIES' WORKERS.

CITY OF PITTSBURGH

SUED BY CALIFORNIA AFFORDABLE HOUSING LAW PROJECT AND PUBLIC ADVOCATES, INC.

SETTLEMENT COMMITTED THE CITY TO PRODUCE 990 UNITS OF AFFORDABLE HOUSING OVER 9 YEARS. 396 OF THESE UNITS MUST BE AFFORDABLE TO VERY LOW INCOME RESIDENTS. 200 OF THESE MUST BE BUILT WITHIN 4 YEARS.

CITY ALSO AGREED TO PROVIDE INCENTIVES FOR CONSTRUCTION OF LARGER UNITS, AND UNITS AFFORDABLE TO EXTREMELY LOW INCOME RESIDENTS, AND TO PROVIDE A PREFERENCE THAT ENSURES PEOPLE WHO LIVE OR WORK IN THE CITY WILL BENEFIT FROM NEW UNITS.

CITY OF FREMONT

SUED BY CALIFORNIA AFFORDABLE HOUSING LAW PROJECT AND LAW CENTER FOR FAMILIES.

SETTLEMENT COMMITTED THE CITY TO (1) REZONE 286 ACRES FOR MULTI-FAMILY HOUSING AND PLANNED DEVELOPMENT TO MEET AFFORDABLE HOUSING NEEDS, (2) IDENTIFY SITES FOR BUILDING HOUSING THAT IS AFFORDABLE TO LOW AND VERY LOW INCOME HOUSEHOLDS, AND (3) SIGNIFICANTLY MODIFY ITS HOUSING ELEMENT TO REMOVE BARRIERS AND BETTER PLAN FOR AFFORDABLE HOUSING.

CITY OF LINCOLN

SUED BY LEGAL SERVICES.

COURT ORDERED **MORATORIA** ON ALL DEVELOPMENT UNTIL THE CITY ATTAINED A STATE CERTIFIED HOUSING ELEMENT.

CITY OF WINTERS

SUED BY LEGAL SERVICES FOR NOT SETTING ASIDE A SUFFICIENT PERCENTAGE OF UNITS IN NEW DEVELOPMENTS FOR AFFORDABLE HOUSING.

PARTIES SETTLED PURSUANT TO A STIPULATED JUDGMENT.

THE CITY MUST REPORT TO PLAINTIFF EACH YEAR, AND PLAINTIFF MAY APPROVE OR DISAPPROVE OF THE CITY'S HOUSING ELEMENT.

CITY OF ALAMEDA

SUED IN FEBRUARY 2007: COLLINS V. CITY OF ALAMEDA.

PLAINTIFF OWNS 9 ACRES ALONG THE WATER AND WISHES TO DEVELOP HIGH DENSITY RESIDENTIAL UNITS ON A PORTION ZONED INDUSTRIAL AND DESIGNATED AS POTENTIAL PUBLIC PARK SPACE.

PLAINTIFF IS ARGUING THAT THE CITY'S HOUSING ELEMENT IS INCONSISTENT WITH ITS GENERAL PLAN, I.E., THE ZONING ORDINANCE WHICH PROHIBITS PLAINTIFF FROM DEVELOPING HIGH DENSITY RESIDENTIAL UNITS ON HIS PARCEL IS INCONSISTENT WITH THE CITY'S NEED FOR AFFORDABLE HOUSING IN ORDER TO IMPLEMENT THE PROVISIONS OF THEIR HOUSING ELEMENT.

****

THE FOLLOWING CITIES AND COUNTY HAVE BEEN SUCCESSFUL IN DEFENDING HOUSING LAW LITIGATION – NONE HAVE PREVAILED ON A THEORY THAT THEY DO NOT NEED TO COMPLY WITH STATE LAW:

CITY OF GILROY

SUED BY CALIFORNIA AFFORDABLE HOUSING LAW PROJECT, CALIFORNIA RURAL LEGAL ASSISTANCE, AND PUBLIC ADVOCATES, INC.

COURT RULED THAT GILROY'S GENERAL PLAN SUBSTANTIALLY COMPLIED WITH **FORMER** HOUSING ELEMENT LAW – THE LAW THAT WAS IN EFFECT WHEN GILROY ADOPTED ITS HOUSING ELEMENT. (PRIOR TO 2004, THE LAW DID NOT REQUIRE SITE SPECIFICITY.)

PLAINTIFFS HAVE FILED A PETITION FOR DE-PUBLICATION AND THE CASE IS NOW ON APPEAL BEFORE THE CALIFORNIA SUPREME COURT.

CITY OF PLEASANTON

SUED BY PUBLIC ADVOCATES, INC.

THE CITY'S MOTION TO DISMISS WAS GRANTED ON THE GROUND THAT EACH CAUSE OF ACTION WAS **BARRED BY THE STATUTE OF LIMITATIONS**, AND THAT THE FIRST THROUGH THIRD CAUSES OF ACTION CHALLENGING THE CITY'S HOUSING CAP AND GROWTH MANAGEMENT ORDINANCE WERE NOT RIPE.

THE CITY ANTICIPATES THERE WILL BE AN APPEAL.

COUNTY OF HUMBOLDT

SUED BY A HOUSING ADVOCACY GROUP AND COALITION OF DEVELOPERS AND REAL ESTATE PROFESSIONALS.

COURT FOUND COMPLAINT DEFICIENT BASED **ON LAWS THAT WERE NOT APPLICABLE AT HOUSING ELEMENT ADOPTION.**

PLAINTIFFS HAVE FILED AN AMENDED COMPLAINT.