



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT

Chris Bazar  
Agency Director

Agenda Item # 7 March 27, 2012

March 10, 2012

Albert Lopez  
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Dear Board Members:

**SUBJECT: INTRODUCTION AND FIRST READING OF AMENDMENTS TO THE ALAMEDA COUNTY ZONING ORDINANCE NECESSARY TO IMPLEMENT THE ALAMEDA COUNTY HOUSING ELEMENT (2009-2014)**

**RECOMMENDATION:**

Amend the Alameda County Zoning Ordinance as recommended by the Alameda County Planning Commission on March 5, 2012.

**BACKGROUND:**

The Board of Supervisors adopted the 2009-2014 Housing Element on April 12, 2011. The Element was reviewed and subsequently certified by the State Department of Housing and Community Development on April 29, 2011. The Housing Element identified the need to review, and if necessary revise, the Alameda County Zoning Ordinance to comply with Federal and State law and to successfully implement the County's Housing Element in the following areas:

- Density Bonuses and Incentives
- Supportive Housing
- Farm or Agricultural Employee Housing Facilities
- Residential Care Facilities
- Emergency Shelters
- Transitional Housing
- Manufactured Housing and Mobile Homes
- Single Room Occupancy (SRO) Units

Staff has prepared amendments to the Alameda County Zoning Ordinance (Title 17) pertaining to the aforementioned topics, which are included as Attachment A.

The Board of Supervisors' Transportation and Planning Committee heard a presentation regarding the proposed amendments and took public testimony at their February 16, 2012 meeting. The Board of Supervisors' Unincorporated Services Committee met on February 22, 2012 to consider a preliminary draft of the amendments. A subsequent draft was considered by the Planning Commission on March 5, 2012 and was ultimately approved by the Commission.

At this time, staff recommends that your Board adopt the Ordinance as approved by the Planning Commission on March 5, 2012.

**DISCUSSION/SUMMARY:**

*Ordinance Development Process*

In preparing the attached amendments, staff completed the following tasks:

Researched Federal and State law. Staff researched State and Federal housing laws to provide guidance and the legal basis for the Ordinance amendments.

Analyzed the County's General Plan and Reviewed Ordinances by Other Planning Departments. Staff prepared an initial draft of the Ordinance amendments based on legal research, consistency with the General Plan, and reviewing examples of similar ordinances, recently adopted by other local agencies throughout the State.

Conducted Meetings with the Ordinance Review Advisory Committee. Staff conducted 2 meetings with the Ordinance Review Advisory Committee on January 10 and January 24, 2012.

Consultation with Agencies and Committees. Staff has sought input from County Counsel, the Public Works Agency, the Social Services Agency, and the Housing and Community Development Department. The item was presented before the BOS-Unincorporated Services Committee on February 22, 2012, the BOS-Transportation and Planning Committee on February 16, 2012, the Castro Valley Municipal Advisory Council (CVMAC) on January 23 and February 27, 2012, and the Sunol Citizens Advisory Committee (SCAC) on January 18, 2012. Revisions recommended at these meetings that have been found consistent with state law have been incorporated into the draft under consideration at this hearing.

The Agricultural Advisory Committee (AAC) was provided with a memo from staff about the proposed amendments pertaining to farmworker housing and was invited to provide comments to staff. No comments have been received from the AAC.

Planning Commission Hearings. The Planning Commission met to discuss the implementation of the Housing Element on December 5, 2011, February 6 and February 21, 2012, and March 5, 2012. At their March 5, 2012, the Commission approved the amendments.

*The Role of Senate Bill 2 (Cedillo, 2007)*

Per Senate Bill 2 (Cedillo, 2007), local jurisdictions must amend their Zoning Ordinances to permit emergency shelters by right in at least one zoning district within one year of the adoption of their Housing Element. Ordinance amendments pertaining to transitional and supportive housing should also be accomplished as soon as possible. Since the Alameda County Housing Element (2009-2014) was adopted by your Board on April 12, 2011 the County's amendments must be approved by your Board no later than April 2012.

*Environmental Review*

The California Environmental Quality Act (CEQA) requires that an analysis be performed when there is a project that may cause a direct or indirect change in the environment (Public Resources Code 21065). An Initial Study (IS) and Negative Declaration (ND) was prepared for the Alameda County Housing Element Update (2009-2014) which addressed potential impacts arising from adoption and subsequent

implementation of the Housing Element. The County performed this analysis as required under CEQA and subsequently concluded that there will be no significant adverse environmental impacts from adopting the Ordinance amendments as there are no specific development or construction projects being proposed or permitted at this time. The Negative Declaration was certified by the Board of Supervisors on March 30, 2010 and is included with this letter as Attachment B.

Individual projects which may (or may not) be proposed as a result of the proposed amendments will be subject to evaluation under CEQA, will be analyzed for compliance with the County's Zoning, Building, Grading and Subdivision Ordinances, and be judged for their consistency with the County's General Plan.

**CONCLUSION:**

The proposed amendments have received broad public review, and have been written to implement the County's Housing Element and state law. At this point, staff is not aware of any public concern or opposition to the amendments. Staff recommends approval of the amendments.

Sincerely,



Chris Bazar  
Director, Community Development Agency

**ATTACHMENTS:**

(Please refer to <http://www.acgov.org/cda/planning/generalplans/housingelement09.htm> for the following items)

- A- Resolution
- B- Draft Ordinance
- C- Initial Study and Negative Declaration approved March 30, 2010
- D- Minutes of the March 5, 2012 Planning Commission Hearing
- E- Planning Commission Resolution, March 5, 2012
- F- Planning Commission Staff Report, March 5, 2012

REEL            IMAGE

\_\_\_\_\_  
Approved as to Form  
DONNA ZIEGLER, County Counsel  
By Brian Washington, Chief Assistant

**THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA,  
STATE OF CALIFORNIA**

On motion of Supervisor -  
Seconded by Supervisor -

and approved by the following vote:

Ayes:

Noes:

Excused or Absent:

**THE FOLLOWING RESOLUTION WAS ADOPTED TBD, 2012:  
NUMBER #**

**HOUSING ELEMENT IMPLEMENTATION AMENDMENTS**

**WHEREAS**, the Planning Commission (“Commission”) did hold public hearings on the proposed Housing Element Implementation Amendments (“Amendments”) on February 6, February 21, and March 5, 2012; and

**WHEREAS**, notice was given as required by law; and

**WHEREAS**, the Commission did find on March 5, 2012 that the Amendments were necessary and appropriate in order to ensure that the Alameda County Zoning Ordinance (Title 17 of the General Ordinance Code) continues to comply with state housing law, and recommended these Amendments to the Alameda County Board of Supervisors for approval after an appropriate process as prescribed by law; and

**WHEREAS**, Planning staff did prepare an Initial Study and Negative Declaration that addressed not only the Alameda County Housing Element (2009-2014), but also its subsequent implementation; and

**WHEREAS**, the Initial Study and Negative Declaration were completed pursuant to the California Environmental Quality Act (CEQA) to more closely examine the potential environmental impacts that may result from implementation of the Element; and

**WHEREAS**, staff did submit this Initial Study and Negative Declaration to the Planning Commission for its consideration pursuant to CEQA, which is appropriate when a project is found to have no significant effect upon the environment; and

**WHEREAS**, CEQA Guidelines Section 15074 requires certain findings to be made in order that a Negative Declaration may be adopted by the decisionmaking body, specifically “only if it finds on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the negative

declaration...reflects the lead agency's independent judgment and analysis"; and

**WHEREAS**, the Initial Study prepared by Planning Staff was circulated for public review as required by the CEQA for a period no less than 21 days, and whereas the public had the opportunity to comment on that document both during the review period and up to and during the public hearing by this Commission on January 19, 2010; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing to consider the Initial Study and Negative Declaration recommendation for the Alameda County Housing Element and its related implementation at the hour of 6:00 p.m. on Monday, the 19<sup>th</sup> day of January, 2010, in the Auditorium of the Alameda County Building, 224 W. Winton Avenue, Hayward, California; and

**WHEREAS** this Planning Commission did recommend that the Initial Study and Negative Declaration be sent to the Alameda County Board of Supervisors for review and certification; and

**WHEREAS**, the Alameda County Board of Supervisors ("Board") did consider the Negative Declaration on Tuesday, the 30<sup>th</sup> day of March, 2010, at 1221 Oak Street, Board Chambers, Oakland, California, for which notice was given as required by law and at which the Board took public testimony; and

**WHEREAS** the Board did certify that Negative Declaration that was prepared and completed in compliance with the California Environmental Quality Act, and found on the basis of the whole record before it that there is no substantial evidence that the Alameda County Housing Element Update (2009-2014) or its implementation would have a significant effect on the environment and that the Negative Declaration reflects the independent judgment and analysis of the County; and

**WHEREAS**, the Amendments have thus been reviewed in accordance with the provisions of the California Environmental Quality Act; and

**WHEREAS**, it is the finding of this Board that the approval of the Amendments is in the public interest for the reasons that it would serves aid in the development of housing affordable to all residents of unincorporated Alameda County; and

**NOW, THEREFORE,**

**BE IT RESOLVED**, that this Board finds, on the basis of the whole record before it that there is no substantial evidence in the record that the Amendments will have a significant effect on the environment and that the Negative Declaration certified by the Board on March 30, 2010 previously addressed the potential impacts of the implementation of the Alameda County Housing Element (2009-2014).

ORDINANCE 2012-\_\_\_\_\_

**AN ORDINANCE AMENDING TITLE 17 OF THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA ADDRESSING AGRICULTURAL EMPLOYEE HOUSING, MOBILEHOME PARKS, DENSITY BONUSES, TRANSITIONAL AND SUPPORTIVE HOUSING, RESIDENTIAL AND MEDICAL CARE FACILITIES, EMERGENCY SHELTERS AND SINGLE ROOM OCCUPANCY FACILITIES IN ORDER TO IMPLEMENT THE ALAMEDA COUNTY HOUSING ELEMENT (2009-2014) AND TO CONFORM WITH STATE LAW**

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Section 17.04.010 of Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new definitions:

**17.04.010 – Definitions.**

“Agricultural employee” means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

“Agricultural employee housing” means any living quarters or accommodations of any type, including mobilehomes, which comply with the building standards in the State Building Standards Code or an adopted local ordinance with equivalent minimum standards for building(s) used for human habitation, and buildings accessory thereto, where accommodations are provided by any person for individuals employed in farming or other agricultural activities, including such individuals’ families. The agricultural employee housing is not required to be located on the same property where the agricultural employee is employed.

“Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person.

“SRO (single room occupancy) facility” means a building containing six or more SRO units or guestrooms, designed for occupancy of no more than two persons, and which is intended, designed, or is used as a primary residence by guests.

“SRO (single room occupancy) unit” means a room that is used, intended or designed to be used by no more than two persons as a primary residence, but which lacks either or both a self-contained kitchen or bathroom.

“Supportive housing” means housing with no limit on length of stay, that is occupied by the “target population”, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

"Target population" means persons with Low Income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (California Welfare and Institutions Code, section 4500 et seq.) and may include, among other populations, adults, emancipated youth, families, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

"Transitional housing" and "transitional housing development" mean buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

## SECTION II

Section 17.04.010 of Title 17 of the General Ordinance Code of the County of Alameda is amended by deleting the definitions of "Family Emergency Homeless Shelter" and "General Emergency Homeless Shelter."

## SECTION III

Section 17.04.010 of Title 17 of the General Ordinance Code of the County of Alameda is amended by revising the definition of "Medical or residential care facility" to read as follows:

### **17.04.010 – Definitions.**

"Medical or residential care facility" means a residential care home as licensed by State Department of Social Services, Community Care Licensing Division. This term also includes group living quarters housing persons placed by an authorized agency for rehabilitation purposes and is funded by or licensed by or is operated under the auspices of an appropriate federal, state or county governmental agency.

## SECTION IV

Section 17.06.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.06.030 - Permitted uses.**

The following principal uses are permitted in an A district:

- A. On a building site, one one-family dwelling or one-family mobilehome either constructed after September 15, 1971, and issued an insignia of approval by the California Department of Housing and Community Development and permanently located on a permanent foundation system, or constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system;
- B. Crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture;
- C. Raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals;
- D. Grazing, breeding or training of horses or cattle;

- E. Winery or olive oil mill;
- F. Fish hatcheries and rearing ponds;
- G. Public or private riding or hiking trails;
- H. One secondary dwelling unit per building site on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel subject to the following requirements:
  - 1. The secondary dwelling unit shall be on the same building envelope as the primary unit;
  - 2. On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;
  - 3. The secondary dwelling unit shall be subject to site development review pursuant to Section 17.54.210 et seq.; and
  - 4. The secondary dwelling unit shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas. Notwithstanding the requirements of Section 17.54.220.A, for secondary units on parcels that are less than one hundred (100) acres in size, the planning commission shall decide applications for site development review under this section, and a public hearing is required.
- I. Occupancy of agricultural caretaker dwelling(s) subject to a site development review as provided in Section 17.06.090, when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her family.
- J. Boarding stables and riding academies subject to the following requirements:
  - 1. The boarding stable shall be subject to site development review pursuant to Sections 17.06.090 and 17.54.210 et seq., except as follows:
    - a. The appropriate board of zoning adjustments shall decide applications for site development review under this section, and a public hearing is required.
    - b. Where the holder of an existing conditional use permit is found to be in compliance with all conditions of the existing conditional use permit, the planning director shall recommend approval of a site development review for the facility Alameda County Ordinance Code, Title 17, Zoning Ordinance with no new conditions except as allowed by the county policy for equine facilities in the A (agricultural) district, to the appropriate board of zoning adjustments.
    - c. The planning director may modify the requirements of Section 17.54.230 consistent with the provisions of the county policy of equine facilities in the A (agricultural) district; and specifically may waive the requirement that the site plan be prepared by licensed civil engineer, land surveyor, architect, landscape architect, or a registered building designer.
  - 2. The boarding stable shall be subject to and consistent with the provisions of the county policy for equine facilities in the A (agricultural) district.
  - 3. Site development reviews under this section shall not have an expiration date. However, they shall be subject to a periodic review for compliance with conditions of approval of the site development review and with relevant county ordinances, including all water quality rules and regulations. Such reviews shall occur every five years at minimum, or as needed to ensure compliance.
  - 4. Any changes in the scope of the boarding stable operation shall require a modification to the site development review.
  - 5. Site development review approval under this section shall not be construed to confer upon a boarding stable any exemption from any health, nuisance, or public safety ordinances or their subsequent enforcement or confer any other unique privileges upon a stable.
- K. Agricultural employee housing consisting of not more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a single family or household subject

to a site development review as described provided in Section 17.06.090 (Agricultural Districts-- Site Development Review—When Required), 17.60.100 (Agricultural Districts—Agricultural Employee Housing), and 17.54.210 (Site Development Review).

## SECTION V

Section 17.06.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.06.040 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:

- A. Outdoor recreation facility;
- B. Animal hospital, kennel;
- C. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
- D. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;
- E. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;
- F. Flight strip when accessory or incidental to a permitted or conditional use;
- G. Hog ranch;
- H. Drilling for and removal of oil, gas or other hydrocarbon substances;
- I. Radio and television transmission facilities;
- J. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;
- K. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;
- L. Administrative support and service facilities of a public regional recreation district;
- M. Privately owned wind-electric generators;
- N. Remote testing facility;
- O. Winery or olive oil mill related uses; and
- P. Agricultural employee housing for 37 or more beds in group quarters or 13 units or spaces designed for use by a single family or household.

## SECTION VI

Section 17.06.090 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.06.090 - Site development review—When required.**

Site development review pursuant to Section 17.54.210 shall be required for:

- A. Every new dwelling or addition to existing dwelling exceeding five hundred (500) square feet or thirty (30) feet in height hereafter placed on a parcel in the A district;
- B. Agricultural caretakers dwelling(s), when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her/their family(ies); subject to the following provisions:

1. Initial site development review shall include submittal of required applications and materials and completion of an agricultural caretaker dwelling report, signed by the property owner.

2. The agricultural caretaker dwelling report submitted under Paragraph 1 above shall include a description of the agricultural use on the site, a description of the commercial/economic viability of the agricultural use, a discussion of the personnel necessary to implement or oversee the agricultural use, and a description of the proposed agricultural dwelling and/or housing. If the agricultural use is intended primarily for private interest rather than commercial viability, or if the dwelling unit is intended for a use not otherwise related directly to commercially viable agriculture on the site, such as onsite security, the report shall provide this information.

3. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

4. The planning director may extend initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural caretaker dwelling report, signed by the property owner.

5. During the effective period of the site development review, any changes relating to the information contained in the agricultural caretaker dwelling report (including changes to the dwelling unit itself, changes in maximum occupancy requirements, and/or changes in the size/nature/ scope of the agricultural use being served by the presence of the caretaker onsite) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

6. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural caretaker dwelling report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

7. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

8. The approval of a site development review for an agricultural caretaker dwelling of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site status.

9. The agricultural caretaker dwelling is intended to remain only as long as necessary to support either onsite security or the primary agriculture use on the site, and when the need for this support terminates the dwelling must be completely removed or converted to another legal use.

10. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

C. Boarding stables and riding academies subject to the provisions of Section 17.06.030J of this chapter; and

D. Agricultural employee housing subject to the provisions of Section 17.06.100 of this chapter.

## SECTION VII

Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new Section 17.06.100:

### **17.06.100 – Agricultural Districts—Agricultural employee housing.**

Agricultural employee housing is subject to site development review pursuant to Sections 17.06.060 (Agricultural Districts--Site Development Review—When Required) and 17.54.210 (Site Development Review) et seq. and to the following provisions:

A. The site development review shall include submittal of required applications and materials

including an agricultural employee housing report, signed by the property owner.

B. The agricultural employee housing report submitted under Paragraph 1 above shall include the following information:

1. Entity responsible for housing maintenance and up-keep;
2. Description of whether the housing will be used on a permanent, temporary, and/or seasonal basis;
3. Total number of people to be housed on-site at any one time;
4. Description of the housing, including whether the structures will be permanent and/or temporary, intended as units for families, one person, or several persons, and cost of the units and utilities to the agricultural employees;
5. Location(s) where the agricultural employees will work;
6. There must be adequate water and sewer available to service the development, as determined by the Department of Environmental Health;
7. The housing must be located off prime and productive agricultural land, or on the parcel where no other alternatives exist on site, on the least viable portion of the parcel;
8. The development shall incorporate proper erosion and drainage controls; and
9. Parking shall be provided in accordance with Section 17.52.910 (Parking spaces required—Residential buildings).

C. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

D. The planning director may extend the initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural employee housing report, signed by the property owner.

E. During the effective period of the site development review, any changes relating to the information contained in the agricultural employee housing report (including changes to the dwelling unit itself, and changes in maximum occupancy requirements) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

F. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural employee housing report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

G. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

H. The approval of a site development review for an agricultural employee housing of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site status.

I. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

## SECTION VIII

Section 17.08.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.08.030 - Permitted uses.**

The following principal uses are permitted in an R-1 district:

- A. One one-family dwelling;

- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons per unit; and
- D. Licensed transitional or supportive housing for up to six (6) persons per unit.

#### SECTION IX

Section 17.08.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.08.040 - Conditional uses.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-1 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, only when established to fulfill the residential parking requirements of this title for a use on an abutting lot or lots;
- D. Plant nursery or greenhouse used only for the cultivation and wholesale of plant materials;
- E. Medical or residential care facility for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. Licensed transitional or supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);and
- G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

#### SECTION X

Section 17.10.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.10.020 - Permitted uses.**

The following principal uses are permitted in an R-2 district:

- A. One or two one-family dwellings, or one two-family dwelling;
- B. Field crop, orchard, or garden;
- C. Medical or residential care facility for up to six (6) persons per unit; and
- D. Licensed transitional or supportive housing for up to six (6) persons per unit.

#### SECTION XI

Section 17.10.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.10.030 - Conditional uses.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-2 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, subject to the same limitations as in Section 17.08.040C;
- D. Plant nursery, or greenhouse used only for the cultivation of plant materials;

- E. Medical or residential care facility for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. One dwelling or a dwelling group containing altogether not more than three dwelling units, where the lot has an area not less than seven thousand five hundred (7,500) square feet.;
- G. Licensed transitional or supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- H. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

## SECTION XII

Section 17.12.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.12.030 - Permitted uses.**

The following principal uses are permitted in any R-S district:

- A. One-family dwelling, two-family dwelling, multiple dwelling or dwelling group;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons per unit; and
- D. Licensed transitional or supportive housing for up to six (6) persons per unit.

## SECTION XIII

Section 17.12.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.12.040 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-S districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, as regulated in Section 17.08.040C;
- D. Plant nursery or greenhouse used only for the cultivation of plant materials;
- E. Medical or residential care facility for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. Mobile home parks, as regulated by Chapter 17.52, Sections 1000-1065, of this title; and
- G. Licensed transitional and supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities).

## SECTION XIV

Section 17.14.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.14.020 - Permitted uses.**

The following principal uses are permitted in an R-3 district:

- A. One-family dwelling, two-family dwelling, multiple dwelling, or dwelling group, up to a total not to exceed four dwelling units;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons per unit; and
- D. Licensed transitional or supportive housing for up to six (6) persons per unit.

#### SECTION XV

Section 17.14.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.14.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in R-3 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
- E. Parking lot, as regulated in Section 17.08.040C;
- F. Licensed transitional and supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

#### SECTION XVI

Section 17.16.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.16.020 - Permitted uses.**

The following principal uses are permitted in an R-4 district:

- A. All uses permitted in R-3 districts, pursuant to Section 17.14.020;
- B. Multiple dwelling or dwelling group, provided that on any building site with an area which equals or exceeds five times the area for one dwelling unit, every dwelling unit placed on such building site shall be subject to site development review pursuant to Section 17.54.210; and
- C. Emergency shelter provided in accordance with Section 17.52.1165 (Emergency Shelter-Regulations)

#### SECTION XVII

Section 17.16.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.16.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-4 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;

- B. Parking lot, as regulated in Section 17.08.040C;
- C. Clubhouse;
- D. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- E. Boarding house;
- F. Fraternity or sorority house, accredited by an institution of higher learning;
- G. Single room occupancy facility subject to the provisions of 17.54.134 (Conditional Uses- Single Room Occupancy (SRO) Facilities);
- H. Licensed transitional and supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- I. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION XVIII

Table 17.52.910 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

| Table 17.52.910<br>Parking Spaces Required for Residential Buildings  |  |
|---|--|
| Use   | Number of Spaces Required  |
| Dwelling, including single, two-family and multiple residences, group dwellings, apartment houses, apartment hotels, and all other similar structures devoted to habitation | 2 for each dwelling unit, plus 1 for each bedroom available for accommodating a paying guest   |
| Hotel, motel, boarding house, clubhouse, fraternity or sorority, and single room occupancy facilities   | 2 plus 1 for each bedroom available for sorority; accommodating guests a paying guest  |
| Medical or residential care facility, and transitional and supportive housing developments  | 2 plus 1 for each 6 beds for persons not related to the resident family or manager   |
| Hospital  | 2 plus 1 for each 4 patient beds, (except that those patient beds designated as "long term care beds" by the State Department of Public Health may be computed 1 per 6 patient beds) plus 1 for each staff doctor; plus 1 for each 1,000 square feet of gross floor area in the main building or buildings |
| Mobilehome park   | 2 for each mobilehome site; other provisions of this title notwithstanding, the access to one of these spaces may be within the access to the second space; plus 1 for each 10 mobilehome sites  |
| Recreational vehicle park   | 1 for each recreational vehicle site located on each recreational vehicle site, plus 1 for each 15 recreational vehicle sites  |

|                               |  |
|-------------------------------|--|
| Emergency shelter             | 3 plus 1 per each 10 individual beds.  |
| Agricultural employee housing | 1 space per unit, or 1 for each 4 beds |

SECTION XIX

Section 17.52.1020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.52.1020 - Mobilehome parks—Density.**

Except as otherwise provided in a combining district or specific plan, the number of dwelling units permitted on a building site in a mobilehome park shall not exceed the number obtained by dividing the area in square feet of the building site by five thousand (5,000), disregarding any fraction.

SECTION XX

Section 17.52.1065 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.52.1065 - Mobilehome parks—Parking.**

Pursuant to Section 17.52.910 (Parking spaces required—Residential buildings), every mobilehome site shall have two parking spaces. A mobilehome park shall also provide 1 parking space for every 10 mobilehome sites.

SECTION XXI

Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new Section 17.52.1160:

**17.52.1160 – Standards for Emergency Shelters —Purpose.**

The purpose of this Section is to establish the development standards for Emergency Shelters

SECTION XXII

Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new Section 17.52.1165:

**17.52.1165 – Emergency Shelter —Regulations.**

Emergency Shelters shall be subject to the following regulations and development standards:

- A. An Emergency Shelter shall obtain and maintain in good standing all required licenses, permits, and approvals from County and State agencies or departments. An Emergency Shelter shall comply with all County and State health and safety requirements for food, medical, and other supportive services provided on-site;
- B. No Emergency Shelter facility shall have more than sixty (60) beds;
- C. Each resident shall be provided a minimum of fifty (50) gross square feet of personal living space, not including space for common areas;
- D. Bathing facilities shall be provided in quantity and location as required in the California Plumbing Code (Title 24 Part 5), as amended, and shall comply with the accessibility requirements of the California Building Code (Title 24 Part 2), as amended;

- E. No individual or family shall reside in an Emergency Shelter for more than 180 consecutive days;
- F. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area, to the satisfaction of the Planning Director;
- G. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities, to the satisfaction of the Planning Director;
- H. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
- I. The facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
- J. Onsite management shall be provided twenty-four (24) hours a day, seven (7) days per week. All facilities must provide a management plan to the satisfaction of the Planning Director that shall contain policies, maintenance plans, intake procedures, tenant rules, and security procedures;
- K. The facility is no closer than three hundred (300) feet from other emergency shelters unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
- L. On-site parking shall be provided in accordance with Section 17.52.910;
- M. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties.
- N. Required yards shall conform with the R-4 zoning district yard requirements; and
- O. A waiting and client intake area of not less than one hundred (100) square feet shall be provided inside the main building.
- P. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

## SECTION XXIII

Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new Section 17.54.133:

### **17.54.133 – Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities.**

In addition to the findings required of the Board of Zoning Adjustments under Sections 17.54.130 (Conditional Uses) and 17.54.140 (Conditional Uses--Action), a conditional use permit for any conditionally permitted residential or medical care facility, transitional housing facility, or supportive housing facility may only be granted upon determination that the proposal conforms to all of the following additional use permit criteria:

- A. Staffing of the facility shall at all times remain in compliance with any State Licensing Agency requirements;
- B. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area;
- C. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities;

- D. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
- E. That the facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
- F. Onsite management shall be provided twenty-four (24) hours a day, seven days per week. Prior to operation, all facilities must provide to the Planning Director a management plan that shall contain policies, maintenance plans, rental procedures, tenant rules, and security procedures;
- G. In accordance with sections 1267.9 and 1520.5 of the California Health and Safety Code, no facility shall be closer than three hundred (300) feet from other similar activities or facilities unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
- H. Parking shall be provided in accordance with Section 17.52.910 (Parking Spaces required—Residential buildings);
- I. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties; and
- J. Yards shall conform to the zoning requirements established for the district in which it is located.

#### SECTION XXIV

Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new 17.54.134:

**17.54.134 – Conditional Uses- Single Room Occupancy (SRO) Facilities.**

Single Room Occupancy Facilities shall be subject to the following regulations and development standards:

- A. Excluding the bathroom area and closet(s), the Single Room Occupancy unit must be a minimum of one hundred and fifty (150) square feet in floor area and the maximum size shall be not more than four hundred (400) square feet. Each unit shall be designed to accommodate a maximum of two people.
- B. Each Single Room Occupancy Unit must include a closet and may contain either kitchen facilities or bath facilities but not both.
- C. Complete common cooking facilities/kitchens must be provided if any unit within the SRO Facility does not have a kitchen. One complete cooking facility/kitchen shall be provided within the SRO Facility for every twenty (20) SRO units or portion thereof that do not have kitchens, or have one kitchen on any floor where SRO Units without kitchens are located.
- D. Common bathrooms must be located on any floor with any unit that does not have a full bathroom. Common bathrooms shall be either single occupant use with provisions for privacy or multi-occupant use with separate provisions for men and women. Common bathrooms shall have shower or bathtub facilities at a ratio of one for every seven (7) units or fraction thereof. Each shared shower or bathtub facility shall be provided with an interior lockable door.
- E. Each SRO Facility shall have at least ten (10) square feet of common usable area per unit; however no SRO facility shall provide less than two hundred (200) square feet of common outdoor area and two hundred (200) square feet of common indoor area. Maintenance areas, laundry facilities, storage (including bicycle storage), and common hallways shall not be included as usable indoor common space. Landscape areas that are less than eight (8) feet wide shall not be included as outdoor common space.

- F. A SRO Facility with twelve (12) or more units shall provide twenty-four (24) hour on-site management, and include a dwelling unit designated for the manager. All SRO Facilities must have a management plan approved prior to occupation by the Alameda County Department of Housing and Community Development. The management plan shall contain management policies, maintenance plans, rental procedures, tenant rules, and security procedures.
- G. Single Room Occupancy Facilities shall include laundry facilities.
- H. A cleaning supply storeroom and/or utility closet with at least one (1) laundry tub with hot and cold running water must be provided on each floor of the SRO Facility.
- I. Parking shall be provided in accordance with Section 17.52.910.

## SECTION XXV

Title 17 of the General Ordinance Code of the County of Alameda is amended by deleting Chapter 17.56 (Density Bonus) in its entirety.

## SECTION XXVI

Title 17 of the General Ordinance Code of the County of Alameda is amended by adding the following new Chapter 17.106 (Density Bonus):

### **Chapter 17.106- DENSITY BONUS**

#### **17.106.010- Title.**

This chapter shall be called the density bonus ordinance of the county of Alameda.

#### **17.106.020 – Purpose.**

This chapter establishes policies which facilitate the development of affordable housing for very low and lower income households and senior households within the unincorporated area of Alameda County, through the provision of a density bonus, and additional financial incentives if necessary for affordability, to applicants who agree to meet the requirements established by this chapter.

#### **17.106.030 – Definitions.**

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

**Affordable Housing Agreement:** means the agreement made between the applicant and the county governing the regulation and monitoring of the affordable units.

**Amenities:** means interior amenities including, but not limited to, fireplaces, garbage disposals, dishwashers, cabinets and storage space and bathrooms in excess of one.

**Applicant:** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks a density bonus or incentives or both under this chapter.

**Base Units:** means the number of units that would be allowed under the General Plan land use designation and zoning ordinance for the subject site before calculation of the Density Bonus.

**Child Care Facility:** means a facility, other than a day care home, licensed by the State of California to provide non-medical care to children under 18 years of age in need of personal services, supervision or assistance on less than a 24-hour basis. "Density Bonus" means an increase in density over the otherwise maximum allowable residential density under the

applicable zoning ordinance and General Plan land use designation taking into account all applicable limitations.

**Density Bonus:** means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation.

**Density Bonus Unit:** means a residential dwelling unit authorized as a result of the granting of a density bonus.

**Household:** means one person living alone or two or more persons sharing a residential dwelling.

**Housing Development:** means a project providing residential units including, without limitation, a subdivision, a planned unit development, multifamily dwellings, or condominium project. Housing developments consist of development of residential units or creation of unimproved residential lots and also include either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, where the result of the rehabilitation would be a net increase in available residential units.

**Incentive:** An "Incentive" may include any of the following:

1. Approval of a mixed-use development if commercial, office, industrial, or other land uses will help to offset the costs of the housing development. A mixed-use development will be approved only if the commercial, office, industrial, or other land uses are compatible with the surrounding land uses, the county general plan, and applicable specific plans;
2. Government-assisted financing, including, but not limited to, mortgage revenue bonds issued by the county;
3. A reduction in site development standards, but only if the overall quality of the development is not lessened. All developments must also meet any design guidelines codified by the county at a future date;
4. Other incentives proposed by the developer or the county which result in identifiable cost reductions, including but not limited to:
  - a. Waiver or reduction of certain county fees applicable to restricted units in a housing development,
  - b. Reduction of interior amenities,
  - c. Priority processing of a housing development which provides restricted units. Upon certification that the application is complete and eligible for priority processing, the housing development will be reviewed by the planning director in advance of all nonpriority items. The housing development review will be completed and a recommendation will be made by the planning director whether to approve the housing development within one hundred twenty (120) days of receipt of the completed application. The planning director may give written approval to extend the one hundred twenty (120) day period.

**Lower Income Household:** means a household whose gross income is eighty (80) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5; if the Health and Safety Code definition is amended, this definition shall be deemed to be amended to the same effect.

**Maximum Allowable Residential Density:** means the density allowed under the General Plan, or

if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project. Maximum allowable residential density takes into account limitations to density pursuant to General Plan policies and Zoning Ordinance regulations.

Median Income: means the median income for Alameda County, published by the United States Department of Housing and Urban Development.

Moderate Income Household: means a household, with an annual income which does not exceed the United States Department of Housing and Urban Development annual determination for moderate income households with incomes of one hundred twenty (120) percent of the Median Income, adjusted for household size.

Qualifying Unit: means a dwelling or dwellings designated for occupancy by very low, low, or moderate income households, within a housing development, which make the housing development eligible for a Density Bonus.

Resale controls: means a resale restriction placed on restricted units by which the price of such units and/or the age or income of the purchaser will be restricted to ensure affordability and occupancy by very low or lower income households or senior households.

Restricted Unit: means a residential dwelling unit to be sold or rented at a price or rent affordable to a very low, lower, or moderate income household, or sold or rented to a senior household.

Senior Citizen Housing Development: means a housing community governed by a common set of rules, regulations or restrictions, consisting of at least thirty-five (35) dwelling units reserved for Senior Citizen Households as further described in California Civil Code Sections 51.3 and 51.12.

Senior Household: means as established by California Civil Code Section 51.3, a household in which at least one member is at least sixty-two (62) years of age.

Term of Affordability: means the time during which restricted units in a housing development must remain as restricted units.

Unit Type: means a dwelling unit with a defined floor area and a designated number of bedrooms.

Very Low Income Household: means a household whose gross income is fifty (50) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5.

#### **17. 106.040 - Density bonus qualifications.**

In order to qualify for a density bonus and one or more incentives under this chapter, a housing development must consist of five or more dwelling units and meet one or more of the following criteria:

- A. Agrees to construct and maintain at least five (5) percent of the base units for very low income households;
- B. Agrees to construct and maintain at least ten (10) percent of the base units for lower income households;
- C. Agrees to construct and maintain at least ten (10) percent of the base units in a

condominium project or planned development project dedicated to moderate income households, provided that all units in the development are offered to the public for purchase;  
 D. Agrees to construct and maintain a senior citizen housing development;  
 E. Converts an existing apartment or multifamily dwelling to a condominium development as described in Section 17.106.050.I (Density Bonus—Density Bonus Calculations).

**17.106.050 - Density bonus calculations.**

A. In accordance with state law, the granting of a Density Bonus or an incentive(s) shall not be interpreted, in and of itself, to require a General Plan amendment, specific plan amendment, rezone, or other discretionary approval.

B. An applicant must choose a Density Bonus from only one applicable affordability category of this Chapter and may not combine categories, with the exception of a Child Care Facility or land donation. The Child Care Facility or land donation may be combined with an affordable housing development for an additional Density Bonus up to a combined maximum of thirty five (35) percent.

C. Any Density Bonus and/or Concession/Incentive awarded shall apply only to the Housing Development for which it was granted.

D. In determining the number of density bonus units to be granted pursuant to 17.56.040 Section 17.106.040 (Density Bonus Qualifications), the maximum residential density for the site shall be multiplied by 0.20 for subsections A, B, and D of that section and 0.05 for subsection C of that section, unless a lesser number is selected by the developer.

1. For each one percent increase above ten 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.

2. For each one percent increase above five 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.

3. For each one percent increase above ten percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one (1) percent up to a maximum of 35 percent.

4. For a senior housing development that provides one hundred (100) percent of its units available to senior households, the density bonus shall be twenty (20) percent.

E. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

F. The density bonus units shall not be included when determining the number of qualifying units required for a density bonus. When calculating the required number of qualifying units, any calculations resulting in fractional units shall be rounded to the next larger integer.

G. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required qualifying units pursuant to Section 17.106.040 (Density bonus qualifications) above. Regardless of the number of qualifying units, no housing development may be entitled to a density bonus of more than thirty-five percent.

H. The following table summarizes this information:

**Density Bonus Summary Table**

| <b>Income Group</b> | <b>Minimum % Qualifying Units</b> | <b>Bonus Granted</b> | <b>Additional Bonus for Each 1% Increase in Qualifying Units</b> | <b>% Qualifying Units Required for Maximum 35% Bonus</b> |
|---------------------|-----------------------------------|----------------------|--|--|
| Very Low Income     | 5%                                | 20%                  | 2.5%   | 11%  |

|                                    |      |     |      |     |
|------------------------------------|------|-----|------|-----|
| Low Income                         | 10%  | 20% | 1.5% | 20% |
| Moderate Income (Condo or PD only) | 10%  | 5%  | 1%   | 40% |
| Senior Citizen Housing Development | 100% | 20% | —    | —   |

I. An applicant for an apartment conversion to a condominium project that provides at least thirty-three (33) percent of the total units of the proposed condominium project to persons and families of Low or Moderate Income, or fifteen (15) percent of the total units of the project to Lower Income households, and agrees to pay for the reasonable necessary administrative costs incurred by the County, qualify for a twenty-five (25) percent Density Bonus or other incentives of equivalent financial value. An applicant shall be ineligible for a Density Bonus or other incentives if the apartments proposed for conversion constitute a housing development for which a Density Bonus or other Incentives were previously granted under the provisions of this chapter.

**17.106.060 – Density Bonus--Eligibility and application requirements for incentives.**

A. A housing development qualifying for a density bonus is entitled to at least one incentive in addition to the density bonus. Incentives are available for qualifying housing developments as follows:

1. One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five (5) percent for very low income households, or at least ten (10) percent for persons and families of moderate income in a condominium or planned development.
2. Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a condominium or planned development.
3. Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a condominium or planned development.

B. The appropriate authority for the housing development shall grant the incentive unless the appropriate authority makes a written finding, based upon substantial evidence, of any of the following:

1. That the incentive is not necessary in order to provide for affordable housing costs; or
2. The concession or incentive would have a specific adverse impact, as defined in California Health & Safety Code 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 very low, lower and moderate income households.

C. In accordance with Government Code Section 65915 (p), an applicant qualifying for a density bonus may request, inclusive of handicapped and guest parking, the following parking ratios:

1. Zero to one bedrooms: One onsite parking space
2. Two to three bedrooms: Two onsite parking spaces
3. Four or more bedrooms: Two and one-half parking spaces

These standards may be applied in addition to any other incentives for which the housing

development qualifies as specified in this section. If the total number of parking spaces for the development is other than a whole number, the number shall be rounded up to the next whole number. Off-street parking spaces provided pursuant to this paragraph may be arranged in tandem and may be uncovered.

**17. 106.070 - Qualifications for restricted units.**

- A. The applicant shall execute an affordable housing agreement with Alameda County, which shall be recorded and shall run with the land.
- B. The affordable housing agreement shall describe household types, number, location, size and construction scheduling of restricted units and any other information required by the county to determine the applicant's compliance with the conditions.
- C. Restricted units shall be constructed concurrently with or prior to the construction of nonrestricted units, shall be dispersed throughout the housing development, and shall include all unit types represented in the housing development and shall be in the same proportions as nonrestricted unit types.

**17. 106.080 - Term of affordability.**

The applicant shall agree to, and the County shall ensure, the continued availability of the Qualifying Units and other Incentives for a period of at least 30 (thirty) years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

**17. 106.090 - Requirements for rental housing developments.**

- A. All restricted units shall be occupied by the household type specified in the affordable housing agreement.
- B. The applicant shall be responsible for obtaining and verifying information with respect to the qualifications of prospective and current tenants, including, but not limited to, information relating to tenants' incomes, and eligibility, in a form satisfactory to the planning director. The applicant shall maintain a list of qualified applicants for the duration of the program and shall allow the planning director to inspect such information upon reasonable notice. The applicant may contract with another entity to perform these functions subject to the approval of the planning director.
- C. The applicant shall submit reports annually certifying that the restricted units are occupied by the household types specified in the affordable housing agreement. The annual reports shall include the number of persons and income for each household in the restricted units.
- D. If the affordable housing agreement is violated, the applicant shall pay to the county as liquidated damages the maximum sum of five thousand dollars (\$5,000.00) for each restricted unit that is in violation of the affordable housing agreement. This amount may be required for each month of violation. Any unpaid liquidated damages may be recorded as a notice of violation of the affordable housing agreement against the title of the property. In addition to the liquidated damages, if a very low income, moderate income or lower income household in a restricted unit is charged a rent that exceeds the rent specified in the affordable housing agreement, the applicant must pay to the tenant the difference in the rent charged and the allowable rent for the months that the tenant was overcharged. If a restricted unit is rented to a household with an income exceeding that specified in the affordable housing agreement, in lieu of the liquidated damages mentioned above, the first vacant nonrestricted unit must be made a restricted unit and rented to a household that qualifies under the affordable housing agreement.

**17. 106.100 - Requirements for owner-occupied housing.**

- A. The home buyer shall verify on a form provided by the planning director that the restricted unit being purchased is for use as the buyer's principal residence and that the buyer is either a

moderate income household, lower income household, very low income household or a senior household. If the restricted unit ceases to function as the owner's principal residence, it shall be sold according to the requirements of the resale controls. If evidence is presented to the planning director that the owner is unable to continuously occupy the restricted unit because of illness or incapacity, the planning director may approve rental of the restricted unit to a senior, very low income, lower income, or moderate income household.

B. The resale controls will place limits on the resale price of a restricted unit and on the income of the new buyer. The resale price of a restricted unit will be limited to the original price of the restricted unit, plus a factor of appreciation equal to the annual increase in the median income, plus the appraised value, at time of sale, of any documented capital improvements. In addition, when an owner sells a restricted unit, the sale must be to a moderate income household, very low income household, lower income household, or senior household.

C. Resale controls shall be recorded as part of the declaration of covenants, conditions, and restrictions on the restricted unit. The resale controls will remain in effect for the term of affordability.

D. The following transfers of title or any interest therein are not subject to the provisions of this section, provided, however, that the resale controls shall continue to run with the land following such transfers: transfers by gift, devise, or intestate succession to the owner's spouse or children, and transfers of title to a spouse as part of a dissolution of marriage proceeding or in conjunction with marriage.

#### **17. 106.110 - Application procedure.**

A. An applicant may submit to the planning director a preliminary proposal for a housing development pursuant to this chapter prior to the submittal of any formal housing development application. The planning director shall, within ninety (90) days of receiving a preliminary proposal, provide the applicant a written preliminary evaluation of the housing development.

B. In addition to the county's usual development requirements, formal application for a housing development under this chapter shall include the following information:

1. A written statement specifying the desired density increase, incentive requested, and the number, type, location, size and construction schedule of all dwelling units;
2. If necessary for the planning director to evaluate the financial need for additional incentives, the applicant shall submit a report that contains housing development costs and revenues, including but not limited to land, construction, and financing costs, and revenues from restricted units, unrestricted units, and density bonus units. Such other information as the planning director needs to evaluate the housing development may be requested by the planning director. The planning director may retain a consultant to review the financial report. The cost of the consultant shall be borne by the applicant; and
3. Any other information requested by the planning director to implement this chapter.

C. Housing developments that meet the requirements set forth in Section 17.106.040 (Density bonus qualifications) above shall qualify for a density bonus and at least one incentive, unless the planning director adopts a written finding that the incentive is not required to achieve the economic feasibility of the restricted units. The planning director may also provide an incentive in place of a density bonus that is of equivalent value to the density bonus. Such incentive shall be calculated in a manner determined by the planning director.

#### **17.106.120 – Density Bonus--Child Care Facilities.**

A. When an applicant proposes a housing development that is eligible for a density bonus under this chapter and includes a child care facility on the premises or adjacent to the housing development, the applicant shall receive an additional density bonus that is in an amount of square feet of residential space that is equal to the square footage of the child care facility; or the applicant may receive another incentive that contributes significantly to the economic

feasibility of the construction of the child care facility, provided that, in both cases, the following conditions are incorporated in the conditions of approval for the housing development:

1. 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 restricted units are required to remain affordable pursuant to the terms of the affordable housing agreement executed between the County and the developer.
2. Attendance of children at the child care facility shall have an equal or greater percentage of children from very low, low, and moderate income households than the percentage of affordable units in the housing development.

B. The County may deny the request for a density bonus or incentive for a child care facility if the county finds, based upon substantial evidence, that the community has adequate child care facilities without the facilities being considered as part of the subject housing development.

#### **17.106.130 - Density Bonus--Donation of land.**

A. When an applicant for a tentative subdivision map, parcel map or other residential development donates land to the County, the applicant shall be entitled to a density bonus above the maximum allowable residential density, up to a maximum of thirty five (35) percent depending on the amount of land donated. The amount of density bonus shall be based upon the number of permittable units consistent with Section 17.106.050(H). This increase shall be in addition to any increase in density permitted by this chapter up to a maximum combined density increase of 35 percent. A density bonus for donation of land shall only be considered 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 the amount not less than ten percent (10%) of the residential units in 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 (forty) 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 (such as waste water treatment facilities and public transit). The transferred 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 units on the transferred land, except that the County may subject the proposed development to subsequent design review if the design is not reviewed by the County prior to the time of transfer.
4. The transferred land and the units constructed on said land shall be subject to a deed restriction ensuring continued affordability of the units for a period of at least thirty (30) years and subject to restrictions consistent with California Government Code Section 65915 (c)(1) and (2), as may be periodically amended.
5. The land is transferred to the County or to a housing developer approved by the County.
6. The transferred land shall be within the boundary of the proposed development or, if the County determines appropriate, be located within the same General Plan area as the proposed development.

#### **17. 106.140 - Administration and fees.**

A. At the discretion of the planning director, the county may contract with another entity to administer the rental and sales provisions of this chapter.

B. The planning director shall establish the amount of fees to be charged to applicants for administration of this chapter at the cost of staff time attributable to such administration. These fees may be waived or reduced as specified in Section 17.106.030 (Definitions) under subsection (4)(a) of the definition of "incentive" .

C. The planning director shall be responsible for monitoring the resale of restricted units.

D. The planning director shall adopt regulations and forms necessary to implement and interpret the provisions of this chapter.

#### SECTION XXVII

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California,  
\_\_\_\_\_, 2012 by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
NATE MILEY  
President of the Board of Supervisors  
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA GRAFF,  
Clerk of the Board of Supervisors, County of Alameda

By \_\_\_\_\_

Approved as to Form:  
DONNA ZIEGLER, County Counsel

By \_\_\_\_\_  
BRIAN WASHINGTON  
Chief Assistant County Counsel



## Environmental Checklist Form

### Prepared Pursuant to the California Environmental Quality Act (CEQA)

#### A. PROJECT DESCRIPTION

1. **Project title:** Alameda County Housing Element Update (2009-2014)
2. **Project location:** Unincorporated Alameda County
3. **Project sponsor's name and address:** Alameda County Community Development Agency  
224 West Winton Avenue, Room 111, Hayward, CA 94544
4. **Lead Agency name and address:** Alameda County Community Development Agency  
224 West Winton Avenue, Room 111, Hayward, CA 94544
5. **Contact Person and phone number:** Elizabeth McElligott, Assistant Planning Director,  
(510) 670-5400
6. **General plan designation:** Not applicable. Housing Element Update is not specific to a site or a community.
7. **Zoning:** Not applicable. See #6.
8. **Description of project:** State law requires each city and county to adopt a general plan containing at least seven elements including housing. Unlike the other mandatory general plan elements, a housing element, must be updated every five years, and is subject to detailed statutory requirements and mandatory review by the State Department of Housing and Community Development (HCD).  
  
Alameda County has prepared a draft update to the Housing Element of the County's General Plan. The current Housing Element was adopted by the Board of Supervisors on October 2, 2003. The planning period for the Housing Element update will cover from July 1, 2009 to June 30, 2014.  
  
The Alameda County Housing Element is the primary housing policy document for the unincorporated portions of the County and it provides a comprehensive strategy for promoting the development, preservation, and rehabilitation of safe, decent and affordable housing for all residents within the unincorporated areas.  
  
The adoption and implementation of the Housing Element does not propose or require any changes to existing Zoning or General Plan designations for any parcel.
9. **Surrounding land uses and setting:** Alameda County is one of the nine San Francisco Bay Area counties, located along the eastern shore of the San Francisco Bay. The County covers approximately 738 square miles. Alameda County is one of only two Bay Area counties that spans an area that reaches from the Bay to California's Central Valley. The western portion of Alameda County is located generally on the East Bay Plain between the coastal hills and the Bay. The area is heavily urbanized and contains the incorporated cities of Albany, Berkeley, Piedmont, Oakland, Emeryville, Alameda, San Leandro, Hayward, Union City, Newark, and Fremont, as well as the unincorporated urban areas of Castro Valley, Fairview, San Lorenzo, Ashland, and Cherryland.  
  
Eastern Alameda County is primary composed of the coastal range's rough terrain that extends from the hills above the Bay Plain to the border with San Joaquin County in the Central Valley. It is comprised mainly of non-urban uses including agriculture, parkland, watershed, and open space. This area has relatively low population density except for the Livermore-Amador Valley, in which the incorporated cities of Dublin, Pleasanton, and Livermore are located.
10. **Other public agencies whose approval may be required:** California Department of Housing and Community Development must review and certify the Housing Element.

**B. ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Aesthetics               | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                                   |
| <input type="checkbox"/> Biological Resources     | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology /Soils                                |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials      | <input type="checkbox"/> Hydrology / Water Quality                     |
| <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                  | <input type="checkbox"/> Noise   |
| <input type="checkbox"/> Population / Housing     | <input type="checkbox"/> Public Services                    | <input type="checkbox"/> Recreation                                    |
| <input type="checkbox"/> Transportation/Traffic   | <input type="checkbox"/> Utilities / Service Systems        | <input checked="" type="checkbox"/> Mandatory Findings of Significance |

**C. LEAD AGENCY DETERMINATION:**

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Elizabeth McElligott  
 Signature

4/1/10  
 Date

Elizabeth McElligott, Assistant Planning Director

**D. EVALUATION OF ENVIRONMENTAL EFFECTS:**

The Environmental Checklist and discussion that follows is based on sample questions provided in the CEQA Guidelines (Appendix G) which focus on various individual concerns within 16 different broad environmental categories, such as air quality, cultural resources, land use and traffic (and arranged in alphabetical order). The Guidelines also provide specific direction and guidance for preparing responses to the Environmental Checklist. Each question in the Checklist essentially requires a "yes" or "no" reply as to whether or not the project will have a potentially significant environmental impact of a certain type, and, following a Checklist table with all of the questions in each major environmental heading, citations, information and/or discussion that supports that determination. The Checklist table provides, in addition to a clear "yes" reply and a clear "no" reply, two possible "in-between" replies, including one that is equivalent to "yes, but with changes to the project that the proponent and the Lead Agency have agreed to, *no*", and another "no" reply that requires a greater degree of discussion, supported by citations and analysis of existing conditions, threshold(s) of significance used and project effects than required for a simple "no" reply. Each possible answer to the questions in the Checklist, and the different type of discussion required, is discussed below:

- a) Potentially Significant Impact. Checked if a discussion of the existing setting (including relevant regulations or policies pertaining to the subject) and project characteristics with regard to the environmental topic demonstrates, based on substantial evidence, supporting information, previously prepared and adopted environmental documents, and specific criteria or thresholds used to assess significance, that the project will have a potentially significant impact of the type described in the question.
- b) Less Than Significant With Mitigation. Checked if the discussion of existing conditions and specific project characteristics, also adequately supported with citations of relevant research or documents, determine that the project clearly will or is likely to have particular physical impacts that will exceed the given threshold or criteria by which significance is determined, but that with the incorporation of clearly defined mitigation measures into the project, that the project applicant or proponent has agreed to, such impacts will be avoided or reduced to less-than-significant levels.
- c) Less Than Significant Impact. Checked if a more detailed discussion of existing conditions and specific project features, also citing relevant information, reports or studies, demonstrates that, while some effects may be discernible with regard to the individual environmental topic of the question, the effect would not exceed a threshold of significance which has been established by the Lead or a Responsible Agency. The discussion may note that due to the evidence that a given impact would not occur or would be less than significant, no mitigation measures are required.
- d) No Impact. Checked if brief statements (one or two sentences) or cited reference materials (maps, reports or studies) clearly show that the type of impact could not be reasonably expected to occur due to the specific characteristics of the project or its location (e.g. the project falls outside the nearest fault rupture zone, or is several hundred feet from a 100-year flood zone, and relevant citations are provided). The referenced sources or information may also show that the impact simply does not apply to projects like the one involved. A response to the question may also be "No Impact" with a brief explanation that the basis of adequately supported project-specific factors or general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a basic screening of the specific project).

The discussions of the replies to the Checklist questions must take account of the whole action involved in the project, including off-site as well as on-site effects, both cumulative and project-level impacts, indirect and direct effects, and construction as well as operational impacts. Except when a "No Impact" reply is indicated, the discussion of each issue must identify:

- a) the significance criteria or threshold, if any, used to evaluate each question; and
- b) the mitigation measure identified, if any, to reduce the impact to less than significance, with sufficient description to briefly explain how they reduce the effect to a less than significant level.

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration (Section 15063(c)(3)(D) of the Guidelines). In this case, a brief discussion should identify the following:

- a) Earlier Analysis Used. Identify and state where they are available for review.
- b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
- c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

**E. EVALUATION OF ENVIRONMENTAL IMPACTS:**

| 1. AESTHETICS<br>Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Have a substantial adverse effect on a scenic vista?  |                                     |   |                                  | X             |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? |                                     |   |                                  | X             |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings?  |                                     |   |                                  | X             |
| d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?                                    |                                     |   |                                  | X             |

**Summary:**

The Housing Element has been updated to report on the County's progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The Specific Plan for Areas of Environmental Significance and the Open Space and Scenic Route Elements to the County General Plan provide an inventory and generalized mapping of the scenic resources and describes scenic resource protection measures for the County. Based upon a review of these documents and the proposed actions in the Housing Element update, the adoption and subsequent implementation of the Housing Element update would not adversely affect scenic vistas, scenic resources, visual character, or create light/glare on a specific site or community in the unincorporated area, because it would not result in development of a specific site or alter a community. Any possible impacts on aesthetics are within the parameters already assessed in the Environmental Impact Reports (EIRs) prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <p><b>2. AGRICULTURE AND FOREST RESOURCES</b></p> <p>In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</p> | <p>YES: Potentially Significant Impact</p> | <p>NO: Less Than Significant with Mitigation</p> | <p>NO: Less Than Significant Impact</p> | <p>NO: No Impact</p> |
|--|--|--|---|----------------------|
| <p>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</p>  |  |  |   | <p>X</p>             |
| <p>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</p>  |  |  |   | <p>X</p>             |
| <p>c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)) or timberland (as defined by Public Resources Code section 4526)?</p>  |  |  |   | <p>X</p>             |
| <p>d) Result in the loss of forest land or conversion of forest land to non-forest use?</p>  |  |  |   | <p>X</p>             |
| <p>e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?</p>  |  |  |   | <p>X</p>             |

Summary:

The Housing Element has been updated to report on the County's progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area, and more specifically does not propose any changes to areas of the County designated for agricultural or forestry uses.

The Conservation Element to the County General Plan provides an inventory and generalized mapping of the agricultural and forestry/timberland resources within the County and describes policies to protect those resources. Additionally, the California Department of Conservation compiles maps of important farmlands for each county in California, including Alameda County, and Alameda County has mapped land area under Agricultural Preserves or Williamson Act contracts. Based upon a review of the Alameda County Conservation Element, the California Department of Conservation Map of Important Farmlands, Alameda County's Map of Agricultural Preserves, the County has determined that the proposed actions in the Housing Element update, and the adoption and subsequent implementation of the Housing Element would not result in any direct loss of important farmlands or conversion of farmland, it would not conflict with the existing zoning districts for agricultural use, and it would not alter land under a Williamson Act contract, because it would not directly result in development of specific site. Moreover, the county has

analyzed information provided by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land and has found that no forest lands are located within or adjacent to the project area and as such the adoption and implementation of the Housing Element would not result in any direct loss of forest land or lands currently under timber preserve because the Element would not result in the development of any specific site. In addition, none of the housing opportunity sites identified in the Element are within an area identified for agricultural or timber uses. Thus, any impacts on agriculture or forestry resources would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <b>3. AIR QUALITY</b><br>Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant with Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Conflict with or obstruct implementation of the applicable air quality plan?   |                                     |   |                                  | X             |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?  |                                     |   |                                  | X             |
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? |                                     |   |                                  | X             |
| d) Expose sensitive receptors to substantial pollutant concentrations?  |                                     |   |                                  | X             |
| e) Create objectionable odors affecting a substantial number of people?   |                                     |   |                                  | X             |

**Summary:**

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area, and more specifically does not propose any actions that would alter or have any other affect on the implementation of air quality plans.

The Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines, 1999, state that sources of air pollution emissions that comply with all applicable BAAQMD regulations generally would not be considered to have significant air quality impacts. Furthermore, the BAAQMD Guidelines state that cumulative impacts of a project are not considered cumulatively significant if the project does not require a general plan amendment and the general plan is consistent with the Clean Air Plan. The Housing Element does not require any zoning code or general plan amendments for any specific parcel, and so it does not conflict with the Clean Air Plan.<sup>1</sup>

Sensitive receptors are defined as occupants of residences, schools and hospitals. There are opportunity sites within the Sites Inventory that are located adjacent to or near some sensitive receptors such as residential areas and schools. Sensitive receptors could be exposed to air pollutants from two sources: project construction and from vehicle emissions.

The County has several policies in place to monitor and mitigate air quality impacts associated with construction. The following items are typical conditions of approval that are imposed upon by the County for new construction projects:

- Water all exposed soils of the active construction areas at least twice daily.
- Cover loads of soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.

<sup>1</sup> Page 19, BAAQMD CEQA Guidelines, December, 1999

- Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and construction staging areas.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)
- Limit traffic speeds on unpaved areas to 24 km (15 miles) per hour.
- Suspend excavation and grading activity during strong winds.
- A demolition permit shall be obtained from the Alameda County Building Inspection Department prior to the demolition of any structures.
- Appropriate air quality and asbestos permits shall be obtained from the Bay Area Air Quality Management District (BAAQMD).

Adoption of the Housing Element would not result in a substantial increase in air pollutant concentrations or result in an exposure of sensitive receptors to substantial pollutant concentrations arising from vehicular use. The Castro Valley, East County, and Eden Area Plans include transportation control measures and land use policies that address air quality impacts by encouraging alternative modes of transportation, higher density development in proximity to transit service, improvements to pedestrian and bicycle facilities, traffic calming, and similar activities that the County undertakes as part of its redevelopment agency projects, capital improvements plan, and as conditions of approval for new development.

The adoption and subsequent implementation of the Housing Element update would not violate any air quality standard or contribute to an existing or projected air quality violation, it would not result in a cumulatively considerable net increase of any pollutant criteria for which the region is a non-attainment under an applicable federal or state ambient air quality standard, it would not expose sensitive receptors to substantial pollutants, and it would not create objectionable odors.

| 4. BIOLOGICAL RESOURCES<br>Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? |                                     |   |                                  | X             |
| b) Have a substantial adverse effect on any riparian, aquatic or wetland habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?   |                                     |   |                                  | X             |
| c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?   |                                     |   |                                  | X             |
| d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?   |                                     |   |                                  | X             |
| e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?  |                                     |   |                                  | X             |
| f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?   |                                     |   |                                  | X             |
| g) Result in conversion of oak woodlands that will have a significant effect on the environment?   |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area, and more specifically does not propose any actions that would alter or have any other affect on areas designated for the protection of biological or natural resources.

The East County Area, Central Metropolitan, Eden Area and Castro Valley Plans, the Conservation Element and the Specific Plan for Areas of Environmental Significance to the County General Plan provide descriptions and generalized maps of the biologically sensitive areas within the County and describe policies to protect them. The housing opportunity sites identified in the Housing Element are located in areas where the natural conditions were long ago disturbed in favor of urban land uses. Consistent with these patterns of urbanization, much of the area native vegetation has been removed; creeks have been culverted, diverted or undergrounded; the area has been developed with paved roadways, sidewalks, gutters, parking lots, and various structures.

Based upon a review of these documents, it can be concluded that the proposed actions in the Housing Element update, and the adoption and subsequent implementation of the Housing Element would not have any impact on any specially listed species, riparian habitat, sensitive natural community, or protected wetlands. Any impacts on biological resources would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <b>5. CULTURAL RESOURCES</b><br>Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Cause a substantial adverse change in the significance of a historical resource as defined in '15064.5.    |                                     |   |                                  | X             |
| b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to '15064.5. |                                     |   |                                  | X             |
| c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.       |                                     |   |                                  | X             |
| d) Disturb any human remains, including those interred outside of formal cemeteries.                          |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area, and more specifically does not propose any actions that would alter or have any other affect on areas designated for the protection of cultural, architectural, historical, paleontological or archaeological resources.

There are sites within the project area that may be eligible for listing on the California Register of Historical Resources (CRHR). Development on the majority of the opportunity sites are subject to site-specific review of some form. Part of this review will include a review of cultural or historical resource surveys and other documents as needed to formulate an opinion about a site’s, location, design, setting, materials, workmanship, feeling, and association with significant persons or events as provided in the Secretary of the Interiors Guidelines for Archaeology and Historic Preservation. Projects involving properties that appear eligible for listing for the CRHR will be required to have an assessment performed by a consultant qualified to make a determination about the site’s significance based on the appropriate State or Federal standards. Should this review find that the project may cause an impact to a cultural or historical resource; the County may impose mitigations as a condition of approval.

Native American archaeological sites have been found in the project area; therefore, it is possible that development on one of the opportunity sites could have an impact on archaeological, paleontological, or geologic resource, or disturb human remains. Under the County’s standard condition of approval, the project sponsor is required to notify construction personnel about the possibility of unearthing archaeological, paleontological, geologic resources, or to disturb human remains. Should such resources be identified, the sponsor is required to halt construction related activity in the area and to consult with a qualified archaeologist or geologist to assess the site and to determine the nature of the discovery. Should the consultant determine that there are substantial impacts to a resource; mitigation measures recommended by the archaeologist and approved by the planning director will be implemented.

Adoption and implementation of the Housing Element would not result in disturbance of known significant archaeological or paleontological resources, and it would not result in disturbance of known sites with human remains. Any impacts on cultural resources would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| 6. GEOLOGY AND SOILS<br>Would the project:   | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:   |                                     |   |                                  | X             |
| i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault. Refer to Division of Mines and Geology Special Publication 42. |                                     |   |                                  | X             |
| ii) Strong seismic ground shaking.   |                                     |   |                                  | X             |
| iii) Seismic-related ground failure, including liquefaction.   |                                     |   |                                  | X             |
| iv) Landslides.  |                                     |   |                                  | X             |
| b) Result in substantial soil erosion or the loss of topsoil.  |                                     |   |                                  | X             |
| c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.   |                                     |   |                                  | X             |
| d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property.   |                                     |   |                                  | X             |
| e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.   |                                     |   |                                  | X             |

**Summary:**

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The Seismic and Safety Elements to the County General Plan an inventory provide a generalized mapping of landslides, unstable soils, and seismic hazards in the County, and describes policies to protect people and structures from such hazards. The United States Geological Survey (USGS), the State Board of Geologists and Geophysicists, and the State Mining and Geology Board also provide maps and data pertaining to faults within the project area. This data shows that there are areas within the unincorporated County that may be subject to geologic and seismic risk. Should such risks be identified by the County, the project sponsor will be required to consult with persons qualified to assess the specific hazard and to develop appropriate mitigations to ensure that the project complies with relevant County and State standards for development in areas with geologic or seismic hazards.

Based upon a review of the Seismic and Safety Elements, USGS map data and the proposed actions in the Housing Element update, the adoption and subsequent implementation of the Housing Element update would not expose people or structures to potential substantial adverse effects involving earthquakes and

seismic-related activity, it would not result in soil erosion or loss of topsoil, and it would not result in placing structures on unstable soils, because it would not directly result in development of specific site or alter a community. Any potential impacts to geology or soils would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| 7. GREENHOUSE GAS EMISSIONS<br>Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?                    |                                     |   | X                                |               |
| b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases? |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area. The following paragraphs summarize the steps that the County has or will undertake to reduce greenhouse gases.

The County’s Housing Plan, as provided within the Housing Element, describes the various goals, policies, and actions that the county will undertake during the planning period to “minimize the adverse environmental impacts of residential development” which includes the reduction of greenhouse gases (GHG).<sup>2</sup>

Alameda County is developing amendments to the Castro Valley and Eden Area plans that will propose strategies and programs to reduce GHGs as required by Assembly Bill 32 (Nunez, 2006) and Senate Bill 375 (Steinberg, 2008). While these documents have not been adopted by the Board of Supervisors, staff has reviewed drafts of these documents in an attempt to ensure consistency between each of these General Plan documents as required by State law. Likewise, the staff and consultants responsible for the Castro Valley and Eden Plans have evaluated the draft Housing Element and the Sites Inventory and have incorporated the population and housing projections into their GHG models.

The County recently amended its Ordinance to include policies to reduce greenhouse gases and the effects of climate change. The Green Building Ordinance (Chapter 15.08, Section 460) requires that new residential construction over 1,000 square feet meet green building standards as required by a third party rating agency such as LEED or GreenPoint.

The County is currently developing a Community Climate Action Plan (CAP) that will provide the foundation for its GHG reduction goals through specific policies, programs, and actions. The plan will: identify and prioritize actions to reduce emissions from multiple action areas, such as building energy use, transportation systems, and waste disposal; estimate each action's effect on emissions, costs/savings, and other criteria (e.g., impacts on service delivery, public health, advancement of other goals/priorities); build on the County's greenhouse gas emissions inventories, which establishes baseline GHG emissions level; and contain performance targets that will be tracked and reported on. Adoption of the Community CAP is expected in March 2010.

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The Housing Element, if adopted, must be consistent with, and would therefore be dependent upon, the Eden Area Plan and the Castro Valley Plan. These two plans in turn must legally demonstrate reduction in GHG emissions in conformance with current State and Federal law, and along with the proposed CCAP must result in reductions of GHG emissions to 1990 levels by the by Year 2025 or earlier, in order to achieve a less-than-significant impact on GHG emissions. The Housing Element could have no greater impact on GHG emissions than the underlying Area General Plans on which it depends, and thus would have a less-than-significant effect on GHG emissions.

| 8. HAZARDS AND HAZARDOUS MATERIALS<br>Would the project:   | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.  |                                     |   |                                  | X             |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.  |                                     |   |                                  | X             |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.  |                                     |   |                                  | X             |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment.                                   |                                     |   |                                  | X             |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area. |                                     |   |                                  | X             |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area.  |                                     |   |                                  | X             |
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.  |                                     |   |                                  | X             |
| h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.   |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The Seismic and Safety Elements to the County General Plan an inventory provide a generalized mapping of hazardous land uses and fire areas and describes policies to protect people and structures from hazardous materials and the threat of fire in the County. Based upon a review of the Seismic and Safety Elements, the Airport Land Use Plan, and the proposed actions in the Housing Element update, the adoption and subsequent implementation of the Housing Element update would not expose people or structures to potential substantial adverse effects involving hazardous materials or fire. Any potential impacts to geology or soils would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| 9. HYDROLOGY AND WATER QUALITY<br>Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Violate any water quality standards, conflict with water quality objectives, fail to meet waste discharge requirements, or otherwise cause significant degradation of beneficial uses of surface water bodies or groundwater, including public uses, aquatic, wetland and riparian habitat?  |                                     |   |                                  | X             |
| b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?                         |                                     |   |                                  | X             |
| c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site (i.e. within a watershed)?  |                                     |   |                                  | X             |
| d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff (e.g., due to increased impervious surfaces) in a manner which would result in flooding on- or off-site (i.e. within a watershed)?  |                                     |   |                                  | X             |
| e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems due to changes in runoff flow rates or volumes?   |                                     |   |                                  | X             |
| f) Result in a significant increase in pollutant discharges to receiving waters (marine, fresh, and/or wetlands) during or following construction (considering water quality parameters such as temperature, dissolved oxygen, turbidity, and typical stormwater pollutants such as heavy metals, pathogens, petroleum derivatives, synthetic organics, sediment, nutrients, oxygen-demanding substances, and trash)? |                                     |   |                                  | X             |
| g) Result in an increase in any pollutant for which a water body is listed as impaired under Section 303(d) of the Clean Water Act?   |                                     |   |                                  | X             |
| h) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?  |                                     |   |                                  | X             |
| i) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?   |                                     |   |                                  | X             |
| j) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?  |                                     |   |                                  | X             |
| k) Inundation by seiche, tsunami, or mudflow?   |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County's progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

A review of the following documents was conducted in order to assess potential impacts to hydrologic and water resources: the County's General/Specific Plan policies and related maps; the Seismic and Safety Elements, the Specific Plan for Areas of Environmental Significance; the Watercourse Protection Ordinance, maps from the Federal Emergency Management Agency (FEMA), and Public Works Agency data on storm drainage and flooding. Based upon a review of the aforementioned documents and the proposed actions in the Housing Element update, the adoption and subsequent implementation of the Housing Element update would not expose people or structures to potential substantial adverse effects from flood hazards, nor would they violate adopted water quality or waste water standards, alter existing drainage patterns, or exceed planned flows of stormwater runoff for drainage systems. Any impacts on hydrologic and water resources would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| 10. LAND USE AND PLANNING<br>Would the project:   | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Physically divide an established community.  |                                     |   |                                  | X             |
| b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. |                                     |   |                                  | X             |
| c) Conflict with any applicable habitat conservation plan or natural community conservation plan.   |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County's progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. The Housing Element does not require any revisions to zoned density or General Plan Designation for any parcel. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The Housing Element does not physically divide an established community, nor does it conflict with any established State, Federal or County land use plan, policy or regulation which was adopted for the purpose of mitigating or avoiding an environmental impact. Any impacts on land use would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans. Moreover, the adoption and subsequent implementation of the Housing Element would not require any modifications to existing zoning or general plan designations for any parcel contained therein.

| <b>11. MINERAL RESOURCES</b><br>Would the project:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state.                                |                                     |   |                                  | X             |
| b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan. |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area, and more specifically does not propose any actions that would result in a loss of the availability of a known or locally-important mineral resource.

The East County Area, Central Metropolitan and Castro Valley Plans, and the Conservation Element provide descriptions and generalized maps of the known mineral deposits within the County and describe policies to manage their extraction. Based upon a review of these documents it can be concluded that the proposed actions in the Housing Element update, and the adoption and subsequent implementation of the Housing Element would not have any impact on any known or locally-important mineral resource. Any impacts on mineral resources would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <b>12. NOISE</b><br>Would the project result in:  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.   |                                     |   |                                  | X             |
| b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels.   |                                     |   |                                  | X             |
| c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.  |                                     |   |                                  | X             |
| d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.  |                                     |   |                                  | X             |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels. |                                     |   |                                  | X             |
| f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels.  |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. The Housing Element does not require any revisions to zoned density or General Plan Designation for any parcel. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area, and more specifically does not propose any actions that would increase current noise levels.

The East County Area, Central Metropolitan and Castro Valley Plans, and the Noise Element provide an inventory and mapping of noise sensitive land uses and establishes compatibility guidelines for land use and noise. Based upon a review of these documents it can be concluded that the proposed actions in the Housing Element update, and the adoption and subsequent implementation of the Housing Element would not result in noise levels in excess of established standards in the County General Plan. Any impacts on noise would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <p><b>13. POPULATION AND HOUSING</b><br/>                     Would the project:</p>  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? |                                     |   | X                                |               |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?   |                                     |   |                                  | X             |
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?   |                                     |   |                                  | X             |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. The Housing Element does not require any revisions to zoned density or General Plan Designation for any parcel. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

Although the Housing Element update will facilitate housing through policies and programs that may result in more intensive use of land, any impacts on population and housing would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <b>14. PUBLIC SERVICES</b><br>Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services: | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Fire protection.  |                                     |   | X                                |               |
| b) Police protection.  |                                     |   | X                                |               |
| c) Schools.  |                                     |   | X                                |               |
| d) Parks.  |                                     |   | X                                |               |
| e) Other public facilities.  |                                     |   | X                                |               |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area. The Housing Element does not require any revisions to zoned density or General Plan Designation for any parcel. Its purpose is to facilitate development of housing opportunities within the unincorporated area that the County General Plan has already determined are suitable and planned for residential development.

The County General Plan assumes that the areas identified as appropriate for residential uses will have a basic level of public services to support new residential development, and requires that approval of new development will be conditioned on mitigating their impact on public services that would be generated by the development. The adoption and subsequent implementation of the Housing Element update would not alter the ability to maintain acceptable levels of public services as defined in the County General Plan.

Although the Housing Element update would facilitate housing through policies that may result in more intensive use of land, any impacts on public services would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| <p><b>15. RECREATION</b><br/>Would the project:</p>   | <p>YES: Potentially Significant Impact</p> | <p>NO: Less Than Significant With Mitigation</p> | <p>NO: Less Than Significant Impact</p> | <p>NO: No Impact</p> |
|---|--|--|---|----------------------|
| <p>a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.</p> |  |  | <p>X</p>                                |                      |
| <p>b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.</p>                       |  |  | <p>X</p>                                |                      |

Summary:

The Housing Element has been updated to report on the County’s progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five- year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The County General Plan assumes that the areas identified as appropriate for residential uses will have a basic level of park and recreational facilities to support new residential development, and requires that approval of new development will be conditioned on the applicant’s either providing funding via park dedication fees or by the granting of land to support the increased demand for such services. The adoption and subsequent implementation of the Housing Element update would not alter the ability to maintain acceptable levels of parks and recreational facilities as defined in the County General Plan.

Although the Housing Element update would facilitate housing through policies that may result in more intensive use of land, any impacts on parks and recreation services would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| 16. TRANSPORTATION/TRAFFIC<br>Would the project:   | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| a) Exceed the capacity of the existing circulation system, based on applicable measures of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? |                                     |   | X                                |               |
| b) Conflict with an applicable congestion management program, including but not limited to, level of service standards and travel demand measures and other standards established by the county congestion management agency for designated roads or highways.   |                                     |   | X                                |               |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.  |                                     |   | X                                |               |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).   |                                     |   | X                                |               |
| e) Result in inadequate emergency access.  |                                     |   | X                                |               |
| f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).   |                                     |   | X                                |               |

Summary:

The Housing Element has been updated to report on the County's progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five-year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The County General Plan assumes that the areas identified as appropriate for residential uses will have a basic transportation system to support additional residential development. The County General Plan also requires that approval of new development will be conditioned on mitigating impacts on the transportation system that would be generated by the new development. These mitigations include a cumulative traffic impact fee, and sidewalk and roadway improvements. The adoption and subsequent implementation of the Housing Element update would not alter the ability to maintain acceptable levels of traffic service as defined in the County General Plan.

Although the Housing Element update contains policies and programs, which facilitate a more intensive use of land that could generate impacts on transportation/traffic systems, any impacts on transportation and traffic would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

| 17. UTILITIES AND SERVICE SYSTEMS<br>Would the project:   | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|---|-------------------------------------|---|----------------------------------|---------------|
| a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board.   |                                     |   | X                                |               |
| b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.                            |                                     |   | X                                |               |
| c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.                                     |                                     |   | X                                |               |
| d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed.  |                                     |   | X                                |               |
| e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments. |                                     |   | X                                |               |
| f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.  |                                     |   | X                                |               |
| g) Comply with federal, state, and local statutes and regulations related to solid waste.   |                                     |   | X                                |               |

Summary:

The Housing Element has been updated to report on the County's progress in meeting existing goals and objectives for housing in the unincorporated area, to incorporate new data for the five-year period covering 2009 to 2014, and to define policies, programs, and other actions to meet goals and objectives for the period covering 2009 to 2014. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area.

The areas identified as appropriate for residential uses will have a basic level of utilities and service systems to support new residential development. The Housing Element update does not involve the disturbance of land, installation of facilities, or construction of any buildings or improvements. The adoption and subsequent implementation of the Housing Element update would have no effect on the utility requirements or on the state of compliance of local utility provision with federal, state and local statutes, regulations, and policies.

Although the Housing Element update would facilitate housing through policies that may result in more intensive use of land, any impact on utility and service systems would be indirect or within the parameters already assessed in the EIRs prepared for the East County Area, Central Metropolitan, Eden Area and Castro Valley Plans.

|  | YES: Potentially Significant Impact | NO: Less Than Significant With Mitigation | NO: Less Than Significant Impact | NO: No Impact |
|--|-------------------------------------|---|----------------------------------|---------------|
| <b>18. MANDATORY FINDINGS OF SIGNIFICANCE</b>  |                                     |   |                                  |               |
| a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? |                                     |   |                                  | X             |
| b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)   |                                     |   | X                                |               |
| c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?  |                                     |   |                                  | X             |

Discussion

The proposed project, which is the update of the Housing Element in the County General Plan, will not have a significant new impact on the environment, nor will the project have a significant new cumulative impact. The adoption and implementation of the Housing Element will not require any changes to existing zoning or general plan designations for any parcel identified therein.

**E. SOURCES**

The following references (which are available for review at the Alameda County Planning Department 224 West Winton Avenue, Room 111, Hayward, CA 94544) were consulted to prepare the Initial Study Checklist:

- General Plan, County of Alameda (Land Use and Circulation Elements), adopted May 26, 1966. Amended August 27, 1969; June 6, 1974; October 10, 1974; November 3, 1977; August 8, 1978; January 4, 1979; December 16, 1980; November 3, 1984; and April 5, 1984.
- Castro Valley Plan, adopted June 15, 1961. Amended January 29, 1974; August 8, 1978; April 4, 1985; modified by voters through Measure D, November, 2000, codified by Board of Supervisors May, 2002.
- Livermore-Amador Valley Planning Unit General Plan, adopted November 3, 1977. Amended January 4, 1979; December 16, 1980; November 3, 1983; April 5, 1984; December 12, 1989. Superseded by the East County Area Plan, adopted May 5, 1993; modified by voters through Measure D, November, 2000, codified by Board of Supervisors May, 2002.
- General Plan for the Central Metropolitan, Eden and Washington Planning Units, adopted January 13, 1981. Amended November 3, 1983.
- Unincorporated Eden (Portion) Area Plan, adopted November 3, 1983.
- Housing Element, adopted October 2, 2003
- Park and Recreation Element, adopted June 12, 1956. Amended November 21, 1968.
- Scenic Route Element, adopted May 5, 1966.
- Open Space Element, adopted May 31, 1973. Amended December 12, 1989.
- Conservation Element, adopted January 8, 1976. Amended November 23, 1976.
- Seismic Safety Element, adopted January 8, 1976. Amended August 5, 1982.
- Seismic and Safety Elements, adopted January 8, 1976. Amended August 5, 1982.
- Noise Element, adopted January 8, 1976.
- Alameda County Assessor's Williamson Act Subvention data as of December 31, 2008.
- Fairview Area Specific Plan, adopted September 4, 1997.

#### **RESPONSE TO LETTER 4**

The comments from the California Department of Transportation (CalTrans) do not question the adequacy of the Draft Initial Study/Negative Declaration, but rather describes the general requirements that are imposed on individual development projects requiring roadway improvements. As the draft Housing Element does not propose the development of any specific site, no mitigations are required. No additional action is required.

## **ADDENDUM**

### **Comments and Responses to the Initial Study and Negative Declaration**

This chapter includes a reproduction of, and response to, each letter received during the public review period. Each letter is reproduced in its entirety and is immediately followed by responses to the comments in it. The letters are presented in the order that they were received.

## DEPARTMENT OF FISH AND GAME

POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
(707) 944-5500

**CEQA Filing Fee No Effect Determination Form**

**Date Submitted:** October 26, 2009

**Applicant Name:** Alameda County Community Development Agency

**Applicant Address:** 224 West Winton Avenue, Room 111, Hayward, CA 94544

**Project Name:** Alameda County Housing Element Update (2009-2014)

**CEQA Lead Agency:** Alameda County Community Development Agency

**CEQA Document Type:** Negative Declaration

**SCH Number and/or local agency ID number:** TBD

**Project Location:** Although the Alameda County Housing Element covers the entire unincorporated portion of Alameda County (County), its goals policies and actions are limited to areas within the County's Urban Growth Boundary established by Measure D (approved by the voters of Alameda County 2000, adopted by the County's Board of Supervisors 2002). Measure D limits intensive lands uses to the western, heavily urbanized portions of Alameda County which includes the incorporated cities of: Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton and Union City, as well as the unincorporated urban areas of Castro Valley, Fairview, San Lorenzo, Ashland, and Cherryland.

**Brief Project Description:** State-law requires each city and county to adopt a general plan containing at least seven elements including housing. Unlike the other mandatory general plan elements, a housing element, must be updated every five years, and is subject to detailed statutory requirements and mandatory review by the State Department of Housing and Community Development (HCD). The Alameda County Housing Element is the primary housing policy document for the unincorporated portions of the County and it provides a comprehensive strategy for promoting the development, preservation, and rehabilitation of safe, decent and affordable housing for all residents. Alameda County has prepared a Draft Housing Element to cover the period from July 1, 2009 to June 30, 2014.

The adoption and implementation of the Housing Element does not propose or require any changes to existing Zoning or General Plan designations for any parcel.

**Describe clearly why the project has no effect on fish and wildlife:** The County has reviewed the goals, policies and actions of the Housing Element and has concluded that the adoption and implementation of the Housing Element would not pose any threat to the protection of vital biotic resources in the County. Furthermore, the Housing Element Update does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area. It does not propose or require any changes to existing Zoning or General Plan designations for any parcel, and it

does not grant any entitlements to a specific project or site. Projects that occur on a site identified in the Housing Element Sites Inventory may be subject to more intensive environmental review; and all projects must comply with applicable Federal, State and County environmental laws and policies.

**Determination:** Based on a review of the Project as proposed, the Department of Fish and Game has determined that for purposes of the assessment of CEQA filing fees [F&G Code 711.4(c)] the project has no potential effect on fish, wildlife and habitat and the project as described does not require payment of a CEQA filing fee. This determination does not in any way imply that the project is exempt from CEQA and does not determine the significance of any potential project effects evaluated pursuant to CEQA.

Please retain this original determination for your records; you are required to file a copy of this determination with the County Clerk after your project is approved and at the time of filing of the CEQA lead agency's Notice of Determination (NOD). If you do not file a copy of this determination with the County Clerk at the time of filing of the NOD, the appropriate CEQA filing fee will be due and payable.

Without a valid No Effect Determination Form or proof of fee payment, the project will not be operative, vested, or final, and any local permits issued for the project will be invalid, pursuant to Fish and Game Code Section 711.4(c)(3).

DFG Approval By:



Charles Armor  
Regional Manager  
Bay Delta Region

Date: October 29, 2009

## **RESPONSE TO LETTER 1**

The Department of Fish and Game has determined that the Alameda County Housing Element Update would not have a "potential effect on fish, wildlife and habitat." No additional action is required.

LETTER 2

-----Original Message-----

From: Jewell Spalding [REDACTED]  
Sent: Monday, November 02, 2009 3:21 PM  
To: Glenn Kirby; Glenn Kirby; Kathie Ready; Ken Carbone; [REDACTED];  
alaneloisel@comcast.net; Rich Rhodes; McElligott, Elizabeth, CDA  
Cc: Lopez, Albert, CDA; Palmeri, Maria, CDA; [REDACTED]; Bazar, Chris, CDA;  
gail.steeleg@acgov.org; Nate Miley; Lai-Bitker, Alice, Supv BOS Dist 3; Kaplan, Seth, BOS  
Dist. 4; Swanson, Bob, BOS Dist 4; Lewis, Alison, BOS Dist 2; Wilson, Shawn, BOS Dist 3; Dawn  
Clark-Montenegro; Charles & Ruby Snipes; Suzanne Barba; Howard Beckman  
Subject: Initial Comments on Draft Housing Element Update & Initial Study/Negative  
Declaration

Dear Mr. Chairman Kirby and Ms. McElligott,

I would have included Commissioner Frank Imhof on this message, however, staff did not have an email contact for him. By copy this is to request that staff provide Commissioner Imhof with a copy of this correspondence for your meeting this evening. I also telephoned Elizabeth McElligott this morning, but apparently she has not had an opportunity to return my telephone call. Although I would like to attend the hearing on this matter, due to other pre-existing obligations at this time and the short notice that you would be addressing this today, I am unsure whether I can attend.

This is to initially address the "Initial Comments on Draft Housing Element Update & Initial Study/Negative Declaration" dated October 23, 2009 which was distributed on Wednesday afternoon, October 28, 2009 to members of the Board of Zoning Adjustment. First, I would like to point out that providing two to three business days to review over 200 pages single spaced, a 123 page single spaced report, approximately eight single spaced appendices exceeding 35 pages, and six inventories totaling over 62 pages, for a hearing to be held on Monday, November 2, 2009 is simply an inadequate amount of time. Given these circumstances, this is to urge you to continue this hearing to allow the public to present to you more substantive comments after having an adequate time for review.

Initially, this also is to urge you to require that staff provide a full EIR on this project. Based on the draft site inventory for "all" communities, there are 795 existing housing units and a maximum additional capacity of 4,263. Applying various statements made by staff in the draft Eden General Plan, this proposal contemplates the identification of 5,058 housing units. From what I understand, although it is not readily apparent in the voluminous documents to review on short notice, is that approximately 2,167 units were identified as "needed." (See p. 55.) Given this proposal exceeds the needed number by almost 3,000 units (MORE than double needed - almost triple), a full EIR should be performed to enable you to make an informed and educated review and analysis, including the impacts which are likely from such large substantial development.

Also, excluded from the areas to provide such housing is all of the East County, and all lands south of Hayward Acres and Fairview, including Sunol. Staff should either identify for you what lands within these areas may serve the Housing Element purposes or confirm in writing that not one single parcel of land exists within these areas to contribute to the Housing Element Plan. In this regard, as to the Environmental Checklist, numbers 6 and 7, this project is site specific as identified in the October 20, 2009 Map provided and detailed inventory list.

Page 2 of the Report provides table 1-1 discussing population growth, which, without explanation, combines the unincorporated districts of Cherryland and Fairview together, although they are distinct areas which are not even physically close or adjacent to once another. The population growth for Cherryland and Fairview should be separately identified, including their numerical increase and growth. Additionally, there should be clarification as to whether the 5 Canyons development, now identified as Castro Valley but falling within Fairview is included in the growth numbers for Fairview or Castro Valley.

Beginning at page 51, under "Environmental and Safety Constraints," there is the identification of the County's "unincorporated urbanized areas (e.g. Castro Valley), most of the remaining undeveloped parcels are infill that have one or more physical constraints, such as slope, drainage or traffic circulation" and "must be evaluated under the environmental review process mandated" by CEQA. However, there is no EIR provided outlining alternatives or which is the least environmentally damaging. The necessity for such an examination is particularly acute given the San Lorenzo and Cherryland areas have now been newly designated floodplains, a significant consequence due to increased development (a point not recognized on page 53). Will the addition of over 5,000 housing units expand this flood plain further or raise the new water level even higher? This cannot be addressed in a "mitigated negative declaration" as proposed. By staff's own admission, this project needs an EIR yet none is provided.

Related to this is the discussion on page 52 under Hillsides and Slopes, Creeks and Watercourses and p. 53, Flooding and Mudflows. Page 52 states that "Hillsides exist in both urbanized and rural parts of the County." First, what is not apparent, is where is the definition as to what is "urban." The vast majority of areas within Fairview are zoned suburban, limited combined residential agriculture or agriculture. Is staff distinguishing between "urban" from "suburban?" What is the definition of "urban" v. "suburban." On what hillsides does "urban" development exist within each of the distinct unincorporated districts.

As to "consistency with other general plan elements and other planning documents," this plan is not consistent with the Fairview Specific Plan and Staff has agreed that the Fairview Specific Plan needs to be amended so that the implementing language actually accomplishes the stated purposes. In this regard, encouraging "mergers" of lots is not consistent with the Fairview Specific Plan or the requirement that the "prevailing" existing lot size be considered. (Compare p. B-13, principles/goal "encourage housing preservation and rehabilitation.") For that matter, any EIR should examine the consequence of mergers which can have the consequence of ripping down existing housing, creating abandoned neighborhoods and blight. Further, at page 122, it states that "the County is currently revising the Eden Area Plan, which covers the communities of Ashland, Cheryland, Fairview, Hillcrest Knolls, Mt. Eden, and San Lorenzo. In addition to Hillcrest Knolls "opting out" of the Eden Plan, according to the September 21, 2009, revised final draft, p. 1-2, the "Planning Area" for the "Eden Area is ... shown in Figure 1-2." Fairview is not included.

When the draft Eden Plan was earlier revised, it stated that "The Eden Area also includes the Fairview sub-area. However, Fairview is not included in this General Plan because a specific plan and existing conditions for Fairview can be found in the specific plan and its related documents." This is language I and others within the community relied on. Now, just recently, that language was struck and inserted is "The Eden AREA also includes the Fairview area. The 1997 Fairview Area Specific Plan contains the goals, policies, and zoning regulations that apply to this area." (9/21/09 Draft, p. 1-7.) Now, this Housing proposal states that the Eden Area Plan "covers" Fairview; there is no discussion as to consistency with the Fairview Plan which the Eden Plan states "contains the goals, policies, and zoning regulations that apply to this area."

In this regard, many of the lots identified in Fairview are located within 50 feet of creeks. This further confirms the necessity for the preparation of an EIR. The Fairview area also is home to several headwaters to various creeks in the area. In addition to failing to address the Fairview Specific Plan, the consistency section is completely silent on the proposed Creek Ordinance. Likewise, identified are large lots where the property owner has planted extensive grape fields, yet there is no environmental analysis provided as to the impact of adopting this plan on such property.

Also adjacent to this land identified as owned by a public utility is land which East Bay Regional Park identified as appropriate for a trail. (Compare Environmental Checklist: aesthetics, p. 5 & agriculture, p. 6, biological [adverse effect on riparian habitat], water quality, p. 19, public services, p. 25.)

As for satisfying the objections of the 2003 Housing Element Plan, under B-9, the report identifies the whether the program adopted was effective, such as the establishment of the Ordinance Review Advisory Committee. To date, although this committee has been ongoing, based on the information available, other than the garage conversion ordinance, not one ordinance has been generated, not even the fence issue.

In essence, this is to urge you to reject the proposal that "the proposed project will not result in any significant impacts" as stated in the Notice of Availability and Intent to Adopt a Negative Declaration. As far as the Fairview Unincorporated area, this simply is untrue and the project is inconsistent with the Fairview Specific Plan. (Compare, Environmental Checklist, identifying Fairview as "heavily urbanized," compare Fairview Specific Plan, identifying itself as "rural and semi-rural" and minimum zoning generally "suburban." Clearly, at least as to Fairview, and I believe other communities, this project would have a potentially significant impact on land use and planning, physically dividing established communities and conflicting with applicable land use policy documents, as well as inducing substantial population growth as revealed by the inventory of parcels subject to "mergers" and adversely impacting "public services" by identifying schools and other public facilities.  
(Compare, Environmental Checklist, p. 24-25)

Lastly, this is to urge you to reject staff's proposal that there is "no impact" on the many issues identified in the Environmental Checklist. Starting with aesthetics: Identified are properties on Fairview which, under the Fairview Specific Plan, is designated a scenic road. Likewise, that there is "no impact" on air quality or greenhouse gas emissions is incorrect and inconsistent with the draft EIR on the Eden Plan's Air Quality Chapter which acknowledges that the proposed Eden Plan violates the Clean Air Act. Clearly this project of over 5,000 housing units would increase the use of existing parks and accelerate their deterioration as well as significantly impact transportation and traffic. (Environmental Checklist, pp. 26 - 27.)

Thank you for your consideration and I hope to look forward to examining a full EIR on this project.

Jewell Spalding  
Fairview, zoned limited agricultural-residential.

## **RESPONSE TO LETTER 2**

### **INTRODUCTION**

The adoption of the draft Housing Element would not require any changes to the existing General Plan designation or zoned density for any parcel. State law requires that General Plan documents be internally consistent. Thus, the draft Housing Element is consistent with the policies and actions of the other current and proposed County General Plans, including the Eden Area Plan, the Central Metropolitan Plan, the Castro Valley General Plan, and the East County Area Plan. As a result, any potential environmental impacts arising from the adoption of the draft Housing Element have already been assessed in the CEQA's analysis for these County General Plans.

### **PUBLIC COMMENT PERIOD**

The comment periods for the Draft Housing Element and the Initial Study/Negative Declaration fully comply with State law.

The draft Housing Element was released to the public on October 26, 2009 and the County has provided sufficient time to review and to comment on the document. Comments on the draft Housing Element may be submitted at any time until the document has been adopted by the Board of Supervisors; adoption is not anticipated until January 2010. In the interim, there are meetings scheduled with the Planning Commission on December 7, 2009 and the Board of Supervisors' Transportation and Planning Subcommittee on December 14, 2009 where the public may choose to comment on the draft Housing Element. Outside of these meetings, interested parties may provide their comments verbally or in writing to staff, the Planning Commission or the Board of Supervisors about the content of the Housing Element.

The comment period for the draft Initial Study/Negative Declaration began on October 26, 2009 and will end on November 30, 2009. State law requires a 20 day minimum for the circulation of an IS/ND; however, given the importance of the Housing Element and the fact that the comment period would overlap with the Thanksgiving Holiday, staff has provided a 36 day window to provide comments.

The purpose of November 2, meeting of the Planning Commission was for staff to provide the Commission and the public an overview of the changes to the document since its transmittal to the State Department of Housing and Community Development (State HCD) in July. The Commission was not expected to take action on that date. The Commissioners provided additional comments to staff about corrections and/or additions that they would like to be included in future revisions to the text. Staff will continue to take comments until the Board of Supervisors adopts the document.

### **ALAMEDA COUNTY'S REGIONAL HOUSING NEED**

On pages ii and 76 of the draft Housing Element, the County briefly describes its housing needs for the 2009-2014 planning period. Under California Housing Element law (Government Code Section 65584) the regional Council of Government (COG) determines the projected housing need for all localities in its defined region. Here, the COG is the Association of Bay Area Governments (ABAG). Thus, housing need is not determined by the County, but rather by ABAG pursuant to its Regional Housing Needs Allocation (RHNA) process.

Under Housing Element law (Government Code Section 65583) the County is required to identify parcels with sufficient development capacity to meet its identified RHNA number as provided by ABAG. The County must perform a Sites Inventory and Capacity Analysis that demonstrates the County's capacity to meet its RHNA within the planning period. If the County is unable to meet its RHNA, then the County must describe the actions that it will undertake within one year of the adoption of the Housing Element, to

either identify additional housing sites, or if no available parcels exist, to rezone parcels at densities sufficient to meet the RHNA.

## THE DRAFT SITES INVENTORY AND CAPACITY ANALYSIS

### Realistic Development Capacity

The Sites Inventory lists those parcels that the County has determined are available and suitable for development within the planning period, and that have the potential to accommodate the County's RHNA of 2,167 additional units of housing. The development capacity proposed by the draft Housing Element is neither 5,058 units, nor is it 4,263 additional units of housing, but rather 2,398 (see Table III-5, page 84). The maximum capacity of 4,263 is a theoretical maximum that is infeasible given the provisions of the Building, Zoning, and Subdivision Ordinances, and various General Plan requirements. Ms. Spalding is correct that Staff calculated the maximum additional capacity and identified it in the Sites Inventory and Capacity Analysis; however, to achieve that level of development the County would either have to forgo any existing yard, setback or parking requirements; or rezone the identified parcels to higher densities. None of these actions are proposed in the draft Housing Element. The maximum capacity provided in the Sites Inventory table has been calculated to provide the basis of the "realistic development capacity". A description of the how staff determined realistic development capacity is provided in Chapter III, pages 80-82. Staff will review the language in the Housing Element to make sure this distinction is clear.

### Excess Capacity

The development capacity proposed by the Housing Element does not exceed the County's RHNA number by 3,000 units. In Table III-6 on page 86, staff has provided a summary of the County's status in meeting its RHNA numbers. According to this table, the County has exceeded its RHNA by 1,340 units. There have been numerous discussions by the Planning Commission about the need to exceed the RHNA, and while the County is not required to do so, staff contends that providing a cushion is reasonable for the following reasons:

- The County must maintain an inventory of sufficient sites to accommodate its RHNA throughout the planning period. This is particularly important when one considers that 982 out of the 2,398 of the identified housing capacity are on parcels identified as Mixed Use (residential/commercial) zoning districts. If any of these parcels are developed exclusively for commercial uses, the County will have to demonstrate that it has enough surplus capacity to cover the lost residential development potential, or take actions to "make up" lost housing capacity under Government Code Section 65863 (b & c).
- Under Assembly Bill 2348 (AB 2348), Mullin, 2004, the County must also demonstrate that it has sites zoned at an appropriate density to accommodate affordable housing. Under AB 2348, sites zoned at least 30 dwelling units per acre are considered the minimum density to develop housing that may be affordable to extremely low-income households. Coincidentally, many of these sites are in Mixed Use districts. As was stated in the prior paragraph, any loss in residential capacity must be resolved under the "no net loss statute", Government Code Section 65863.
- Some of the excess capacity is due to the County's use of the "Alternative Adequate Sites" requirement. Under this requirement jurisdictions may credit a portion of their substantially rehabilitated, preserved affordable housing stock towards the attainment of its RHNA. While the County has proposed a credit of 219 units under this provision, State HCD in its comments dated September 25, 2009 has indicated that the County may not be able to credit some or all these housing units under the 2009-2014 planning period.

- The Illustrated Design Guidelines may provide additional constraints on developments, particularly for multifamily housing. While it is unclear what impact these guidelines will have on residential development capacity, staff has determined that there should be a buffer to cover lost residential development capacity.

In conclusion, the current buffer of 1,340 housing units provides sufficient sites to cover any potential losses resulting from development where the net unit count is far less than the capacity as determined in the inventory analysis. Moreover, the State Department of Housing and Community Development (HCD) recommends that jurisdictions produce an inventory with a buffer of at least 20% more than its calculated regional housing need (RHNA). The State HCD website provides direction on this issue and states, "Over zoning compensates for urban land left vacant due to ownership and development constraints and creates a real surplus. A sufficient supply of land beyond the time frame of the element helps prevent land shortages from bidding up land costs."<sup>1</sup>

### **HOUSING ELEMENT BOUNDARY**

Parcels south of Hayward Acres and south of Fairview were excluded because they are part of the City of Hayward, not unincorporated Alameda County, and therefore not subject to the County's Zoning Ordinance or General Plan. Parcels within East County (including Sunol) have not been included in the Sites Inventory due to the growth controls imposed by Measure D, 2002. Land in East County is zoned Agricultural, and may have additional General Plan designations such as "Large Parcel Agriculture", "Resource Management", etc. Building site status generally requires a 100 acre minimum parcel size, and many of these areas may not be appropriate for the development of housing for a variety of reasons such as lack of frontage on an approved County road, insufficient water supply, the presence of protected wildlife or vegetation, etc. Moreover, many of these lands are protected farmlands, and are under Williamson Act Contract. Thus given the various environmental and regulatory constraints on parcels within the East County area, parcels within East County were not included as a part of staff's analysis.

### **CENSUS DATA**

The commenter takes issue with the combining of Fairview and Cherryland in its demographic analyses. The County does not produce its own demographic data, and must rely upon data from the Census to provide information about the demographic make-up of the unincorporated areas. The 2000 Census made determinations regarding Fairview and Cherryland that required the data to be analysed in combination. After the 2010 Census, this will no longer be the case, but until that Census is complete, we must use the data that is provided. Staff will verify whether or not Five Canyons was included for data reported for Fairview or Castro Valley.

### **FAIRVIEW AREA**

The draft Housing Element does not propose any goal, policy or action that would conflict with the Fairview Area Specific Plan.

### **The Use of the Terms Urban, Rural and Suburban**

The draft Housing Element does not provide a definition of rural, urban or suburban. The Draft Housing Element glossary will be revised to include definitions of urban and rural as they are specifically mentioned in the draft. As part of their analysis, staff used the definitions for urban and rural development as provided in the East County Area Plan, as amended by Measure D, 2002. Generally speaking urban areas refer to those areas served by existing public infrastructure i.e. roadways/streets,

<sup>1</sup> [http://www.hcd.ca.gov/hpd/housing\\_element/screen31\\_sites\\_program.pdf](http://www.hcd.ca.gov/hpd/housing_element/screen31_sites_program.pdf)

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<sup>1</sup> [http://www.hcd.ca.gov/hpd/housing\\_element/screen31\\_sites\\_program.pdf](http://www.hcd.ca.gov/hpd/housing_element/screen31_sites_program.pdf)

lighting, water, and sewer services. Urban areas are those areas that permit densities greater than 1 dwelling unit per acre. All of the parcels that were identified in the Sites Inventory that are located in Fairview have permit densities of 1 dwelling unit or more per acre, and thus may be referred to as "urban" under the definition provided in the East County Area plan. None of these sites are combined with the L district indicating that they are intended for limited agricultural uses.

Finally, on page 2 of the Fairview Area Specific Plan, under section "A. Extent of the Urban Area", the document states, "The line delineating the boundary between agricultural and residential land uses (Urban Area Boundary) shall be the limit of urban development within the Fairview Area. The Urban Area Boundary is intended to be permanent and to define the line beyond which urban development is not allowed." None of the lands identified in the draft Housing Element Sites Inventory lie beyond the Urban Area Boundary as specified in the Fairview Area Plan, and thus urban development is permitted for these parcels under the plan.

#### Lot Size and Mergers within the Fairview Area Specific Plan

Ms. Spaulding's statement that "prevailing existing lot size be considered," is not clear. The draft Housing Element does not propose lot sizes less than those established in the Fairview Area Specific Plan.

There is no language within the Fairview Area Specific Plan that prohibits or discourages lot mergers. The draft Housing Element includes a listing of parcels that may be merged; however, there is no requirement that these parcels be combined. The Sites Inventory sub-table identifies those parcels that are adjacent or contiguous with one another, and thus may be candidates for merger, lot-line adjustment, or subdivision. Whether or not an individual or group actually purchases parcels with the intent of reconfiguration is not determined by the County, but rather by market forces outside of its purview. The realignment of parcels via merger, boundary adjustment, or subdivision is subject to review per the County's Zoning and Subdivision Ordinances. In order for a parcel that has been reconfigured to retain its building site status, the resultant parcels must be consistent with the applicable Zoning and General Plan requirements, otherwise the applicant would need to apply for rezoning or a variance, which are both subject to public hearing, to establish building site status.

#### Consistency of the Draft Housing Element with the Fairview Area Specific Plan

Under State law, all areas within a jurisdiction must be covered under a General Plan. Although Fairview is part of what is referred to as the Eden Area, Fairview is not included in the existing Eden Area (portion) Plan, (adopted in 1983). Rather, the Fairview area is covered by the General Plan for the Central Metropolitan, Eden, and Washington Planning Units (adopted in 1981). In addition, more specific standards, policies, and goals are provided in the Fairview Area Specific Plan. Land use policies in Fairview are not being revised as part of the current update to the Eden Area Plan.

Thus, page 122, of the draft Housing Element will be revised to state, "In addition, the County is currently revising the Eden Area Plan. The plan update will covers the communities of Ashland, Cherryland, Fairview, Hillcrest Knolls, Mt. Eden, and San Lorenzo, as well as other small unincorporated pockets in the area. Although Fairview is considered part of the Eden Area, the Fairview Area is not included in the existing Eden Area Plan, the current update to the Eden Plan. The 1997 Fairview Area Specific Plan contains the land use goals, policies and zoning regulations that apply to this area."

#### **ORDINANCE REVIEW COMMITTEE**

The Ordinance Review Committee was established following the adoption of the 2003 Housing Element to vet changes to the Zoning Ordinance. The respondent's comments about the committee are duly noted.

## **ENVIRONMENTAL ANALYSIS OF THE DRAFT HOUSING ELEMENT**

The commenter requests that the County perform a full EIR to determine the impact of large scale residential development; however an EIR is not required. The adoption and implementation of the Housing Element would not require changes to present zoning for any parcel or any amendments to the County's General Plan. As a result, the existing conditions and policies described in the County's current, adopted General Plan would be maintained. Furthermore, the Housing Element does not grant any entitlements or building site status to any parcel contained therein. Individual projects which may (or may not) be proposed during the Housing Element period will be subject to evaluation under the California Environmental Quality Act (CEQA), will be analyzed for compliance with the County's Zoning, Building, Grading and Subdivision Ordinances, and will be judged for their consistency with the County's General Plan. As a part of its analysis conducted for the Initial Study/Negative Declaration (IS/ND), the County relies on previous EIRs for the other General Plan Elements, including the current Eden, East County, the Central Metropolitan, and Castro Valley Area Plans.

Although the draft Housing Element requires environmental analysis under CEQA, the Housing Element does not propose or require the construction of additional housing. The draft Housing Element does not provide a housing production quota; rather it identifies sites that may be appropriate for the development of housing, and describes those policies and programs that the County currently administers to facilitate the development of housing. The draft Housing Element does not require any changes to the zoned density of a single parcel, change its present use, nor does it require the reconfiguration of any parcel. The Sites Inventory identifies sites whose location, current conditions, zoning, and General Plan requirements may support the development of housing. At no point, does the draft Housing Element state that an EIR is necessary.

### **Environmental Impacts**

**Creeks and Watercourses:** Any development proposed on a parcel adjacent to a creek would need to comply with the County's Watercourse Ordinance, which requires a minimum setback of 20 feet from a creek. A larger setback may be required if warranted by site specific conditions such as the presence of riparian habitat. Of the 52 parcels identified within the boundaries of the Fairview Area Specific Plan, 15 are within 50 feet of a creek. Most of these are the parcels that are located on East Avenue and Kelly Street. While the Creeks Ordinance is still under development, there is no proposal under consideration that would prohibit development of a parcel located within 50 feet of a creek or watercourse. Standards may be imposed on these sites regarding siting and setbacks for proposed developments, but that does not constitute a prohibition on development. No additional action is required.

**Existing Agricultural Uses:** The commenter expressed concerns about properties that have other uses (such as grape fields). The Housing Element does not require that the owner of any property sell in order to accommodate a different use or a new development. In addition, as the specific property is not within an area zoned for Agricultural uses or is under Williamson Act contract, there is no requirement that the County consider the potential loss of grape fields, as a significant environmental impact for the purposes of CEQA. No additional action is required.

**Trails and Open Space:** None of the sites analyzed in the Sites Inventory have been identified by any public body for use as trails or dedicated opens space. No additional action is required.

**Land Use and Planning:** The adoption and implementation of the Housing Element will not divide an established community, as it does not propose the construction of any structure that would physically separate areas of a neighborhood from another. The draft Housing Element identifies sites within

Fairview that have been zoned to allow residential uses. The draft Housing Element does not propose any changes to the density, height, or setbacks for any parcel. No additional action is required.

**Population Impacts:** The Housing Element does not require any revisions to zoned density or General Plan Designation for any parcel. This programmatic update to the Housing Element does not propose any actions that would directly result in development of a specific site or fundamentally change a community within the unincorporated area. No additional action is required.

**Aesthetics/Scenic Roads:** Parcels within a Scenic Corridor may be developed, but must be consistent with applicable development standards. Staff could not identify any parcels within the Sites Inventory that were part of a recognized Scenic Route Corridor. No additional action is required.

**Transportation:** Any impacts on transportation and traffic would be indirect or within the parameters already assessed in the environmental assessments prepared for the adopted East County, Eden, Central Metropolitan, and Castro Valley Plans. Moreover, the draft Housing Element would create no additional environmental impacts beyond those analyzed in the EIRs for the draft Eden and Castro Valley Area Plans.

The draft Eden and Castro Valley plans assessed the cumulative impacts of residential, commercial and industrial growth on traffic through the year 2025. A separate EIR for the draft Housing Element would not produce any new knowledge about existing traffic/circulation conditions, or lead to additional mitigation measures. The draft Housing Element does not contradict any of the actions proposed in the draft Eden and Castro Valley Area Plans, nor would it create additional environmental impacts beyond what was assessed in these documents. The draft Housing Element is consistent with both the previously adopted plans and relies on their current policies, goals, land use designations, and zoning. No additional action is required.

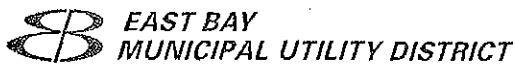
**Air Quality:** The draft Housing Element would create no additional environmental impacts beyond those analyzed in the EIRs for the Eden and Castro Valley Area Plans. The draft Housing Element does not identify sites where residential development may occur outside of existing residentially zoned parcels. The draft Housing Element is consistent with both the current General Plans, and it relies on its policies, goals, land use designations, and zoning. The adoption and subsequent implementation of the draft Housing Element would not conflict or obstruct implementation of the region's 2000 Bay Area Air Quality Plan and the 2005 Bay Area Ozone Strategy.

The draft Eden and Castro Valley plans assessed the cumulative impacts of residential, commercial and industrial growth on air quality through the year 2025. A separate EIR for the draft Housing Element would not produce any new knowledge about existing air quality conditions, or lead to additional mitigation measures. The draft Housing Element does not contradict any of the actions proposed in the draft Eden and Castro Valley Area Plans, nor would it create additional environmental impacts beyond what was assessed in these documents. Any mitigation measures or standard conditions of approval contained in the draft Eden and Castro Valley Area Plans would be applied to residential development activity occurring within their respective plan area. No additional action is required.

**Greenhouse Gas Emissions (GHGs):** The Housing Element, if adopted, must be consistent with, and would therefore be dependent upon, the Eden Area Plan and the Castro Valley Plan. These two plans in turn must legally demonstrate reduction in GHG emissions in conformance with current State and Federal law, and along with the proposed Community Climate Action Plan must result in reductions of GHG emissions to 1990 levels by the by Year 2025 or earlier, in order to achieve a less-than-significant impact on GHG emissions. The Housing Element could have no greater impact on GHG emissions than the

underlying Area General Plans on which it depends, and thus would have a less-than-significant effect on GHG emissions.

The draft Eden and Castro Valley plans assessed the cumulative impacts of residential, commercial and industrial growth on GHGs through the year 2025. A separate EIR for the draft Housing Element would not produce any new knowledge about existing conditions, or lead to additional mitigation measures. The draft Housing Element does not contradict any of the actions proposed in the draft Eden and Castro Valley Area Plans, nor would it create additional environmental impacts beyond what was assessed in these documents. Any mitigation measures or standard conditions of approval contained in the draft Eden and Castro Valley Area Plans would be applied to residential development activity occurring within their respective plan area. No additional action is required.



November 19, 2009

Elizabeth McElligott, Assistant Planning Director  
Alameda County Community Development Agency  
224 West Winton Avenue, Room 111  
Hayward, CA 94544

Re: Notice of Availability and Intent to Adopt a Negative Declaration for Draft Alameda County Housing Element Update 2009-2014 -Revised

Dear Ms. McElligott:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Alameda County Housing Element Update 2009-2014 and the associated Negative Declaration. EBMUD has the following comments.

#### **WATER SERVICE**

The Alameda County Housing Element Update document does not reference specific development projects. Any development project associated with the Housing Element Update will be subject to the following general requirements:

Main extensions that may be required to serve any specific development projects to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsor's expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsor's expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. All project sponsors should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipeline and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

Please note that depending on the size and/or square footage, the lead agency for future individual projects within the Alameda County Housing Element Update areas should contact EBMUD to request a Water Supply Assessment (WSA) that meets the threshold of a WSA pursuant to Section 15155 of the California Environmental Quality Act Guidelines, and Section 10910-10915 of the California Water Code. EBMUD requires project sponsors to provide future water demand data and estimates for individual project sites for analysis of the

WSA. Please be aware that the WSA can take up to 90 days to complete from the day on which the request is received.

The project sponsor should be also be aware that EBMUD will not inspect, install or maintain pipeline in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may pose a health and safety risk to construction or maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping in areas where groundwater contaminant concentrations exceed specified limits for discharge to sanitary sewer systems or sewage treatment plants. Applicants for EBMUD services requiring excavation in contaminated areas must submit copies of existing information regarding soil and groundwater quality within or adjacent to the project boundary. In addition, the applicant must provide a legally sufficient, complete and specific written remedial plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of all identified contaminated soil and/or groundwater.

EBMUD will not design the installation of pipelines until such time as soil and groundwater quality data and remediation plans are received and reviewed and will not install pipelines until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists or the information supplied by the applicant is insufficient EBMUD may require the applicant to perform sampling and analysis to characterize the soil being excavated and groundwater that may be encountered during excavation or perform such sampling and analysis itself at the applicant's expense.

## **WATER RECYCLING**

EBMUD's Policy 8.01 requires that customers use non-potable water for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health and not injurious to plant life, fish and wild life to offset demand on EBMUD's limited potable water supply. EBMUD recommends that the County require developers of new or redevelopment projects within the County to coordinate and consult with EBMUD regarding the feasibility of providing recycled water for appropriate non-potable purposes.

## **WATER CONSERVATION**

Individual projects within the Alameda County Housing Element Update may present an opportunity to incorporate water conservation measures. EBMUD would request that the County include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). Project sponsors for individual projects should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service

Elizabeth McElligott, Assistant Planning Director

November 19, 2009

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unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning at (510) 287-1365.

Sincerely,



*WRK*  
William R. Kirkpatrick  
Manager of Water Distribution Planning

WRK:AMW:sb

sb09\_234.doc

### RESPONSE TO LETTER 3

The comments from the East Bay Municipal Utility District (EBMUD) do not question the adequacy of the Draft Initial Study/Negative Declaration, but rather describes the general requirements that are imposed on development projects requesting water service from EBMUD.

The letter also recommends that the County consult with EBMUD on the feasibility of water recycling.

Although the County has not amended its Ordinance to include language taken from the Model Water Efficient Landscape Ordinance, it has taken several actions to promote water conservation. On June 10, 2008 the Board of Supervisors adopted a resolution establishing a goal of 75% reduction in waste going to landfills by 2010 for unincorporated areas and civic operations of the county of Alameda. Under this resolution, Bay-Friendly Landscaping Guidelines must be applied to County initiated projects and those described as "public-private partnerships." On May 5, 2009, the Board of Supervisors of Alameda County adopted the Green Building Program for unincorporated areas of Alameda County. Effective June 4, 2009, any covered projects submitted for building permit applications will be subject to Green Building standards. Projects covered under the ordinance include residential developments or additions in excess of 1,000 square feet and non-residential development in excess of 3,000 square feet. On July 14, 2009, the Board of Supervisors of Alameda County adopted Construction & Demolition Debris Management Program for unincorporated areas of Alameda County. Under this ordinance a minimum of 75% of inert solids and 50% of all other construction waste must be diverted from landfills. Vegetation and other debris associated with landscaping are subject to this requirement. As with the Green Building Ordinance, residential developments or additions in excess of 1,000 square feet and non-residential developments over 3,000 square feet are covered under this policy. Moreover, the County routinely requests comments from EBMUD about development proposals that are located within its service area. Comments received are incorporated into staff reports, and are addressed within the project's conditions of approval. Finally, the County is working on an ordinance to be based on the Model Water Efficient Landscape Ordinance to be adopted in 2010.

No additional action is required.

**DEPARTMENT OF TRANSPORTATION**

111 GRAND AVENUE  
P. O. BOX 23660  
OAKLAND, CA 94623-0660  
PHONE (510) 622-5491  
FAX (510) 286-5559  
TTY 711



*Flex your power!  
Be energy efficient!*

November 30, 2009

ALAGEN244  
SCH#2009102085

Ms. Elizabeth McElligott  
Community Development Agency  
Alameda County  
224 West Winton Avenue, Room 111  
Hayward, CA 94544

Dear Ms. McElligott:

**Alameda County Housing Element Update (2009-2014) – Negative Declaration**

Thank you for including the California Department of Transportation (Department) in the environmental review process for the Alameda County Housing Element Update. The following comments are based on the Negative Declaration. As lead agency, the Alameda County is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, and implementation responsibilities as well as lead agency monitoring should be fully discussed for all proposed mitigation measures and the project's traffic mitigation fees should be specifically identified in the environmental document. Any required roadway improvements should be completed prior to issuance of project occupancy permits. An encroachment permit is required when the project involves work in the State's right of way (ROW). The Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's California Environmental Quality Act (CEQA) concerns prior to submittal of the encroachment permit application; see the end of this letter for more information regarding the encroachment permit process.

***Community Planning***

The Department encourages Alameda County to locate housing near major mass transit nodes, in addition to having a countywide street configuration that facilitates walking and biking. We also recommend that the County refer to, "Reforming Parking Policies to Support Smart Growth," a Metropolitan Transportation Commission study funded by the Department, for sample parking ratios and strategies that support smart growth and Transit Oriented Development. Doing so will encourage alternate forms of transportation, reduce regional vehicle miles traveled and alleviate future traffic impacts on the state highways.

***Encroachment Permit***

Any work or traffic control within the State ROW requires an encroachment permit that is issued by the Department. Traffic-related mitigation measures will be incorporated into the construction

Ms. Elizabeth McElligott/Alameda County  
November 30, 2009  
Page 2

plans during the encroachment permit process. See the following website link for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits/>

To apply for an encroachment permit, submit a completed encroachment permit application, environmental documentation, and five (5) sets of plans which clearly indicate State ROW to the address at the top of this letterhead, marked ATTN: Michael Condie, Mail Stop #5E.

Should you have any questions regarding this letter, please call Yatman Kwan of my staff at (510) 622-1670.

Sincerely,



LISA CARBONI  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse

#### **RESPONSE TO LETTER 4**

The comments from the California Department of Transportation (CalTrans) do not question the adequacy of the Draft Initial Study/Negative Declaration, but rather describes the general requirements that are imposed on individual development projects requiring roadway improvements. As the draft Housing Element does not propose the development of any specific site, no mitigations are required. No additional action is required.

**MINUTES OF MEETING**  
**ALAMEDA COUNTY PLANNING COMMISSION**  
**MARCH 5, 2012**  
**(Approved March 19, 2012)**

**FIELD TRIP - *Cancelled***

**REGULAR MEETING**

**CALL TO ORDER:** *The Chair called the meeting to order at 6:10 p.m.*

**MEMBERS PRESENT:** Commissioners Ken Carbone, Chair; Mike Jacob, Vice-Chair; Kathie Ready; and Richard Rhodes.

**MEMBERS EXCUSED:** Commissioners Alane Loisel, Frank Imhof and Larry Ratto

**OTHERS PRESENT:** Albert Lopez, Planning Director; Elizabeth McElligott, Assistant Planning Director; Rodrigo Orduña, Senior Planner; Angela Robinson-Piñon, Planner; William Fleishhaker, County Counsel's Office; and Nilma Singh, Recording Secretary.

*There was one person in the audience.*

**PLEDGE OF ALLEGIANCE**

**ANNOUNCEMENTS BY THE CHAIR:** *None*

**OPEN FORUM:** Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. *No one requested to be heard under open forum.*

**FIELD TRIP REPORT:** *Cancelled*

1. **GENERAL PLAN CONFORMANCE REPORT, GPC-PLN2012-00023 ~** Petition to consider a determination of General Plan Conformance request by the City and County of San Francisco (CCSF) through the San Francisco Public Utilities Commission (SFPUC), under Government Code Section 65402(b) for the proposed San Antonio Backup Pipeline Project, identified by County Assessor's Parcel Numbers 096-0375-011-05 and 096-0080-008-00, approximately 668 acres, located on Calaveras Road, south of Interstate Highway 680, Sunol area of unincorporated Alameda County.  
**Staff Planner: Carole Kajita**

**COMMITTEE REPORT:** *None*

**APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

2. **APPROVAL OF COMMISSION MINUTES – February 21, 2012**

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*Commissioner Ready made the motion to approve the February 21<sup>st</sup> Minutes as submitted and Commissioner Rhodes seconded. Motion carried unanimously, 4/0 with Commissioners Imhof, Loisel and Ratto excused.*

**CONSENT CALENDAR:**

**3. SAN LORENZO CREEK WATERSHED TASK FORCE  
RECOMMENDATION REPORT**

*Continued from October 3, December 5, 2011 and February 6, 2012.*

*To be continued to April 2, 2012.*

**Staff Planner: Elizabeth McElligott**

*Commissioner Jacob made the motion to approve the Consent Calendar per staff recommendation and Commissioner Ready seconded. Motion carried unanimously, 4/0, with Commissioners Imhof, Loisel and Ratto excused.*

**REGULAR CALENDAR:**

**4. GENERAL PLAN CONFORMANCE REPORT, GPC-PLN2012-00023 ~**

Petition to consider a determination of General Plan Conformance request by the City and County of San Francisco (CCSF) through the San Francisco Public Utilities Commission (SFPUC), under Government Code Section 65402(b) for the proposed San Antonio Backup Pipeline Project, identified by County Assessor's Parcel Numbers 096-0375-011-05 and 096-0080-008-00, approximately 668 acres, located on Calaveras Road, south of Interstate Highway 680, Sunol area of unincorporated Alameda County.

**Staff Planner: Carole Kajita**

*Action item.*

Mr. Orduña presented the staff report. In response to the Commission, he further explained that the County has reviewed and submitted comments on the environmental document, and provided clarification regarding Figure 3-2. No public testimony was submitted. *Commissioner Ready made the motion that the proposed project is consistent with the East County Area Plan. Commissioner Jacob seconded the motion which carried unanimously, 4/0, with Commissioners Imhof, Loisel and Ratto excused.*

**5. PROPOSED ZONING REGULATIONS PERTAINING TO  
AGRICULTURAL EMPLOYEE HOUSING, MOBILE HOME PARKS,  
DENSITY BONUSES, TRANSITIONAL AND SUPPORTIVE  
HOUSING, RESIDENTIAL AND MEDICAL CARE FACILITIES,  
EMERGENCY SHELTERS AND SINGLE ROOM OCCUPANCY  
FACILITIES.**

**Staff Planner: Angela Robinson-Piñon**

*Action item.*

Ms. Robinson-Piñon presented the staff report and the addendum. A discussion ensued regarding agricultural employee housing with respect to Measure D; Section 17.04.010

Definitions--the expansive definition of agricultural employee housing; Section 17.06.100.(D); SDR process; possible language amendment to Section 17.06.090.(7) -- replace the words “may, at his/her discretion” with ‘will’; and how the Density bonus for senior housing is calculated. Staff agreed to make the revisions to Section 17.106.050 (D) to reflect the Density Bonus Summary Table (page 17-18); addition of the words “dwelling group of units governed by common set of rules, regulations or restrictions” to the definition “Senior Citizen Housing Development” on page 16; and the format of definitions in the Density Bonus Ordinance (pages 14-16). *Commissioner Jacob made the motion for an approval with amendments and Commissioner Rhodes seconded. Commissioner Jacob made the motion to move staff recommendation (resolution) and Commissioner Ready seconded. Motions carried unanimously, 4/0, with Commissioners Imhof, Loisel and Ratto excused.*

**6. CONSIDERATION OF A MITIGATED NEGATIVE DECLARATION FOR A SPECIFIC PLAN AMENDMENT CREATING A CONDITIONAL USE PERMIT PROCESS TO ALLOW LESS RESTRICTIVE DEVELOPMENT STANDARDS RELATING TO GROUND FLOOR RETAIL, FLOOR TO AREA RATIO AND PARKING REQUIREMENTS IN THE ASHLAND/CHERRYLAND BUSINESS DISTRICT PLAN**

**Staff Planner: Bruce Jensen**

*Action item.*

*This item was heard first.* Mr. Lopez explained that staff is recommending a continuance due to a Brown Act violation as noted by a member of the public. No public testimony was submitted. *Commissioner Jacob made the motion for a continuance for two weeks and Commissioner Rhodes seconded. Motion carried unanimously, 4/0, with Commissioners Imhof, Loisel and Ratto excused.*

**STAFF COMMENTS & CORRESPONDENCE:** *None*

**CHAIRS REPORT:** *The Chair announced that the date, once confirmed, will be announced for San Leandro proposed fiber optic infrastructure presentation.*

**COMMISSION ANNOUNCEMENT, COMMENTS AND REPORTS:** *None*

**ADJOURNMENT:** *There being no further business, Commissioner Ready moved to adjourn the meeting at 7:05 p.m. Commissioner Rhodes seconded the motion. The motion was carried 4/0.*

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**ALBERT LOPEZ, SECRETARY**  
**COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**

**THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY  
HAYWARD, CALIFORNIA**

**RESOLUTION NO. 12-03 - AT MEETING HELD MARCH 5, 2012**

**HOUSING ELEMENT IMPLEMENTATION AMENDMENTS**

**Introduced by Commissioner Jacob  
Seconded by Commissioner Ready**

**WHEREAS** the Planning Commission did hold public hearings on the proposed Housing Element Implementation Amendments to the County Zoning Ordinance (“Amendments”) on February 6, February 21, and March 5, 2012; and

**WHEREAS** notice was given as required by law; and

**WHEREAS** this Commission did find on March 5, 2012 that the Amendments were necessary and appropriate in order to ensure that the Alameda County Zoning Ordinance (Title 17 of the General Ordinance Code) continues to comply with state housing law, and recommended these Amendments to the Board of Supervisors for approval after an appropriate process as prescribed by law; and

**WHEREAS** Planning staff did prepare an Initial Study and Negative Declaration that addressed not only the Alameda County Housing Element (2009-2014), but also its subsequent implementation; and

**WHEREAS** the Initial Study and Negative Declaration were completed pursuant to the California Environmental Quality Act (CEQA) to more closely examine the potential environmental impacts that may result from implementation of the Element; and

**WHEREAS** staff did submit this Initial Study and Negative Declaration to the Planning Commission for its consideration pursuant to CEQA, which is appropriate when a project is found to have no significant effect upon the environment; and

**WHEREAS** CEQA Guidelines Section 15074 requires certain findings to be made in order that a Negative Declaration may be adopted by the decisionmaking body, specifically “only if it finds on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration...reflects the lead agency’s independent judgment and analysis”; and

**WHEREAS** the Initial Study prepared by Planning Staff was circulated for public review as required by the CEQA for a period no less than 21 days, and whereas the public had the opportunity to comment on that document both during the review period and up to and during the public hearing by this Commission on January 19, 2010; and

**WHEREAS** this Planning Commission held a duly noticed public hearing to consider the Initial Study and Negative Declaration recommendation for the Alameda County Housing Element and its related implementation at the hour of 6:00 p.m. on Monday, the 19<sup>th</sup> day of January, 2010, in the Auditorium of the Alameda County Building, 224 W. Winton Avenue, Hayward, California; and

**WHEREAS** this Planning Commission did recommend that the Initial Study and Negative Declaration be sent to the Alameda County Board of Supervisors for review and certification; and

**WHEREAS** the Alameda County Board of Supervisors (“Board”) did consider the Negative Declaration on Tuesday, the 30<sup>th</sup> day of March, 2010, at 1221 Oak Street, Board Chambers, Oakland, California, for which notice was given as required by law and at which the Board took public testimony; and

**WHEREAS** the Board did certify that Negative Declaration that was prepared and completed in compliance with the California Environmental Quality Act, and found on the basis of the whole record before it that there is no substantial evidence that the Alameda County Housing Element Update (2009-2014) or its implementation would have a significant effect on the environment and that the Negative Declaration reflects the independent judgment and analysis of the County; and

**WHEREAS** the Amendments have thus been reviewed in accordance with the provisions of the California Environmental Quality Act; and

**WHEREAS** the Planning Commission is authorized and obligated to make recommendations to the Board of Supervisors on matters of Ordinance amendment related to planning and zoning; and

**WHEREAS** the testimony submitted in writing and at the public hearing and items in the public record have been considered by the Planning Commission prior to this action; and

**WHEREAS** the complete record for this process is in the custody of the Alameda County Planning Department, and may be found at Room 111, 224 West Winton Avenue, Hayward, California 94544.

**NOW, THEREFORE,**

**BE IT RESOLVED** that this Planning Commission does hereby find, and recommends that the Board of Supervisors does also find, on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence in the record that the project will have a significant effect on the environment and that the Negative Declaration certified by the Board on March 30, 2010 addressed the potential impacts of the implementation of the Alameda County Housing Element (2009-2014) ; and

**BE IT RESOLVED** that this Planning Commission hereby recommends to the Board of Supervisors that the Housing Element Implementation amendments be adopted in order to ensure that the County’s Zoning Ordinance reflects state housing law.

**ADOPTED BY THE FOLLOWING VOTE:**

**AYES:** Chair Carbone, Vice Chair Jacob, Commissioners Ready and Rhodes

**NOE:**

**EXCUSED:** Commissioners Imhof, Loisel and Ratto

**ABSENT:**

**ABSTAINED:**

ALBERT LOPEZ, PLANNING DIRECTOR AND SECRETARY,  
ALAMEDA COUNTY PLANNING COMMISSION

**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT**



**STAFF REPORT**

**TO** Members of the Alameda County Planning Commission  
**RE** Housing Element Implementation  
**HEARING DATE** March 5, 2012

**GENERAL INFORMATION**

The Commission will consider proposed amendments to the County's Zoning Ordinance pertaining to agricultural employee housing, density bonuses, mobilehome parks, transitional and supportive housing, residential and medical care facilities, emergency shelters, and single room occupancy facilities (SROs) necessary to implement the County's Housing Element.

**STAFF RECOMMENDATION**

Staff requests that the Commission hear staff's presentation, take public comment and approve the attached resolution.

**STAFF ANALYSIS**

The Board of Supervisors adopted the 2009-2014 Housing Element on April 12, 2011. The Element was reviewed and subsequently certified by the State Department of Housing and Community Development on April 29, 2011. The Housing Element identified the need to review, and if necessary to revise, the Alameda County Zoning Ordinance to comply with Federal and State law and to successfully implement the County's Housing Element in the following areas:

- Density Bonuses and Incentives
- Supportive Housing
- Farm or Agricultural Employee Housing Facilities
- Residential Care Facilities
- Emergency Shelters
- Transitional Housing
- Manufactured Housing and Mobile Homes
- Single Room Occupancy (SRO) Units

In preparing the following amendments, staff completed the following tasks:

- Researched Federal and State law. Staff researched State and Federal housing laws to provide guidance in drafting the Ordinance amendments.
- Analyzed the County's General Plan and Reviewed Ordinances by Other Planning Departments. Staff prepared an initial draft of the Ordinance amendments based on legal research, consistency with the General Plan, and reviewing examples of similar ordinances, recently adopted by other local agencies throughout the State.

- Conducted Meetings with the Ordinance Review Advisory Committee. Staff conducted 2 meetings with the Ordinance Review Advisory Committee on January 10 and January 24, 2012.
- Consultation with Agencies and Committees. Staff has sought input from County Counsel, the Public Works Agency, the Social Services Agency, and the Housing and Community Development Department. The item was presented before the BOS-Unincorporated Services Committee on February 22, 2012, the BOS-Transportation and Planning Committee on February 16, 2012, the Castro Valley Municipal Advisory Council (CVMAC) on January 23 and February 27, 2012, and the Sunol Citizens Advisory Committee (SCAC) on January 18, 2012. Revisions recommended at these meetings that have been found consistent with state law have been incorporated into the draft under consideration at this hearing.

The Agricultural Advisory Committee (AAC) was provided with a memo from staff about proposed amendments pertaining to farmworker housing and was invited to provide comments to staff. No comments have been received from the AAC.

- Planning Commission Hearings. The Planning Commission has met on three previous occasions to discuss the implementation of the Housing Element—December 5, 2011, February 6 and February 21, 2012.

#### Facilities for Seven or More Persons in the R-1 (Single Family Residential) Zone

At the February 21, 2012 meeting of the Commission it was suggested that staff remove language regarding residential, medical care, transitional and supportive housing facilities in the R-1 (Single Family Residential) zone. While there are no statutory requirements that facilities serving seven or more persons be subject to a Conditional Use Permit, there are currently licensed and entitled facilities within the R-1 zone that serve seven or more persons. Therefore, to strike such language from the Ordinance text would make it impossible for those facilities to continue operating in their present location, and create a hardship for both their operators and residents. Based upon these considerations, staff believes that the current discretionary review process for such facilities is appropriate and that the language regarding residential, medical care, transitional and supportive housing facilities as a conditional use in the R-1 zone should remain in the amendment text.

#### Initial Study/Negative Declaration (IS/ND)

The California Environmental Quality Act (CEQA) requires that an analysis be performed when there is a project that may cause a direct or indirect change in the environment (Public Resources Code 21065). An Initial Study (IS) and Negative Declaration (ND) was prepared for the Alameda County Housing Element Update (2009-2014) which addressed potential impacts arising from adoption and subsequent implementation of the Housing Element. The County performed this analysis as required under CEQA and subsequently concluded that there will be no significant adverse environmental impacts from adopting the Ordinance amendments as there are no specific development or construction projects being proposed or permitted at this time. The ND was certified by the Board of Supervisors on March 30, 2010.

Individual projects which may (or may not) be proposed as a result of the proposed amendments will be subject to evaluation under CEQA, will be analyzed for compliance with the County's

Zoning, Building, Grading and Subdivision Ordinances, and be judged for their consistency with the County's General Plan.

**CONCLUSION**

At this time staff requests that the Planning Commission consider the proposed amendments and adopt the attached resolution.

**ATTACHMENTS**

- A. Resolution
- B. Ordinance Amendments

|                     |   |
|---------------------|---|
| <b>PREPARED BY:</b> | Angela C. Robinson Piñon, Planner                 |
| <b>REVIEWED BY:</b> | Elizabeth McElligott, Assistant Planning Director |

**THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY  
HAYWARD, CALIFORNIA**

**RESOLUTION NO. 12-XX - AT MEETING HELD MARCH 5, 2012**

**HOUSING ELEMENT IMPLEMENTATION AMENDMENTS**

**Introduced by Commissioner  
Seconded by Commissioner**

**WHEREAS** the Planning Commission did hold public hearings on the proposed Housing Element Implementation Amendments to the County Zoning Ordinance (“Amendments”) on February 6, February 21, and March 5, 2012; and

**WHEREAS** notice was given as required by law; and

**WHEREAS** this Commission did find on March 5, 2012 that the Amendments were necessary and appropriate in order to ensure that the Alameda County Zoning Ordinance (Title 17 of the General Ordinance Code) continues to comply with state housing law, and recommended these Amendments to the Board of Supervisors for approval after an appropriate process as prescribed by law; and

**WHEREAS** Planning staff did prepare an Initial Study and Negative Declaration that addressed not only the Alameda County Housing Element (2009-2014), but also its subsequent implementation; and

**WHEREAS** the Initial Study and Negative Declaration were completed pursuant to the California Environmental Quality Act (CEQA) to more closely examine the potential environmental impacts that may result from implementation of the Element; and

**WHEREAS** staff did submit this Initial Study and Negative Declaration to the Planning Commission for its consideration pursuant to CEQA, which is appropriate when a project is found to have no significant effect upon the environment; and

**WHEREAS** CEQA Guidelines Section 15074 requires certain findings to be made in order that a Negative Declaration may be adopted by the decisionmaking body, specifically “only if it finds on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration...reflects the lead agency’s independent judgment and analysis”; and

**WHEREAS** the Initial Study prepared by Planning Staff was circulated for public review as required by the CEQA for a period no less than 21 days, and whereas the public had the opportunity to comment on that document both during the review period and up to and during the public hearing by this Commission on January 19, 2010; and

**WHEREAS** this Planning Commission held a duly noticed public hearing to consider the Initial Study and Negative Declaration recommendation for the Alameda County Housing Element and its related implementation at the hour of 6:00 p.m. on Monday, the 19<sup>th</sup> day of January, 2010, in the Auditorium of the Alameda County Building, 224 W. Winton Avenue, Hayward, California; and

**WHEREAS** this Planning Commission did recommend that the Initial Study and Negative Declaration be sent to the Alameda County Board of Supervisors for review and certification; and

**WHEREAS** the Alameda County Board of Supervisors (“Board”) did consider the Negative Declaration on Tuesday, the 30<sup>th</sup> day of March, 2010, at 1221 Oak Street, Board Chambers, Oakland, California, for which notice was given as required by law and at which the Board took public testimony; and

**WHEREAS** the Board did certify that Negative Declaration that was prepared and completed in compliance with the California Environmental Quality Act, and found on the basis of the whole record before it that there is no substantial evidence that the Alameda County Housing Element Update (2009-2014) or its implementation would have a significant effect on the environment and that the Negative Declaration reflects the independent judgment and analysis of the County; and

**WHEREAS** the Amendments have thus been reviewed in accordance with the provisions of the California Environmental Quality Act; and

**WHEREAS** the Planning Commission is authorized and obligated to make recommendations to the Board of Supervisors on matters of Ordinance amendment related to planning and zoning; and

**WHEREAS** the testimony submitted in writing and at the public hearing and items in the public record have been considered by the Planning Commission prior to this action; and

**WHEREAS** the complete record for this process is in the custody of the Alameda County Planning Department, and may be found at Room 111, 224 West Winton Avenue, Hayward, California 94544.

**NOW, THEREFORE,**

**BE IT RESOLVED** that this Planning Commission does hereby find, and recommends that the Board of Supervisors does also find, on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence in the record that the project will have a significant effect on the environment and that the Negative Declaration certified by the Board on March 30, 2010 addressed the potential impacts of the implementation of the Alameda County Housing Element (2009-2014) ; and

**BE IT RESOLVED** that this Planning Commission hereby recommends to the Board of Supervisors that the Housing Element Implementation amendments be adopted in order to ensure that the County’s Zoning Ordinance reflects state housing law.

**ADOPTED BY THE FOLLOWING VOTE:**

**AYES:**

**NOE:**

**EXCUSED:**

**ABSENT:**

**ABSTAINED:**

ALBERT LOPEZ, PLANNING DIRECTOR AND SECRETARY,  
ALAMEDA COUNTY PLANNING COMMISSION

ORDINANCE 2012-\_\_\_\_\_

**AN ORDINANCE AMENDING TITLE 17 OF THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA ADDRESSING AGRICULTURAL EMPLOYEE HOUSING, MOBILEHOME PARKS, DENSITY BONUSES, TRANSITIONAL AND SUPPORTIVE HOUSING, RESIDENTIAL AND MEDICAL CARE FACILITIES, EMERGENCY SHELTERS AND SINGLE ROOM OCCUPANCY FACILITIES IN ORDER TO IMPLEMENT THE ALAMEDA COUNTY HOUSING ELEMENT (2009-2014) AND TO CONFORM WITH STATE LAW**

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Section 17.04.010 of Title 17 of the General Ordinance Code of the County of Alameda is amended reflect the following additions, revisions and deletions:

**17.04.010 – Definitions.**

“Agricultural employee” means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

“Agricultural employee housing” means any living quarters or accommodations of any type, including mobilehomes, which comply with the building standards in the State Building Standards Code or an adopted local ordinance with equivalent minimum standards for building(s) used for human habitation, and buildings accessory thereto, where accommodations are provided by any person for individuals employed in farming or other agricultural activities, including such individuals’ families. The agricultural employee housing is not required to be located on the same property where the agricultural employee is employed.

“Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person.

~~“Family Emergency Homeless Shelter” means a short term residential facility adequately staffed during operating hours with minimal supportive services providing lodging and meals for up to six months to homeless families with minor children, pending attempts to find more permanent housing and referred to the shelter by partner social service agencies or similar organizations the offices of which are not located on premises of the shelter, and where no meals or other services are provided to non-residents of the shelter. Such shelters shall be located within ¼ mile of transit lines and no closer than 500 feet, measured from property line to property line, from schools, parks and day care facilities, nor closer than 1000 feet from :~~

- ~~• Alcohol outlets~~
- ~~• Medical marijuana dispensaries~~
- ~~• Other Emergency Homeless Shelters~~

~~“General Emergency Homeless Shelter” means a short term residential facility adequately~~

~~staffed during operating hours with minimal supportive services providing lodging and meals for up to six months to homeless persons, not including families with minor children, pending attempts to find more permanent housing and referred to the shelter by partner social service agencies or similar organizations the offices of which are not located on the premises of the shelter, and where no meals or other services are provided to non-residents of the shelter. Such shelters shall be located within ¼ mile of transit lines and no closer than 1000 feet, measured from property line to property line, of the following uses:~~

- ~~• Schools~~
- ~~• Day care facilities~~
- ~~• Parks~~
- ~~• Alcohol outlets~~
- ~~• Medical marijuana dispensaries~~
- ~~• Other Emergency Homeless Shelters~~

"Medical or residential care facility" means a residential care homes as licensed by State Department of Social Services, Community Care Licensing Division. This term also includes group living quarters housing persons placed by an authorized agency for rehabilitation purposes and is funded by or licensed by or is operated under the auspices of an appropriate federal, state or county governmental agency.

"SRO (single room occupancy) facility" means a building containing six or more SRO units or guestrooms, designed for occupancy of no more than two persons, and which is intended, designed, or is used as a primary residence by guests.

"SRO (single room occupancy) unit" means a room that is used, intended or designed to be used by no more than two persons as a primary residence, but which lacks either or both a self-contained kitchen or bathroom.

"Supportive housing" means housing with no limit on length of stay, that is occupied by the "target population", and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

"Target population" means persons with Low Income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (California Welfare and Institutions Code, section 4500 et seq.) and may include, among other populations, adults, emancipated youth, families, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

"Transitional housing" and "transitional housing development" mean buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

## SECTION II

Section 17.06.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.06.030 - Permitted uses.**

The following principal uses are permitted in an A district:

- A. On a building site, one one-family dwelling or one-family mobilehome either constructed after September 15, 1971, and issued an insignia of approval by the California Department of Housing and Community Development and permanently located on a permanent foundation system, or constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system;
- B. Crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture;
- C. Raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals;
- D. Grazing, breeding or training of horses or cattle;
- E. Winery or olive oil mill;
- F. Fish hatcheries and rearing ponds;
- G. Public or private riding or hiking trails;
- H. One secondary dwelling unit per building site on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel subject to the following requirements:
  - 1. The secondary dwelling unit shall be on the same building envelope as the primary unit;
  - 2. On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;
  - 3. The secondary dwelling unit shall be subject to site development review pursuant to Section 17.54.210 et seq.; and
  - 4. The secondary dwelling unit shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas. Notwithstanding the requirements of Section 17.54.220.A, for secondary units on parcels that are less than one hundred (100) acres in size, the planning commission shall decide applications for site development review under this section, and a public hearing is required.
- I. Occupancy of agricultural caretaker dwelling(s) subject to a site development review as provided in Section 17.06.090, when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her family.
- J. Boarding stables and riding academies subject to the following requirements:
  - 1. The boarding stable shall be subject to site development review pursuant to Sections 17.06.090 and 17.54.210 et seq., except as follows:
    - a. The appropriate board of zoning adjustments shall decide applications for site development review under this section, and a public hearing is required.
    - b. Where the holder of an existing conditional use permit is found to be in compliance with all conditions of the existing conditional use permit, the planning director shall recommend approval of a site development review for the facility Alameda County Ordinance Code, Title 17, Zoning Ordinance with no new conditions except as allowed by the county policy for equine facilities in the A (agricultural) district, to the appropriate board of zoning adjustments.
    - c. The planning director may modify the requirements of Section 17.54.230 consistent with the provisions of the county policy of equine facilities in the A (agricultural) district; and specifically may waive the requirement that the site plan be prepared by licensed civil engineer, land surveyor, architect, landscape architect, or a registered building designer.
  - 2. The boarding stable shall be subject to and consistent with the provisions of the county policy for equine facilities in the A (agricultural) district.

3. Site development reviews under this section shall not have an expiration date. However, they shall be subject to a periodic review for compliance with conditions of approval of the site development review and with relevant county ordinances, including all water quality rules and regulations. Such reviews shall occur every five years at minimum, or as needed to ensure compliance.

4. Any changes in the scope of the boarding stable operation shall require a modification to the site development review.

5. Site development review approval under this section shall not be construed to confer upon a boarding stable any exemption from any health, nuisance, or public safety ordinances or their subsequent enforcement or confer any other unique privileges upon a stable.

K. Agricultural employee housing consisting of not more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a single family or household subject to a site development review as described provided in Section 17.06.090 (Agricultural Districts-- Site Development Review—When Required), 17.60.100 (Agricultural Districts—Agricultural Employee Housing), and 17.54.210 (Site Development Review).

### SECTION III

Section 17.06.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.06.040 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:

- A. Outdoor recreation facility;
- B. Animal hospital, kennel;
- C. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
- D. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;
- E. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;
- F. Flight strip when accessory or incidental to a permitted or conditional use;
- G. Hog ranch;
- H. Drilling for and removal of oil, gas or other hydrocarbon substances;
- I. Radio and television transmission facilities;
- J. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;
- K. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;
- L. Administrative support and service facilities of a public regional recreation district;
- M. Privately owned wind-electric generators;
- N. Remote testing facility;
- O. Winery or olive oil mill related uses; and
- P. Agricultural employee housing for 37 or more beds in group quarters or 13 units or spaces designed for use by a single family or household.

### SECTION IV

Section 17.06.090 of Title 17 of the General Ordinance Code of the County of Alameda is

amended to read as follows:

**17.06.090 - Site development review—When required.**

Site development review pursuant to Section 17.54.210 shall be required for:

A. Every new dwelling or addition to existing dwelling exceeding five hundred (500) square feet or thirty (30) feet in height hereafter placed on a parcel in the A district;

B. Agricultural caretakers dwelling(s), when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her/their family(ies); subject to the following provisions:

1. Initial site development review shall include submittal of required applications and materials and completion of an agricultural caretaker dwelling report, signed by the property owner.

2. The agricultural caretaker dwelling report submitted under Paragraph 1 above shall include a description of the agricultural use on the site, a description of the commercial/economic viability of the agricultural use, a discussion of the personnel necessary to implement or oversee the agricultural use, and a description of the proposed agricultural dwelling and/or housing. If the agricultural use is intended primarily for private interest rather than commercial viability, or if the dwelling unit is intended for a use not otherwise related directly to commercially viable agriculture on the site, such as onsite security, the report shall provide this information.

3. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

4. The planning director may extend initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural caretaker dwelling report, signed by the property owner.

5. During the effective period of the site development review, any changes relating to the information contained in the agricultural caretaker dwelling report (including changes to the dwelling unit itself, changes in maximum occupancy requirements, and/or changes in the size/nature/ scope of the agricultural use being served by the presence of the caretaker onsite) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

6. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural caretaker dwelling report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

7. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

8. The approval of a site development review for an agricultural caretaker dwelling of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site status.

9. The agricultural caretaker dwelling is intended to remain only as long as necessary to support either onsite security or the primary agriculture use on the site, and when the need for this support terminates the dwelling must be completely removed or converted to another legal use.

10. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

C. Boarding stables and riding academies subject to the provisions of Section 17.06.030J of this chapter; and

D. Agricultural employee housing subject to the provisions of Section 17.06.100 of this chapter.

## SECTION V

Section 17.06.100 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

### **17.06.100 – Agricultural Districts—Agricultural employee housing.**

Agricultural employee housing is subject to site development review pursuant to Sections 17.06.060 (Agricultural Districts--Site Development Review—When Required) and 17.54.210 (Site Development Review) et seq. and to the following provisions:

A. The site development review shall include submittal of required applications and materials including an agricultural employee housing report, signed by the property owner.

B. The agricultural employee housing report submitted under Paragraph 1 above shall include the following information:

1. Entity responsible for housing maintenance and up-keep;
2. Description of whether the housing will be used on a permanent, temporary, and/or seasonal basis;
3. Total number of people to be housed on-site at any one time;
4. Description of the housing, including whether the structures will be permanent and/or temporary, intended as units for families, one person, or several persons, and cost of the units and utilities to the agricultural employees;
5. Location(s) where the agricultural employees will work;
6. There must be adequate water and sewer available to service the development, as determined by the Department of Environmental Health;
7. The housing must be located off prime and productive agricultural land, or on the parcel where no other alternatives exist on site, on the least viable portion of the parcel;
8. The development shall incorporate proper erosion and drainage controls; and
9. Parking shall be provided in accordance with Section 17.52.910 (Parking spaces required—Residential buildings).

C. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

D. The planning director may extend the initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural employee housing report, signed by the property owner.

E. During the effective period of the site development review, any changes relating to the information contained in the agricultural employee housing report (including changes to the dwelling unit itself, and changes in maximum occupancy requirements) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

F. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural employee housing report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

G. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

H. The approval of a site development review for an agricultural employee housing of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site

status.

I. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

## SECTION VI

Section 17.08.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.08.030 - Permitted uses.**

The following principal uses are permitted in an R-1 district:

- A. One one-family dwelling;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons; and
- D. Transitional or supportive housing for up to six (6) persons.

## SECTION VII

Section 17.08.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.08.040 - Conditional uses.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-1 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, only when established to fulfill the residential parking requirements of this title for a use on an abutting lot or lots;
- D. Plant nursery or greenhouse used only for the cultivation and wholesale of plant materials;
- E. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. Transitional or supportive housing for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);and
- G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

## SECTION VIII

Section 17.10.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.10.020 - Permitted uses.**

The following principal uses are permitted in an R-2 district:

- A. One or two one-family dwellings, or one two-family dwelling;
- B. Field crop, orchard, or garden;
- C. Medical or residential care facility for up to six (6) persons; and
- D. Transitional or supportive housing for up to six (6) persons.

## SECTION IX

Section 17.10.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.10.030 - Conditional uses.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-2 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, subject to the same limitations as in Section 17.08.040C;
- D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
- E. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. One dwelling or a dwelling group containing altogether not more than three dwelling units, where the lot has an area not less than seven thousand five hundred (7,500) square feet.;
- G. Transitional or supportive housing for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- H. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION X

Section 17.12.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.12.030 - Permitted uses.**

The following principal uses are permitted in any R-S district:

- A. One-family dwelling, two-family dwelling, multiple dwelling or dwelling group;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons; and
- D. Transitional or supportive housing for up to six (6) persons.

SECTION XI

Section 17.12.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.12.040 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-S districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, as regulated in Section 17.08.040C;
- D. Plant nursery or greenhouse used only for the cultivation of plant materials;
- E. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. Mobile home parks, as regulated by Chapter 17.52, Sections 1000-1065, of this title; and

G. Transitional and supportive housing for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities).

## SECTION XII

Section 17.14.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.14.020 - Permitted uses.**

The following principal uses are permitted in an R-3 district:

- A. One-family dwelling, two-family dwelling, multiple dwelling, or dwelling group, up to a total not to exceed four dwelling units;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons; and
- D. Transitional or supportive housing for up to six (6) persons.

## SECTION XIII

Section 17.14.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.14.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in R-3 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
- E. Parking lot, as regulated in Section 17.08.040C;
- F. Transitional and supportive housing for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

## SECTION XIV

Section 17.16.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.16.020 - Permitted uses.**

The following principal uses are permitted in an R-4 district:

- A. All uses permitted in R-3 districts, pursuant to Section 17.14.020;
- B. Multiple dwelling or dwelling group, provided that on any building site with an area which equals or exceeds five times the area for one dwelling unit, every dwelling unit placed on such building site shall be subject to site development review pursuant to Section 17.54.210; and
- C. Emergency shelter provided in accordance with Section 17.52.1165 (Emergency Shelter-

SECTION XV

Section 17.16.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.16.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-4 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Parking lot, as regulated in Section 17.08.040C;
- C. Clubhouse;
- D. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- E. Boarding house;
- F. Fraternity or sorority house, accredited by an institution of higher learning;
- G. Single room occupancy facility subject to the provisions of 17.54.134 (Conditional Uses- Single Room Occupancy (SRO) Facilities);
- H. Transitional and supportive housing for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- I. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION XVI

Table 17.52.910 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

| Table 17.52.910<br>Parking Spaces Required for Residential Buildings  |  |
|---|--|
| Use   | Number of Spaces Required  |
| Dwelling, including single, two-family and multiple residences, group dwellings, apartment houses, apartment hotels, and all other similar structures devoted to habitation | 2 for each dwelling unit, plus 1 for each bedroom available for accommodating a paying guest   |
| Hotel, motel, boarding house, clubhouse, fraternity or sorority, and single room occupancy facilities   | 2 plus 1 for each bedroom available for sorority; accommodating guests a paying guest  |
| Medical or residential care facility, and transitional and supportive housing developments  | 2 plus 1 for each 6 beds for persons not related to the resident family or manager   |
| Hospital  | 2 plus 1 for each 4 patient beds, (except that those patient beds designated as "long term care beds" by the State Department of Public Health may be computed 1 |

|                               |   |
|-------------------------------|---|
|                               | per 6 patient beds) plus 1 for each staff doctor; plus 1 for each 1,000 square feet of gross floor area in the main building or buildings   |
| Mobilehome park               | 2 for each mobilehome site; other provisions of this title notwithstanding, the access to one of these spaces may be within the access to the second space; plus 1 for each 10 mobilehome sites |
| Recreational vehicle park     | 1 for each recreational vehicle site located on each recreational vehicle site, plus 1 for each 15 recreational vehicle sites   |
| Emergency shelter             | 3 plus 1 per each 10 individual beds.   |
| Agricultural employee housing | 1 space per unit, or 1 for each 4 beds  |

SECTION XVII

Section 17.52.1020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.52.1020 - Mobilehome parks—Density.**

Except as otherwise provided in a combining district or specific plan, the number of dwelling units permitted on a building site in a mobilehome park shall not exceed the number obtained by dividing the area in square feet of the building site by five thousand (5,000), disregarding any fraction.

SECTION XVIII

Section 17.52.1065 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.52.1065 - Mobilehome parks—Parking.**

Pursuant to Section 17.52.910 (Parking spaces required—Residential buildings), every mobilehome site shall have two parking spaces. A mobilehome park shall also provide 1 parking space for every 10 mobilehome sites.

SECTION XIX

Section 17.52.1160 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

**17.52.1160 – Standards for Emergency Shelters —Purpose.**

The purpose of this Section is to establish the development standards for Emergency Shelters

SECTION XX

Section 17.52.1165 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

**17.52.1165 – Emergency Shelter —Regulations.**

Emergency Shelters shall be subject to the following regulations and development standards:

- A. An Emergency Shelter shall obtain and maintain in good standing all required licenses, permits, and approvals from County and State agencies or departments. An Emergency Shelter shall comply with all County and State health and safety requirements for food, medical, and other supportive services provided on-site;
- B. No Emergency Shelter facility shall have more than sixty (60) beds;
- C. Each resident shall be provided a minimum of fifty (50) gross square feet of personal living space, not including space for common areas;
- D. Bathing facilities shall be provided in quantity and location as required in the California Plumbing Code (Title 24 Part 5), as amended, and shall comply with the accessibility requirements of the California Building Code (Title 24 Part 2), as amended;
- E. No individual or family shall reside in an Emergency Shelter for more than 180 consecutive days;
- F. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area, to the satisfaction of the Planning Director;
- G. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities, to the satisfaction of the Planning Director;
- H. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
- I. The facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
- J. Onsite management shall be provided twenty-four (24) hours a day, seven (7) days per week. All facilities must provide a management plan to the satisfaction of the Planning Director that shall contain policies, maintenance plans, intake procedures, tenant rules, and security procedures;
- K. The facility is no closer than three hundred (300) feet from other emergency shelters unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
- L. On-site parking shall be provided in accordance with Section 17.52.910;
- M. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties.
- N. Required yards shall conform with the R-4 zoning district yard requirements; and
- O. A waiting and client intake area of not less than one hundred (100) square feet shall be provided inside the main building.
- P. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

## SECTION XXI

Section 17.54.133 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

### **17.54.133 – Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities.**

In addition to the findings required of the Board of Zoning Adjustments under Sections 17.54.130 (Conditional Uses) and 17.54.140 (Conditional Uses--Action), a conditional use permit for any conditionally permitted residential or medical care facility, transitional housing

facility, or supportive housing facility may only be granted upon determination that the proposal conforms to all of the following additional use permit criteria:

- A. Staffing of the facility shall at all times remain in compliance with any State Licensing Agency requirements;
- B. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area;
- C. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities;
- D. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
- E. That the facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
- F. Onsite management shall be provided twenty-four (24) hours a day, seven days per week. Prior to operation, all facilities must provide to the Planning Director a management plan that shall contain policies, maintenance plans, rental procedures, tenant rules, and security procedures;
- G. In accordance with sections 1267.9 and 1520.5 of the California Health and Safety Code, no facility shall be closer than three hundred (300) feet from other similar activities or facilities unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
- H. Parking shall be provided in accordance with Section 17.52.910 (Parking Spaces required—Residential buildings);
- I. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties; and
- J. Yards shall conform to the zoning requirements established for the district in which it is located.

## SECTION XXII

Section 17.54.134 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

### **17.54.134 – Conditional Uses- Single Room Occupancy (SRO) Facilities.**

Single Room Occupancy Facilities shall be subject to the following regulations and development standards:

- A. Excluding the bathroom area and closet(s), the Single Room Occupancy unit must be a minimum of one hundred and fifty (150) square feet in floor area and the maximum size shall be not more than four hundred (400) square feet. Each unit shall be designed to accommodate a maximum of two people.
- B. Each Single Room Occupancy Unit must include a closet and may contain either kitchen facilities or bath facilities but not both.
- C. Complete common cooking facilities/kitchens must be provided if any unit within the SRO Facility does not have a kitchen. One complete cooking facility/kitchen shall be provided within the SRO Facility for every twenty (20) SRO units or portion thereof that do not have kitchens, or have one kitchen on any floor where SRO Units without kitchens are located.
- D. Common bathrooms must be located on any floor with any unit that does not have a full bathroom. Common bathrooms shall be either single occupant use with provisions for privacy or

multi-occupant use with separate provisions for men and women. Common bathrooms shall have shower or bathtub facilities at a ratio of one for every seven (7) units or fraction thereof. Each shared shower or bathtub facility shall be provided with an interior lockable door.

E. Each SRO Facility shall have at least ten (10) square feet of common usable area per unit; however no SRO facility shall provide less than two hundred (200) square feet of common outdoor area and two hundred (200) square feet of common indoor area. Maintenance areas, laundry facilities, storage (including bicycle storage), and common hallways shall not be included as usable indoor common space. Landscape areas that are less than eight (8) feet wide shall not be included as outdoor common space.

F. A SRO Facility with twelve (12) or more units shall provide twenty-four (24) hour on-site management, and include a dwelling unit designated for the manager. All SRO Facilities must have a management plan approved prior to occupation by the Alameda County Department of Housing and Community Development. The management plan shall contain management policies, maintenance plans, rental procedures, tenant rules, and security procedures.

G. Single Room Occupancy Facilities shall include laundry facilities.

H. A cleaning supply storeroom and/or utility closet with at least one (1) laundry tub with hot and cold running water must be provided on each floor of the SRO Facility.

I. Parking shall be provided in accordance with Section 17.52.910.

## SECTION XXIII

Chapter 17.56 (Density Bonus) of Title 17 of the General Ordinance Code of the County of Alameda is hereby repealed.

## SECTION XXIV

Chapter 17.106 (Density Bonus) of Title 17 of the General Ordinance Code of the County of Alameda is hereby added to read as follows:

### **Chapter 17.106- DENSITY BONUS**

#### **17.106.010- Title.**

This chapter shall be called the density bonus ordinance of the county of Alameda.

#### **17.106.020 – Purpose.**

This chapter establishes policies which facilitate the development of affordable housing for very low and lower income households and senior households within the unincorporated area of Alameda County, through the provision of a density bonus, and additional financial incentives if necessary for affordability, to applicants who agree to meet the requirements established by this chapter.

#### **17.106.030 – Definitions.**

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

Affordable Housing Agreement: "Affordable housing agreement" means the agreement made between the applicant and the county governing the regulation and monitoring of the affordable units.

Amenities: "Amenities" means interior amenities including, but not limited to, fireplaces, garbage disposals, dishwashers, cabinets and storage space and bathrooms in excess of one.

Applicant: "Applicant" means any person, firm, partnership, association, joint venture,

corporation, or any entity or combination of entities which seeks a density bonus or incentives or both under this chapter.

**Base Units:** "Base Units" means the number of units that would be allowed under the General Plan land use designation and zoning ordinance for the subject site before calculation of the Density Bonus.

**Child Care Facility:** "Child Care Facility" means a facility, other than a day care home, licensed by the State of California to provide non-medical care to children under 18 years of age in need of personal services, supervision or assistance on less than a 24-hour basis. "Density Bonus" means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation taking into account all applicable limitations.

**Density Bonus:** "Density bonus" means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation.

**Density Bonus Unit:** "Density bonus unit" means a residential dwelling unit authorized as a result of the granting of a density bonus.

**Household:** "Household" means one person living alone or two or more persons sharing a residential dwelling.

**Housing Development:** "Housing Development" means a project providing residential units including, without limitation, a subdivision, a planned unit development, multifamily dwellings, or condominium project. Housing developments consist of development of residential units or creation of unimproved residential lots and also include either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, where the result of the rehabilitation would be a net increase in available residential units.

**Incentive:** An "Incentive" may include any of the following:

1. Approval of a mixed-use development if commercial, office, industrial, or other land uses will help to offset the costs of the housing development. A mixed-use development will be approved only if the commercial, office, industrial, or other land uses are compatible with the surrounding land uses, the county general plan, and applicable specific plans;
2. Government-assisted financing, including, but not limited to, mortgage revenue bonds issued by the county;
3. A reduction in site development standards, but only if the overall quality of the development is not lessened. All developments must also meet any design guidelines codified by the county at a future date;
4. Other incentives proposed by the developer or the county which result in identifiable cost reductions, including but not limited to:
  - a. Waiver or reduction of certain county fees applicable to restricted units in a housing development,
  - b. Reduction of interior amenities,
  - c. Priority processing of a housing development which provides restricted units. Upon certification that the application is complete and eligible for priority processing, the housing development will be reviewed by the planning director in advance of all nonpriority items. The housing development review will be completed and a

recommendation will be made by the planning director whether to approve the housing development within one hundred twenty (120) days of receipt of the completed application. The planning director may give written approval to extend the one hundred twenty (120) day period.

**Lower Income Household:** "Lower income household" means a household whose gross income is eighty (80) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5; if the Health and Safety Code definition is amended, this definition shall be deemed to be amended to the same effect.

**Maximum Allowable Residential Density:** "Maximum allowable residential density" means the density allowed under the General Plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project. Maximum allowable residential density takes into account limitations to density pursuant to General Plan policies and Zoning Ordinance regulations.

**Median Income:** "Median income" means the median income for Alameda County, published by the United States Department of Housing and Urban Development.

**Moderate Income Household:** "Moderate Income Household" means a household, with an annual income which does not exceed the United States Department of Housing and Urban Development annual determination for moderate income households with incomes of one hundred twenty (120) percent of the Median Income, adjusted for household size.

**Qualifying Unit:** "Qualifying Unit" means a dwelling or dwellings designated for occupancy by very low, low, or moderate income households, within a housing development, which make the housing development eligible for a Density Bonus.

**Resale controls:** "Resale controls" means a resale restriction placed on restricted units by which the price of such units and/or the age or income of the purchaser will be restricted to ensure affordability and occupancy by very low or lower income households or senior households.

**Restricted Unit:** "Restricted unit" means a residential dwelling unit to be sold or rented at a price or rent affordable to a very low or lower income household, or sold or rented to a senior household.

**Senior Citizen Housing Development:** "Senior Citizen Housing Development" means a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in California Civil Code Sections 51.3 and 51.12.

**Senior Household:** "Senior household" means as established by California Civil Code Section 51.3, a household in which at least one member is at least sixty-two (62) years of age.

**Term of Affordability:** "Term of affordability" means the time during which restricted units in a housing development must remain as restricted units.

**Unit Type:** "Unit type" means a dwelling unit with a defined floor area and a designated number of bedrooms.

**Very Low Income Household:** "Very low income household" means a household whose gross

income is fifty (50) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5.

**17.106.040 - Density bonus qualifications.**

In order to qualify for a density bonus and one or more incentives under this chapter, a housing development must consist of five or more dwelling units and meet one or more of the following criteria:

- A. Agrees to construct and maintain at least five (5) percent of the base units for very low income households;
- B. Agrees to construct and maintain at least ten (10) percent of the base units for lower income households;
- C. Agrees to construct and maintain at least ten (10) percent of the base units in a condominium project or planned development project dedicated to moderate income households, provided that all units in the development are offered to the public for purchase;
- D. Agrees to construct and maintain a senior citizen housing development;
- E. Converts an existing apartment or multifamily dwelling to a condominium development as described in Section 17.106.050.I (Density Bonus—Density Bonus Calculations).

**17.106.050 - Density bonus calculations.**

- A. In accordance with state law, the granting of a Density Bonus or an incentive(s) shall not be interpreted, in and of itself, to require a General Plan amendment, specific plan amendment, rezone, or other discretionary approval.
- B. An applicant must choose a Density Bonus from only one applicable affordability category of this Chapter and may not combine categories, with the exception of a Child Care Facility or land donation. The Child Care Facility or land donation may be combined with an affordable housing development for an additional Density Bonus up to a combined maximum of thirty five (35) percent.
- C. Any Density Bonus and/or Concession/Incentive awarded shall apply only to the Housing Development for which it was granted.
- D. In determining the number of density bonus units to be granted pursuant to 17.56.040 Section 17.106.040 (Density Bonus Qualifications), the maximum residential density for the site shall be multiplied by 0.20 for subsections A, B, and D of that section and 0.05 for subsection C of that section, unless a lesser number is selected by the developer.
  - 1. For each one percent increase above ten 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.
  - 2. For each one percent increase above five 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.
  - 3. For each one percent increase above ten percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one (1) percent up to a maximum of 35 percent.
- E. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- F. The density bonus units shall not be included when determining the number of qualifying units required for a density bonus. When calculating the required number of qualifying units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- G. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required qualifying units pursuant to Section 17.106.040 (Density bonus qualifications) above. Regardless of the number of qualifying units, no housing development may be entitled to a density bonus of more than thirty-five percent.

H. The following table summarizes this information:

**Density Bonus Summary Table**

| <b>Income Group</b>                | <b>Minimum % Qualifying Units</b> | <b>Bonus Granted</b> | <b>Additional Bonus for Each 1% Increase in Qualifying Units</b> | <b>% Qualifying Units Required for Maximum 35% Bonus</b> |
|------------------------------------|-----------------------------------|----------------------|--|--|
| Very Low Income                    | 5%                                | 20%                  | 2.5%   | 11%  |
| Low Income                         | 10%                               | 20%                  | 1.5%   | 20%  |
| Moderate Income (Condo or PD only) | 10%                               | 5%                   | 1%   | 40%  |
| Senior Citizen Housing Development | 100%                              | 20%                  | —  | —  |

I. An applicant for an apartment conversion to a condominium project that provides at least thirty-three (33) percent of the total units of the proposed condominium project to persons and families of Low or Moderate Income, or fifteen (15) percent of the total units of the project to Lower Income households, and agrees to pay for the reasonable necessary administrative costs incurred by the County, qualify for a twenty-five (25) percent Density Bonus or other incentives of equivalent financial value. An applicant shall be ineligible for a Density Bonus or other incentives if the apartments proposed for conversion constitute a housing development for which a Density Bonus or other Incentives were previously granted under the provisions of this chapter.

**17.106.060 – Density Bonus--Eligibility and application requirements for incentives.**

A. A housing development qualifying for a density bonus is entitled to at least one incentive in addition to the density bonus. Incentives are available for qualifying housing developments as follows:

1. One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five (5) percent for very low income households, or at least ten (10) percent for persons and families of moderate income in a condominium or planned development.
2. Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a condominium or planned development.
3. Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a condominium or planned development.

B. The appropriate authority for the housing development shall grant the incentive unless the appropriate authority makes a written finding, based upon substantial evidence, of any of the following:

1. That the incentive is not necessary in order to provide for affordable housing costs; or
2. The concession or incentive would have a specific adverse impact, as defined in California Health & Safety Code 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 very low, lower and moderate income households.

C. In accordance with Government Code Section 65915 (p), an applicant qualifying for a density bonus may request, inclusive of handicapped and guest parking, the following parking ratios:

1. Zero to one bedrooms: One onsite parking space
2. Two to three bedrooms: Two onsite parking spaces
3. Four or more bedrooms: Two and one-half parking spaces

These standards may be applied in addition to any other incentives for which the housing development qualifies as specified in this section. If the total number of parking spaces for the development is other than a whole number, the number shall be rounded up to the next whole number. Off-street parking spaces provided pursuant to this paragraph may be arranged in tandem and may be uncovered.

**17. 106.070 - Qualifications for restricted units.**

A. The applicant shall execute an affordable housing agreement with Alameda County, which shall be recorded and shall run with the land.

B. The affordable housing agreement shall describe household types, number, location, size and construction scheduling of restricted units and any other information required by the county to determine the applicant's compliance with the conditions.

C. Restricted units shall be constructed concurrently with or prior to the construction of nonrestricted units, shall be dispersed throughout the housing development, and shall include all unit types represented in the housing development and shall be in the same proportions as nonrestricted unit types.

**17. 106.080 - Term of affordability.**

The applicant shall agree to, and the County shall ensure, the continued availability of the Qualifying Units and other Incentives for a period of at least 30 (thirty) years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

**17. 106.090 - Requirements for rental housing developments.**

A. All restricted units shall be occupied by the household type specified in the affordable housing agreement.

B. The applicant shall be responsible for obtaining and verifying information with respect to the qualifications of prospective and current tenants, including, but not limited to, information relating to tenants' incomes, and eligibility, in a form satisfactory to the planning director. The applicant shall maintain a list of qualified applicants for the duration of the program and shall allow the planning director to inspect such information upon reasonable notice. The applicant may contract with another entity to perform these functions subject to the approval of the planning director.

C. The applicant shall submit reports annually certifying that the restricted units are occupied by the household types specified in the affordable housing agreement. The annual reports shall include the number of persons and income for each household in the restricted units.

D. If the affordable housing agreement is violated, the applicant shall pay to the county as liquidated damages the maximum sum of five thousand dollars (\$5,000.00) for each restricted unit that is in violation of the affordable housing agreement. This amount may be required for each month of violation. Any unpaid liquidated damages may be recorded as a notice of violation of the affordable housing agreement against the title of the property. In addition to the liquidated damages, if a very low income or lower income household in a restricted unit is charged a rent that exceeds the rent specified in the affordable housing agreement, the

applicant must pay to the tenant the difference in the rent charged and the allowable rent for the months that the tenant was overcharged. If a restricted unit is rented to a household with an income exceeding that specified in the affordable housing agreement, in lieu of the liquidated damages mentioned above, the first vacant nonrestricted unit must be made a restricted unit and rented to a household that qualifies under the affordable housing agreement.

**17. 106.100 - Requirements for owner-occupied housing.**

A. The home buyer shall verify on a form provided by the planning director that the restricted unit being purchased is for use as the buyer's principal residence and that the buyer is either a lower income household, very low income household or a senior household. If the restricted unit ceases to function as the owner's principal residence, it shall be sold according to the requirements of the resale controls. If evidence is presented to the planning director that the owner is unable to continuously occupy the restricted unit because of illness or incapacity, the planning director may approve rental of the restricted unit to a very low income household, lower income household, or moderate income household.

B. The resale controls will place limits on the resale price of a restricted unit and on the income of the new buyer. The resale price of a restricted unit will be limited to the original price of the restricted unit, plus a factor of appreciation equal to the annual increase in the median income, plus the appraised value, at time of sale, of any documented capital improvements. In addition, when an owner sells a restricted unit, the sale must be to a very low income household, lower income household, or moderate income household.

C. Resale controls shall be recorded as part of the declaration of covenants, conditions, and restrictions on the restricted unit. The resale controls will remain in effect for the term of affordability.

D. The following transfers of title or any interest therein are not subject to the provisions of this section, provided, however, that the resale controls shall continue to run with the land following such transfers: transfers by gift, devise, or intestate succession to the owner's spouse or children, and transfers of title to a spouse as part of a dissolution of marriage proceeding or in conjunction with marriage.

**17. 106.110 - Application procedure.**

A. An applicant may submit to the planning director a preliminary proposal for a housing development pursuant to this chapter prior to the submittal of any formal housing development application. The planning director shall, within ninety (90) days of receiving a preliminary proposal, provide the applicant a written preliminary evaluation of the housing development.

B. In addition to the county's usual development requirements, formal application for a housing development under this chapter shall include the following information:

1. A written statement specifying the desired density increase, incentive requested, and the number, type, location, size and construction schedule of all dwelling units;

2. If necessary for the planning director to evaluate the financial need for additional incentives, the applicant shall submit a report that contains housing development costs and revenues, including but not limited to land, construction, and financing costs, and revenues from restricted units, unrestricted units, and density bonus units. Such other information as the planning director needs to evaluate the housing development may be requested by the planning director. The planning director may retain a consultant to review the financial report. The cost of the consultant shall be borne by the applicant; and

3. Any other information requested by the planning director to implement this chapter.

C. Housing developments that meet the requirements set forth in Section 17.106.040 (Density bonus qualifications) above shall qualify for a density bonus and at least one incentive, unless the planning director adopts a written finding that the incentive is not required to achieve the economic feasibility of the restricted units. The planning director may also provide an incentive

in place of a density bonus that is of equivalent value to the density bonus. Such incentive shall be calculated in a manner determined by the planning director.

**17.106.120 – Density Bonus--Child Care Facilities.**

A. When an applicant proposes a housing development that is eligible for a density bonus under this chapter and includes a child care facility on the premises or adjacent to the housing development, the applicant shall receive an additional density bonus that is in an amount of square feet of residential space that is equal to the square footage of the child care facility; or the applicant may receive another incentive that contributes significantly to the economic feasibility of the construction of the child care facility, provided that, in both cases, the following conditions are incorporated in the conditions of approval for the housing development:

1. 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 restricted units are required to remain affordable pursuant to the terms of the affordable housing agreement executed between the County and the developer.
2. Attendance of children at the child care facility shall have an equal or greater percentage of children from very low, low, and moderate income households than the percentage of affordable units in the housing development.

B. The County may deny the request for a density bonus or incentive for a child care facility if the county finds, based upon substantial evidence, that the community has adequate child care facilities without the facilities being considered as part of the subject housing development.

**17.106.130 - Density Bonus--Donation of land.**

A. When an applicant for a tentative subdivision map, parcel map or other residential development donates land to the County, the applicant shall be entitled to a density bonus above the maximum allowable residential density, up to a maximum of thirty five (35) percent depending on the amount of land donated. The amount of density bonus shall be based upon the number of permittable units consistent with Section 17.106.050(H). This increase shall be in addition to any increase in density permitted by this chapter up to a maximum combined density increase of 35 percent. A density bonus for donation of land shall only be considered 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 the amount not less than ten percent (10%) of the residential units in 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 (forty) 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 (such as waste water treatment facilities and public transit). The transferred 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 units on the transferred land, except that the County may subject the proposed development to subsequent design review if the design is not reviewed by the County prior to the time of transfer.
4. The transferred land and the units constructed on said land shall be subject to a deed restriction ensuring continued affordability of the units for a period of at least thirty (30) years and subject to restrictions consistent with California Government Code Section 65915 (c)(1)

and (2), as may be periodically amended.

5. The land is transferred to the County or to a housing developer approved by the County.

6. The transferred land shall be within the boundary of the proposed development or, if the County determines appropriate, be located within the same General Plan area as the proposed development.

**17. 106.140 - Administration and fees.**

A. At the discretion of the planning director, the county may contract with another entity to administer the rental and sales provisions of this chapter.

B. The planning director shall establish the amount of fees to be charged to applicants for administration of this chapter at the cost of staff time attributable to such administration. These fees may be waived or reduced as specified in Section 17.106.030 (Definitions) under subsection (4)(a) of the definition of "incentive" .

C. The planning director shall be responsible for monitoring the resale of restricted units.

D. The planning director shall adopt regulations and forms necessary to implement and interpret the provisions of this chapter.

SECTION XXV

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, \_\_\_\_\_, 2012 by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
NATE MILEY  
President of the Board of Supervisors  
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA GRAFF,  
Clerk of the Board of Supervisors, County of Alameda

By \_\_\_\_\_

Approved as to Form:  
DONNA ZIEGLER, County Counsel

By \_\_\_\_\_  
BRIAN WASHINGTON  
Chief Assistant County Counsel

**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT**



**STAFF REPORT**

**TO** Members of the Alameda County Planning Commission  
**RE** Housing Element Implementation-**Addendum**  
**HEARING DATE** March 5, 2012

**GENERAL INFORMATION**

This report is intended as an addendum to the previous staff report that was sent to the Commission.

**STAFF RECOMMENDATION**

Staff requests that the Commission consider the revised Ordinance Amendments.

**STAFF ANALYSIS**

*Transitional and Supportive Housing*

Staff has revised the Ordinance amendments that were initially sent to the Planning Commission in advance of the March 5 meeting. These revisions were necessary to address concerns regarding the treatment of transitional and supportive housing. Staff from the County's Department of Housing and Community Development (County HCD) requested that Planning staff clarify that regulations for transitional and supportive housing would be applied solely to licensed facilities and not to other formal or informal housing arrangements. Staff interpreted the original amendment language as being applicable only to facilities licensed by the California Department of Social Services, Community Care Licensing Division. However, County HCD was concerned that the definition might be broadly applied in the future and lead to possible violations of state and federal housing law and state privacy laws-- leaving the County open to litigation. Attachment B was drafted by the law firm Goldfarb & Lipman and analyzes how the local jurisdictions may regulate licensed facilities and the limitations of regulated group housing or other types of living arrangements that are unlicensed. Currently, there is no clear direction as to how the County might regulate unlicensed care that operates in a manner similar to a transitional or supportive housing development, as such Planning staff has concluded that the changes are consistent with its interpretation of the Ordinance amendments in that they clarify the intent of the amendments, and that the proposed revisions would not violate any state or federal housing laws.

County HCD also requested that staff revise the amendments to state that limitations on the number of persons that may be housed in a licensed care environment is applied per dwelling unit and not per parcel. These changes are reflected in the revised amendments.

*Density Bonuses*

At the February 6, 2012 Commission hearing, Commissioner Jacob questioned staff about limiting the sale of housing units to seniors, as he believed that such limitations may violate the federal Fair Housing Act. He suggested that the term “senior” be changed to “moderate income” as local jurisdictions are empowered to restrict units on the basis of income. Attachment C provides information about the Housing for Older Persons Act of 1995 (HOPA). Under this federal law, qualified housing for older persons may be exempt from the Fair Housing Act, and so the purchase of a dwelling may be restricted to persons 55 years or older. To be certain, there are several steps that must be taken to demonstrate that a housing development qualifies under this law; however, it is legally possible to limit the sale of a dwelling within a qualified community (per HOPA) for older persons.

Staff has revised Sections 17.106.090 and 17.106.100 to ensure that the sale of restricted units may be accomplished for both senior and moderate income households.

**CONCLUSION**

At this time staff requests that the Planning Commission consider the proposed revisions.

**ATTACHMENTS**

- A. Revised Ordinance Amendments
- B. Briefing from Goldfarb Lipman
- C. Information regarding the Housing for Older Persons Act

|                     |   |
|---------------------|---|
| <b>PREPARED BY:</b> | Angela C. Robinson Piñon, Planner                 |
| <b>REVIEWED BY:</b> | Elizabeth McElligott, Assistant Planning Director |

ORDINANCE 2012-\_\_\_\_\_

**AN ORDINANCE AMENDING TITLE 17 OF THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA ADDRESSING AGRICULTURAL EMPLOYEE HOUSING, MOBILEHOME PARKS, DENSITY BONUSES, TRANSITIONAL AND SUPPORTIVE HOUSING, RESIDENTIAL AND MEDICAL CARE FACILITIES, EMERGENCY SHELTERS AND SINGLE ROOM OCCUPANCY FACILITIES IN ORDER TO IMPLEMENT THE ALAMEDA COUNTY HOUSING ELEMENT (2009-2014) AND TO CONFORM WITH STATE LAW**

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Section 17.04.010 of Title 17 of the General Ordinance Code of the County of Alameda is amended reflect the following additions, revisions and deletions:

**17.04.010 – Definitions.**

“Agricultural employee” means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

“Agricultural employee housing” means any living quarters or accommodations of any type, including mobilehomes, which comply with the building standards in the State Building Standards Code or an adopted local ordinance with equivalent minimum standards for building(s) used for human habitation, and buildings accessory thereto, where accommodations are provided by any person for individuals employed in farming or other agricultural activities, including such individuals’ families. The agricultural employee housing is not required to be located on the same property where the agricultural employee is employed.

“Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person.

~~“Family Emergency Homeless Shelter” means a short term residential facility adequately staffed during operating hours with minimal supportive services providing lodging and meals for up to six months to homeless families with minor children, pending attempts to find more permanent housing and referred to the shelter by partner social service agencies or similar organizations the offices of which are not located on premises of the shelter, and where no meals or other services are provided to non-residents of the shelter. Such shelters shall be located within ¼ mile of transit lines and no closer than 500 feet, measured from property line to property line, from schools, parks and day care facilities, nor closer than 1000 feet from :~~

- ~~• Alcohol outlets~~
- ~~• Medical marijuana dispensaries~~
- ~~• Other Emergency Homeless Shelters~~

~~“General Emergency Homeless Shelter” means a short term residential facility adequately~~

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~~staffed during operating hours with minimal supportive services providing lodging and meals for up to six months to homeless persons, not including families with minor children, pending attempts to find more permanent housing and referred to the shelter by partner social service agencies or similar organizations the offices of which are not located on the premises of the shelter, and where no meals or other services are provided to non-residents of the shelter. Such shelters shall be located within ¼ mile of transit lines and no closer than 1000 feet, measured from property line to property line, of the following uses:~~

- ~~• Schools~~
- ~~• Day care facilities~~
- ~~• Parks~~
- ~~• Alcohol outlets~~
- ~~• Medical marijuana dispensaries~~
- ~~• Other Emergency Homeless Shelters~~

"Medical or residential care facility" means a residential care homes as licensed by State Department of Social Services, Community Care Licensing Division. This term also includes group living quarters housing persons placed by an authorized agency for rehabilitation purposes and is funded by or licensed by or is operated under the auspices of an appropriate federal, state or county governmental agency.

"SRO (single room occupancy) facility" means a building containing six or more SRO units or guestrooms, designed for occupancy of no more than two persons, and which is intended, designed, or is used as a primary residence by guests.

"SRO (single room occupancy) unit" means a room that is used, intended or designed to be used by no more than two persons as a primary residence, but which lacks either or both a self-contained kitchen or bathroom.

"Supportive housing" means housing with no limit on length of stay, that is occupied by the "target population", and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

"Target population" means persons with Low Income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (California Welfare and Institutions Code, section 4500 et seq.) and may include, among other populations, adults, emancipated youth, families, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

"Transitional housing" and "transitional housing development" mean buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

## SECTION II

Section 17.06.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

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### 17.06.030 - Permitted uses.

The following principal uses are permitted in an A district:

- A. On a building site, one one-family dwelling or one-family mobilehome either constructed after September 15, 1971, and issued an insignia of approval by the California Department of Housing and Community Development and permanently located on a permanent foundation system, or constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system;
- B. Crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture;
- C. Raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals;
- D. Grazing, breeding or training of horses or cattle;
- E. Winery or olive oil mill;
- F. Fish hatcheries and rearing ponds;
- G. Public or private riding or hiking trails;
- H. One secondary dwelling unit per building site on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel subject to the following requirements:
  - 1. The secondary dwelling unit shall be on the same building envelope as the primary unit;
  - 2. On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;
  - 3. The secondary dwelling unit shall be subject to site development review pursuant to Section 17.54.210 et seq.; and
  - 4. The secondary dwelling unit shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas. Notwithstanding the requirements of Section 17.54.220.A, for secondary units on parcels that are less than one hundred (100) acres in size, the planning commission shall decide applications for site development review under this section, and a public hearing is required.
- I. Occupancy of agricultural caretaker dwelling(s) subject to a site development review as provided in Section 17.06.090, when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her family.
- J. Boarding stables and riding academies subject to the following requirements:
  - 1. The boarding stable shall be subject to site development review pursuant to Sections 17.06.090 and 17.54.210 et seq., except as follows:
    - a. The appropriate board of zoning adjustments shall decide applications for site development review under this section, and a public hearing is required.
    - b. Where the holder of an existing conditional use permit is found to be in compliance with all conditions of the existing conditional use permit, the planning director shall recommend approval of a site development review for the facility Alameda County Ordinance Code, Title 17, Zoning Ordinance with no new conditions except as allowed by the county policy for equine facilities in the A (agricultural) district, to the appropriate board of zoning adjustments.
    - c. The planning director may modify the requirements of Section 17.54.230 consistent with the provisions of the county policy of equine facilities in the A (agricultural) district; and specifically may waive the requirement that the site plan be prepared by licensed civil engineer, land surveyor, architect, landscape architect, or a registered building designer.
  - 2. The boarding stable shall be subject to and consistent with the provisions of the county policy for equine facilities in the A (agricultural) district.

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3. Site development reviews under this section shall not have an expiration date. However, they shall be subject to a periodic review for compliance with conditions of approval of the site development review and with relevant county ordinances, including all water quality rules and regulations. Such reviews shall occur every five years at minimum, or as needed to ensure compliance.

4. Any changes in the scope of the boarding stable operation shall require a modification to the site development review.

5. Site development review approval under this section shall not be construed to confer upon a boarding stable any exemption from any health, nuisance, or public safety ordinances or their subsequent enforcement or confer any other unique privileges upon a stable.

K. Agricultural employee housing consisting of not more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a single family or household subject to a site development review as described provided in Section 17.06.090 (Agricultural Districts-- Site Development Review—When Required), 17.60.100 (Agricultural Districts—Agricultural Employee Housing), and 17.54.210 (Site Development Review).

### SECTION III

Section 17.06.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.06.040 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:

- A. Outdoor recreation facility;
- B. Animal hospital, kennel;
- C. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
- D. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;
- E. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;
- F. Flight strip when accessory or incidental to a permitted or conditional use;
- G. Hog ranch;
- H. Drilling for and removal of oil, gas or other hydrocarbon substances;
- I. Radio and television transmission facilities;
- J. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;
- K. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;
- L. Administrative support and service facilities of a public regional recreation district;
- M. Privately owned wind-electric generators;
- N. Remote testing facility;
- O. Winery or olive oil mill related uses; and
- P. Agricultural employee housing for 37 or more beds in group quarters or 13 units or spaces designed for use by a single family or household.

### SECTION IV

Section 17.06.090 of Title 17 of the General Ordinance Code of the County of Alameda is

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amended to read as follows:

### **17.06.090 - Site development review—When required.**

Site development review pursuant to Section 17.54.210 shall be required for:

A. Every new dwelling or addition to existing dwelling exceeding five hundred (500) square feet or thirty (30) feet in height hereafter placed on a parcel in the A district;

B. Agricultural caretakers dwelling(s), when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her/their family(ies); subject to the following provisions:

1. Initial site development review shall include submittal of required applications and materials and completion of an agricultural caretaker dwelling report, signed by the property owner.

2. The agricultural caretaker dwelling report submitted under Paragraph 1 above shall include a description of the agricultural use on the site, a description of the commercial/economic viability of the agricultural use, a discussion of the personnel necessary to implement or oversee the agricultural use, and a description of the proposed agricultural dwelling and/or housing. If the agricultural use is intended primarily for private interest rather than commercial viability, or if the dwelling unit is intended for a use not otherwise related directly to commercially viable agriculture on the site, such as onsite security, the report shall provide this information.

3. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

4. The planning director may extend initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural caretaker dwelling report, signed by the property owner.

5. During the effective period of the site development review, any changes relating to the information contained in the agricultural caretaker dwelling report (including changes to the dwelling unit itself, changes in maximum occupancy requirements, and/or changes in the size/nature/ scope of the agricultural use being served by the presence of the caretaker onsite) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

6. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural caretaker dwelling report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

7. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

8. The approval of a site development review for an agricultural caretaker dwelling of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site status.

9. The agricultural caretaker dwelling is intended to remain only as long as necessary to support either onsite security or the primary agriculture use on the site, and when the need for this support terminates the dwelling must be completely removed or converted to another legal use.

10. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

C. Boarding stables and riding academies subject to the provisions of Section 17.06.030J of this chapter; and

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D. Agricultural employee housing subject to the provisions of Section 17.06.100 of this chapter.

### SECTION V

Section 17.06.100 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

#### **17.06.100 – Agricultural Districts—Agricultural employee housing.**

Agricultural employee housing is subject to site development review pursuant to Sections 17.06.060 (Agricultural Districts--Site Development Review—When Required) and 17.54.210 (Site Development Review) et seq. and to the following provisions:

A. The site development review shall include submittal of required applications and materials including an agricultural employee housing report, signed by the property owner.

B. The agricultural employee housing report submitted under Paragraph 1 above shall include the following information:

1. Entity responsible for housing maintenance and up-keep;
2. Description of whether the housing will be used on a permanent, temporary, and/or seasonal basis;
3. Total number of people to be housed on-site at any one time;
4. Description of the housing, including whether the structures will be permanent and/or temporary, intended as units for families, one person, or several persons, and cost of the units and utilities to the agricultural employees;
5. Location(s) where the agricultural employees will work;
6. There must be adequate water and sewer available to service the development, as determined by the Department of Environmental Health;
7. The housing must be located off prime and productive agricultural land, or on the parcel where no other alternatives exist on site, on the least viable portion of the parcel;
8. The development shall incorporate proper erosion and drainage controls; and
9. Parking shall be provided in accordance with Section 17.52.910 (Parking spaces required—Residential buildings).

C. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

D. The planning director may extend the initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural employee housing report, signed by the property owner.

E. During the effective period of the site development review, any changes relating to the information contained in the agricultural employee housing report (including changes to the dwelling unit itself, and changes in maximum occupancy requirements) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

F. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural employee housing report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

G. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

H. The approval of a site development review for an agricultural employee housing of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site

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status.

I. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

### SECTION VI

Section 17.08.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.08.030 - Permitted uses.**

The following principal uses are permitted in an R-1 district:

- A. One one-family dwelling;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons **per unit**; and
- D. **Licensed** transitional or supportive housing for up to six (6) persons **per unit**.

### SECTION VII

Section 17.08.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.08.040 - Conditional uses.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-1 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, only when established to fulfill the residential parking requirements of this title for a use on an abutting lot or lots;
- D. Plant nursery or greenhouse used only for the cultivation and wholesale of plant materials;
- E. Medical or residential care facility for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. **Licensed** transitional or supportive housing for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);and
- G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

### SECTION VIII

Section 17.10.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.10.020 - Permitted uses.**

The following principal uses are permitted in an R-2 district:

- A. One or two one-family dwellings, or one two-family dwelling;
- B. Field crop, orchard, or garden;
- C. Medical or residential care facility for up to six (6) persons **per unit**; and
- D. **Licensed** transitional or supportive housing for up to six (6) persons **per unit**.

### SECTION IX

## REVISED DRAFT

Section 17.10.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.10.030 - Conditional uses.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-2 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, subject to the same limitations as in Section 17.08.040C;
- D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
- E. Medical or residential care facility for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. One dwelling or a dwelling group containing altogether not more than three dwelling units, where the lot has an area not less than seven thousand five hundred (7,500) square feet.;
- G. **Licensed** transitional or supportive housing for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- H. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

## SECTION X

Section 17.12.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.12.030 - Permitted uses.**

The following principal uses are permitted in any R-S district:

- A. One-family dwelling, two-family dwelling, multiple dwelling or dwelling group;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons **per unit**; and
- D. **Licensed** transitional or supportive housing for up to six (6) persons **per unit**.

## SECTION XI

Section 17.12.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

### **17.12.040 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-S districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Parking lot, as regulated in Section 17.08.040C;
- D. Plant nursery or greenhouse used only for the cultivation of plant materials;
- E. Medical or residential care facility for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- F. Mobile home parks, as regulated by Chapter 17.52, Sections 1000-1065, of this title; and

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G. **Licensed** transitional and supportive housing for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities).

### SECTION XII

Section 17.14.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.14.020 - Permitted uses.**

The following principal uses are permitted in an R-3 district:

- A. One-family dwelling, two-family dwelling, multiple dwelling, or dwelling group, up to a total not to exceed four dwelling units;
- B. Field crop, orchard, garden;
- C. Medical or residential care facility for up to six (6) persons **per unit**; and
- D. **Licensed** transitional or supportive housing for up to six (6) persons **per unit**.

### SECTION XIII

Section 17.14.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.14.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in R-3 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Community clubhouse;
- C. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
- E. Parking lot, as regulated in Section 17.08.040C;
- F. **Licensed** transitional and supportive housing for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

### SECTION XIV

Section 17.16.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

#### **17.16.020 - Permitted uses.**

The following principal uses are permitted in an R-4 district:

- A. All uses permitted in R-3 districts, pursuant to Section 17.14.020;
- B. Multiple dwelling or dwelling group, provided that on any building site with an area which equals or exceeds five times the area for one dwelling unit, every dwelling unit placed on such building site shall be subject to site development review pursuant to Section 17.54.210; and
- C. Emergency shelter provided in accordance with Section 17.52.1165 (Emergency Shelter-

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Regulations)

SECTION XV

Section 17.16.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.16.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-4 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Parking lot, as regulated in Section 17.08.040C;
- C. Clubhouse;
- D. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
- E. Boarding house;
- F. Fraternity or sorority house, accredited by an institution of higher learning;
- G. Single room occupancy facility subject to the provisions of 17.54.134 (Conditional Uses- Single Room Occupancy (SRO) Facilities);
- H. **Licensed** transitional and supportive housing for seven (7) or more persons **per unit** as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
- I. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION XVI

Table 17.52.910 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

| Table 17.52.910<br>Parking Spaces Required for Residential Buildings  |  |
|---|--|
| Use   | Number of Spaces Required  |
| Dwelling, including single, two-family and multiple residences, group dwellings, apartment houses, apartment hotels, and all other similar structures devoted to habitation | 2 for each dwelling unit, plus 1 for each bedroom available for accommodating a paying guest   |
| Hotel, motel, boarding house, clubhouse, fraternity or sorority, and single room occupancy facilities   | 2 plus 1 for each bedroom available for sorority; accommodating guests a paying guest  |
| Medical or residential care facility, and transitional and supportive housing developments  | 2 plus 1 for each 6 beds for persons not related to the resident family or manager   |
| Hospital  | 2 plus 1 for each 4 patient beds, (except that those patient beds designated as "long term care beds" by the State Department of Public Health may be computed 1 |

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|                               |   |
|-------------------------------|---|
|                               | per 6 patient beds) plus 1 for each staff doctor; plus 1 for each 1,000 square feet of gross floor area in the main building or buildings   |
| Mobilehome park               | 2 for each mobilehome site; other provisions of this title notwithstanding, the access to one of these spaces may be within the access to the second space; plus 1 for each 10 mobilehome sites |
| Recreational vehicle park     | 1 for each recreational vehicle site located on each recreational vehicle site, plus 1 for each 15 recreational vehicle sites   |
| Emergency shelter             | 3 plus 1 per each 10 individual beds.   |
| Agricultural employee housing | 1 space per unit, or 1 for each 4 beds  |

SECTION XVII

Section 17.52.1020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.52.1020 - Mobilehome parks—Density.**

Except as otherwise provided in a combining district or specific plan, the number of dwelling units permitted on a building site in a mobilehome park shall not exceed the number obtained by dividing the area in square feet of the building site by five thousand (5,000), disregarding any fraction.

SECTION XVIII

Section 17.52.1065 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

**17.52.1065 - Mobilehome parks—Parking.**

Pursuant to Section 17.52.910 (Parking spaces required—Residential buildings), every mobilehome site shall have two parking spaces. A mobilehome park shall also provide 1 parking space for every 10 mobilehome sites.

SECTION XIX

Section 17.52.1160 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

**17.52.1160 – Standards for Emergency Shelters —Purpose.**

The purpose of this Section is to establish the development standards for Emergency Shelters

SECTION XX

Section 17.52.1165 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

**17.52.1165 – Emergency Shelter —Regulations.**

Emergency Shelters shall be subject to the following regulations and development standards:

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- A. An Emergency Shelter shall obtain and maintain in good standing all required licenses, permits, and approvals from County and State agencies or departments. An Emergency Shelter shall comply with all County and State health and safety requirements for food, medical, and other supportive services provided on-site;
- B. No Emergency Shelter facility shall have more than sixty (60) beds;
- C. Each resident shall be provided a minimum of fifty (50) gross square feet of personal living space, not including space for common areas;
- D. Bathing facilities shall be provided in quantity and location as required in the California Plumbing Code (Title 24 Part 5), as amended, and shall comply with the accessibility requirements of the California Building Code (Title 24 Part 2), as amended;
- E. No individual or family shall reside in an Emergency Shelter for more than 180 consecutive days;
- F. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area, to the satisfaction of the Planning Director;
- G. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities, to the satisfaction of the Planning Director;
- H. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
- I. The facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
- J. Onsite management shall be provided twenty-four (24) hours a day, seven (7) days per week. All facilities must provide a management plan to the satisfaction of the Planning Director that shall contain policies, maintenance plans, intake procedures, tenant rules, and security procedures;
- K. The facility is no closer than three hundred (300) feet from other emergency shelters unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
- L. On-site parking shall be provided in accordance with Section 17.52.910;
- M. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties.
- N. Required yards shall conform with the R-4 zoning district yard requirements; and
- O. A waiting and client intake area of not less than one hundred (100) square feet shall be provided inside the main building.
- P. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

## SECTION XXI

Section 17.54.133 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

### **17.54.133 – Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities.**

In addition to the findings required of the Board of Zoning Adjustments under Sections 17.54.130 (Conditional Uses) and 17.54.140 (Conditional Uses--Action), a conditional use permit for any conditionally permitted residential or medical care facility, transitional housing

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facility, or supportive housing facility may only be granted upon determination that the proposal conforms to all of the following additional use permit criteria:

- A. Staffing of the facility shall at all times remain in compliance with any State Licensing Agency requirements;
- B. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area;
- C. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities;
- D. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
- E. That the facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
- F. Onsite management shall be provided twenty-four (24) hours a day, seven days per week. Prior to operation, all facilities must provide to the Planning Director a management plan that shall contain policies, maintenance plans, rental procedures, tenant rules, and security procedures;
- G. In accordance with sections 1267.9 and 1520.5 of the California Health and Safety Code, no facility shall be closer than three hundred (300) feet from other similar activities or facilities unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
- H. Parking shall be provided in accordance with Section 17.52.910 (Parking Spaces required—Residential buildings);
- I. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties; and
- J. Yards shall conform to the zoning requirements established for the district in which it is located.

## SECTION XXII

Section 17.54.134 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

### **17.54.134 – Conditional Uses- Single Room Occupancy (SRO) Facilities.**

Single Room Occupancy Facilities shall be subject to the following regulations and development standards:

- A. Excluding the bathroom area and closet(s), the Single Room Occupancy unit must be a minimum of one hundred and fifty (150) square feet in floor area and the maximum size shall be not more than four hundred (400) square feet. Each unit shall be designed to accommodate a maximum of two people.
- B. Each Single Room Occupancy Unit must include a closet and may contain either kitchen facilities or bath facilities but not both.
- C. Complete common cooking facilities/kitchens must be provided if any unit within the SRO Facility does not have a kitchen. One complete cooking facility/kitchen shall be provided within the SRO Facility for every twenty (20) SRO units or portion thereof that do not have kitchens, or have one kitchen on any floor where SRO Units without kitchens are located.
- D. Common bathrooms must be located on any floor with any unit that does not have a full bathroom. Common bathrooms shall be either single occupant use with provisions for privacy or

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multi-occupant use with separate provisions for men and women. Common bathrooms shall have shower or bathtub facilities at a ratio of one for every seven (7) units or fraction thereof. Each shared shower or bathtub facility shall be provided with an interior lockable door.

E. Each SRO Facility shall have at least ten (10) square feet of common usable area per unit; however no SRO facility shall provide less than two hundred (200) square feet of common outdoor area and two hundred (200) square feet of common indoor area. Maintenance areas, laundry facilities, storage (including bicycle storage), and common hallways shall not be included as usable indoor common space. Landscape areas that are less than eight (8) feet wide shall not be included as outdoor common space.

F. A SRO Facility with twelve (12) or more units shall provide twenty-four (24) hour on-site management, and include a dwelling unit designated for the manager. All SRO Facilities must have a management plan approved prior to occupation by the Alameda County Department of Housing and Community Development. The management plan shall contain management policies, maintenance plans, rental procedures, tenant rules, and security procedures.

G. Single Room Occupancy Facilities shall include laundry facilities.

H. A cleaning supply storeroom and/or utility closet with at least one (1) laundry tub with hot and cold running water must be provided on each floor of the SRO Facility.

I. Parking shall be provided in accordance with Section 17.52.910.

### SECTION XXIII

Chapter 17.56 (Density Bonus) of Title 17 of the General Ordinance Code of the County of Alameda is hereby repealed.

### SECTION XXIV

Chapter 17.106 (Density Bonus) of Title 17 of the General Ordinance Code of the County of Alameda is hereby added to read as follows:

#### **Chapter 17.106- DENSITY BONUS**

##### **17.106.010- Title.**

This chapter shall be called the density bonus ordinance of the county of Alameda.

##### **17.106.020 – Purpose.**

This chapter establishes policies which facilitate the development of affordable housing for very low and lower income households and senior households within the unincorporated area of Alameda County, through the provision of a density bonus, and additional financial incentives if necessary for affordability, to applicants who agree to meet the requirements established by this chapter.

##### **17.106.030 – Definitions.**

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

Affordable Housing Agreement: "Affordable housing agreement" means the agreement made between the applicant and the county governing the regulation and monitoring of the affordable units.

Amenities: "Amenities" means interior amenities including, but not limited to, fireplaces, garbage disposals, dishwashers, cabinets and storage space and bathrooms in excess of one.

Applicant: "Applicant" means any person, firm, partnership, association, joint venture,

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corporation, or any entity or combination of entities which seeks a density bonus or incentives or both under this chapter.

**Base Units:** "Base Units" means the number of units that would be allowed under the General Plan land use designation and zoning ordinance for the subject site before calculation of the Density Bonus.

**Child Care Facility:** "Child Care Facility" means a facility, other than a day care home, licensed by the State of California to provide non-medical care to children under 18 years of age in need of personal services, supervision or assistance on less than a 24-hour basis. "Density Bonus" means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation taking into account all applicable limitations.

**Density Bonus:** "Density bonus" means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation.

**Density Bonus Unit:** "Density bonus unit" means a residential dwelling unit authorized as a result of the granting of a density bonus.

**Household:** "Household" means one person living alone or two or more persons sharing a residential dwelling.

**Housing Development:** "Housing Development" means a project providing residential units including, without limitation, a subdivision, a planned unit development, multifamily dwellings, or condominium project. Housing developments consist of development of residential units or creation of unimproved residential lots and also include either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, where the result of the rehabilitation would be a net increase in available residential units.

**Incentive:** An "Incentive" may include any of the following:

1. Approval of a mixed-use development if commercial, office, industrial, or other land uses will help to offset the costs of the housing development. A mixed-use development will be approved only if the commercial, office, industrial, or other land uses are compatible with the surrounding land uses, the county general plan, and applicable specific plans;
2. Government-assisted financing, including, but not limited to, mortgage revenue bonds issued by the county;
3. A reduction in site development standards, but only if the overall quality of the development is not lessened. All developments must also meet any design guidelines codified by the county at a future date;
4. Other incentives proposed by the developer or the county which result in identifiable cost reductions, including but not limited to:
  - a. Waiver or reduction of certain county fees applicable to restricted units in a housing development,
  - b. Reduction of interior amenities,
  - c. Priority processing of a housing development which provides restricted units. Upon certification that the application is complete and eligible for priority processing, the housing development will be reviewed by the planning director in advance of all nonpriority items. The housing development review will be completed and a

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recommendation will be made by the planning director whether to approve the housing development within one hundred twenty (120) days of receipt of the completed application. The planning director may give written approval to extend the one hundred twenty (120) day period.

**Lower Income Household:** "Lower income household" means a household whose gross income is eighty (80) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5; if the Health and Safety Code definition is amended, this definition shall be deemed to be amended to the same effect.

**Maximum Allowable Residential Density:** "Maximum allowable residential density" means the density allowed under the General Plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project. Maximum allowable residential density takes into account limitations to density pursuant to General Plan policies and Zoning Ordinance regulations.

**Median Income:** "Median income" means the median income for Alameda County, published by the United States Department of Housing and Urban Development.

**Moderate Income Household:** "Moderate Income Household" means a household, with an annual income which does not exceed the United States Department of Housing and Urban Development annual determination for moderate income households with incomes of one hundred twenty (120) percent of the Median Income, adjusted for household size.

**Qualifying Unit:** "Qualifying Unit" means a dwelling or dwellings designated for occupancy by very low, low, or moderate income households, within a housing development, which make the housing development eligible for a Density Bonus.

**Resale controls:** "Resale controls" means a resale restriction placed on restricted units by which the price of such units and/or the age or income of the purchaser will be restricted to ensure affordability and occupancy by very low or lower income households or senior households.

**Restricted Unit:** "Restricted unit" means a residential dwelling unit to be sold or rented at a price or rent affordable to a very low, lower, **or moderate income household,** or sold or rented to a senior household.

**Senior Citizen Housing Development:** "Senior Citizen Housing Development" means a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in California Civil Code Sections 51.3 and 51.12.

**Senior Household:** "Senior household" means as established by California Civil Code Section 51.3, a household in which at least one member is at least sixty-two (62) years of age.

**Term of Affordability:** "Term of affordability" means the time during which restricted units in a housing development must remain as restricted units.

**Unit Type:** "Unit type" means a dwelling unit with a defined floor area and a designated number of bedrooms.

**Very Low Income Household:** "Very low income household" means a household whose gross

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income is fifty (50) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5.

### **17.106.040 - Density bonus qualifications.**

In order to qualify for a density bonus and one or more incentives under this chapter, a housing development must consist of five or more dwelling units and meet one or more of the following criteria:

- A. Agrees to construct and maintain at least five (5) percent of the base units for very low income households;
- B. Agrees to construct and maintain at least ten (10) percent of the base units for lower income households;
- C. Agrees to construct and maintain at least ten (10) percent of the base units in a condominium project or planned development project dedicated to moderate income households, provided that all units in the development are offered to the public for purchase;
- D. Agrees to construct and maintain a senior citizen housing development;
- E. Converts an existing apartment or multifamily dwelling to a condominium development as described in Section 17.106.050.I (Density Bonus—Density Bonus Calculations).

### **17.106.050 - Density bonus calculations.**

- A. In accordance with state law, the granting of a Density Bonus or an incentive(s) shall not be interpreted, in and of itself, to require a General Plan amendment, specific plan amendment, rezone, or other discretionary approval.
- B. An applicant must choose a Density Bonus from only one applicable affordability category of this Chapter and may not combine categories, with the exception of a Child Care Facility or land donation. The Child Care Facility or land donation may be combined with an affordable housing development for an additional Density Bonus up to a combined maximum of thirty five (35) percent.
- C. Any Density Bonus and/or Concession/Incentive awarded shall apply only to the Housing Development for which it was granted.
- D. In determining the number of density bonus units to be granted pursuant to 17.56.040 Section 17.106.040 (Density Bonus Qualifications), the maximum residential density for the site shall be multiplied by 0.20 for subsections A, B, and D of that section and 0.05 for subsection C of that section, unless a lesser number is selected by the developer.
  - 1. For each one percent increase above ten 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.
  - 2. For each one percent increase above five 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.
  - 3. For each one percent increase above ten percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one (1) percent up to a maximum of 35 percent.
- E. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- F. The density bonus units shall not be included when determining the number of qualifying units required for a density bonus. When calculating the required number of qualifying units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- G. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required qualifying units pursuant to Section 17.106.040 (Density bonus qualifications) above. Regardless of the number of qualifying units, no housing development may be entitled to a density bonus of more than thirty-five percent.

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H. The following table summarizes this information:

**Density Bonus Summary Table**

| <b>Income Group</b>                | <b>Minimum % Qualifying Units</b> | <b>Bonus Granted</b> | <b>Additional Bonus for Each 1% Increase in Qualifying Units</b> | <b>% Qualifying Units Required for Maximum 35% Bonus</b> |
|------------------------------------|-----------------------------------|----------------------|--|--|
| Very Low Income                    | 5%                                | 20%                  | 2.5%   | 11%  |
| Low Income                         | 10%                               | 20%                  | 1.5%   | 20%  |
| Moderate Income (Condo or PD only) | 10%                               | 5%                   | 1%   | 40%  |
| Senior Citizen Housing Development | 100%                              | 20%                  | —  | —  |

I. An applicant for an apartment conversion to a condominium project that provides at least thirty-three (33) percent of the total units of the proposed condominium project to persons and families of Low or Moderate Income, or fifteen (15) percent of the total units of the project to Lower Income households, and agrees to pay for the reasonable necessary administrative costs incurred by the County, qualify for a twenty-five (25) percent Density Bonus or other incentives of equivalent financial value. An applicant shall be ineligible for a Density Bonus or other incentives if the apartments proposed for conversion constitute a housing development for which a Density Bonus or other Incentives were previously granted under the provisions of this chapter.

**17.106.060 – Density Bonus--Eligibility and application requirements for incentives.**

A. A housing development qualifying for a density bonus is entitled to at least one incentive in addition to the density bonus. Incentives are available for qualifying housing developments as follows:

1. One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five (5) percent for very low income households, or at least ten (10) percent for persons and families of moderate income in a condominium or planned development.
2. Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a condominium or planned development.
3. Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a condominium or planned development.

B. The appropriate authority for the housing development shall grant the incentive unless the appropriate authority makes a written finding, based upon substantial evidence, of any of the following:

1. That the incentive is not necessary in order to provide for affordable housing costs; or
2. The concession or incentive would have a specific adverse impact, as defined in California Health & Safety Code 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

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avoid the specific adverse impact without rendering the development unaffordable to very low, lower and moderate income households.

C. In accordance with Government Code Section 65915 (p), an applicant qualifying for a density bonus may request, inclusive of handicapped and guest parking, the following parking ratios:

1. Zero to one bedrooms: One onsite parking space
2. Two to three bedrooms: Two onsite parking spaces
3. Four or more bedrooms: Two and one-half parking spaces

These standards may be applied in addition to any other incentives for which the housing development qualifies as specified in this section. If the total number of parking spaces for the development is other than a whole number, the number shall be rounded up to the next whole number. Off-street parking spaces provided pursuant to this paragraph may be arranged in tandem and may be uncovered.

### **17. 106.070 - Qualifications for restricted units.**

A. The applicant shall execute an affordable housing agreement with Alameda County, which shall be recorded and shall run with the land.

B. The affordable housing agreement shall describe household types, number, location, size and construction scheduling of restricted units and any other information required by the county to determine the applicant's compliance with the conditions.

C. Restricted units shall be constructed concurrently with or prior to the construction of nonrestricted units, shall be dispersed throughout the housing development, and shall include all unit types represented in the housing development and shall be in the same proportions as nonrestricted unit types.

### **17. 106.080 - Term of affordability.**

The applicant shall agree to, and the County shall ensure, the continued availability of the Qualifying Units and other Incentives for a period of at least 30 (thirty) years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

### **17. 106.090 - Requirements for rental housing developments.**

A. All restricted units shall be occupied by the household type specified in the affordable housing agreement.

B. The applicant shall be responsible for obtaining and verifying information with respect to the qualifications of prospective and current tenants, including, but not limited to, information relating to tenants' incomes, and eligibility, in a form satisfactory to the planning director. The applicant shall maintain a list of qualified applicants for the duration of the program and shall allow the planning director to inspect such information upon reasonable notice. The applicant may contract with another entity to perform these functions subject to the approval of the planning director.

C. The applicant shall submit reports annually certifying that the restricted units are occupied by the household types specified in the affordable housing agreement. The annual reports shall include the number of persons and income for each household in the restricted units.

D. If the affordable housing agreement is violated, the applicant shall pay to the county as liquidated damages the maximum sum of five thousand dollars (\$5,000.00) for each restricted unit that is in violation of the affordable housing agreement. This amount may be required for each month of violation. Any unpaid liquidated damages may be recorded as a notice of violation of the affordable housing agreement against the title of the property. In addition to the liquidated damages, if a very low income, moderate income or lower income household in a restricted unit is charged a rent that exceeds the rent specified in the affordable housing

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agreement, the applicant must pay to the tenant the difference in the rent charged and the allowable rent for the months that the tenant was overcharged. If a restricted unit is rented to a household with an income exceeding that specified in the affordable housing agreement, in lieu of the liquidated damages mentioned above, the first vacant nonrestricted unit must be made a restricted unit and rented to a household that qualifies under the affordable housing agreement.

### **17. 106.100 - Requirements for owner-occupied housing.**

A. The home buyer shall verify on a form provided by the planning director that the restricted unit being purchased is for use as the buyer's principal residence and that the buyer is either a moderate income household, lower income household, very low income household or a senior household. If the restricted unit ceases to function as the owner's principal residence, it shall be sold according to the requirements of the resale controls. If evidence is presented to the planning director that the owner is unable to continuously occupy the restricted unit because of illness or incapacity, the planning director may approve rental of the restricted unit to a senior, very low income, lower income, or moderate income household.

B. The resale controls will place limits on the resale price of a restricted unit and on the income of the new buyer. The resale price of a restricted unit will be limited to the original price of the restricted unit, plus a factor of appreciation equal to the annual increase in the median income, plus the appraised value, at time of sale, of any documented capital improvements. In addition, when an owner sells a restricted unit, the sale must be to a moderate income household, very low income household, lower income household, or senior household.

C. Resale controls shall be recorded as part of the declaration of covenants, conditions, and restrictions on the restricted unit. The resale controls will remain in effect for the term of affordability.

D. The following transfers of title or any interest therein are not subject to the provisions of this section, provided, however, that the resale controls shall continue to run with the land following such transfers: transfers by gift, devise, or intestate succession to the owner's spouse or children, and transfers of title to a spouse as part of a dissolution of marriage proceeding or in conjunction with marriage.

### **17. 106.110 - Application procedure.**

A. An applicant may submit to the planning director a preliminary proposal for a housing development pursuant to this chapter prior to the submittal of any formal housing development application. The planning director shall, within ninety (90) days of receiving a preliminary proposal, provide the applicant a written preliminary evaluation of the housing development.

B. In addition to the county's usual development requirements, formal application for a housing development under this chapter shall include the following information:

1. A written statement specifying the desired density increase, incentive requested, and the number, type, location, size and construction schedule of all dwelling units;
2. If necessary for the planning director to evaluate the financial need for additional incentives, the applicant shall submit a report that contains housing development costs and revenues, including but not limited to land, construction, and financing costs, and revenues from restricted units, unrestricted units, and density bonus units. Such other information as the planning director needs to evaluate the housing development may be requested by the planning director. The planning director may retain a consultant to review the financial report. The cost of the consultant shall be borne by the applicant; and
3. Any other information requested by the planning director to implement this chapter.

C. Housing developments that meet the requirements set forth in Section 17.106.040 (Density bonus qualifications) above shall qualify for a density bonus and at least one incentive, unless the planning director adopts a written finding that the incentive is not required to achieve the economic feasibility of the restricted units. The planning director may also provide an incentive

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in place of a density bonus that is of equivalent value to the density bonus. Such incentive shall be calculated in a manner determined by the planning director.

### **17.106.120 – Density Bonus--Child Care Facilities.**

A. When an applicant proposes a housing development that is eligible for a density bonus under this chapter and includes a child care facility on the premises or adjacent to the housing development, the applicant shall receive an additional density bonus that is in an amount of square feet of residential space that is equal to the square footage of the child care facility; or the applicant may receive another incentive that contributes significantly to the economic feasibility of the construction of the child care facility, provided that, in both cases, the following conditions are incorporated in the conditions of approval for the housing development:

1. 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 restricted units are required to remain affordable pursuant to the terms of the affordable housing agreement executed between the County and the developer.
2. Attendance of children at the child care facility shall have an equal or greater percentage of children from very low, low, and moderate income households than the percentage of affordable units in the housing development.

B. The County may deny the request for a density bonus or incentive for a child care facility if the county finds, based upon substantial evidence, that the community has adequate child care facilities without the facilities being considered as part of the subject housing development.

### **17.106.130 - Density Bonus--Donation of land.**

A. When an applicant for a tentative subdivision map, parcel map or other residential development donates land to the County, the applicant shall be entitled to a density bonus above the maximum allowable residential density, up to a maximum of thirty five (35) percent depending on the amount of land donated. The amount of density bonus shall be based upon the number of permittable units consistent with Section 17.106.050(H). This increase shall be in addition to any increase in density permitted by this chapter up to a maximum combined density increase of 35 percent. A density bonus for donation of land shall only be considered 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 the amount not less than ten percent (10%) of the residential units in 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 (forty) 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 (such as waste water treatment facilities and public transit). The transferred 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 units on the transferred land, except that the County may subject the proposed development to subsequent design review if the design is not reviewed by the County prior to the time of transfer.
4. The transferred land and the units constructed on said land shall be subject to a deed restriction ensuring continued affordability of the units for a period of at least thirty (30) years and subject to restrictions consistent with California Government Code Section 65915 (c)(1)

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and (2), as may be periodically amended.

5. The land is transferred to the County or to a housing developer approved by the County.

6. The transferred land shall be within the boundary of the proposed development or, if the County determines appropriate, be located within the same General Plan area as the proposed development.

**17. 106.140 - Administration and fees.**

A. At the discretion of the planning director, the county may contract with another entity to administer the rental and sales provisions of this chapter.

B. The planning director shall establish the amount of fees to be charged to applicants for administration of this chapter at the cost of staff time attributable to such administration. These fees may be waived or reduced as specified in Section 17.106.030 (Definitions) under subsection (4)(a) of the definition of "incentive" .

C. The planning director shall be responsible for monitoring the resale of restricted units.

D. The planning director shall adopt regulations and forms necessary to implement and interpret the provisions of this chapter.

**SECTION XXV**

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, \_\_\_\_\_, 2012 by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
NATE MILEY  
President of the Board of Supervisors  
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA GRAFF,  
Clerk of the Board of Supervisors, County of Alameda

By \_\_\_\_\_

Approved as to Form:  
DONNA ZIEGLER, County Counsel

By \_\_\_\_\_  
BRIAN WASHINGTON  
Chief Assistant County Counsel

# **Select California Laws Relating to Residential Recovery Facilities and Group Homes**

American Planning Association, California  
Annual Conference  
September 22, 2008

Presented by:

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## **I. Introduction**

This paper summarizes two sources of protection for group homes and supportive housing under California law. First, it reviews state statutes that protect certain licensed group homes. Second, it explains California case law relating to the right of privacy, which prevents local governments from discriminating between families and unrelated individuals. It concludes by describing areas of uncertainty and suggesting strategies for local governments and for providers related to those issues.

## **II. Statutes Protecting Licensed Facilities**

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

### **A. California Licensing Laws**

California has adopted a complicated licensing scheme in which group homes providing certain kinds of care and supervision must be licensed. Some licensed homes cannot be closer than 300 feet to each other, while other licensed homes have no separation requirements. All licensed facilities serving six or fewer persons must be treated like single-family homes for zoning purposes.

While this section discusses some of the most common licensed facilities, it does not include every type of license or facility regulated in this very complex area of law.

#### **1. Community Care Facilities**

Community care facilities must be licensed by the California Department of Social Services (CDSS).<sup>1</sup> A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.<sup>2</sup> Facilities serving adults typically provide care and supervision for persons between 18-59 years of age who need a supportive living environment. Residents are usually mentally or developmentally disabled. The services provided may include assistance in dressing and bathing; supervision of client activities; monitoring of food intake; or oversight of the client's property.<sup>3</sup>

CDSS separately licenses residential care facilities for the elderly and residential care facilities for the chronically ill. Residential care facilities for the elderly provide varying levels of non-medical care and supervision for persons 60 years of age or older.<sup>4</sup> Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.<sup>5</sup>

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<sup>1</sup> Cal. Health & Safety Code 1500 *et seq.*

<sup>2</sup> Cal. Health & Safety Code 1502(a).

<sup>3</sup> 22 Cal. Code of Regulations 80001(c)(2).

<sup>4</sup> Cal. Health & Safety Code 1569.2(k).

<sup>5</sup> 22 Cal. Code of Regulations 87801(a)(5).

## 2. Drug and Alcohol Treatment Facilities

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services.<sup>6</sup> Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.<sup>7</sup> This category of disability includes both individuals in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

## 3. Health Facilities

The State Department of Health Services and State Department of Mental Health license a variety of residential health care facilities serving six or fewer persons.<sup>8</sup> These include "congregate living health facilities" which provide in-patient care to no more than six persons who may be terminally ill, ventilator dependent, or catastrophically and severely disabled<sup>9</sup> and intermediate care facilities for persons who need intermittent nursing care.<sup>10</sup> Pediatric day health and respite care facilities with six or fewer beds are separately licensed.<sup>11</sup>

### **B. Protection from Land Use Regulations for Certain Licensed Facilities**

Small facilities licensed under these sections of California law and serving six or fewer residents must be treated by local governments identically to single-family homes. Additional protection from discrimination is provided to certain psychiatric facilities. However, some group homes may be subject to spacing requirements.

#### 1. Limitations on Zoning Control of Small Group Homes Serving Six or Fewer Residents

Licensed group homes serving six or fewer residents must be treated like single-family homes for zoning purposes.<sup>12</sup> In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be imposed. The statutes specifically state that these facilities cannot be considered to

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<sup>6</sup> Cal. Health & Safety Code 11834.02.

<sup>7</sup> 24 C.F.R. 100.201.

<sup>8</sup> Cal. Health & Safety Code 1265 – 1271.1.

<sup>9</sup> Cal. Health & Safety Code 1250(i).

<sup>10</sup> Cal. Health & Safety Code 1250(e) and 1250(h).

<sup>11</sup> Cal. Health & Safety Code 1760 – 1761.8.

<sup>12</sup> This rule appears to apply to virtually all licensed group homes. Included are facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1, pediatric day health facilities (Health & Safety Code 1267.9; 1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

be boarding houses or rest homes or regulated as such.<sup>13</sup> Staff members and operators of the facility may reside in the home in addition to those served.

Homeowners' associations and other residents also cannot enforce restrictive covenants limiting uses of homes to "private residences" to exclude group homes for the disabled serving six or fewer persons.<sup>14</sup>

The Legislature in 2006 adopted AB 2184 (Bogh) to clarify that communities may fully enforce local ordinances against these facilities, including fines and other penalties, so long as the ordinances do not distinguish residential facilities from other single-family homes.<sup>15</sup>

## 2. Facilities Serving More Than Six Residents

Because California law only protects facilities serving six or fewer residents, many cities and counties restrict the location of facilities housing seven or more clients. They may do this by requiring use permits, adopting special parking and other standards for these homes, or prohibiting these large facilities outright in certain zoning districts. While this practice may raise fair housing issues, no published California decision prohibits the practice, and analyses of recent State legislation appear to assume that localities can restrict facilities with seven or more clients. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.<sup>16</sup> However, the federal Ninth Circuit, whose decisions are binding in California, found that requiring a conditional use permit for a building atypical in size and bulk for a single-family residence does not violate the Fair Housing Act.<sup>17</sup>

One specific statutory provision states that a congregate living *health* facility serving more than six persons is "subject to the conditional use permit requirements of the city or county in which it is located."<sup>18</sup> It is not clear whether this section means that these facilities must be permitted in any zone with a use permit; or, that the facilities must obtain a use permit if the zoning district otherwise allows the facility with a use permit.

A city or county cannot require an annual review of a group home's operations as a condition of a use permit. The Ninth Circuit has held that an annual review provision of a special use permit was not consistent with the Fair Housing Act.<sup>19</sup>

In 2006, the Legislature passed a bill (SB 1322) sponsored by State Senator Cedillo that would have required all communities to designate sites where licensed facilities with seven or more residents could locate either as a permitted use or with a use permit. It was motivated by newspaper reports of suburban communities' "dumping" the mentally ill and homeless in big

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<sup>13</sup> For example, *see* Health & Safety Code 1566.3 & 11834.23.

<sup>14</sup> Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4<sup>th</sup> 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4<sup>th</sup> 1 (1994).

<sup>15</sup> Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.

<sup>16</sup> ARC of New Jersey v. New Jersey, 950 F. Supp. 637 (D. N.J. 1996); Assoc. for Advancement of the Mentally Handicapped v. City of Elizabeth, 876 F. Supp. 614 (D. N.J. 1994).

<sup>17</sup> Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997).

<sup>18</sup> Cal. Health & Safety Code 1267.16(c).

<sup>19</sup> Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

cities. The bill would also have severely limited communities' ability to deny these facilities by including them within the protections of the so-called "Anti-NIMBY Law"<sup>20</sup> (now renamed the Housing Accountability Act). It was vetoed by the Governor.

### 3. Siting of Inpatient and Outpatient Psychiatric Facilities

Cities must allow health facilities for both inpatient and outpatient psychiatric care and treatment in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted with a conditional use permit.<sup>21</sup> "Health facilities" include residential care facilities for mentally ill persons. This means that if a zoning ordinance permits hospitals or nursing homes in an area, it must also permit all types of mental health facilities, regardless of the number of patients or residents. This is important because most cities are supportive of hospitals and nursing zones and may allow them in areas where they would normally not wish to allow large facilities for the mentally ill.

In one case, a residential care facility for 16 mentally ill persons was refused a permit in an R-2 zoning district where "rest homes" and "convalescent homes" were permitted, but not "nursing homes." Since the zoning district did not permit "nursing homes" or hospitals, the City believed that it was able to forbid the use in that zoning district. However, the court found that the City's definitions of "rest homes" and "convalescent homes" were very similar to its definition of "nursing homes"—rest homes and convalescent homes were, in effect, nursing homes—and so held that the City must allow the residential facility for mentally ill persons within that zoning district.<sup>22</sup>

### 4. Separation Requirements for Certain Licensed Facilities

CDSS must deny an application for certain group homes if the new facility would result in "overconcentration." For community care facilities,<sup>23</sup> intermediate care facilities, and pediatric day health and respite care facilities,<sup>24</sup> "overconcentration" is defined as a separation of less than 300 feet from another licensed "residential care facility," measured from the outside walls of the structure housing the facility. Congregate living health facilities must be separated by 1,000 feet.<sup>25</sup>

These separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment facilities, foster family homes, or "transitional shelter care facilities," which provide immediate shelter for children removed from their homes. None of the separation requirements have been challenged under the federal Fair Housing Act, although separation requirements have been challenged in other states.<sup>26</sup>

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<sup>20</sup> Cal. Government Code 65589.5.

<sup>21</sup> Cal. Wel. & Inst. Code 5120.

<sup>22</sup> City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).

<sup>23</sup> Cal. Health & Safety Code 1520.5.

<sup>24</sup> Cal. Health & Safety Code 1267.9.

<sup>25</sup> Cal. Health & Safety Code 1267.9(b)(2).

<sup>26</sup> Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld.

CDSS must submit any application for a facility covered by the law to the city where the facility will be located. The city may request that the license be denied based on overconcentration or may ask that the license be approved. CDSS cannot approve a facility located within 300 feet of an existing facility (or within 1,000 feet of a congregate living health facility) unless the city approves the application. Even if there is adequate separation between the facilities, a city or county may ask that the license be denied based on overconcentration.<sup>27</sup>

These separation requirements apply only to facilities with the same type of license. For instance, a community care facility would not violate the separation requirements even if located next to a drug and alcohol treatment facility.

### **C. Facilities That Do Not Need a License**

Housing in which some services are provided to persons with disabilities may not require licensing. In housing financed under certain federal housing programs, including Sections 202, 221(d)(3), 236, and 811, if residents obtain care and supervision independently from a third party that is not the housing provider, then the housing provider need not obtain a license.<sup>28</sup> "Supportive housing" and independent living facilities with "community living support services," both of which provide some services to disabled people, generally do not need to be licensed.<sup>29</sup> Recovery homes providing group living arrangements for people who have *graduated* from drug and alcohol programs, but which do not provide care or supervision, also do not need to be licensed.<sup>30</sup>

The result is that many situations exist where persons with disabilities will live together and receive some services in unlicensed facilities. Because State law does not require that these facilities be treated as single-family homes, some communities have attempted to classify them as lodging houses or other commercial uses and require special permits. Distinguishing a "lodging house" from a "residence" is discussed in more detail in the next section. However, courts in other jurisdictions have found that when the state does not provide a license for a type of facility, cities cannot discriminate against facilities merely because they are unlicensed.<sup>31</sup> Although there is no case on point in California or the Ninth Circuit, there may be both a fair housing and equal protection argument against requiring a use permit for an unlicensed group home with six or fewer residents when a licensed group home does not require a permit. This is discussed in more detail below.

Assemblymember Bogh introduced legislation in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. The legislation was ultimately amended to remove this provision after receiving fierce opposition from advocates for the disabled and State agencies responsible for finding placements for foster children and recovering drug and alcohol abusers.

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<sup>27</sup> See, e.g., Cal. Health & Safety Code 1520.5(d).

<sup>28</sup> Cal. Health & Safety Code 1505(p).

<sup>29</sup> Cal. Health & Safety Code 1504.5.

<sup>30</sup> Cal. Health & Safety Code 1505(i).

<sup>31</sup> North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

#### **D. Protection from Discrimination in Land Use Decisions**

California's Planning and Zoning Law prohibits discrimination in local governments' zoning and land use actions based on (among other categories) familial status, disability, or occupancy by low to middle income persons.<sup>32</sup> It also prevents agencies from imposing different requirements on single-family or multifamily homes because of the familial status, disability, or income of the intended residents.<sup>33</sup>

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.<sup>34</sup> However, federal fair housing law does not specifically limit discrimination based on *income*,<sup>35</sup> and the State statute provides another potential claim that may be relevant when a group home is denied.

### **III. Protections Provided by the California Right to Privacy**

Unlike the federal Constitution, California's Constitution contains an *express* right to privacy, adopted by the voters in 1972. The California Supreme Court has found that this right includes "the right to be left alone in our own homes" and has explained that "the right to choose with whom to live is fundamental."<sup>36</sup> Consequently, the California courts have struck down local ordinances that attempt to control *who* lives in a household—whether families or unrelated persons, whether healthy or disabled, whether renters or owners. On the other hand, the courts will support ordinances that regulate the *use* of a residence for commercial purposes.

Communities opposed to certain unlicensed facilities, such as halfway houses, clean and sober houses, and supportive housing, have attempted to define them as commercial *uses* rather than restricting *who* lives there.

#### **A. Families v. Unrelated Persons in a Household**

In many states, local communities can control the number of unrelated people permitted to live in a household. However, based on the privacy clause in the State Constitution, California case law requires cities to treat groups of related and unrelated people identically when they function as one household.<sup>37</sup> Local ordinances that define a "family" in terms of blood, marriage, or adoption, and that treat unrelated groups differently from "families," violate California law. California cities cannot limit the number of unrelated people who live together while allowing an unlimited number of family members to live in a dwelling.

In the lead case of *City of Santa Barbara v. Adamson*, Mrs. Adamson owned a very large 6,200 sq. ft., 10-bedroom single-family home that she rented to twelve "congenial people." They became "a close group with social, economic, and psychological commitments to each other.

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<sup>32</sup> Cal. Gov't Code 65008(a) and (b).

<sup>33</sup> Cal. Gov't Code 65008(d)(2).

<sup>34</sup> *Keith v. Volpe*, 858 F.2d 467, 485 (9<sup>th</sup> Cir. 1987).

<sup>35</sup> *Affordable Housing Development Corp. v. City of Fresno*, 433 F.3d 1182 (2006).

<sup>36</sup> *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4<sup>th</sup> 451, 459-60 (2001).

<sup>37</sup> *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 134 (1980).

They shared expenses, rotated chores, ate evening meals together" and considered themselves a family.

However, Santa Barbara defined a family as either "two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit," or a maximum of five unrelated adults. The court considered the twelve residents to be an "alternate family" that achieved many of the personal and practical needs served by traditional families. The twelve met half the definition of "family," because they lived as a single housekeeping unit. However, they were not related by blood. The court found that the right of privacy guaranteed them the right to choose whom to live with. The purposes put forth by Santa Barbara to justify the ordinance—such as a concern about parking—should be handled by neutral ordinances applicable to all households, not just unrelated individuals, such as applying limits on the number of cars to *all* households. "*In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.*"<sup>38</sup>

Despite this long-standing rule, a 2002 study found that *one-third* of local zoning ordinances, including that of the City of Los Angeles, still contained illegal definitions of "family" that included limits on the number of unrelated people in a household.<sup>39</sup> While most cities were aware that these limits were illegal and did not enforce them, interviews with staff members in the City of Los Angeles, for example, found that many did attempt to enforce the limits on the number of unrelated persons.<sup>40</sup>

If a group of people living together can meet the definition of a "household" or "family," there is no limit on the number of people who are permitted to live together, except for Housing Code limits discussed in the next section. By comparison, many ordinances regulate licensed group homes more strictly if they have seven or more residents, by defining such licensed facilities as a separate *use*.

Since *Adamson*, the California courts have struggled to determine when zoning ordinances are focusing on the *occupants* of the home and when they are focusing on the *use* of the home. In particular, courts have struck down ordinances that:

- Limited the residents of a second dwelling unit to the property owner, his/her dependent, or a caregiver for the owner or dependent.<sup>41</sup>
- Allowed owner-occupied properties to have more residents than renter-occupied properties.<sup>42</sup>
- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.<sup>43</sup>

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<sup>38</sup> *Adamson*, 27 Cal. 3d at 133.

<sup>39</sup> Housing Rights, Inc., *California Land Use and Zoning Campaign Report* 27-28 (2002).

<sup>40</sup> Kim Savage, *Fair Housing Impediments Study* 37 (prepared for Los Angeles Housing Department) (2002).

<sup>41</sup> *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4<sup>th</sup> 451 (2001).

<sup>42</sup> *College Area Renters and Landlords Assn. v. City of San Diego*, 43 Cal. App. 4<sup>th</sup> 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.

<sup>43</sup> *Tom v. City & County of San Francisco*, 120 Cal. App. 4<sup>th</sup> 674 (2004).

On the other hand, the courts have upheld regulations when they were convinced that the city's primary purpose was to prevent non-residential or commercial *use* in a residential area. In particular, the courts have upheld ordinances that:

- Regulated businesses in single-family residences ("home occupations") and limited employees to residents of the home.<sup>44</sup>
- Prohibited short-term transient rentals of properties for less than thirty days.<sup>45</sup>

## **B. Occupancy Limits**

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person.<sup>46</sup> Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.<sup>47</sup>

Similarly, the Ninth Circuit found that a local ordinance that limited the number of persons in a homeless shelter to 15, when the building code would allow 25 persons, was unreasonable, and found that allowing 25 persons in the shelter would constitute a reasonable accommodation.<sup>48</sup>

Based on these federal and state precedents, localities may not limit the number of people living in a dwelling below that permitted by the UHC.

## **C. Defining Unlicensed Facilities as Lodging Houses**

Communities often attempt to define certain group residences, such as sober living homes, as "lodging houses," "boarding houses" or "rooming homes" so that they can be regulated more strictly. Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Potential locations for sober living houses would be severely limited if they could not be located in single-family areas.

A recent opinion of the State Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone in order to preserve the residential character of the neighborhood.<sup>49</sup> Here the City of Lompoc defined a lodging house as "a

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<sup>44</sup> *City of Los Altos v. Barnes*, 3 Cal. App. 4th 1193 (1992).

<sup>45</sup> *Ewing v. City of Carmel*, 234 Cal. App. 3d 1579 (1991).

<sup>46</sup> Cal. Health and Safety Code 17922(a)(1). See *Briseno v. City of Santa Ana*, 6 Cal. App. 4th 1378, 1381-82 (1992) (holding that the state Uniform Housing Code preempts local regulation of occupancy limits).

<sup>47</sup> *Briseno*, 6 Cal. App. 4th at 1383.

<sup>48</sup> *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996).

<sup>49</sup> 86 Op. Att'y Gen'l Cal. 30 (2003).

residence or dwelling . . . wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence." The Attorney General agreed that a lodging house could be considered a *commercial* use and so could be prohibited in residential areas.

To avoid being subject to such a provision, all residents of the dwelling would need to sign the lease or rental agreement, so that it could not be argued that the rooms were rented under separate agreements.

Cities have also sought to distinguish lodging houses from residences by requiring that all occupants in a residence have common use of and access to all living and eating areas and food preparation and service areas. Some also seek to distinguish transient use from permanent residence. For instance, one city states in a publication on residential care homes that:

"Court cases have recognized that a family represents an intentionally structured relationship between the occupants implying a permanent, long-term relationship as opposed to one that is short-term or transient. The latter includes roominghouse, halfway, and sober/drug-free living homes where the person is at the home for a defined period and then is required to move to more permanent living arrangements..."

The *Adamson* court did not specifically address the issue of transiency (although some of the cases on which it relied considered this to be a factor). The above definition would appear to require a fairly intrusive investigation into the precise relationship between residents living in a clean and sober house.

Ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services may well raise equal protection and fair housing issues. For example, a Connecticut court found evidence of discriminatory decision-making where a city classified a clean and sober house as a boarding house and enforced a zoning restriction against the house in response to neighborhood opposition. The court listed among factors it considered in finding evidence of discriminatory intent "the decision's historical background," "the specific sequence of events leading up to the challenged decision," and "departures from the normal procedural sequences."<sup>50</sup>

If a group is challenged as not constituting a single housekeeping unit, it will likely assert that it is indeed operating as a single unit. Unless there is public information available showing that a residence is operated as a lodging house (e.g., an ad saying, "Rooms for Rent"), an investigation would be required to demonstrate otherwise. If complaints were based primarily on the disability of the occupants (which could include their status as recovering drug and alcohol abusers), then California privacy rights and fair housing laws might be implicated. In one Washington, D.C., case, a federal district court found a violation of the federal Fair Housing Act where the Zoning Administrator carried out a detailed investigation of a residence for five mentally ill men in response to neighbors' concerns, finding that the Zoning Administrator's actions were motivated

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<sup>50</sup> Tsombanidis v. City of West Haven, 180 F. Supp. 2d 262, 286-88 (D. Conn. 2001).

in part by the neighbors' fears about the residents' mental illness.<sup>51</sup> In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

In general, the courts look with particular disfavor on local decisions that appear to have been influenced by neighborhood opposition to the types of people who will live there.

#### **IV. Best Practices**

##### **A. Local Agencies**

In advising our public agency clients, we recommend that they treat unlicensed facilities identically to licensed facilities, allowing facilities with six or fewer persons to be treated like single-family homes. This avoids what may be a losing battle to force supportive housing into the "lodging house" definition.

For facilities with seven or more residents, the challenge for a local agency is to define an unlicensed facility as a *use* that is different from a residence. The Attorney General's opinion provides guidance to those wishing to define these facilities as lodging houses. Others have defined "residential service facilities" as a separate use. One such definition reads as follows:

Residential Service Facility. A residential facility, other than a residential care facility or single housekeeping unit, designed for the provision of personal services in addition to housing, or where the operator receives compensation for the provision of personal services in addition to housing. Personal services may include, but are not limited to, protection, care, supervision, counseling, guidance, training, education, therapy, or other nonmedical care.

Because this definition is more related to care than is the definition of a lodging house, it may be perceived as being directed at disabled persons and hence more subject to challenge as intentionally discriminatory. It can also force supportive housing and foster care homes (which are not usually the target of community wrath) into lengthy and complicated processes.

Other defensible ordinances would attempt to control the behavior or actions that the community finds offensive: too many cars, groups smoking outdoors, too much noise. In trying to control these problems, local agencies have been constrained since *Adamson* by being required to apply ordinances uniformly to traditional families and to households made up of unrelated people. For instance, communities could deal with complaints about too many cars by limiting the number of vehicles that could be parked at a home—but the ordinance would also need to apply to families with two teenagers and four cars. Controls on outdoor cigarette smoking would similarly need to be applied uniformly. Consequently, developing controls on offensive behavior is a challenge.

##### **B. Service Providers**

We advise our nonprofit sponsors that if a facility with more than six persons can be considered a single housekeeping unit, the facility must be treated as a residence with one family residing in it. The most defensible structure for such a facility would be to:

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<sup>51</sup> Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

- Have one rental agreement or lease signed by all *occupants*. If, instead, the provider signs the lease and each resident has a verbal or written agreement with the provider, then the facility could be considered a "lodging house" under the definition upheld by the Attorney General.
- Give all residents equal access to all living and eating areas and food preparation and service areas.
- Do not require occupants to move after a certain period of time, except for time limits imposed by the rental agreement or lease with the owner.

## V. Conclusion

In my own experience as a former city official, many group homes were invisible in the community and caused few problems. Most complaints about overcrowding and excessive vehicles did not involve a group home, but rather the poorest areas where space was rented out to the limits of the Housing Code.

The group homes that caused the most concern were sober living facilities which tended to concentrate in certain inexpensive single-family neighborhoods. In one case, all five homes on one block face were purchased by a single owner. He was knowledgeable about his rights but unconcerned about his obligations, and sneered at the City's and neighborhood's concerns. Without required licensing, there was no regulatory oversight. When the occupant of one home was arrested for drug dealing, it caused an uproar.

Many providers are conscious of their position in neighborhoods and make an effort to accommodate community concerns. Others may be perceived as arrogant and dismissive of local concerns, viewing all neighbors as "NIMBYs." Providers who view themselves as part of the community and set house rules that encourage community involvement, restrict noise, control parking, and establish smoking locations not visible from the street can go a long way toward abating perceived problems.

Cities should modify their zoning ordinances to address unlicensed group homes and decide on a strategy for dealing with group homes with seven or more persons (use permit and reasonable accommodation). State legislation requiring some minimal licensing for sober living facilities would also be beneficial to set standards for minimal levels of care, along with minimal separation requirements to maintain the "community integration" purpose of the statutes. Cities need also to avoid the kind of incidents that result in the Legislature's willingness to further constrain local control of these homes.

## SUMMARY: GROUP HOME ANALYSIS

### IF LICENSED:

#### **6 or fewer clients:**

*Must* be treated like a single-family home for all zoning purposes, except for spacing requirements for certain licensed facilities (eg, community care facilities). Community care facilities for the elderly and drug and alcohol treatment centers do not have spacing requirements.

#### **7 or more clients:**

**Psychiatric facilities—both inpatient and outpatient—**must be permitted in any zone that permits nursing homes or hospitals as conditional or permitted uses. (City of Torrance v. Transitional Living Centers)

**Other licensed facilities** are often subject to a use permit and may not be permitted in certain zones. Advocates may request a reasonable accommodation to avoid use permit requirements. But the Ninth Circuit has not found a use permit *per se* to violate the Fair Housing Act. (Gamble v. City of Escondido)

### IF UNLICENSED:

**Can it be considered a single housekeeping unit? Or can it be defined as a boarding house or another use? (City of Santa Barbara v. Adamson) Only the *use* can be regulated, not the *user*. Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:**

- Physical design: all have access to common areas, kitchens; laundry is free; one mailbox; looks like a home.
- No limits on term of occupancy ["must move after 3 months"]
- All residents on lease or rental agreement [AG's opinion]

**There are different *local* definitions of various uses relating to the qualification of unlicensed homes as a single housekeeping unit.** (For instance, some localities do not use the existence of separate rental agreements as a test for a single housekeeping unit.)

**6 or fewer clients:** equal protection or fair housing argument if treated more strictly than licensed facilities.

## **DEFINITIONS OF EMERGENCY SHELTERS, TRANSITIONAL, AND SUPPORTIVE HOUSING**

### **Emergency Shelter**

(e) "Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

*Cal Health & Saf Code § 50801*

### **Transitional Housing**

(h) "Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

*Cal Health & Saf Code § 50675.2*

### **Supportive Housing**

(b) "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

*Cal Health & Saf Code § 50675.14*

#### **"Target Population"**

(d) "Target population" means adults with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.

*Cal Health & Saf Code § 53260*

#### **"Eligible for Services Under the Lanterman Act"**

Persons with a "developmental disability" are eligible for services under the Lanterman Act.

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

*Cal Wel & Inst Code § 4512*

Summary from Draft Mental Health Services Act Guide

The definition of "supportive housing" contained in Health & Safety Code Section 50675.14 requires that the supportive housing:

- Have no limit on the length of stay.
- Be linked to onsite or offsite services that assist residents in improving their health status, retaining the housing, and living and working in the community.
- Be occupied by the "target population." The "target population" includes adults with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health problems. The target population also includes persons eligible for services under the Lanterman Development Disabilities Act (the "Lanterman Act"). The Lanterman Act provides services to persons, including children, with developmental disabilities that originated before the person turned 18; it does not provide services to persons with solely physical disabilities. The target population may include, among other populations, families with children, elderly persons, young adults aging out of the foster care system, individual exiting from institutional settings, veterans, and homeless people.

Public Law 104-76  
104th Congress

An Act

To amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons.

Dec. 28, 1995  
[H.R. 660]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Housing for Older Persons Act of 1995”.

Housing for  
Older Persons  
Act of 1995.  
46 USC 3601  
note.

**SEC. 2. DEFINITION OF HOUSING FOR OLDER PERSONS.**

Section 807(b)(2)(C) of the Fair Housing Act (42 U.S.C. 3607(b)(2)(C)) is amended to read as follows:

“(C) intended and operated for occupancy by persons 55 years of age or older, and—

“(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

“(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

“(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

“(I) provide for verification by reliable surveys and affidavits; and

“(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.”.

**SEC. 3. GOOD FAITH ATTEMPT AT COMPLIANCE; DEFENSE AGAINST CIVIL MONEY DAMAGES.**

Section 807(b) of the Fair Housing Act (42 U.S.C. 3607(b)) is amended by adding at the end the following new paragraph:

“(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

“(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

“(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

“(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.”.

Approved December 28, 1995.

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LEGISLATIVE HISTORY—H.R. 660:

HOUSE REPORTS: No. 104-91 (Comm. on the Judiciary).

SENATE REPORTS: No. 104-172 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 141 (1995):

Apr. 6, considered and passed House.

Dec. 6, considered and passed Senate, amended.

Dec. 18, House concurred in Senate amendment.



**Questions and Answers  
Concerning the Final Rule Implementing  
the Housing for Older Persons Act of 1995 (HOPA)**

Title VIII of the Civil Rights Act of 1968 (the Federal Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act), prohibits discrimination in housing and real estate-related transactions based on race, color, religion, sex, national origin, handicap and familial status (in general, the presence of children under the age of 18 in the household). The prohibition against discrimination based on familial status became effective March 12, 1989. The Act contained a provision exempting "senior" housing from the prohibition against familial status discrimination.

The Housing for Older Persons Act (HOPA), signed into law by President Clinton on December 28, 1995, amended the housing for older persons exemption against familial status discrimination. The HOPA modified the statutory definition of housing for older persons as housing intended and operated for occupancy by at least one person 55 years of age or older per unit. It eliminated the requirement that housing for older persons have significant services and facilities specifically designed for its elderly residents. It required that facilities or communities claiming the exemption establish age verification procedures. It established a good faith reliance defense or exemption against monetary damages for persons who illegally act in good faith to exclude children based on a legitimate belief that the housing facility or community was entitled to the exemption.

Question 1

**For the purpose of HOPA, what is a housing community or facility?  
What are some typical examples of a housing, community or facility?**

Answer

A housing community or facility is any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion of a single building may not be considered a housing facility or community. Typical examples include: a condominium association; a cooperative; a property governed by homeowners or resident association; a municipally zoned area; a leased property under common private ownership; a manufactured housing community, a mobile home park.

### Question 2

**May an owner of single family houses that are dispersed throughout a geographical area, and who is not otherwise exempt under the Fair Housing Act, qualify as a "housing community or facility" and claim the exemption?**

### Answer

No. The common use of the terms "housing community" and "facility" applies to dwelling units which are in the same location and have some relationship to each other. The dwelling units in a housing community or facility must share a common set of rules, policies, and procedures, that is applied to all of the dwellings in the community or facility. Further, although there is no required stated minimum number of dwelling units that must be present for the exemption to apply, there must be a sufficient number of dwelling units to constitute a "community" or "facility" in the common meaning of those terms. One single family dwelling or a duplex would not qualify as a "housing community or facility."

### Question 3

**What must a housing community or facility do to qualify for the 55 or older housing for older persons exemption?**

### Answer

In order to qualify for the exemption, the housing community/facility must satisfy each of the following requirements:

- a) at least 80 percent of the occupied units must be occupied by at least one person 55 years of age or older per unit;
- b) the owner or management of the housing facility/community must publish and adhere to policies and procedures that demonstrate an intent to provide housing for persons 55 years or older; and
- c) the facility/community must comply with rules issued by the Secretary for verification of occupancy through reliable surveys and affidavits.

### Question 4

**What are some examples of the types of policies and procedures that would demonstrate an intent to provide housing for persons 55 years of age or older?**

Answer

Examples include:

- a) the written rules, regulations, lease provisions, deed or other restrictions,
- b) the actual practices of the owner/management of the housing facility/community used in the enforcement of the rules;
- c) the kind of advertising used to attract prospective residents to the housing facility/community as well as the manner in which the facility/community is described to prospective residents;
- d) the housing community's/facility's age verification procedures, and its ability to produce, in response to a familial status complaint, verification of required occupancy.

Question 5

**May a housing facility or community advertise as "adult" housing and still demonstrate the intent to be housing for older persons?**

Answer

Use of the word "adult" or "adult community" in an advertisement, sign or other informational material, or when describing the facility or community to prospective renters or purchasers or members of the public, does not demonstrate an intent to be housing for older persons as defined by the final rule. The use of these terms, on the other hand, does not destroy the intent requirement of HOPA. If a facility or community has clearly shown in other ways that it intends to operate as housing for older persons, and meets the 80% requirement, and has in place age verification procedures, the intent requirement can be met even if the term "adult" is occasionally used to describe it. The Department will look at the totality of the circumstances in the investigation of a complaint alleging that the facility or community does not qualify as housing for older persons.

Question 6

**How many days after the effective date of the final rule implementing HOPA does a facility/community have to develop routine procedures for determining the occupancy of each unit, including age verification?**

Answer

The housing community/facility has 180 days after the effective date of the rule, May 3, 1999, to develop the appropriate procedures that should constitute a part of its normal leasing and purchasing procedures. However, if a housing facility or community is not now but intends to become eligible for the exemption, it should not delay development of appropriate procedures.

Question 7

**What information should a housing provider include in its survey of residents in order to calculate whether the community or facility meets the 80% requirement of HOPA?**

Answer

The owner or manager should obtain the total number of units in the housing community or facility. From that number, the following units should be excluded from the calculation of the 80% requirement:

- a) the number of units that have been continuously occupied by the same household since September 13, 1988, and the household did not contain and does not currently contain at least one person over the age of 55;
- b) the number of unoccupied units (see question 22);
- c) the number of units occupied by employees of the housing facility or community who are under 55 years of age, and who provide substantial management and maintenance services to the housing facility or community
- d) the number of units occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents.

The owner or management then should calculate the percentage of the remaining number of units that are occupied by at least one person age 55 or over as of the date of the survey or the alleged date of violation of the Act.

#### Question 8

**What is considered reliable age verification documentation?**

#### Answer

The following documents are considered to be reliable for age verification: birth certificate, drivers license, passport, immigration card, military identification, or any other state, local, national or international documentation, provided it contains current information about the age or birth of the possessor.

#### Question 9

**Is there any other documentation that would be considered reliable for age verification?**

#### Answer

Yes. A self certification in a lease, application affidavit, or other document signed by an adult member of the household asserting that at least one occupant in the unit is 55 years of age or older will satisfy this requirement.

#### Question 10

**What recourse is there for the owner or management of the housing community or facility if the occupants in the household refuse to cooperate in providing documentation regarding their age?**

#### Answer

The housing/community facility may, if it has sufficient evidence, consider the household to be occupied by at least one person who is 55 years or older. Statements made under penalty of perjury from third party individuals who have knowledge of the age of the occupants of a household may be used when the household itself refuses to cooperate by providing age verification. Other information, such as statements indicating age in prior applications may be acceptable. In addition, the facility/community may base its decision on government documents such as census data. The census data referred to is household censuses that are conducted by many cities and towns.

Question 11

**How frequently should a housing/community provider update its lists of occupants to be in compliance with the age verification requirements of HOPA? Are there any consequences if a housing provider fails to update its list of residents?**

Answer

HOPA requires that a housing facility/community re-survey its lists of residents every two years to ensure that the 80% requirement is met. A housing community's or facility's failure to survey or re-survey its list of occupants in accordance with its age verification procedures does not demonstrate intent to housing for older persons, and could jeopardize the housing community's status as 55 or older housing.

Question 12

**How long should a housing community/facility retain its records of survey information that show it meets the 80 percent requirement?**

Answer

The records referred to in Answer 9 above need to be kept as long as the housing community/facility intends to proffer its exempt status.

Question 13

**Are the surveys and affidavits used to gather information about the facility's/community's residents admissible in an administrative or judicial proceeding under the Fair Housing Act?**

Answer

Yes.

Question 14

**What does the ratio or percentage of 80/20 portion of housing mean?**

Answer

HOPA requires that at least 80 percent of the occupied units must be occupied by at least one person 55 or older. The remaining 20 percent of the units may be occupied by persons under 55, and the community/facility may still qualify for the exemption.

Question 15

**Is it lawful to advertise or market the 20 percent portion of the units not required to be occupied by at least one person 55 years of age or older to prospective tenants/purchasers under age 55 and to families with children?**

Answer

Yes. However, the marketing must be done in a way that identifies the facility/community as housing intended for older persons. Advertising and marketing must not be inconsistent with the intent. Further, the facility/community needs to plan with care any attempt to sell or rent the entire 20 percent portion of the remaining units to incoming households under age 55, because it could risk losing the exemption if some occupants over 55 die, with surviving spouses or heirs who are under 55 years of age. Such planning should address notice to incoming households under the age of 55 regarding how the housing provider will proceed in the event that the 80% requirement is endangered.

Question 16

**May a housing facility/community impose an age limitation more restrictive than that required by HOPA and qualify for the 55 or older exemption?**

Answer

Yes. For example, the housing facility/community may require that at least 80 percent of the units be occupied by at least one person 60 years of age or older. The housing facility/community may require that 100% of the units are occupied by at least one person 55 years of age or older, or that 80% of the units be occupied exclusively by persons aged 55 or older. However, the facility/community should review other state and local laws, including fair housing laws that may prohibit discrimination based on age, before establishing policies and procedures restricting occupancy based on age, or affecting survivors' rights to property, that are not covered under HOPA.

Question 17

**If a housing facility or community meets the requirements of HOPA but permits up to 20 percent of the units to be occupied by families with children, may the facility/community impose different terms and conditions of residency on those families with children who reside there?**

Answer

Yes. If a housing community/facility qualifies under HOPA as housing for older persons, the community/facility is exempt from the Act's prohibition against discrimination on the basis of familial status. The housing community/facility may restrict families with children from benefits of the community, or otherwise treat family households differently than senior households, as long as those actions do not violate any other state or local law. However, the community/facility is not exempt from the provisions of the Act that prohibit discrimination against any resident or potential resident on the basis of race, color, religion, national origin, sex, or disability.

Question 18

**If a 55 or older occupant dies and leaves his/her property to a surviving spouse or heir(s) under the age of 55, what rights, if any, do the survivors have to possession?**

Answer

The right to possession by a surviving spouse or heir is not governed by the HOPA or the Fair Housing Act. Whether an underage heir or surviving spouse can occupy the unit upon the death of the 55 or older occupant is a matter of state/local law or custom, and generally is governed by private contractual agreements between senior housing developers and the individuals who purchased or rented the dwelling. The provision in the Act permitting 20 percent of the units to be occupied by persons under 55 is intended, in part, to prevent a housing facility/community from losing the exemption due to situations where there are surviving spouses and underage heirs when the 55 or older occupant dies.

Question 19

**In the event that the sole 55 or older occupant dies, and a surviving spouse or heir remains in the unit, is the surviving occupant counted in the 80 percent or the 20 percent portion of the units needed to meet the criteria for housing for older persons?**

Answer

The surviving occupant must be counted in the 20 percent portion.

Question 20

**How should a housing provider count, for the purpose of meeting the 80/20 occupancy requirement, attendants or health care providers needed for the reasonable accommodation of the disability of an occupant (including family members under the age of 18)?**

Answer

The attendant or health care provider or family care provider is excluded from the calculation in its entirety. This is true whether the live-in person resides in the same unit with the disabled occupant or in a separate unit. Neither circumstance adversely affects the exemption of the housing facility/community.

Question 21

**How is the calculation for the 80/20 percent requirement affected if a 55 or older individual purchases a dwelling in a senior housing facility/community, vacates the unit, and allows an underage adult relative to move in for an indefinite length of time?**

Answer

In calculating whether a community/facility meets the 80 percent requirement, it is the occupants of the dwelling units who are counted, not the owners. In this example, the current resident, the underage adult relative, would be counted in the 20 percent portion. Similarly, if a 55 or older owner/occupant decided to vacate a unit for an indefinite period of time and rent to an underage individual, the current occupant would be counted in the 20 percent portion.

Question 22

**Are there circumstances under which a 55 or older owner/tenant might be temporarily absent from a dwelling without affecting the exemption status of the community/dwelling?**

Answer

Yes. For example, the 55 or older occupant may be on vacation, hospitalized, or absent for a season without affecting the exempt status of the community. The resident may, if he/she wishes, allow a younger relative or a house sitter under 55 years of age to live in the unit during this absence. In either event, the unit would be included in the calculation of the 80 percent occupancy requirement as long as the dwelling is not rented out, the owner/tenant returns on a periodic basis, and maintains legal and financial responsibility for the upkeep of the dwelling.

Question 23

**Can a housing community/facility that does not now meet the 80 percent occupancy requirement take any action to become eligible?**

Answer

Yes. For a period of one year after the rule became effective (May 3, 1999), a housing provider may reserve all new, vacant and/or unoccupied units/dwellings for occupancy until 80 percent of the units/dwellings are occupied by at least one person 55 years of age or older. This does not mean that the dwellings/units must be held off the market; indeed, marketing the units as 55 and over units during the transition period may be done as those units become vacant.

Question 24

**During this transition period, may a facility/community refuse to rent or sell to families with children in its effort to qualify as housing for older persons?**

Answer

Yes. If, during the one year period the facility/community demonstrates its intent to be housing for older persons through advertising and revisions to or development of rules and procedures, and adopts age verification procedures, it may refuse to rent or sell to applicants based on their familial status. Of course, the facility/community may have to meet the requirements of state and local laws with respect to making the changes required for the transition in its covenants or other instruments binding on the property.

Question 25

**Can the facility/community evict families with children during the transition period for the purpose of becoming housing for older persons?**

Answer

No. However, the housing facility/community can renew or not renew leases for families with children if doing so does not represent a change in its practices or does not violate state or local landlord tenant law. Additionally, while the facility/community may not take any measures deliberately designed to discourage families with children from continuing to reside in the community, nothing prevents the offering of positive incentives that might lead some families to seek housing elsewhere.

Question 26

**What if a 55 or older housing provider, at the end of the transition period, does not succeed in meeting the 80 percent occupancy requirement?**

Answer

At the expiration of the one year period, all units/dwellings must be marketed and made available to the public in general, including families with children. Additionally, all restrictive operations policies which may impact negatively on families with children must be rescinded.

Question 27

**When does HUD become involved in determining whether a 55 or older housing community or facility is in compliance with HOPA requirements?**

Answer

HUD's involvement begins in one of two ways: 1) when a person allegedly injured on the basis of familial status files a complaint against a housing facility/community and the respondent claims the exemption as a defense; or 2) when HUD commences a Secretary-initiated investigation or files a complaint based on information it has that indicates the need for an investigation.

Question 28

**When must a person claiming to be injured by a housing community/facility because of familial status file a complaint with the Department in order for the complaint to be timely?**

Answer

The complaint must be filed no later than one year after the alleged discriminatory act occurred or was terminated.

Question 29

**Can a household which does not fall within the Fair Housing Act's definition of familial status file a complaint challenging a housing provider's attempt to provide housing for older persons?**

Answer

No. The family cannot file a familial status complaint because it does not meet the definition of familial status.

Question 30

**Can an owner of a dwelling file a complaint based on familial status if the owner is being impeded in the ability to sell or rent the dwelling because the housing facility/community is claiming to be 55 and over housing but does not meet the requirements for the exemption?**

Answer

Yes, if the owner has affirmatively undertaken to rent or sell his property and can establish that the housing community/facility illegally (is not qualified housing for older persons) interfered with the owner's ability to do so, he/she can file a familial status complaint. Other complainant parties could include the family with children seeking to rent or buy but was denied the opportunity, as well as any real estate agent involved in the transaction.

Question 31

**If an individual files a complaint based on familial status and the housing community/facility claims the exemption as a defense, who has the burden of proving, that the community/facility is in compliance with HOPA requirements?**

Answer

The community/facility housing provider has the burden of proving that it was in compliance with HOPA requirements on the date of occurrence of the alleged act or incident of discrimination.

Question 32

**Can a corporate entity avail itself of the good faith reliance against monetary damages if the housing community/facility is found not to be in compliance with the HOPA requirements?**

Answer

No. The governing board, management company, or corporate entity of the housing facility/community is liable if the facility/community fails to meet the requirements, and cannot claim a good faith reliance defense against monetary damages. The legislative history of HOPA shows that in creating the good faith reliance defense, Congress intended to protect **individual persons**, such as individual members of boards of governing homeowners associations and real estate agents relying on information provided by the housing providers of senior housing.

Question 33

**Since individuals, including individual members of a homeowners association or a board of directors, can use the good faith reliance against monetary damages, under what conditions might that occur?**

Answer

An individual is not liable for monetary damages if the person acted with a good faith belief that the housing facility/community qualified for a housing for older persons exemption. Such a person must have knowledge, from an authorized representative, that the facility/community asserted in writing that it qualified for the older persons exemption before the date on which the alleged discrimination occurred. An authorized representative may be an

individual, committee, management company, listing agent, owner or other entity.

Question 34

**Under what circumstances may an individual not use the good faith reliance defense?**

Answer

An individual is not entitled to the good faith defense if he or she has actual knowledge that the facility/community does not or will not qualify as housing for older persons, despite the fact that he/she received written assurances to the contrary from an authorized representative of the housing provider.

Question 35

**Is an individual insulated from a liability claim for disseminating information to others regarding the facility's/community's exemption claim?**

Answer

An individual who claims the good faith reliance defense based on his/her actual knowledge and a written assertion from an authorized representative of the facility/community may disseminate such information to others. Those others may include real estate agents, multiple listing services, advertisers and other print media who may, in turn, rely on the assertions of the individual from whom they received the information, unless they have actual knowledge that information is not accurate.

Question 36

**Is a publisher (newspaper or other print media) liable for damages under the Fair Housing Act for accepting for publication an advertisement for 55 and older housing if the community/facility is found not to be in compliance with HOPA?**

Answer

No. Newspaper publishers and other print media that rely on the assertions of the housing provider are not liable unless they have actual knowledge that the housing does not qualify for the exemption.

Question 37

**Does HUD certify that a housing, facility/community is housing for older persons?**

Answer

No. Neither the Fair Housing Act nor HOPA authorizes the Department to certify whether a particular housing facility or community meets the qualifications for housing for older persons.

Question 38

**If a developer is building new housing that is intended to be for persons 55 and over, how should the new units be marketed and occupied as the facility/community is being developed?**

Answer

Newly constructed housing for first occupancy after March 12, 1989 (including a facility or community that has not been occupied in its entirety for at least 90 days prior to re-occupancy due to renovation or rehabilitation), must be marketed as housing intended for older persons. It does not have to have at least one occupant in each occupied unit who is age 55 and over until at least 25 percent of the units are occupied.

Question 39

**How are state and federal fair housing laws that prohibit age discrimination affected by HOPA?**

Answer

Neither the Fair Housing Act nor HOPA covers age discrimination. Neither of these federal laws supersede or otherwise affect state or local laws that prohibit age discrimination. Housing community/facilities always should check all relevant state, local and federal laws, and any requirements imposed as a term of governmental financial assistance before implementing policies and procedures that limit the eligibility of its residents.

Question 40

**Must state or local governments that have been determined to have substantially equivalent laws to the Fair Housing Act change the laws under which they operate in order to be identical to HOPA?**

Answer

No. States and local governments with fair housing laws that have been determined to be substantially equivalent to the federal law may have no exemption from familial status discrimination for housing for older persons, or may have more stringent requirements to meet an exemption than does HOPA.

Question 41

**Must a housing community/facility file or register a declaration of intent with the state or local unit of government in order to claim its exemption as housing for older persons?**

Answer

HOPA does not require this. However, the state or local government might require the housing community/facility to register its intent to be housing for older persons. The facility/community should consult the appropriate governmental body for requirements in this regard.

Question 42

**Must a resident of a 55 or older housing community/facility join the homeowner's association?**

Answer

The Fair Housing Act does not require this. HOPA does not require this. This is an example of an issue or aspect of senior housing communities that is generally governed by independent law, deed restriction, or other legally enforceable documents.

Question 43

**Would HUD apply HOPA retroactively to a familial status claim of discrimination that occurred prior to December 28, 1995, when HOPA was signed into law?**

Answer

No. If the alleged violation occurred prior to December 28, 1995, the Department's investigation of a pending complaint will determine whether the community/facility met the requirements for the housing for older persons exemption, based on the regulations that were in effect at the time of the alleged violation.

Question 44

**How does the Fair Housing Amendments Act senior housing, exemption, and HOPA, affect eligibility requirements for federally funded housing programs.**

Answer

The Act and HOPA do not affect statutory or regulatory provisions of federally assisted housing programs. For example, neither HOPA nor the Act change the definition of "elderly family" in federally assisted housing programs. HOPA does not permit a HUD funded public housing provider to designate a project as an "elderly project" without HUD review and approval as mandated by existing regulations. HUD funded housing that is designated as elderly housing may not, because of HOPA, admit households that are not statutorily eligible for the housing. No public housing development that is not designated as an elderly development by statute or program regulation may exclude families with children even if at least 80% of the units are occupied by at least one person age 55 or older. Federally assisted housing providers should continue look to existing program statutory and regulatory requirements to determine tenancy of those developments.