Inclusionary Housing in California

The Experience of Two Decades

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Answering the call for a "new comprehensiveness" in planning that enhances community equity, this paper presents a case study of Inclusionary Housing (IH), a program that can foster both residential integration and affordable housing. IH in California has evolved in response to, and has adapted to changing economic and political conditions. Survey findings for 75 IH programs show that they have produced more than 24,000 units, provide flexibility to the developers in meeting program requirements, establish affordability terms that are usually met at 30 years or longer, and favor moderate-income home buyers. Interviews with planners in San Diego County reveal that IH programs are usually established as a response to an actual or perceived threat of litigation due to noncompliance with state "housing element" law. Planners can enhance a new comprehensiveness by emphasizing state mandates and regional housing needs and by pursuing IH as one of the regulatory choices available to decision-makers.

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The riots that shook Los Angeles in the spring of 1992 forced the American Planning Association (APA) to address the issues of extreme poverty and increased racial and social segregation in American cities. The APA established the Agenda for America's Community to provide planners with the tools and the innovation to bring about "a vision of a 'new comprehensiveness' for planning by expanding the goals of comprehensive planning to explicitly include the concept of community equity" (APA 1994, 1).

Five years after the Los Angeles riots, the need for a "new comprehensiveness" is stronger than ever. Millions of Americans are homeless. Millions more spend over 50 percent of their meager incomes on shelter. People in the inner city have been cut off from the job market and the higher living standards of the suburbs (Dolbeare 1989; Goldsmith and Blakely 1992; Cisneros 1995). Massey and Denton (1993) in their *American Apartheid: Segregation and the Making of the Underclass* have argued that residential segregation "is the principal organizational feature of American society that is responsible for the creation of the urban underclass."

It has been argued that Inclusionary Housing (IH) is "the best, perhaps even the only, currently available means by which residential integration can be actively fostered" and housing affordable to a less affluent population provided (Mallach 1984, 45). The late Paul Davidoff, "an unyielding force for justice and equity in planning" (Checkoway 1994, 139), the founder of advocacy planning and of the Suburban Action Institute, which fought exclusionary practices in the suburbs, called IH "the major land-use innovation of the 1980s" (*Planning* 1985, 18).

Regrettably, with the exception of New Jersey and California, where it has enjoyed a certain degree of success, IH has not often been applied. It is essential, then, to analyze those cases where it has been applied, to illuminate the practical and methodological side of equity planning.[1]

The literature is replete with analyses of the well known Mount Lau-

rel decisions surrounding the New Jersey experience (Ellickson 1982; Rahenkamp and Rahenkamp 1986; Lamar, Mallach, and Payne 1989; Lovejoy 1992; Anglin 1994; Mallach 1994). In contrast, little systematic research has been published on IH programs in California since the studies by Schwartz and Johnson (1983) and Mallach (1984).

The dearth of research on the development and operation of inclusionary programs in California, particularly in the last ten years, is curious for a number of reasons: (1) The oldest programs in California predate those in New Jersey by 11 years.[2] (2) Localities in California have adopted inclusionary programs voluntarily, without being forced to do so by the courts, as in New Jersey. (3) IH in California has produced more than 24,000 units, more than twice the number produced in New Jersey.[3] (4) Since 1990, 35 new inclusionary programs have been introduced in California, demonstrating a renewed interest in IH. (5) The cutback in federal housing programs during the 1980s has created a new era of post-federal housing innovation, necessitating a better understanding of the nature and scope of urban and local policy (Goetz 1993; Davis 1994).

This discrepancy in research interest can be explained by several factors. First, New Jersey is the only state in the country that mandates IH. As an exception to the "home rule" tradition, it has generated more visibility and controversy and, consequently, research interest. The New Jersey case, being court-inspired, has forced unwilling localities—and a less than enthusiastic state—to tackle social and racial residential integration, raising questions about the role of the judiciary in promoting social change (Rosenberg 1991; Anglin 1994). In California, there is no legislative or judicial IH mandate as in New Jersey. California localities are supposed to have a Housing Element certified by the Department of Housing and Community Development (HCD), but there is no requirement for IH. The ultimate decision to enact IH programs in California is left to each jurisdiction. Second, this ad hoc, decentralized, incremental aspect of IH in California is reflected in the diversity and complexity of its programs, making it difficult to describe in general terms. Finally, New Jersey's program is easier to fix in place, time, origin, and characteristics and is more accessible than the decentralized California system is to investigators.

Heeding the APA' s call for "a continuing stream of technical advice, case examples, and informational support for a reinvigorated approach to a new comprehensiveness in planning" (APA 1994, 4), this paper presents a case study of IH in California. The paper is organized as follows: The first section briefly introduces the concept, the objectives of IH, and the controversy surrounding its implementation. The next section presents the California housing context and the evolution of IH programs as a response to changes in the economic and political conditions in the state. Finally, we outline the characteristics of IH programs in California by presenting the findings of two surveys of IH programs in California, and discuss why certain localities adopt IH. In the conclusion, the findings of the paper are summarized and the policy implications discussed.

Definitions and Objectives

The terms "inclusionary housing" and its correlative, "inclusionary zoning," have been used imprecisely in the literature and by practitioners for many years, to describe all manner of mandatory fees and voluntary incentives facilitating the development of affordable housing in suburban and downtown areas.[4] This study follows the definition of Mallach in his pioneering study (1984), but applies the term "inclusionary housing" more strictly to clearly differentiate between IH and other, related policies in California, such as the linkage fees programs, the statewide Density Bonus Program, the state-mandated set-aside of funds for low- and moderate-income housing in redevelopment areas, and the now defunct inclusionary program in the coastal zone. As the term is used here, the defining feature of IH is a citywide or countywide mandatory requirement or voluntary objective that assigns a percentage of housing units in all new residential developments with more than a specified minimum of units, to be sold or rented to lower- or moderate-income households at affordable rates.

In California, mandatory IH requirements are usually incorporated in the zoning code or the housing element, and obtaining building permits is made contingent on the developer's agreement to provide affordable housing. Voluntary objectives are usually based on goals specified in the housing element of the General Plan and are set forth in a public policy that typically requires developers to negotiate with public officials, but without specifically requiring them to provide affordable housing. In California, some inclusionary programs rely solely on the authority of objectives and policies stated in the housing element of the locality's General Plan. This is considered to be as effective as inclusionary zoning, because for a subdivision to be approved, a finding must be made that it is consistent with the General Plan. If the housing element contains inclusionary requirements, the subdivision cannot be approved unless compliance with

the requirement can be established.[5] According to Hynes (1991, 1), the implementation of IH programs through subdivision approval conforming with General Plan policies set forth in the housing element represents "equally effective and more legally defensive mechanisms."

A major objective of IH, in addition to increasing the supply of affordable housing, is to foster greater economic and racial residential integration. IH in newly developing areas provides housing opportunities for lower-income households in the suburbs. "Opening up the suburbs" has long been considered desirable as a way to ameliorate economic and racial imbalance, provide access for lower-income households to better jobs and educational opportunities, and help break the cycle of poverty in which many inner-city residents, particularly minorities, are trapped (Gans 1961; Downs 1973; Franklin et al. 1974; Orfield 1985; Massey and Denton 1993; Rosenbaum, 1993; Cisneros 1995). Economic and social integration has other planning benefits as well. Mismatches between workers' earnings and housing prices, especially pronounced in job-surplus cities, impede job-housing balance and self-containment, thus lengthening commuting times and worsening traffic and air pollution problems (Cervero 1996). "Fair share housing programs" (i.e., IH) have been pointed out in this context as a policy remedy to be considered, but unlikely to get much political support (Cervero 1966).

Inclusionary programs also enable local governments to sidestep one of the thorniest obstacles to developing affordable housing—the deep-seated opposition of many communities to the siting of low-income housing within their boundaries. Commonly known by the acronym NIMBY (Not In My Back Yard), neighborhood opposition delays the construction of low-income housing, creates uncertainties in the development process, and substantially increases the risk that low-income units will not be built (Advisory Commission on Regulatory Barriers 1991). Under an IH program, affordable units and market-rate units are usually constructed and occupied concurrently, so there are no pre-existing, organized groups of residents to object to the inclusion of low-income housing.

If not from residents, opposition to IH is sure to come from developers. At an ideological level, developers resent what they perceive as more government interference in their business. Specifically, they charge that losses incurred on IH are passed along to purchasers or renters of market-rate units, decreasing housing affordability for middle-income buyers. Such an assumption, however, is highly controversial.

The Incidence Controversy

At the heart of this controversy is the issue of "economic incidence," i.e. the distribution and fairness of the economic effects of IH among developers, buyers of market-rate housing, and landowners. Economists have pointed out that, in addition to passing the costs along to homebuyers and renters, there are two other possible effects of IH. First, if the demand for housing is elastic (i.e., sensitive to changes in price), developers cannot pass down the cost increases to home buyers or renters, and so have to reduce their profits. Second, if developers do not own the land at the time when an IH program is enacted, they should be able to bargain with the landowners for a lower price. There seems to be agreement in the literature that "in the long run . . . most of the costs will be passed backward to the owners of land" (Mallach 1984). However, Ellickson (1982; 1985) and other critics of IH (Rivinius 1991; Hansen 1993) maintain that all possible outcomes of IH represent unreasonable and unfair outcomes. Proponents of IH charge that it is not "necessarily unfair or unreasonable" if the landowner bears much of the cost of inclusionary programs (Mallach 1986, 65). It has been argued that increases in land values are generally not the result of the owner's efforts, but of public investments and government decisions, and are therefore "unearned." This argument is widely accepted in many European countries, leading to the establishment of programs that recapture or eliminate windfall profits in land development (Strong 1971; Hagman and Misczynski 1978). In the United States, "property rights" sentiment is much stronger; nonetheless, the argument against IH would probably lose much of its power if it became widely known that, in the long run, landowners and not homebuyers bear the costs of IH. Attempts to provide incentives and cost offsets would lose much of their rationale as well. Hagman (1982) has argued that incentives such as density bonuses and other cost offsets that are often given to developers as part of IH programs do not prevent cost increases for middle-income homebuyers, but instead keep the unearned increments in land value flowing to landowners.

In any case, these arguments have remained theoretical. Empirical research is needed to find out if, as economic theory suggests, the landowner does indeed bear most of the costs of IH in the long run. Such a finding might make the argument for cost offsets less politically compelling and could encourage acceptance of inclusionary housing programs.

Inclusionary Housing in California

The Housing Crisis

The most important factor in the growth of IH programs in California has been the housing affordability crisis, which since the 1970s has been one of the worst in the nation. Until the 1970s, housing costs in California were in line with the national average, but they suddenly skyrocketed after the recession of the early 1970s (Katz and Rosen 1980). As figure 1 indicates, by 1992 the median resale housing price in California was approximately 190 percent of the U.S. figure. Between 1970 and 1993, gross rent levels rose 436 percent and home prices increased 723 percent. During the same period, median household income increased 316 percent (California Department of Housing and Community Development 1993).

This rapid increase in housing costs in California is in part attributable to heavy in-migration in the 1970s and 1980s, and to the inability on the part of the housing industry to keep up with demand (Porter 1986; Levy 1991). Growth limitation measures have been blamed as a factor that has stunted housing production and increased its costs (Schwartz and Johnston 1981; Dowall 1984; Schwartz, Hansen, and Green 1984; Tucker 1991).

Growth limitation measures are a common reaction to rapid changes in the character of a community and to excessive demands on the infrastructure capacity of a region. As one of the nation's fastest growing states, California has enacted more growth limitation measures than has any other state. According to Lillydahl and Singell (1987, 73), growth limitation measures impede the supply of low- and moderate-income housing and may even cause it to disappear. However, public policy can countervail this effect. Some of the inclusionary programs analyzed in this study were included as part of growth limitation packages to provide low and moderate-income housing. Similarly, a study of Boulder, Colorado found that the effects of growth limitation measures were mitigated by other policies of the city, including an IH ordinance that required new projects to include moderately priced housing (Miller 1986).

But blaming growth controls for high housing costs in California is probably fallacious in the first place. Recent research on the connection between growth controls and housing production has found that cities with growth controls had no slower rates of growth than did other cities (Logan and Zhou 1989; Glickfield and Levine 1992; Landis 1992). The ineffectiveness of growth controls is attributable to the dominant and systemic power of growth coalitions that

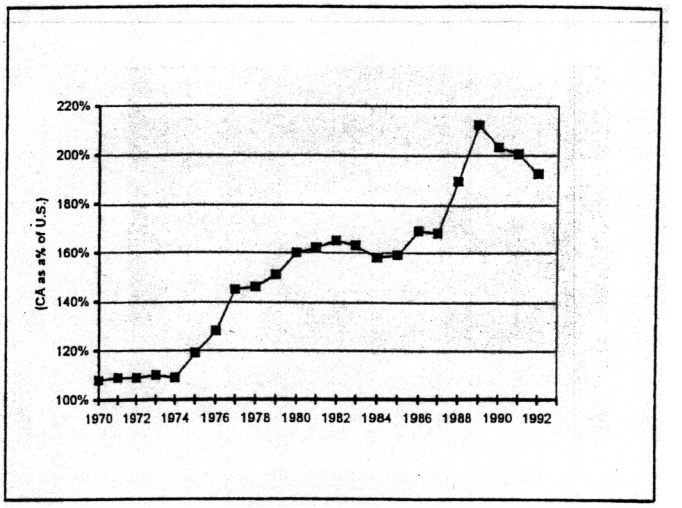

FIGURE 1. Median housing prices: California and the United States, resale housing

Source: California Economic Growth, 1993 edition. Palo Alto, CA: Center for Continuing Study of the California Economy

sidestep growth controls during their implementation (Warner and Molotch 1995). Growth controls might nevertheless increase the cost of housing, but indirectly: if the quantity of development is being threatened and the regulatory environment is tough, developers may be more willing to provide additional amenities in their projects to obtain development approval (Calavita 1992; Warner and Molotch 1995).

Development fees charged to new development generally increased considerably during the 1970s and 1980s. A sharp decline in federal funding, coupled with higher costs and increased performance standards for infrastructure, made it appealing to levy development impact fees (DIFs) on developers. This is especially true in California, where the adoption of Proposition 13 in 1978, limiting property tax revenues, may have had "the greatest single impact on infrastructure deficit now experienced in California localities." Consequently, DIFs in California are among the highest in the nation. Whereas the national average for all fees collected in 1990 was $6,413 (Nicholas, Nelson, and Juergensmeyer 1991), developers estimate that in some California cities the fees for a new home exceed $20,000 (Fulton 1991). Although the full amount is not necessarily passed on to consumers, high fees usually mean higher housing costs. But without the fees, it should be remembered, public facilities would face shortfalls and the quality of life of a community would decline as a result of growth.

In California, then, during the past 25 years, market pressures and regulatory exigencies attributable in

large part to Proposition 13 have reinforced one an other to drive up costs.

Policy-Making Environment

California statute requires that localities prepare a General Plan, including a "housing element," a five-year plan that "... shall make adequate provision for the existing and projected needs of all segments of the community" and identify potential housing sites "for all income levels" (Section 65583 of Government Code). Each locality is supposed to create policies and programs to enable it to meet its "fair share" of the region's needs for lower-income households, as identified by the regional council of government for that locality.

The California Department of Housing and Community Development (HCD) has the power to review housing elements and single out those that do not meet state law, but it lacks the power to mandate changes. Neverthless, under California General Plan Law, it is possible to litigate and stop the issuance of building permits until an approved housing element is produced. Actual and threatened litigation on the part of the California Attorney General in the late 1970s, and more recently on the part of builders or housing advocates—as in the case of the city of San Diego in 1996—pushes many local governments into obtaining state certification (Lane 1991). Furthermore, eligibility for state-administered housing programs such as HOME is linked with housing element compliance and provides an incentive, especially for smaller localities that receive federal funds through the state, to have a certified housing element (Department of HCD 1993).

However, even when a locality's housing element meets state requirements, there are no mechanisms to ensure that it is implemented. Housing element law requires local governments to designate potential sites for affordable housing, but it does not ensure that such housing is built. The result is a "paper chase" that "focuses on the question of whether the housing element complies with state law, rather than the question of whether enough housing is being constructed" (Fulton 1991, 75). There are 527 cities and counties in the state required to adopt housing elements. At the end of 1992, the compliance rate was 19 percent. Starting in 1993, HCD redoubled its efforts to increase compliance, raising the compliance level to 58 percent by December 31, 1995 (California Department of Housing and Community Development 1996).[6]

In the absence of a clear state mandate, inclusionary programs in California are adopted locally and are subject to the vicissitudes of local political and economic conditions. The experience of California thus stands in contrast to that of New Jersey, where, in response to the official tolerance of exclusionary practices,[7] IH was mandated by the State Supreme Court in the 1975 and 1983 Mount Laurel decisions (Rahenkamp and Rahenkamp 1986). Thus, in New Jersey inclusionary requirements are imposed on reluctant local governments by the Council on Affordable Housing, established in 1985 by Mount Laurel III (Lamar, Mallach, and Payne 1989), whereas in California inclusionary requirements are imposed on reluctant developers by some local governments.

While the adoption of an IH program ultimately rests with each jurisdiction, these decisions are influenced by larger economic and political circumstances that affect the local policy-making environment, notably the boom and bust cycles of the real estate market, and shifts in the policy and regulatory climate at the state level. What follows is a description of the evolution of IH programs in California, identifying key historical periods during which particular approaches to IH were stressed. We identify three major periods: from the beginning to the late 1970s, when IH programs were initiated as part of the response of some communities to severe growth problems; from the late 1970s to the mid-1980s, a period of strong state activism and widespread concern about affordable housing; and the late 1980s to the present, characterized by a sharp downturn in housing starts, calls for regulatory relief, and the state's repudiation of IH.

Historical Overview

1970s: Reaction to Growth Problems

The earliest inclusionary programs in California correspond to the first generation of growth-control measures, implemented in the 1970s to limit the rate of development in several communities that were attempting to protect their environment, fiscal health, and lifestyle (Reilly 1973; California Office of Planning and Research 1980; Brower, Godschalk, and Porter 1989; Navarro and Carson 1989). These growth-control programs were concentrated in Northern California and clustered around the San Francisco Bay in small, suburban "bedroom" communities. Typically, residential building caps were established, limiting the annual number of residential building permits a jurisdiction could issue.

For example, in Petaluma an annual limit of 500 units was established for the period 1973–1977. But limiting the supply of housing in areas where there is a strong demand could have an inflationary effect on the cost of housing. To ward off possible legal challenges to their programs, cities like Petaluma and Davis established a system that awarded points to pro-

posed projects that included affordable units, effectively giving them priority in the allocation of building permits. These programs tend to have lower thresholds for minimum project size, and require a higher percentage of affordable units and longer terms of affordability than California programs in general have. Such terms may be the result of the relative lack of power that developers had in these cities. Writing about Petaluma, Davis, and Palo Alto, Schwartz and Johnston (1981, 22) point out that "All three subject cities were engaged in vigorous growth control programs, and developers were not a major political force. No major ideological debate took place before the adoption of the inclusionary program."

During the 1970s the City of Irvine and Orange County experienced a burgeoning growth of jobs without a corresponding increase in housing affordable to most of the new workers. In response, lawsuits were filed in both jurisdictions. A 1975 Irvine lawsuit questioned the adequacy of the EIR for the impact that rezoning 2,058 acres to industrial/commercial development would have on low- and moderate-income housing needs. This legal challenge led to a settlement that required the Irvine Company, owner of almost 90 percent of developable land in Irvine, to produce 700 units of low- and moderate-income housing, with the city providing cost offsets and financing offsite infrastructure. The legal challenge further highlighted this jobs-housing imbalance and led to the establishment of a voluntary inclusionary program. Similarly, an inclusionary program—first voluntary and then mandatory—was adopted in Orange County in 1979 as a result of a lawsuit challenging the County's housing element for noncompliance with state housing law and a requirement of the Air Resources Board that affordable housing be provided in the vicinity of new jobs.

In both cases the building industry, especially the powerful Irvine Company, was directly involved in the negotiation process that led to the enactment of the inclusionary programs. Their influence was reflected in two ways. First, these programs allowed a great deal of flexibility; the Irvine program was first made voluntary, and both programs were governed by the jurisdiction's housing element and not by the zoning ordinance, thus allowing greater flexibility in their implementation. Second, the programs were designed "to encourage the economic feasibility of private sector construction of affordable housing" (Schwartz and Johnston 1981, 33). Cost offsets included reduced parking standards, density bonuses, processing assistance and, in Orange County, the ability to transfer credits from builders who had built more than their share of deed-restricted, price-controlled, low- and moderate-income units. In addition, low-cost financing was made available by the issue of housing bonds and through Section 8 New Construction Assistance or Community Development Block Grant funds. The extensive use of offsets and low-cost financing was facilitated by unusually sophisticated staff in Orange County who were committed to the establishment of an inclusionary program and determined to "make it work" (Mallach 1984, 160). In Irvine, also, during the 1980s, there was a particularly "gutsy" staff dedicated to the implementation of an affordable housing program.[8]

The Irvine and Orange County programs, though producing the largest number of IH units, have been modified and weakened as social and economic conditions have changed. The mandatory program in Orange County was phased out in 1983–86 and replaced with a voluntary program (*Los Angeles Daily Journal* 1983) that requires a term of affordability of "as long as possible" (5–10 years). In 1991, the Irvine program was amended to make clear that the inclusionary program applies only if sufficient offsets are provided to cover developers' costs. Irvine's program has no system for resale control, and almost all of its 1,610 single-family ownership units have been sold in the open market. In both Irvine and Orange County, the building industry has been able to shape inclusionary programs to meet its needs, and to weaken them further as soon as political conditions have made it possible.[9]

Between 1976 and 1981, the California Coastal Commission actively implemented a goal of 25 percent of low- and moderate-income units in residential developments to be built in the coastal zone. Strains in the state/local relationship, coupled with the high cost of affordable housing in highly desirable coastal communities, led to 1981 legislation that stripped housing responsibilities from the Coastal Commission and assigned them to each local government in the coastal zone, weakening the Commission's effectiveness considerably (Mallach 1984).

Finally, it should be mentioned that California Community Redevelopment Law requires that 20 percent of the tax increment that a redevelopment agency collects be spent on low- and moderate-income housing, and that 30 percent of all new or rehabilitated units developed by an agency should be affordable to low- and moderate-income households, with no fewer than half of those units affordable to persons of very low income. Lastly, 15 percent of all private and public units built in a redevelopment area must be affordable, with 6 percent affordable to very low-income households. The number of inclusionary units produced through redevelopment law for fiscal year

1994–1995—the first year the number of new units assisted by redevelopment agencies statewide was calculated—was 5,037 under the 30 percent, and 251 under the 15 percent requirement.

Late 1970s/Early 1980s: Housing Element Law Strengthened; HCD Advocacy

In 1975, the housing element statute was revised and strengthened under the Housing and Home Finance Act, to require the housing element "to make adequate provision for the housing needs of all economic segments of the community," and authorizing the Department of Housing and Community Development (HCD) to adopt guidelines and to review and comment on housing elements. HCD adopted the guidelines in 1977 during the Democratic administration of Jerry Brown and considered them mandatory, but officials and developers declared them advisory only (California Building Industry Association 1979). The need to settle this dispute prompted the legislature to enact new housing element provisions in 1980, declaring the HCD guidelines advisory only. The same legislation, however, introduced the concept of regional fair share that is central to both the California and New Jersey systems, by mandating that a locality's housing needs for all income levels "shall include the locality's share of the regional housing need" (Burton 1981, 26). Burton, HCD counsel at the time, interpreted the new legislation to mean that "cities and counties have an obligation imposed by housing element law to zone affirmatively for regional housing needs" (1981, 29).

A Model Inclusionary Housing Ordinance was prepared by HCD and advocated as a tool that local jurisdictions could use to bring their housing elements into compliance with state law (California Department of Housing and Community Development, Legal Department 1978; Ellickson 1982; Mallach 1984). HCD staff even implied that local housing elements might not be approved unless they contained an inclusionary program (California Association of Realtors 1991).

When the Republican administration of Governor George Deukmejian took over in 1983, HCD moderated its approach, making it more difficult for local policy makers and housing advocates to leverage IH. HCD-inspired programs require inclusion of affordable housing in new development, and provide no cost offsets or incentives to developers other than the state-mandated density bonus. They do, however, permit developers to fulfill program requirements through land dedications, off-site compliance, and the payment of in-lieu fees.

Approximately thirty IH programs were launched during this period, with their application spreading beyond the San Francisco Bay area and Orange County. HCD played an important part in their enactment, but it must be recognized that these programs were more generally a reflection of the "burgeoning housing crisis" and "a widely held conviction that housing affordability was a major problem affecting a substantial part of the area population and that the inclusionary approach was a rational way in which to address the problem" (Mallach 1984, 200). The quick proliferation of IH programs in California in the early 1980s prompted a New Jersey attorney to remark that "New Jersey adopted inclusionary housing but California implemented it" (Burton 1981).

1990s: The Legitimization of "Regulatory Barriers"; Repudiation of IH by HCD; The Cost Offset Approach

The re-emergence of the cost-offset approach in the 1990s reflects political-economic conditions at the state level similar to those in Irvine and in Orange County in the late 1970s and early 1980s. Most importantly, a recession increased the power of the development industry, and "overregulation" was legitimated as the major cause of high housing costs (Advisory Commission on Regulatory Barriers to Affordable Housing 1991). In the expansive market of the 1980s, developers had been able to pass on cost increases to the consumer. When California was hit by a recession in 1990 and real estate values fell, developers who had paid prerecession prices for the land would have had to absorb much of the cost increases that might be generated by IH, a prospect that strengthened the resolve of real estate and development forces to oppose further regulation and redistributional programs.

Under these political circumstances, the strategic choice for local governments was to develop inclusionary programs that were more palatable to the building industry. This could be achieved by making cost offsets a central feature of IH programs. Cost offsets provide developers with financial assistance and regulatory relief as a way to counter the costs of providing inclusionary units. Regulatory relief might include density increases, fast-track permit approval, impact fee waivers or deferral, lower parking requirements, and such relaxation of design restrictions as reduced streetwidths and setbacks. Financial assistance might be made available through state housing bonds, below-market-rate construction loans, Community Development Block Grants, tax-exempt mortgage financing, or land "write downs." A number of studies show that the affordability gap—the difference

between what it costs to provide housing and what lower-income households can afford—can indeed be filled through local government measures to reduce production costs (Brown and Harrington 1991; San Diego Housing Commission 1992). Neverthless, such an approach does not guarantee acceptance or acquiescence on the part of the development industry. Developers charge that such regulatory relief does not sufficiently compensate them for meeting inclusionary requirements, and they often seek additional financial assistance (Johnson et al. 1990; Rivinius 1991). When the development industry is especially powerful, as in large jurisdictions in high-growth areas during a recessionary period, even cost-offset approaches can be thwarted, as they were in Stockton, Sacramento County, and the City of San Diego (Newman 1993; Calavita and Grimes 1994).

What may have made an offset approach indispensable (albeit insufficient in some cases) was the dramatic shift by HCD on the merits of IH. It is now HCD's position that, without offsets and flexibility, "inclusionary zoning becomes a constraint or an exaction on new development" (Coyle 1991).[10] It thus "recommends against the adoption by local governments of inclusionary housing ordinances or policies which shift the burden of subsidizing low-income affordability from government to private builders" (Coyle 1994). Viewed as such, IH becomes a "governmental constraint," making it necessary for those jurisdictions that insist on IH in their housing element to measure its effect on housing development in general: "While we cannot endorse this approach to facilitate lower-income housing production, if the City has implemented a program that acts as a governmental constraint, the City must analyze the effect that the action has on housing development" (Badenhausen 1995). Although this position may have discouraged some localities from considering IH, it should be pointed out that no jurisdiction has been denied certification of the housing element because of IH. The usual outcome of the HCD-requested analysis of the effect of IH on housing development is an increase of cost-offsets.

This startling reversal of HCD's strong advocacy of IH programs in the late 1970s and early 1980s reflects the dramatic political differences between the Brown and the Wilson administrations, and a more widely diffused antiregulatory and probusiness stance. Such a stance becomes even more evident when one considers that HCD is now also criticizing long-term affordability requirements for IH units. In at least two cases, the length of affordability was reduced as a result of HCD's new position: in San Luis Obispo, from 50 to 30 years, and in the City of American Canyon from 30 to 10 years.

All new programs offer offsets, with the most common being the density bonus mandated by the State Density Bonus Law of 1979. Additional regulatory relief is provided in 39 percent of the localities, and financial incentives in 51 percent. Eighteen of the 35 programs established during the 1990s provide both financial incentives and reduction or flexibility in development standards. Many of the IH programs that were updated in the 1990s also were changed to provide more flexibility and cost offsets. For example, in Santa Barbara County: "Significant changes in the State and local economy have driven the County to seek programs which offer practical incentives ensuring the economic feasibility of affordable housing projects" (Santa Barbara County 1993, 17). Similarly, in Chula Vista, IH was modified in 1991 to provide additional flexibility and incentives, making it possible for "every player—federal, state, local, master developers and builders, and non-profit housing developers—to bring collective resources to become partners" (Batchelder 1995).

The analysis of the evolution of IH in California reveals a system marked by change and plasticity, as local governments respond to economic change and shifts in the state's policy-making environment. That adaptability helps to explain the wide variation in the distribution and characteristics of inclusionary programs in California, as we will see in the next section. The variation reflects the highly political nature of any public policy response to the affordable housing shortage, and indicates both the differences between local power structures and the ingenuity of local planners in successfully negotiating obstacles in their path.

Distribution and Characteristics of IH, and the Impetus

The data presented here represent an update and elaboration of the findings of two surveys of IH produced during the 1990s. The first was a telephone survey conducted by one of the authors while at the City of San Diego Housing Commission (San Diego Housing Commission 1992). That survey identified cities and counties with IH from the California Planners' Book of Lists, published by the Governor's Office of Planning and Research (1990); from a listing of jurisdictions with discretionary housing projects, provided by HCD; and through a review of the available literature. In order to include programs not identified through those sources, survey respondents were asked to name other jurisdictions in their area having IH.

This survey was updated and expanded by the California Coalition for Rural Projects (CCRHP) in 1994. CCRHP mailed an eight-page survey about the structure and outcomes of inclusionary programs to 505 City and County Planning Departments. Follow-up telephone calls were made to jurisdictions that had not returned the questionnaire, but that had been identified by the San Diego Housing Commission survey as having inclusionary programs, and to jurisdictions that had returned the survey with incomplete information. The survey form was accompanied by a cover letter explaining the objectives of the study and defining "inclusionary" for the purpose of the survey. Data from returned surveys[11] were entered and tabulated in a computer database. Of the 64 respondents, 37 requested a copy of the report to check the accuracy of the jurisdiction's information, and 14 submitted comments.

During 1995 the authors expanded the survey to include 11 additional programs that were not included in the CCRHP report: six that were known to have IH but for which information had not been obtained by the original survey, three that were adopted in 1995, and two others that had been missed by both the San Diego Housing Commission and the CCRHP surveys, bringing the total of IH programs described in this paper to 75.[12] We are confident that they represent all IH programs existing in California at the beginning of 1996. In table 1 we have limited a presentation of the results to 10 characteristics that we feel are the most important in describing the salient features of IH programs in California.

Although scattered throughout the state, inclusionary programs in California are found primarily in jurisdictions clustered around San Francisco and in Southern California coastal counties—Los Angeles, Orange, and San Diego, characterized by rampant growth and high housing costs. (See figure 2; a list, by county, of jurisdictions with inclusionary housing programs appears in figure 3.)

The majority of programs (52 or 69 percent) are mandatory, requiring developers to meet the terms of the program. Other programs, though voluntary, are functionally mandatory: for example, the program in Pleasanton is technically voluntary, but it is nonetheless very difficult for developers to secure a building permit without agreeing to provide affordable units. This suggests that an effective inclusionary program is dependent not only on the formal structure of the program, but also on the commitment of the public agency responsible for its implementation and monitoring.

The required percentage of affordable units varies from 5 percent in San Luis Obispo to 50 percent in Placer County, although the majority (61 percent) require 10–15 percent of new residential development projects to be affordable. The typical minimum project size is 10 units. Smaller projects are usually exempted, because they do not enjoy the economies of scale that facilitate the compliance of larger projects.

Most programs do not require market rate units and affordable units to be identical; however, in pursuit of economic integration objectives, most require them to be similar in outward appearance. Similarly, it is common for inclusionary programs to require that affordable units be distributed throughout the development rather than clustered in a single area where they may be easily identified.

All localities allow the developer a degree of flexibility in meeting program requirements to reduce the economic impact on projects. Developers are normally allowed to reduce the dimensions and amenities in affordable units, although most programs establish minimum standards. Most programs permit the developer to pay a fee in lieu of providing affordable housing. In-lieu fees vary from a low of $600 per unit in Pleasanton to a high of more than $36,000 per unit in Oceanside (reduced in 1991 from $58,000). In some localities, such as Encinitas and Oceanside, in-lieu fees are used to support local rent subsidy programs. In-lieu fees are also used for homelessness assistance, special need or transitional housing, land acquisition, rehabilitation, and new construction. The Carlsbad program allows the developer to make an in-lieu donation of land, normally equivalent to the acreage that would have been used to meet the requirement.

Nearly all programs (87 percent) provide for both low- (between 50 percent and 80 percent of median income) and moderate- (between 80 percent and 120 percent of median income) income households, and 53 percent of programs also require housing for very-low-income households (50 percent of median or less, earning $22,600 or less per year in 1993). Only five programs provide housing exclusively for moderate-income families.

Most programs (64 percent) require affordability restrictions to remain in effect for at least 30 years, with some programs maintaining the units affordable in perpetuity. A third of all programs employ "rolling" resale control, whereby the term of affordability begins anew with each resale, or else require affordability restrictions to remain in effect permanently.

Given this ad hoc IH system in California, the question arises as to why certain localities adopt IH and others do not. The CCRHP survey included the question: "Why did your locality adopt an inclu-

TABLE 1. Continued

City/County	Year Adopted/ Updated	Mandatory/ Voluntary	Minimum Project Size	% Units Required	Target Population	In Lieu Fee	Number of Units Produced	Terms of Affordability
Marin County	1980/95	M	10	15	VL/L/M	Yes	37	30 years
Menlo Park	1986	M	10	10	L/M	Yes	16	55 years
Merced County	1992	V	NR	NR	VL/L/M	No	131	None
Mill Valley	1985	M	2	10–15	VL/M	No	74	Permanent
Monterey County	1979/85	M		15	L/M	Yes	454	30 years SF, Permanent MF
Monterey	1981/89	M	10	15	M	Yes	242	Permanent
Morgan Hill	1979/92	V	2	10–15	VL/L/M;	Yes	287	30 years sale, 20 years rental
Napa County	1992	M	1	10	VL/L/M	Yes	0	40 years
Oceanside	1991	M	3	10	L/M	Yes	0	30 years
Ojai	1991	V	5	20% LR; 10% VL	VL/L/Seniors	No	21	30 years
Orange County	1979/90	V/M	4	25	L/M	No	7341	None SF, Permanent MF
Palo Alto	1974/90	M	3	10	VL/L/M	Yes	197	59 years
Petaluma	1984/90	M	5	10 to 15	VL/L/M	Yes	519	SF: as long as possible; MF: Permanent
Placer County	1992	V	SF:100/MF:4	SF 10% L; MF 50% L/M	VL/L/M	Yes	0	20 years
Pleasanton	1988/93	V		25	L	Yes	932	25 years
Portola Valley	1992	M	7	15	VL/L/M	Yes	0	Permanent
Richmond	1991/93	V	10	15%L; 10%VL	VL/L/M	Yes	0	10 years
Roseville	1988	V	4	10%, Emph. on rental	VL/L/M	Yes	910	Determined in development agreement
Salinas	1991	M	10	12	VL/L	No	202	30 years
San Anselmo	1988	M	10	10	L/M	Yes	2	30 + 30 option
San Benito County	1988	V	NR	NR	NR	Yes	0	NR
San Buenaventura	1987	V	8	20	VL/L/M		0	30 years
San Carlos	1991/93	M	10	10	L/M	Yes	0	None
San Clemente	1980/89	V	10	15	VL/L/M	Yes	352	20 years
San Leandro	1983	M	20	10	L/M	Yes	377	20 years
San Luis Obispo	1993/94	V	50	<50 Units: 5%; 50 Units or more?	VL/L/M	No	0	50 years; Permanent if subsidies used

San Mateo	1992	M	11	10 MF only	L/M	Yes+	6	30 years
San Rafael	1981/92	M	10	10	VL/L/M	Yes	301	40 years
Santa Barbara County	1985/93	M	5	See footnote B	VL/L/M	Yes	1312	30 years
Santa Clara County	1979/94	V	10	10	L/M	NR	0	NR
Santa Cruz County	1979/93	M	5	15	VL/L/M	Yes	1238	Permanent
Santa Cruz	1985	M	5	15	VL/L	Yes	110	Permanent
Santa Monica	1990/92	M	2	30	L/M	Yes	377	Permanent
Santa Rosa	1992/93	M	1	15–20	L	Yes	20	30 years
Solana Beach	1995	M	4	10	VL/L	Yes	0	30 years
Sonoma	1995	M	5	10	M	No	0	30 years
Sunnyvale	1980/91	M	1	10	VL/L/M	Yes	740	20 years
Tiburon	1984/92	M	10	10	L/M	Yes	43	Permanent
Truckee	1996	M	See footnote	10–20	VL/L/M	No	0	NR
Vista	1985	M	1	6	VL/L	Yes	0	Permanent
Watsonville	1991	M	8	25	VL/L/M	Yes	2	Permanent
West Hollywood	1986/90	M	1	10–20	L/M	Yes	53	Permanent
Winters	1994	M	1	15	VL/L/M	No	0	55 years
Woodland	1993	V	10	10–25	VL/L	No	0	40 years
Yolo County	1992	M	1	10–25	VL/L/M	Yes	0	SF recapture mechanism; MF permanent

Total Number of Units Produced: 24,432
A: 50 to 20 units: 10%; 20–100 units, use formula (.225 total # of units); 100+ units, 20%.
B: 20% @ 110% of median or 15% @ 90% of median or 10% @ 75% of median or 5% @ 50% of median
C: Relates to acreage of specific plan
*: only for 4-to-9-unit developments
+: only for 1-to-11-unit developments
VL (Very Low): Incomes at or below 50% of median
L (Low): Incomes between 50 and 80% of median
M (Moderate): Incomes between 80 and 120% of median

TABLE 1. Inclusionary housing programs in the State of California

City/County	Year Adopted/ Updated	Mandatory/ Voluntary	Minimum Project Size	% Units Required	Target Population		Number of Units Produced	Terms of Affordability
Agoura Hills	1987	M	10	15	L/M	No	50	15 years
Auburn	1993	V	5	10–15	L/M	Yes	NR	NR
Avalon	1983	M	4	20	L/M	No	135	Permanent
Berkeley	1986/87	M	5	20		No	42	30 years; SF; 59 years MF
Brea	1993	M	20	10	VL/L/M	Yes	5	30 years
Brisbane	1985/94	V	10	15	L/M	No	0	None
Burbank	1985	V	NR	NR	NR	No	128	NR
Calistoga	1989/95	M	5	20	L/M	Yes	48	Permanent
Carlsbad	1991/93	M		15	VL/L	Yes	344	Permanent
Carpenteria	1986	V	10	15–20	VL/L/M	Yes	20	None
Chowchilla	1992	V	NR	NR	NR	NR	0	NR
Chula Vista	1991	V	50	10	L/M	No	521	"Maximize"
Clayton	1993	M	10	10	VL/L	No	0	NR
Coronado	1982/93	M	2	20	VL/L/M	Yes	11	30 years
Corte Madera	1978	M	10	15	L/M	Yes	32	Permanent
Cotati	1985/90	M	5	15	L/M	Yes	20	10 years
Cupertino	1993	M	4	10	VL/L/M	Yes*	43	30 years
Danville	1991/95	M	8	13 units < 10%; 14 units > 15%	M	Yes	66	20 years minimum
Davis	1987/92	M	5	25–35	VL/L/M		471	None SF, Permanent MF
Del Mar	1981/93	M	10	10–66% Section 8	VL/L	Yes	0	30 years
East Palo Alto	1994	M		20 L & VL	VL/L	Yes	0	30 years
Encinitas	1990	M	10	10 Rental only	VL/L	Yes	20	None
Fairfax	1986/90	V	10	Densities < 6u/a:10 Densities > 6u/a:15	L/M	Yes	0	Resale controls set by MCHA
Hesperia	1992	V		10	VL/L	Yes	0	30 years
Irvine	1984/89	M		25	M	Yes	4469	30 years
Laguna Beach	1982/90	V		25	VL/L/M	Yes	310	10 years
Larkspur	1990/90	M	10	Density < 7u/a:10	L/M	Yes	139	Permanent
Livermore	1978	M	10	10	VL/L/M	Yes	1212	30 years
Lompoc	1992	M	10	10	VL/L/M	NR	30	NR
Long Beach	1992	V	10	5–10	VL/L	Yes	NR	10–30 years
Los Gatos	1976/86	M	5	See footnote A	M	Yes	20	Permanent

FIGURE 2 Inclusionary housing programs in California

sionary housing policy? Please be specific." Of the 72 percent of jurisdictions that provided a response, 31 percent simply noted a desire "to provide affordable housing" in their communities, and 21 percent indicated a "desire to meet the affordable housing goals established in their housing elements or to achieve their regional fair share requirements." Citizen initiatives launched 6 percent and lawsuits led to 3 percent of inclusionary programs (CCRHP 1994, 37).

A series of personal interviews in eight jurisdictions in San Diego County having IH yielded more in-depth understanding about the possible motivations of localities for adopting IH. The results of the interviews indicate that the state's Housing Element Law is the origin of all IH programs in San Diego County. These jurisdictions looked at IH programs as a mechanism that would help them meet housing element requirements. Moreover, a few jurisdictions felt that not only did they have to produce a housing element acceptable to HCD, but a plan would not be enough. Intentions codified in the housing element had to show some results: the "paper chase" could not last forever, affordable units had to be built, and an IH program was the only mechanism that could produce tangible results. This was especially true in localities with large tracts of undeveloped land.

Carlsbad, for example, was confronted in 1989 by new SANDAG (San Diego Association of Governments) "fair share" numbers showing a substantial unmet and future need for affordable housing, and a record of zero affordable units produced since the 1985 housing element. The city had also recently lost a lawsuit brought by the Legal Aid Society of San Diego County for its failure to spend $1.5 million of redevelopment funds earmarked for affordable housing. As a result, the City Attorney warned that the city might

Alameda
Berkeley
Livermore
Pleasanton
San Leandr

Contra Costa
Clayton
Danville
Lafayette
Richmond

Los Angeles
Agoura Hills
Avalon
Burbank
Long Beach
Santa Monica
West Hollywood

Madera
Chowchilla

Marin
Corte Madera
Fairfax
Larkspur
Marin County
Mill Valley
San Anselmo
San Rafael
Tiburon

Merced
Merced County

Monterey
Monterey County
Monterey
Salinas

Napa
Calistoga
Napa County

Orange
Brea
Irvine
Laguna Beach
Orange County
San Clemente

Placer
Auburn
Placer County
Roseville

San Benito
San Benito County

San Bernardino
Hesperia

San Diego
Carlsbad
Chula Vista
Coronado
Del Mar
Encinitas
Oceanside
Solana Beacl
Vista

San Luis Obispo
San Luis Obispo

San Mateo
Brisbane
Menlo Park
Portola Valley
San Carlos
San Mateo

Santa Barbara
Carpenteria
Lompoe
Santa Barbara County

Santa Clara
Cupertino
East Palo Alto
Los Gatos
Morgan Hill
Palo Alto
Santa Clara Coun
Sunnyvale

Santa Cruz
Santa Cruz County
Santa Cruz
Watsonville

Sonoma
Cotati
Petaluma
Santa Rosa
Sonoma

Ventura
Ojai
San Buenaventura

Yolo
Davis
Winters
Woodland
Yolo County

FIGURE 3 Jurisdictions with inclusionary housing programs, by county

be taken to court again over the noncompliance with the housing element, thus risking the invalidation of the General Plan and the halting of the development review process.

The Oceanside IH program is attributable in large part to a local proposition passed in April 1987 that limited the number of dwelling units that could be constructed each year. The Building Industry Association and ten developers sued the city, maintaining that Oceanside would not be able to meet its affordable housing goals because of its slow-growth requirements. As the housing element was placed under a microscope, the new SANDAG "fair share" numbers showed the need to produce more units. An inclusionary program was part of the response to the seeming contradiction between Oceanside's approach to growth management and environmental protection on the one hand, and the attainment of the housing element objectives on the other (Sammartino, 1991). In part because of a sharp slowdown in local construction after 1991, IH has produced no units, but it has collected approximately $350,000 in in-lieu fees.

Chula Vista is a city where, as in Carlsbad and to a lesser extent Oceanside, large tracts of open land are being developed as master-planned communities. The major difference is that Chula Vista is located in southern San Diego County, near the United States-Mexico border, an area considered less desirable than North County. Chula Vista established a voluntary IH program in 1981 to conform to the newly established "fair share" state requirement. Equally important was the goal of avoiding a socially and ethnically divided community, with old Chula Vista, located west of Interstate 5, containing all the existing affordable housing, and the undeveloped eastern area developing as homogeneous, middle-class, suburban communities. Given the low cost of land in Chula Vista, developers were able to meet the inclusionary goals of 5 percent low- and 5 percent moderate-income housing through market-rate housing. In some of the master-planned communities, the inclusionary requirement was shifted to parcels to be developed later, and the last builders to develop were "left holding the bag"; then the inclusionary requirement was waived. This problem, coupled with the sharp rise in the cost of land during the late 1980s, led to changes in 1991 to

reinforce the IH program. The outcome was a program based on negotiation and flexibility. According to one of the Chula Vista planners interviewed, the major reason for the change was the "perceived threat of nonperformance" as evidenced by the huge gap between actual performance and the "fair share" numbers assigned by SANDAG, which could lead to "public scrutiny," in other words a possible lawsuit by advocacy groups and the possible loss of housing funds from the state.

Coronado's IH was originally adopted in 1981 as part of the California Coastal Commission requirements. In 1993, when the housing element was being revised, it was decided to give the program "more teeth" in the hope that it would help Coronado meet state requirements. Ironically, this decision came when HCD was shifting its stance on IH; the housing element was duly modified. It was finally approved after the city included the statement, "We determine that this program will not impede development" and also negotiated new in-lieu fees—an important source of revenues in Coronado, which lacks large or medium-sized tracts of developable land—with the building industry getting them reduced from the original proposal of $43,000 to $7,000.

Solana Beach is a small, affluent coastal city where multifamily development has been discouraged, making it difficult to obtain approval of its housing element. In 1995 the city instituted an IH program, hoping to increase its chances of compliance, only to find out that as a consequence of HCD's policy reversals, IH would actually make the city's case even weaker in the eyes of HCD.

Most planners in San Diego County described their IH program as in flux, tossed and turned by the winds of political and economic changes in their community, as well as at the state level. In Encinitas, for example, IH was adopted in 1987, immediately after the city was incorporated, during a flurry of legislative activity and as a result of the City Attorney's recommendation.[13] More recently, however, a more prodevelopment council has declared its antipathy to IH, failed to adopt a fee schedule, and directed the newly formed Housing Commission to find alternative funding for affordable housing. The Commission has found none, and IH remains in limbo. In this climate of uncertainty, the planners are requiring developers to build ancillary units with permanent affordability restrictions.

Conclusion

California's growth explosion during the 1970s and 1980s led to both market and regulatory pressures that, by pushing housing costs higher, produced a housing affordability crisis that has been one of the worst in the nation. The state responded by requiring localities to develop a housing element as part of their General Plans, aimed at meeting their "fair share" of regional needs for lower-income housing. The housing element is subject to elaborate state review, but with a formal certification process lacking, performance cannot be guaranteed. Through a system of incentives and disincentives, several local jurisdictions have adopted IH programs as mechanisms to help bring about compliance with state law and produce affordable housing. The resultant IH system in California can be described as decentralized, flexible, ad hoc, diverse, and complex, as it reflects the political, economic, and cultural (Ramsay 1996) traits of each locality over time.

From the survey of IH in California used in this study, the following specific and characteristic propensities of IH can be enumerated:

Program Flexibility

To reduce economic impacts on the developer, inclusionary programs generally allow in-lieu fees, off-site units, and fewer amenities. In-lieu provisions are concessions especially valued by developers, because most have little experience building low-income housing and scant motivation to enter an unfamiliar market perceived to entail a high degree of risk (Schwartz and Johnson 1983; Mallack 1984). However, these provisions weaken the potential for integration offered by IH.

Lasting Affordability

Sixty-five percent of programs responding to this survey require that affordability restrictions be enforced for at least 30 years. But maintaining the affordability of units built under IH programs remains controversial. For example, Mallach reports that for many decision-makers, resale controls constitute "an intolerable intrusion by public regulation into the exercise of a fundamental and closely held property right" (1984, 147). This deep-seated ideological opposition explains why more than a quarter of the programs have affordability restrictions of less than 30 years. It might also help to explain the new position of HCD on long-term affordability. Fortunately, the recent experience of prepayment of federally-subsidized projects has increased awareness of the importance of lasting affordability. Davis (1994, 2), in *The Affordable City,* notes that "many people have questioned the wisdom of working so hard to produce affordable housing if the affordability of those units may soon be lost."

Targeted Populations

IH programs have placed too much emphasis on moderate-income, first-time home buyers. Only 53 percent of all programs require housing for very low-income households. There are political as well as economic reasons for the lack of attention to the needs of this population. In the absence of organized pressure, local decision-makers usually favor home ownership programs for middle-income groups over rental housing for lower-income groups. An exception to this rule involves housing trust funds, which are most often established as a result of community pressure and have been successful in providing housing for very-low-income groups (Brooks 1989; 1994; Connerly 1989; 1993; Calavita and Grimes 1992).

Program Inconstancy

Inclusionary programs respond to needs and concerns within a locality, as well as to the vagaries of regional and state political-economic conditions. We have distinguished three historical periods, for which the particular approaches to IH were described. IH was shaped around a variety of factors, including threats to quality of life, affordability crises, and increased regulatory costs, and was filtered through shifting ideological lenses. A pronounced, politically conservative shift became apparent in the 1990s, with HDC characterizing IH as "governmental constraint" on the production of housing—an illustration of the quixotic nature of the program.

Impetus for Enacting IH Programs

Our analysis of the origin of IH programs in San Diego County found that the impetus for the enactment of IH programs is not a generic desire to provide affordable housing, but the perceived threats arising from noncompliance with housing element law. This finding suggests that the impetus for IH in California derives from the legislatively mandated state Housing Element Law and fair share doctrine. Without such state intervention, it is doubtful that IH in Calfornia could have reached any level of significance. The role that state intervention plays also implies that, in the face of the recent push for "self-certification" of housing elements on the part of localities, extreme caution should be exercised about changing a system that, by allowing a great deal of scrutiny, increases opportunities for litigation. The question is whether these attempts to limit public scrutiny are attributable to a genuine desire to reduce the "paper chase" while emphasizing production of affordable units, or simply the aim of lessening the state's pressure on localities to confront affordable housing issues. Unless strict performance standards and procedures are established, "self-certification" will lead to a sharp decline in affordable housing production. Moreover, it seems to us that as more time passes with little or no production of affordable housing, the "paper chase" becomes less feasible as an alternative to the actual production of units, thus reducing the chances for compliance and increasing the chances for litigation. It is this "desperation issue" that is likely to push localities to pursue programs that will produce housing, including IH. As a planner in Carlsbad told us: "It was the only way to produce affordable housing."

Developer Opposition and Cost Offsets

Most developers resolutely oppose IH programs and remain firmly convinced that they are detrimental to their financial interests. While there are at least 75 jurisdictions in the state with inclusionary programs, many other proposed programs have been defeated, for example, those in Sacramento County in 1992 and in Stockton in 1993. Other programs have been put on hold, as in San Diego in 1993. Still others, such as Alameda County, have been attempting for years to build the necessary political consensus for inclusionary programs. In some jurisdictions, existing programs have been terminated—the most recent being the short-lived Los Altos program, which survived for only five months in 1993.

The cost-offset approach anticipates and to some extent accommodates political opposition, by neutralizing or reducing the additional costs developers incur in providing affordable units. This approach demonstrates that local governments can be responsive to claims made by the development community that they are overregulated, and yet at the same time create a mandate for the supply of affordable housing. But, in return for regulatory relief that significantly reduces the costs of development, localities should not shirk their responsibility to impose lasting affordability standards that more closely reflect housing needs, particularly those of very-low-income households.

Housing Production

In the face of the critical paucity of affordable housing in California, the success of the state's IH programs, particularly when measured by the production of 24,000 low-income units over the past two decades, is arguable. That number of units, although commendable, is manifestly insufficient to meet the housing needs of all lower-income households. Obviously, any meaningful effort to meet the needs of lower-income people requires a more comprehensive range of tools and remedies.

Yet, although admittedly modest, the numbers of

low-income units built under this program represent significant progress on diverse fronts. The model of inclusionary housing breaks new ground by: 1) generating affordable housing through focused and flexible local policy rather than through distant and rigid national prescription; 2) creating affordable housing in formerly off-limits suburban communities, thereby instituting gradual and dispersed opportunities for social and economic integration and contributing to greater social stability than is generally or publicly acknowledged; and 3) providing housing opportunities for low-wage earners in job-surplus cities, improving job-housing balance and self-containment.

This breakthrough also reflects a more active role for planners as advocates for increased social equity, rational urban strategy, and comprehensive planning. As Krumholz and Forester (1990, 210) have pointed out, the "typical ambiguity of local planning" and "the typical complexity of local government provide opportunities and not just paralysis for equity oriented planners." Ambiguity and complexity certainly characterize the local-regional-state relationship with regard to the housing element. The state mandate can be interpreted differently, depending on the values and attitudes of planners. If planners see affordable housing as an important objective, they will emphasize the need to meet state housing element law and will lobby to influence the decisions of policy-makers.

By setting these precedents, IH in California has established itself as a multifaceted and thoroughly feasible option available to officials and policy-makers who are responsible for meeting local, regional, and state housing needs and for promoting more community social and economic balance and self-containment. The root source of IH, it should be remembered, is its legislatively mandated housing element and fair share doctrine. In the wake of reduced support from the federal government, it behooves all planners to engage in concerted efforts to pursue IH as one of the regulatory choices to be made available to decision-makers, and to advance IH by advocating the state/regional/local framework of the California system and the principle of regional fair share, to expand the role of IH in any state's affordable housing strategy.

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NOTES

1. Two exceptions are noteworthy: Massachussets and Oregon. In Massachussets, the "anti-snob zoning act" of 1969 combats exclusionary practices, and the "Local Initiative Program" encourages "local government involvement in the production of low- and moderate-income housing," with inclusionary housing being a program that all localities can use (Netter 1990). In Oregon, the Land Conservation and Development Commission, through its power to review local plans for consistency with 19 statewide land use goals and guidelines, has, by removing "land use constraints on the construction of low income housing," led to development that is more compact and more affordable to low-income residents, and in some cases has prompted IH programs. Those programs, however, "do not seek to overcome financial constaints as others do" (Knaap 1990). We must also acknowledge the 1973 Montgomery County, Maryland IH program—even though it is not part of a state effort—as "a national pioneer in inclusionary zoning" (Bauman 1990).
2. Although the Mount Laurel I decision was handed down by the New Jersey Supreme Court in 1975, no ascertainable low- or moderate- income housing was built before Mount Laurel II in 1983, which greatly strengthened the earlier decision and mandated construction of affordable housing.
3. The number of inclusionary units built in New Jersey as of 1992 has been variously reported as nearly 7,000 units (Mallach 1994), 9,800 units (Lovejoy 1992), and 10,123 units (Opalski, unpublished report, cited in Mallach 1994). Nevertheless, it should be remembered in comparing California and New Jersey that California has about four times the population of New Jersey, and that IH has been seriously implemented in New Jersey only since the early 1980s.
4. Sometimes inclusionary programs and linkage programs have been conflated, for example, in Mallach (1984), Merriam et al. (1985), and Stegman and Holden (1987). Linkage programs are exactions on commercial development that are dedicated to the construction of affordable housing (Connerly 1993).
5. The statutory role of the General Plan under California law is much stronger than in nearly all other states; for example, having IH as a policy in the Master Plan of a New Jersey municipality would be largely meaningless.
6. 104 localities (20 percent) have adopted housing elements that are out of compliance; 26 cities' and counties' draft elements are in compliance. When adopted, about 61 percent of all localities' elements will be in compliance with state housing element law.
7. Many New Jersey communities have used zoning to exclude lower-income households or minorities by using ostensibly neutral restraints such as lot size, floor area

ratio requirements, or other devices that have a discriminatory effect because they artificially inflate real estate values. These practices were successfully challenged by the Southern Burlington County NAACP in Mount Laurel I.

8. Interview with Michelle Fergoda, Housing Development Manager, San Diego Mid-City Development Corporation, formerly of the Irvine Department of Housing Services.
9. IH programs resulting from growth-control measures underwent a resurgence during the boom period of the mid-to-late 1980s, most notably in San Diego County, where Oceanside and Carlsbad established caps on housing construction and development phasing.
10. Timothy L. Coyle was the Director of the California Department of Housing and Community Development until 1995. The position of HCD has not changed with the new director.
11. General features of the survey included: Mandatory/Voluntary, Ordinance/Policy, Percentage Requirements, Length of Affordability, Targeted Income Levels, Definition of Affordability, Comparability of Design, Incentives, Alternatives to On-Site Development, Performance Self-Evaluation, In-Lieu Fee Collection, Inclusionary Unit Production, Incentives, Jurisdiction Contacts.
12. Survey data for the 11 programs were collected through telephone interviews, lasting approximately 30 minutes, conducted with housing and planning officials in those localities between October and December 1995. In addition, housing elements and/or zoning codes were collected from each jurisdiction.
13. In later defending IH, City Attorney Krauel justified IH as resulting from the scarcity of buildable land in Encinitas: "When developers use up that resource they should be required to share in the expertise of providing low-income housing in the city" (quoted in Cervone 1990).

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